

1 SENATE BILL 49

2 55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

3 INTRODUCED BY

4 Bill Tallman and Martin Hickey

5
6
7
8
9
10 AN ACT

11 RELATING TO TAXATION; INCREASING THE RATE OF THE CIGARETTE TAX;
12 INCREASING THE RATE OF TAX ON TOBACCO PRODUCTS; INCLUDING
13 NICOTINE, REGARDLESS OF SOURCE, IN THE DEFINITION OF "TOBACCO
14 PRODUCT" IN THE TOBACCO PRODUCTS TAX ACT; EXEMPTING SOCIAL
15 SECURITY INCOME FROM INCOME TAX FOR CERTAIN INDIVIDUALS.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 7-1-6.11 NMSA 1978 (being Laws 1983,
19 Chapter 211, Section 16, as amended) is amended to read:

20 "7-1-6.11. DISTRIBUTIONS OF CIGARETTE TAXES.--

21 A. A distribution pursuant to Section 7-1-6.1 NMSA
22 1978 shall be made to the board of regents of the university of
23 New Mexico for the benefit of the comprehensive cancer center
24 at the university of New Mexico health sciences center in an
25 amount equal to [~~seventy-one hundredths~~] one-half percent of
.221694.2

underscored material = new
[bracketed material] = delete

underscoring material = new
[bracketed material] = delete

1 the net receipts, exclusive of penalties and interest,
2 attributable to the cigarette tax.

3 B. A distribution pursuant to Section 7-1-6.1 NMSA
4 1978 in an amount equal to [~~seven and fifty-two hundredths~~]
5 five and three-tenths percent of the net receipts, exclusive of
6 penalties and interest, attributable to the cigarette tax,
7 shall be made on behalf of and for the benefit of the
8 university of New Mexico health sciences center for its
9 comprehensive cancer center, until payment of all principal,
10 interest and other expenses or obligations related to the bonds
11 authorized pursuant to Section [~~3 of this 2021 act~~] 6-21-6.15
12 NMSA 1978 and the New Mexico finance authority certifies to the
13 secretary of taxation and revenue that all obligations for the
14 bonds have been fully discharged, to the credit enhancement
15 account.

16 C. A distribution pursuant to Section 7-1-6.1 NMSA
17 1978 in an amount equal to [~~three and seventeen hundredths~~] two
18 and three-tenths percent of the net receipts, exclusive of
19 penalties and interest, attributable to the cigarette tax shall
20 be made to the New Mexico finance authority for land
21 acquisition and the planning, designing, construction and
22 equipping of department of health facilities or improvements to
23 such facilities.

24 D. A distribution pursuant to Section 7-1-6.1 NMSA
25 1978 in an amount equal to [~~eight and twenty-six hundredths~~]

.221694.2

underscored material = new
[bracketed material] = delete

1 five and eight-tenths percent of the net receipts, exclusive of
2 penalties and interest, attributable to the cigarette tax shall
3 be made to the New Mexico finance authority for deposit in the
4 credit enhancement account created in the authority.

5 E. A distribution pursuant to Section 7-1-6.1 NMSA
6 1978 in an amount equal to [~~fifty-three hundredths~~] four-tenths
7 percent of the net receipts, exclusive of penalties and
8 interest, attributable to the cigarette tax shall be made, on
9 behalf of and for the benefit of the rural county cancer
10 treatment fund, to the New Mexico finance authority."

11 SECTION 2. Section 7-12-3 NMSA 1978 (being Laws 1971,
12 Chapter 77, Section 3, as amended) is amended to read:

13 "7-12-3. EXCISE TAX ON CIGARETTES--REDUCTION OF RATE FOR
14 CERTAIN CIGARETTES.--

15 A. For the privilege of selling, giving or
16 consuming cigarettes in New Mexico, there is levied an excise
17 tax at a rate of [~~ten cents (\$.10)~~] fifteen cents (\$.15) for
18 each cigarette sold, given or consumed in this state.

