

**FIFTY-FOURTH LEGISLATURE  
FIRST SESSION, 2019**

March 16, 2019

Mr. President:

Your **CONFERENCE COMMITTEE**, to whom has been referred

**HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 6, as amended**

has had it under consideration and reports same with the following recommendation:

1. All items of House Floor Amendment number 1 be APPROVED.
2. The following senate corporations and transportation committee amendments be DISAPPROVED:  
  
Nos. 1, 12 through 14, 18 through 20 and 22 through 26.
3. The following senate corporations and transportation committee amendments be APPROVED:  
  
Nos. 2 through 11, 15 through 17 and 21.
4. The following senate finance committee amendments be DISAPPROVED:  
  
Nos. 1, 3, 4, 6 and 7.
5. The following senate finance committee amendments be APPROVED:

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Nos. 2 and 5.

and that the bill be amended further as follows:

6. On page 2, line 2, after the semicolon and before Item 1 of House Floor Amendment number 1, insert "LIMITING AUDITS OF MARKETPLACE PROVIDERS AND MARKETPLACE SELLERS;".

7. On page 2, line 7, after the first semicolon and before Senate Corporations and Transportation Committee Amendment 4, insert "AMENDING THE DISTRIBUTION OF THE REVENUE OF THE MOTOR VEHICLE EXCISE TAX;".

8. On page 48, between lines 22 and 23, insert the following new section:

"SECTION 10. Section 7-1-11 NMSA 1978 (being Laws 1965, Chapter 248, Section 16, as amended) is amended to read:

"7-1-11. INSPECTION OF BOOKS OF TAXPAYERS--EXCEPTION FOR MARKETPLACE PROVIDERS AND MARKETPLACE SELLERS--CREDENTIALS.--

A. To determine the correct amount of tax due, the department shall cause the records and books of account of taxpayers to be inspected or audited at such times as the department deems necessary for the effective execution of the department's responsibilities.

B. The department shall audit a marketplace provider, but not a marketplace seller, with respect to gross receipts from transactions facilitated by a marketplace provider and for which the marketplace seller may claim a deduction pursuant to Section 36 of this 2019 act, unless an audit of the marketplace seller is necessary to determine the correct amount of tax due, including

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examining the marketplace seller:

(1) to determine compliance with Section 36 of this 2019 act;

(2) to determine if the marketplace provider should be relieved of liability pursuant to Subsection C of Section 7-9-5 NMSA 1978; or

(3) to enforce any other provision of the Tax Administration Act.

~~[B.]~~ C. Auditors and other officials of the department designated by the secretary are authorized to request and require the production for examination of the records and books of account of a taxpayer. Auditors and officials of the department designated by the secretary shall be furnished with credentials identifying them as such, which they shall display to any taxpayer whose books are sought to be examined.

~~[C.]~~ D. Taxpayers shall upon request make their records and books of account available for inspection at reasonable hours to the secretary or the secretary's delegate who presents proper identification to the taxpayer.

~~[D.]~~ E. If the taxpayer's records and books of account do not exist or are insufficient to determine the taxpayer's tax liability, if any, the department may use any reasonable method of estimating the tax liability, including ~~[but not limited to]~~ using information about similar persons, businesses or industries to estimate the taxpayer's liability.

~~[E.]~~ F. The secretary or the secretary's delegate shall develop and maintain written audit policies and procedures for

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all audit programs in which the department routinely conducts field audits of taxpayers, including policies and procedures concerning audit notification, scheduling, records that may be examined, analysis that may be done, sampling procedures, gathering information or evidence from third parties, policies concerning the rights of taxpayers under audit and related matters. Department audit policies and procedures shall be made available to a person who requests them, at a reasonable charge to defray the cost of preparing and distributing those policies and procedures.

