

FIFTY-FOURTH LEGISLATURE
FIRST SESSION, 2019

HB 6/a

March 15, 2019

Mr. President:

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

**HOUSE TAXATION & REVENUE
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 6**

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. Strike Senate Corporations and Transportation Committee Amendments 18, 20 and 23 through 25.

2. On page 2, line 7, after the first semicolon and before Senate Corporations and Transportation Committee Amendment 4, insert "TEMPORARILY DISTRIBUTING A PORTION OF THE REVENUE TO THE DEPARTMENT OF TRANSPORTATION TO MITIGATE THE EMERGENCY ROAD CONDITIONS RELATED TO ACTIVITY IN THE OIL FIELD IN STATE TRANSPORTATION COMMISSION DISTRICT 2 AND THEN DISTRIBUTING A PORTION OF THE REVENUE TO THE LOCAL GOVERNMENTS ROAD FUND;".

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

"SECTION 39. 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;

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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 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;

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

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"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 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 of five cents (\$.05) multiplied by the ratio of the number of milligrams of nicotine in the e-liquid to the number of milliliters of consumable material. Such tax shall be computed based on the concentration of the nicotine content of the e-liquid, as listed by the manufacturer on the manufacturer's invoice.

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.

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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 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."".

4. 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) sixty-seven and eighty-seven hundredths percent to the general fund;

(2) three and fifty-six hundredths percent to the state road fund; and

(3) twenty-eight and fifty-seven hundredths 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:

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(1) sixty-seven and eighty-seven hundredths percent to the general fund;

(2) seventeen and eighty-four hundredths percent to the state road fund; and

(3) fourteen and twenty-nine hundredths percent to the local governments road fund."".

5. On page 133, line 16, strike "11" and insert in lieu thereof "9".

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

"SECTION 54. 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 55. APPLICABILITY.--

A. The provisions of Sections 11 and 12 of this act apply to taxable years beginning on or after January 1, 2019.

B. The provisions of Sections 13 through 19 and 54 of this act apply to taxable years beginning on or after January 1, 2020.

SECTION 56. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1 through 9, 20 through 26, 28, 30 through 46, 48, 49, 51 and 52 of this act is July 1, 2019.

B. The effective date of the provisions of Sections 13 through 19 and 54 of this act is January 1, 2020.

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C. The effective date of the provisions of Sections 10, 27, 29, 47 and 50 of this act is July 1, 2021."

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

Respectfully submitted,

John Arthur Smith, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 12 For 0 Against

Yes: 12

No: 0

Excused: None

Absent: None

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