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SENATE BILL 527

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Michael Padilla

AN ACT

RELATING TO TAXATION; MAKING A DISTRIBUTION TO THE DEPARTMENT OF HEALTH; DEFINING "ELECTRONIC SMOKING DEVICE"; CHANGING THE DEFINITION OF "TOBACCO PRODUCT"; INCREASING THE TOBACCO PRODUCTS TAX RATE; MAKING AN APPROPRIATION.

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

SECTION 1. A new section of the Tax Administration Act is enacted to read:

"[NEW MATERIAL] DISTRIBUTION--TOBACCO PRODUCTS TAX TO THE DEPARTMENT OF HEALTH FOR TOBACCO USE PREVENTION AND CESSATION PROGRAMS.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to eight percent of the net receipts, exclusive of penalties and interest, attributable to the tobacco products tax shall be made to the department of health for tobacco use prevention and cessation programs."

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

3           "7-12A-2. DEFINITIONS.--As used in the Tobacco Products  
4 Tax Act:

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

9           B. "distribute" means to sell or to give;

10           C. "electronic smoking device" means a device that  
11 can be used to deliver aerosolized or vaporized nicotine to a  
12 person inhaling from the device, including an e-cigarette, e-  
13 cigar, e-pipe, vape pen or hookah. "Electronic smoking  
14 device":

15                           (1) includes a:

16                                           (a) component, part or accessory of such  
17 a device, whether sold separately; or

18                                           (b) substance intended to be aerosolized  
19 or vaporized during the use of the device; and

20                           (2) does not include a battery or battery  
21 charger when sold separately or drugs, devices or combination  
22 products as defined in the Federal Food, Drug, and Cosmetic Act  
23 and as authorized for sale by the United States food and drug  
24 administration;

25           ~~[G-]~~ D. "engaging in business" means carrying on or

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1 causing to be carried on any activity with the purpose of  
2 direct or indirect benefit;

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

9 ~~[E-]~~ F. "person" means any individual, estate,  
10 trust, receiver, cooperative association, club, corporation,  
11 company, firm, partnership, joint venture, syndicate, limited  
12 liability company, limited liability partnership, other  
13 association or gas, water or electric utility owned or operated  
14 by a county or municipality or other entity of the state;  
15 "person" also means, to the extent permitted by law, a federal,  
16 state or other governmental unit or subdivision or an agency,  
17 department or instrumentality;

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

24 ~~[G-]~~ H. "tobacco product":

25 (1) means:

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1                   (a) any product, other than cigarettes,  
2                   made of or derived from [~~or containing~~] tobacco and intended  
3                   for human consumption or likely to be consumed, whether smoked,  
4                   heated, chewed, absorbed, dissolved, inhaled or ingested by any  
5                   means, including a cigar, pipe tobacco, chewing tobacco, snuff,  
6                   snus or an electronic smoking device; and

7                   (b) a component or accessory used to  
8                   consume a tobacco product, including filters, rolling papers,  
9                   pipes or substances used in electronic smoking devices,  
10                   regardless of whether they contain nicotine; and

11                   (2) does not include drugs, devices or  
12                   combination products as defined in the Federal Food, Drug, and  
13                   Cosmetic Act and as authorized for sale by the United States  
14                   food and drug administration."

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

17                   "7-12A-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS  
18                   "TOBACCO PRODUCTS TAX"--DATE PAYMENT OF TAX DUE.--

19                   A. For the manufacture or acquisition of tobacco  
20                   products in New Mexico to be distributed in the ordinary course  
21                   of business and for the consumption of tobacco products in New  
22                   Mexico, there is imposed an excise tax at the rate of [~~twenty-~~  
23                   ~~five~~] thirty-six percent of the product value of the tobacco  
24                   products.

25                   B. The tax imposed by Subsection A of this section

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may be referred to as the "tobacco products tax".

C. 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."