~~[F.]~~ G. Nothing in this section shall be construed to require the department to provide the following:

(1) information that is confidential pursuant to Section 7-1-8 NMSA 1978; or

(2) methods, techniques and analysis used to select taxpayers for audit, including the use of:

(a) data analytics;

(b) data mining;

(c) a scoring model;

(d) internal controls; and

(e) metadata used to detect fraud and noncompliance.

~~[G.]~~ H. For purposes of this section:

(1) "data analytics" means the science of

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examining data with the purpose of drawing conclusions about the information;

(2) "data mining" means the process of analyzing data from different perspectives and summarizing it into useful information by collecting data into data sets for the purpose of discovering patterns;

(3) "scoring model" means a predictive model that can predict the chance of occurring of a fact and its occurrence;

(4) "methods, techniques and [~~methodology~~] analysis" means a systematic way to accomplish a tactic, qualitative or quantitative component of research and the use of a specific method;

(5) "internal controls" means a process of assuring achievement of an organization's objectives in operational effectiveness and efficiency, reliable financial reporting and compliance with laws, regulations and policies; [~~and~~]

(6) "marketplace provider" means a "marketplace provider", as that term is used in the Gross Receipts and Compensating Tax Act;

(7) "marketplace seller" means a "marketplace seller", as that term is used in the Gross Receipts and Compensating Tax Act; and

[~~(6)~~] (8) "metadata" means data that provides information about other data."".

9. On pages 51 through 54, strike Section 13 in its

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entirety and insert in lieu thereof the following new section:

"SECTION 12. Section 7-2-7 NMSA 1978 (being Laws 2005, Chapter 104, Section 4) is amended to read:

"7-2-7. INDIVIDUAL INCOME TAX RATES.--The tax imposed by Section 7-2-3 NMSA 1978 shall be at the following rates for any taxable year beginning on or after January 1, [2008] 2021:

A. For married individuals filing separate returns:

If the taxable income is:	The tax shall be:
<del>[Not over \$4,000</del>	<del>1.7% of taxable income</del>
<del>Over \$4,000 but not over \$8,000</del>	<del>\$68.00 plus 3.2% of excess over \$4,000</del>
<del>Over \$8,000 but not over \$12,000</del>	<del>\$196 plus 4.7% of excess over \$8,000</del>
<del>Over \$12,000</del>	<del>\$384 plus 4.9% of excess over \$12,000.</del>

~~B. For heads of household, surviving spouses and married individuals filing joint returns:~~

<del>If the taxable income is:</del>	<del>The tax shall be:</del>
<del>Not over \$8,000</del>	<del>1.7% of taxable income</del>
<del>Over \$8,000 but not over \$16,000</del>	<del>\$136 plus 3.2% of excess over \$8,000</del>
<del>Over \$16,000 but not over \$24,000</del>	<del>\$392 plus 4.7% of excess over \$16,000</del>
<del>Over \$24,000</del>	<del>\$768 plus 4.9% of excess over \$24,000.</del>

~~C. For single individuals and for estates and trusts:~~

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<del>If the taxable income is:</del>	<del>The tax shall be:</del>
<del>Not over \$5,500</del>	<del>1.7% of taxable income</del>
<del>Over \$5,500 but not over \$11,000</del>	<del>\$93.50 plus 3.2% of excess over \$5,500</del>
<del>Over \$11,000 but not over \$16,000</del>	<del>\$269.50 plus 4.7% of excess over \$11,000</del>
<del>Over \$16,000</del>	<del>\$504.50 plus 4.9% of excess over \$16,000.]</del>
<u>Not over \$4,000</u>	<u>1.7% of taxable income</u>
<u>Over \$4,000 but not over \$8,000</u>	<u>\$68.00 plus 3.2% of excess over \$4,000</u>
<u>Over \$8,000 but not over \$12,000</u>	<u>\$196 plus 4.7% of excess over \$8,000</u>
<u>Over \$12,000 but not over \$157,500</u>	<u>\$384 plus 4.9% of excess over \$12,000</u>
<u>Over \$157,500</u>	<u>\$7,513.50 plus 5.9% of excess over \$157,500.</u>

