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HOUSE BILL

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

DISCUSSION DRAFT

FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO TAXATION; INCREASING THE RATE OF THE CIGARETTE TAX;
INCREASING THE RATE OF TAX ON TOBACCO PRODUCTS; INCLUDING
NICOTINE, REGARDLESS OF SOURCE, IN THE DEFINITION OF "TOBACCO
PRODUCT" IN THE TOBACCO PRODUCTS TAX ACT.

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

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

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

A. A distribution pursuant to Section 7-1-6.1 NMSA
1978 shall be made to the board of regents of the university of
New Mexico for the benefit of the comprehensive cancer center
at the university of New Mexico health sciences center in an
amount equal to [~~seventy-one hundredths~~] four-tenths percent of
the net receipts, exclusive of penalties and interest,

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1 attributable to the cigarette tax.

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

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

23 D. A distribution pursuant to Section 7-1-6.1 NMSA
24 1978 in an amount equal to [~~eight and twenty-six~~] four and
25 fifty-five hundredths percent of the net receipts, exclusive of

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1 penalties and interest, attributable to the cigarette tax shall
2 be made to the New Mexico finance authority for deposit in the
3 credit enhancement account created in the authority.

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

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

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

14 A. For the privilege of selling, giving or
15 consuming cigarettes in New Mexico, there is levied an excise
16 tax at a rate of [~~ten cents (\$.10)~~] twenty cents (\$.20) for
17 each cigarette sold, given or consumed in this state.

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

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

25 ~~D. The tax imposed by this section shall be reduced~~

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1 by ~~twenty-five percent for a cigarette for which a modified~~
2 ~~risk tobacco product order has been issued by the United States~~
3 ~~secretary of health and human services pursuant to Section 21~~
4 ~~U.S.C. 387k(g)(2).~~]"

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

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

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

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

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

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

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

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

25 (3) [~~twenty-two~~] eleven hundredths percent

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1 less than the face value of stamps purchased in excess of sixty
2 thousand dollars (\$60,000) in one calendar month.

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

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

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

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

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

21 "7-12A-2. DEFINITIONS.--As used in the Tobacco Products
22 Tax Act:

23 A. "department" means the taxation and revenue
24 department, the secretary or any employee of the department
25 exercising authority lawfully delegated to that employee by the

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1 secretary;

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

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

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

9 E. "e-cigarette" means any ~~[electronic oral device,~~
10 ~~whether composed of a heating element and battery or an~~
11 ~~electronic circuit, that provides a vapor of nicotine or any~~
12 ~~other substance the use or inhalation of which simulates~~
13 ~~smoking and includes any such device, or any part thereof,~~
14 ~~whether manufactured, distributed, marketed or sold as an~~
15 ~~e-cigarette, e-cigar, e-pipe or any other product, name or~~
16 ~~descriptor; "E-cigarette" does not include any product~~
17 ~~regulated as a drug or device by the United States food and~~
18 ~~drug administration under the Federal Food, Drug, and Cosmetic~~
19 ~~Act]~~ device that can be used to deliver aerosolized or
20 vaporized nicotine to the person inhaling from the device and
21 includes any component, part or accessory of such a device that
22 is used during the operation of the device but does not include
23 a battery or battery charger;

24 F. "e-liquid" means liquid or other substance
25 intended for use in an e-cigarette ~~[not including any substance~~

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1 ~~containing cannabis or oil derived from cannabis];~~

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

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

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

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

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

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1 the case of tobacco products received on consignment, the value
2 of the tobacco products received or, in the case of tobacco
3 products manufactured and sold in New Mexico, the proceeds from
4 the sale by the manufacturer of the tobacco products; and

5 L. "tobacco product":

6 (1) means:

7 [(1)] (a) any product, other than
8 cigarettes, [~~eigars and little cigars~~] made from or containing
9 tobacco or nicotine, whether natural or synthetic, that is
10 intended for human consumption or is likely to be consumed,
11 whether smoked, heated, chewed, absorbed, dissolved or inhaled;

12 [(2)] (b) e-liquid;

13 [(3)] (c) e-cigarettes; and

14 [(4)] (d) closed system cartridges; and

15 (2) does not mean any product regulated as a
16 drug or device by the United States food and drug
17 administration pursuant to the Federal Food, Drug, and Cosmetic
18 Act."

19 SECTION 5. Section 7-12A-3 NMSA 1978 (being Laws 1986,
20 Chapter 112, Section 4, as amended) is amended to read:

21 "7-12A-3. IMPOSITION AND RATES OF TAX--~~[REDUCTION OF RATE~~
22 ~~FOR CERTAIN TOBACCO PRODUCTS]~~ DENOMINATION AS "TOBACCO PRODUCTS
23 TAX"--DATE PAYMENT OF TAX DUE.--

24 A. For the manufacture or acquisition of tobacco
25 products in New Mexico [~~not including cigars, little cigars, e-~~

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1 ~~liquid, e-cigarettes or closed system cartridges~~] to be
2 distributed in the ordinary course of business and for the
3 consumption of tobacco products in New Mexico, there is imposed
4 an excise tax at the rate of [~~twenty-five~~] seventy-one percent
5 of the [~~product value~~] wholesale price of the tobacco products;
6 provided that for each little cigar, the rate shall be equal to
7 the rate imposed on a cigarette pursuant to Section 7-12-3 NMSA
8 1978.

9 ~~B. For the manufacture or acquisition of cigars in~~
10 ~~New Mexico to be distributed in the ordinary course of business~~
11 ~~and for the consumption of cigars in New Mexico, there is~~
12 ~~imposed an excise tax at a rate equal to twenty-five percent of~~
13 ~~the product value of the cigar, not to exceed fifty cents~~
14 ~~(\$.50) per cigar.~~

15 ~~C. For the manufacture or acquisition of little~~
16 ~~cigars in New Mexico to be distributed in the ordinary course~~
17 ~~of business and for the consumption of little cigars in New~~
18 ~~Mexico, there is imposed an excise tax at a rate equal to the~~
19 ~~rate imposed on cigarettes pursuant to Section 7-12-3 NMSA 1978~~
20 ~~per package of little cigars.~~

21 ~~D. For the manufacture or acquisition of e-liquid~~
22 ~~in New Mexico to be distributed in the ordinary course of~~
23 ~~business and for the consumption of e-liquid in New Mexico,~~
24 ~~there is imposed an excise tax at a rate equal to twelve and~~
25 ~~one-half percent of the product value of the e-liquid.~~

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~~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.~~

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

[F.] 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."

SECTION 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.