19 B. The tax imposed by this section shall be
20 referred to as the "cigarette tax".

21 C. The tax imposed by this section shall be reduced
22 by fifty percent for a cigarette for which a modified risk
23 tobacco product order has been issued by the United States
24 secretary of health and human services pursuant to Section 21
25 U.S.C. 387k(g)(1).

.221694.2

underscored material = new
[bracketed material] = delete

1 D. The tax imposed by this section shall be reduced
2 by twenty-five percent for a cigarette for which a modified
3 risk tobacco product order has been issued by the United States
4 secretary of health and human services pursuant to Section 21
5 U.S.C. 387k(g)(2)."

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

8 "7-12-7. SALE OF STAMPS--PRICES.--

9 A. Only the department shall sell stamps. Stamps
10 may be sold by the department only to a distributor.

11 B. Stamps shall display a serial number. Stamps
12 bearing the same serial number shall not be sold to more than
13 one distributor. The department shall keep records of the
14 serial numbers of the stamps provided to each distributor.

15 C. A stamp shall be affixed to a package of
16 cigarettes in such a manner as to clearly display the serial
17 number at the point of sale.

18 D. Tax stamps shall be sold at their face value
19 with the following discounts:

20 (1) [~~forty-six~~] thirty-one hundredths percent
21 less than the face value of the first thirty thousand dollars
22 (\$30,000) of stamps purchased in one calendar month;

23 (2) [~~thirty-six~~] twenty-four hundredths
24 percent less than the face value of the second thirty thousand
25 dollars (\$30,000) of stamps purchased in one calendar month;

.221694.2

underscoring material = new
[bracketed material] = delete

1 and

2 (3) [~~twenty-two~~] fifteen hundredths percent
3 less than the face value of stamps purchased in excess of sixty
4 thousand dollars (\$60,000) in one calendar month.

5 E. Tax-credit stamps shall be provided only to
6 distributors and shall be provided free of charge; provided
7 that the distributor is in full compliance with the reporting
8 requirements of the Cigarette Tax Act and rules adopted
9 pursuant to that act.

10 F. If the face value of tax stamps sold in a single
11 sale is less than one thousand dollars (\$1,000), the discount
12 provided for in this section shall not be allowed.

13 G. Payment for tax stamps shall be made on or
14 before the twenty-fifth day of the month following the month in
15 which the sale of stamps by the department is made.

16 H. Tax-exempt stamps shall be provided only to
17 distributors and shall be free of charge; provided that the
18 distributor is in full compliance with the reporting
19 requirements of the Cigarette Tax Act and rules adopted
20 pursuant to that act."

21 SECTION 4. Section 7-12A-2 NMSA 1978 (being Laws 1986,
22 Chapter 112, Section 3, as amended) is amended to read:

23 "7-12A-2. DEFINITIONS.--As used in the Tobacco Products
24 Tax Act:

25 A. "department" means the taxation and revenue

underscoring material = new
~~[bracketed material] = delete~~

1 department, the secretary or any employee of the department
2 exercising authority lawfully delegated to that employee by the
3 secretary;

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

7 C. "distribute" means to sell or to give;

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

11 E. "e-cigarette" means any electronic oral device,
12 whether composed of a heating element and battery or an
13 electronic circuit, that provides a vapor of nicotine or any
14 other substance the use or inhalation of which simulates
15 smoking and includes any such device, or any part thereof,
16 whether manufactured, distributed, marketed or sold as an
17 e-cigarette, e-cigar, e-pipe or any other product, name or
18 descriptor [~~"E-cigarette" does not include any product~~
19 ~~regulated as a drug or device by the United States food and~~
20 ~~drug administration under the Federal Food, Drug, and Cosmetic~~
21 ~~Act~~];

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

25 G. "engaging in business" means carrying on or

.221694.2

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

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

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

13 J. "person" means any individual, estate, trust,
14 receiver, cooperative association, club, corporation, company,
15 firm, partnership, joint venture, syndicate, limited liability
16 company, limited liability partnership, other association or
17 gas, water or electric utility owned or operated by a county or
18 municipality or other entity of the state; "person" also means,
19 to the extent permitted by law, a federal, state or other
20 governmental unit or subdivision or an agency, department or
21 instrumentality;