B. For heads of household, surviving spouses and married individuals filing joint returns:

<u>If the taxable income is:</u>	<u>The tax shall be:</u>
<u>Not over \$8,000</u>	<u>1.7% of taxable income</u>
<u>Over \$8,000 but not over \$16,000</u>	<u>\$136 plus 3.2% of excess over \$8,000</u>
<u>Over \$16,000 but not over \$24,000</u>	<u>\$392 plus 4.7% of excess over \$16,000</u>
<u>Over \$24,000 but not over \$315,000</u>	<u>\$768 plus 4.9% of excess over \$24,000</u>
<u>Over \$315,000</u>	<u>\$15,027 plus 5.9% of excess over \$315,000.</u>

C. For single individuals and for estates and trusts:

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<u>If the taxable income is:</u>	<u>The tax shall be:</u>
<u>Not over \$5,500</u>	<u>1.7% of taxable income</u>
<u>Over \$5,500 but not over \$11,000</u>	<u>\$93.50 plus 3.2% of excess over \$5,500</u>
<u>Over \$11,000 but not over \$16,000</u>	<u>\$269.50 plus 4.7% of excess over \$11,000</u>
<u>Over \$16,000 but not over \$210,000</u>	<u>\$504.50 plus 4.9% of excess over \$16,000</u>
<u>Over \$210,000</u>	<u>\$10,010.50 plus 5.9% of excess over \$210,000.</u>

D. The tax on the sum of any lump-sum amounts included in net income is an amount equal to five multiplied by the difference between:

(1) the amount of tax due on the taxpayer's taxable income; and

(2) the amount of tax that would be due on an amount equal to the taxpayer's taxable income and twenty percent of the taxpayer's lump-sum amounts included in net income."".

10. On page 55, line 4, strike "twenty" and insert in lieu thereof "seventeen".

11. On pages 55 and 56, strike Section 15 in its entirety and insert in lieu thereof the following new section:

"SECTION 14. Section 7-2-34 NMSA 1978 (being Laws 1999, Chapter 205, Section 1, as amended) is amended to read:

"7-2-34. DEDUCTION--NET CAPITAL GAIN INCOME.--

A. Except as provided in Subsection C of this section,



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a taxpayer may claim a deduction from net income in an amount equal to the greater of:

(1) the taxpayer's net capital gain income for the taxable year for which the deduction is being claimed, but not to exceed one thousand dollars (\$1,000); or

(2) [~~the following percentage~~] forty percent of the taxpayer's net capital gain income for the taxable year for which the deduction is being claimed

~~[(a) for a taxable year beginning in 2003, ten percent;~~

~~(b) for a taxable year beginning in 2004, twenty percent;~~

~~(c) for a taxable year beginning in 2005, thirty percent;~~

~~(d) for a taxable year beginning in 2006, forty percent; and~~

~~(e) for taxable years beginning on or after January 1, 2007, fifty percent].~~

B. [~~A husband and wife~~] Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the deduction provided by this section that would have been allowed on the joint return.

C. A taxpayer may not claim the deduction provided in Subsection A of this section if the taxpayer has claimed the

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credit provided in Section 7-2D-8.1 NMSA 1978.

D. As used in this section, "net capital gain" means "net capital gain" as defined in Section 1222 (11) of the Internal Revenue Code."".

12. On pages 116 through 118, strike Sections 42 and 43 in their entirety and insert in lieu thereof the following new sections:

"SECTION 42. Section 7-12A-2 NMSA 1978 (being Laws 1986, Chapter 112, Section 3, as amended) is amended to read:

"7-12A-2. DEFINITIONS.--As used in the Tobacco Products Tax Act:

A. "department" means the taxation and revenue department, the secretary or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "cigar" means a roll for smoking made wholly or in part of tobacco and weighing greater than four and one-half pounds per thousand;

~~[B.]~~ C. "distribute" means to sell or to give;

