SENATE BILL 166
54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY
Clemente Sanchez

AN ACT
RELATING TO TAXATION; INCREASING THE CIGARETTE TAX RATE;
IMPOSING A TOBACCO PRODUCTS TAX ON CERTAIN CIGARS AND ON E-
LIQUID USED IN E-CIGARETTES; PROVIDING A DISCOUNT IN TAX FOR
CERTAIN CIGARETTES AND TOBACCO PRODUCTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 7-12-3 NMSA 1978 (being Laws 1971,
Chapter 77, Section 3, as amended) is amended to read:

"7-12-3. EXCISE TAX ON CIGARETTES--[RATES] REDUCTION OF
RATE FOR CERTAIN CIGARETTES.--

A. For the privilege of selling, giving or
consuming cigarettes in New Mexico, there is levied an excise
tax at [the following rates] a rate of ten cents ($ .10) for
each cigarette sold, given or consumed in this state.

[(1) eight and three tenths cents ($ .083) if
the cigarettes are packaged in lots of twenty or twenty-five;

(2) sixteen and six-tenths cents ($ .166) if

the cigarettes are packaged in lots of ten; or

(3) thirty-three and two-tenths cents ($ .332)

if the cigarettes are packaged in lots of five.]

B. The tax imposed by this section shall be

referred to as the "cigarette tax".

C. The tax imposed by this section shall be reduced

by fifty percent for a cigarette 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).

D. The tax imposed by this section shall be reduced

by twenty-five percent for a cigarette 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)."

SECTION 2. Section 7-12-5 NMSA 1978 (being Laws 1971,
Chapter 77, Section 5, as amended) is amended to read:

"7-12-5. AFFIXING STAMPS.--

A. Except as provided in Section 7-12-6 NMSA 1978,

all cigarettes shall be placed in packages or containers to

which a stamp shall be affixed. Only a distributor with a

valid license issued pursuant to the Cigarette Tax Act may

purchase or obtain unaffixed tax-exempt stamps, tax-credit
stamps or tax stamps. A distributor shall not sell or provide unaffixed stamps to another distributor, manufacturer, export warehouse proprietor or importer with a valid permit pursuant to 26 U.S.C. 5713 or any other person.

B. Stamps shall be affixed by the distributor to each package of cigarettes to be sold or distributed in New Mexico within thirty days of receipt of those packages.

C. A distributor shall apply stamps only to packages of cigarettes that the distributor has received directly from another distributor or from a manufacturer or importer of cigarettes that possesses a valid and current permit pursuant to 26 U.S.C. 5713.

D. A distributor shall not affix a stamp to a package of cigarettes of a manufacturer or a brand family that is not included in the directory or sell, offer or possess for sale cigarettes of a manufacturer or brand family that is not included in the directory.

E. Packages shall contain cigarettes in lots of twenty or twenty-five.

F. Unless the requirements of this section are waived pursuant to Section 7-12-6 NMSA 1978, a tax stamp shall be affixed to each package of cigarettes subject to the cigarette tax, a tax-credit stamp shall be affixed to each package of cigarettes subject to a qualifying tribal cigarette tax, and a tax-exempt stamp shall be affixed to each package of...
cigarettes not subject to the cigarette tax pursuant to Section 7-12-4 NMSA 1978.

G.  A tax-exempt stamp or tax-credit stamp is not an excise tax stamp for purposes of determining units sold pursuant to Section 6-4-12 NMSA 1978.

H.  Stamps shall be affixed inside the boundaries of New Mexico, unless the department has granted a license allowing a person to affix stamps outside New Mexico."

SECTION 3.  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.  "distribute" means to sell or to give;

C.  "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; D. "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;
E. "engaging in business" means carrying on or
causing to be carried on any activity with the purpose of
direct or indirect benefit;
F. "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;
G. "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;
H. "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-] I. "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-] J. "tobacco product" means:

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

(2) e-cigarettes."

SECTION 4. 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 little cigars, e-liquid or e-cigarettes, 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 little

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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.

C. 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 ($0.05) per milliliter of the e-liquid. Such tax shall be computed based on the net volume of the e-liquid, as listed by the manufacturer.

D. The taxes imposed by this section shall be reduced by fifty percent for a tobacco product 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).

E. The taxes imposed by this section shall be reduced by twenty-five percent for a tobacco product 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-] F. The [tax] taxes imposed by [Subsection A of] this section may be referred to as the "tobacco products tax".

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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."

SECTION 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.