22 K. "product value" means the amount paid, net of
23 any discounts taken and allowed, for tobacco products or, in
24 the case of tobacco products received on consignment, the value
25 of the tobacco products received or, in the case of tobacco

underscored material = new
[bracketed material] = delete

1 products manufactured and sold in New Mexico, the proceeds from
2 the sale by the manufacturer of the tobacco products; and

3 L. "tobacco product":

4 (1) means:

5 [~~(1)~~] (a) any product [~~other than~~
6 ~~cigarettes, cigars and little cigars~~] made from or containing
7 tobacco or nicotine, regardless of the source of the nicotine;

8 [~~(2)~~] (b) e-liquid;

9 [~~(3)~~] (c) e-cigarettes; and

10 [~~(4)~~] (d) closed system cartridges; and

11 (2) does not mean cigarettes, cigars, little
12 cigars or any product regulated as a drug or device by the
13 United States food and drug administration pursuant to the
14 Federal Food, Drug, and Cosmetic Act."

15 SECTION 5. 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 RATES OF TAX--REDUCTION OF RATE
18 FOR CERTAIN TOBACCO PRODUCTS--DENOMINATION AS "TOBACCO PRODUCTS
19 TAX"--DATE PAYMENT OF TAX DUE.--

20 A. For the manufacture or acquisition of tobacco
21 products in New Mexico, not including [~~cigars~~] little cigars,
22 [~~e-liquid~~] e-cigarettes or closed system cartridges, to be
23 distributed in the ordinary course of business and for the
24 consumption of tobacco products in New Mexico, there is imposed
25 an excise tax at the rate of [~~twenty-five~~] sixty percent of the

.221694.2

underscored material = new
[bracketed material] = delete

1 product value of the tobacco products.

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

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

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

19 E.] C. For the manufacture or acquisition of closed
20 system cartridges in New Mexico to be distributed in the
21 ordinary course of business, there is imposed an excise tax at
22 a rate of [~~fifty cents (\$.50)~~] two dollars forty cents (\$2.40)
23 per closed system cartridge.

24 ~~[H.]~~ D. The taxes imposed by this section may be
25 referred to as the "tobacco products tax".

.221694.2

underscored material = new
[bracketed material] = delete

1 ~~[F.]~~ E. The tobacco products tax shall be paid by
2 the first purchaser on or before the twenty-fifth day of the
3 month following the month in which the taxable event occurs."

4 **SECTION 6.** A new section of the Income Tax Act is enacted
5 to read:

6 "[NEW MATERIAL] EXEMPTION--SOCIAL SECURITY INCOME.--

7 A. The following individuals may claim an exemption
8 in an amount equal to the amount included in adjusted gross
9 income pursuant to Section 86 of the Internal Revenue Code, as
10 that section may be amended or renumbered, of income includable
11 except for this exemption in net income; provided that the
12 exempted amount shall not exceed the individual's net income:

13 (1) married individuals filing separate
14 returns with an adjusted gross income of sixty-two thousand
15 dollars (\$62,000) or less;

16 (2) heads of household, surviving spouses and
17 married individuals filing joint returns with an adjusted gross
18 income of one hundred twenty-four thousand dollars (\$124,000)
19 or less; and

20 (3) single individuals with an adjusted gross
21 income of seventy-two thousand dollars (\$72,000) or less.

22 B. An individual who claims an exemption pursuant
23 to this section shall not claim the exemption pursuant to
24 Section 7-2-5.2 NMSA 1978."

25 **SECTION 7. APPLICABILITY.**--The provisions of Section 6 of
.221694.2

underscoring material = new
~~[bracketed material] = delete~~

1 this act apply to taxable years beginning on or after January
2 1, 2022.

3 SECTION 8. EFFECTIVE DATE.--The effective date of the
4 provisions of Sections 1 through 5 of this act is July 1, 2022.

5 - 11 -
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25