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SENATE BILL 142

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

INTRODUCED BY

Cliff R. Pirtle

AN ACT

RELATING TO TAXATION; DEFINING "FINE CIGAR" IN THE TOBACCO PRODUCTS TAX ACT; CREATING A NEW TAX RATE DIFFERENTIAL FOR FINE CIGARS IN THAT ACT.

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

SECTION 1. 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

1 pounds per thousand. "Cigar" does not include a fine cigar;

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

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

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

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

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

23 H. "fine cigar" means a roll of tobacco that is
24 wrapped in one hundred percent natural leaf tobacco;

25 [H.] I. "first purchaser" means a person engaging

1 in business in New Mexico that manufactures tobacco products or
2 that purchases or receives on consignment tobacco products from
3 any person outside of New Mexico, which tobacco products are to
4 be distributed in New Mexico in the ordinary course of
5 business;

6 ~~[F.]~~ J. "little cigar" means a roll for smoking
7 made wholly or in part of tobacco, using an integrated
8 cellulose acetate or other similar filter, and weighing not
9 more than four and one-half pounds per thousand. "Little
10 cigar" does not include a fine cigar;

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

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

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1 ~~[L.]~~ M. "tobacco product" means:

2 (1) any product, other than cigarettes,
3 ~~[cigars and little cigars]~~ made from or containing tobacco;

4 (2) e-liquid; and

5 ~~[(3) e-cigarettes; and~~

6 ~~(4)]~~ (3) closed system cartridges."

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

9 "7-12A-3. IMPOSITION AND RATES OF TAX--~~[REDUCTION OF]~~
10 RATE DIFFERENTIALS FOR CERTAIN TOBACCO PRODUCTS--DENOMINATION
11 AS "TOBACCO PRODUCTS TAX"--DATE PAYMENT OF TAX DUE.--

12 A. For the manufacture or acquisition of tobacco
13 products in New Mexico ~~[not including cigars, little cigars, e-~~
14 ~~liquid, e-cigarettes or closed system cartridges]~~ to be
15 distributed in the ordinary course of business and for the
16 consumption of tobacco products in New Mexico, there is imposed
17 an excise tax at the rate of twenty-five percent of the product
18 value of the tobacco products, except the rate of tax shall be
19 as follows for:

20 ~~[B. For the manufacture or acquisition of cigars in~~
21 ~~New Mexico to be distributed in the ordinary course of business~~
22 ~~and for the consumption of cigars in New Mexico, there is~~
23 ~~imposed an excise tax at a rate equal to]~~

24 (1) cigars, twenty-five percent of the product
25 value of the cigar, not to exceed fifty cents (\$.50) per cigar;

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1 (2) fine cigars, ten percent of the product
2 value of the fine cigar, not to exceed ten cents (\$.10) per
3 fine cigar;

4 [~~G. for the manufacture or acquisition of~~] (3)
5 little cigars, [~~in New Mexico to be distributed in the ordinary~~
6 ~~course of business and for the consumption of little cigars in~~
7 ~~New Mexico, there is imposed an excise tax at~~] a rate equal to
8 the rate imposed on cigarettes pursuant to Section 7-12-3 NMSA
9 1978 per package of little cigars;

10 [~~D. for the manufacture or acquisition of~~] (4)
11 e-liquid, [~~in New Mexico to be distributed in the ordinary~~
12 ~~course of business and for the consumption of e-liquid in New~~
13 ~~Mexico, there is imposed an excise tax at a rate equal to~~]
14 twelve and one-half percent of the product value of the e-
15 liquid; and

16 [~~E. for the manufacture or acquisition of~~] (5)
17 closed system cartridges, [~~in New Mexico to be distributed in~~
18 ~~the ordinary course of business, there is imposed an excise tax~~
19 ~~at a rate of~~] fifty cents (\$.50) per closed system cartridge.

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

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

25 SECTION 3. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2022.

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