D. "closed system cartridge" means a single-use, pre-filled disposable cartridge containing five milliliters or less of e-liquid for use in an e-cigarette;

E. "e-cigarette" means any electronic oral device, whether composed of a heating element and battery or an electronic circuit, that provides a vapor of nicotine or any

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other substance the use or inhalation of which simulates smoking and includes any such device, or any part thereof, whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe or any other product, name or descriptor. "E-cigarette" does not include any product regulated as a drug or device by the United States food and drug administration under the Federal Food, Drug, and Cosmetic Act;

F. "e-liquid" means liquid or other substance intended for use in an e-cigarette, not including any substance containing cannabis or oil derived from cannabis;

~~[G.]~~ G. "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit;

~~[D.]~~ H. "first purchaser" means a person engaging in business in New Mexico ~~[who]~~ that manufactures tobacco products or ~~[who]~~ that purchases or receives on consignment tobacco products from any person outside of New Mexico, which tobacco products are to be distributed in New Mexico in the ordinary course of business;

I. "little cigar" means a roll for smoking made wholly or in part of tobacco, using an integrated cellulose acetate or other similar filter, and weighing not more than four and one-half pounds per thousand;

~~[E.]~~ J. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, limited liability company, limited liability partnership, other association or gas, water or electric utility owned or operated by a county or municipality or other entity of the state; "person" also means,

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to the extent permitted by law, a federal, state or other governmental unit or subdivision or an agency, department or instrumentality;

~~[F.]~~ K. "product value" means the amount paid, net of any discounts taken and allowed, for tobacco products or, in the case of tobacco products received on consignment, the value of the tobacco products received or, in the case of tobacco products manufactured and sold in New Mexico, the proceeds from the sale by the manufacturer of the tobacco products; and

~~[G.]~~ L. "tobacco product" means:

(1) any product, other than cigarettes, cigars and little cigars, made from or containing tobacco;

(2) e-liquid;

(3) e-cigarettes; and

(4) closed system cartridges."

**SECTION 43.** Section 7-12A-3 NMSA 1978 (being Laws 1986, Chapter 112, Section 4, as amended) is amended to read:

"7-12A-3. IMPOSITION AND ~~[RATE]~~ RATES OF TAX--REDUCTION OF RATE FOR CERTAIN TOBACCO PRODUCTS--DENOMINATION AS "TOBACCO PRODUCTS TAX"--DATE PAYMENT OF TAX DUE.--

A. For the manufacture or acquisition of tobacco products in New Mexico, not including cigars, little cigars, e-liquid, e-cigarettes or closed system cartridges, to be distributed in the ordinary course of business and for the consumption of tobacco products in New Mexico, there is imposed

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an excise tax at the rate of twenty-five percent of the product value of the tobacco products.

B. For the manufacture or acquisition of cigars in New Mexico to be distributed in the ordinary course of business and for the consumption of cigars in New Mexico, there is imposed an excise tax at a rate equal to twenty-five percent of the product value of the cigar, not to exceed fifty cents (\$.50) per cigar.

C. For the manufacture or acquisition of little cigars in New Mexico to be distributed in the ordinary course of business and for the consumption of little cigars in New Mexico, there is imposed an excise tax at a rate equal to the rate imposed on cigarettes pursuant to Section 7-12-3 NMSA 1978 per package of little cigars.

D. For the manufacture or acquisition of e-liquid in New Mexico to be distributed in the ordinary course of business and for the consumption of e-liquid in New Mexico, there is imposed an excise tax at a rate equal to twelve and one-half percent of the product value of the e-liquid.

E. For the manufacture or acquisition of closed system cartridges in New Mexico to be distributed in the ordinary course of business, there is imposed an excise tax at a rate of fifty cents (\$.50) per closed system cartridge.

F. The taxes imposed by this section shall be reduced by fifty percent for a tobacco product, cigar or little cigar for which a modified risk tobacco product order has been issued by the United States secretary of health and human services pursuant to Section 21 U.S.C. 387k(g)(1).

G. The taxes imposed by this section shall be reduced

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by twenty-five percent for a tobacco product, cigar or little cigar for which a modified risk tobacco product order has been issued by the United States secretary of health and human services pursuant to Section 21 U.S.C. 387k(g)(2).

[B.] H. The [~~tax~~] taxes imposed by [~~Subsection A of~~] this section may be referred to as the "tobacco products tax".

[G.] I. The tobacco products tax shall be paid by the first purchaser on or before the twenty-fifth day of the month following the month in which the taxable event occurs."".

13. On page 119, line 4, strike "and two-tenths".

14. On page 119, strike lines 20 through 22 in their entirety and insert in lieu thereof the following:

"A. prior to July 1, 2021:

(1) seventy-one and eighty-nine hundredths percent to the general fund;

(2) three and eleven hundredths percent to the state road fund; and

(3) twenty-five percent to the department of transportation, for expenditures needed to mitigate the emergency road conditions related to activity in the oil field in state transportation commission district 2; and

B. beginning July 1, 2021:

(1) fifty-nine and thirty-nine hundredths percent to the general fund;

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(2) twenty-one and eighty-six hundredths percent to the state road fund; and

(3) eighteen and seventy-five hundredths percent to the local governments road fund."".

15. On page 133, line 6, strike "Sections 7-2-7 and" and insert in lieu thereof "Section" and on line 10, strike "Sections 7-2-7 and" and insert in lieu thereof "Section".

16. On pages 133 and 134, strike Sections 60 and 61 in their entirety and insert in lieu thereof the following new sections:

**"SECTION 58. DELAYED REPEAL.--**Sections 7-2A-8 and 7-2A-8.4 NMSA 1978 (being Laws 1981, Chapter 37, Section 41 and Laws 1983, Chapter 213, Section 13, as amended) are repealed effective January 1, 2020.

**SECTION 59. APPLICABILITY.--**

A. The provisions of Sections 13 through 15 of this act apply to taxable years beginning on or after January 1, 2019.

B. The provisions of Sections 16 through 22 and 58 of this act apply to taxable years beginning on or after January 1, 2020.

C. The provisions of Section 12 of this act apply to taxable years beginning on or after January 1, 2021.

**SECTION 60. EFFECTIVE DATE.--**

A. The effective date of the provisions of Sections 1

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through 10, 23 through 29, 31, 33 through 49, 51, 52 and 54 through 56 of this act is July 1, 2019.

B. The effective date of the provisions of Sections 16 through 22 of this act is January 1, 2020.

C. The effective date of the provisions of Sections 11, 30, 32, 50 and 53 of this act is July 1, 2021.

**SECTION 61. CONTINGENT EFFECTIVE DATE.**--The effective date of the provisions of Section 12 of this act is the date on which the secretary of finance and administration certifies to the New Mexico compilation commission and the director of the legislative council service that fiscal year 2020 recurring general fund revenues are less than five percent above fiscal year 2019 recurring general fund revenues. If the certification is not made prior to February 19, 2021, the provisions of Section 12 of this act shall not take effect."

17. Renumber sections to correspond to these and previous amendments.




State of New Mexico  
Senate

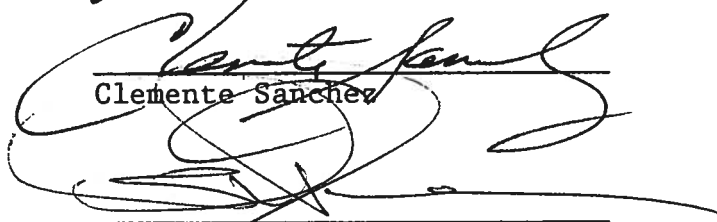
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Respectfully submitted,

  
John Arthur Smith

  
Clemente Sanchez

Steven P. Neville

Adopted   
(Chief Clerk)

Not Adopted \_\_\_\_\_  
(Chief Clerk)

Date 3-16-19