SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TAXATION; AMENDING AND ENACTING SECTIONS OF THE TOBACCO PRODUCTS TAX ACT TO CHANGE THE TITLE OF THE ACT TO THE "TOBACCO AND NICOTINE PRODUCTS TAX ACT", TO IMPOSE A TAX ON NICOTINE PRODUCTS, TO REQUIRE NICOTINE CONTENT LABELING ON ALL NICOTINE PRODUCTS AND TO PERMIT THE TAXATION AND REVENUE DEPARTMENT TO CONDUCT PERIODIC COMPLIANCE CHECKS TO ENSURE ACCURATE NICOTINE CONTENT LABELING ON NICOTINE PRODUCTS.

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

SECTION 1. Section 7-1-2 NMSA 1978 (being Laws 1965, Chapter 248, Section 2, as amended) is amended to read:

"7-1-2. APPLICABILITY.--The Tax Administration Act applies to and governs:

A. the administration and enforcement of the following taxes or tax acts as they now exist or may hereafter

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be amended:

(1) Income Tax Act;

(2) Withholding Tax Act;

(3) Venture Capital Investment Act;

(4) Gross Receipts and Compensating Tax Act and any state gross receipts tax;

(5) Liquor Excise Tax Act;

(6) Local Liquor Excise Tax Act;

(7) any municipal local option gross receipts tax;

(8) any county local option gross receipts tax;

(9) Special Fuels Supplier Tax Act;

(10) Gasoline Tax Act;

(11) petroleum products loading fee, which fee shall be considered a tax for the purpose of the Tax Administration Act;

(12) Alternative Fuel Tax Act;

(13) Cigarette Tax Act;

(14) Estate Tax Act;

(15) Railroad Car Company Tax Act;

(16) Investment Credit Act, rural job tax credit, Laboratory Partnership with Small Business Tax Credit Act, Technology Jobs Tax Credit Act, film production tax credit, New Mexico filmmaker tax credit, Affordable Housing Tax

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Credit Act, high-wage jobs tax credit and Research and Development Small Business Tax Credit Act;

(17) Corporate Income and Franchise Tax Act;

(18) Uniform Division of Income for Tax Purposes Act;

(19) Multistate Tax Compact;

(20) Tobacco and Nicotine Products Tax Act; and

(21) the telecommunications relay service surcharge imposed by Section 63-9F-11 NMSA 1978, which surcharge shall be considered a tax for the purposes of the Tax Administration Act;

B. the administration and enforcement of the following taxes, surtaxes, advanced payments or tax acts as they now exist or may hereafter be amended:

(1) Resources Excise Tax Act;

(2) Severance Tax Act;

(3) any severance surtax;

(4) Oil and Gas Severance Tax Act;

(5) Oil and Gas Conservation Tax Act;

(6) Oil and Gas Emergency School Tax Act;

(7) Oil and Gas Ad Valorem Production Tax Act;

(8) Natural Gas Processors Tax Act;

(9) Oil and Gas Production Equipment Ad Valorem Tax Act;

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(10) Copper Production Ad Valorem Tax Act;

(11) any advance payment required to be made by any act specified in this subsection, which advance payment shall be considered a tax for the purposes of the Tax Administration Act;

(12) Enhanced Oil Recovery Act;

(13) Natural Gas and Crude Oil Production Incentive Act; and

(14) intergovernmental production tax credit and intergovernmental production equipment tax credit;

C. the administration and enforcement of the following taxes, surcharges, fees or acts as they now exist or may hereafter be amended:

(1) Weight Distance Tax Act;

(2) the workers' compensation fee authorized by Section 52-5-19 NMSA 1978, which fee shall be considered a tax for purposes of the Tax Administration Act;

(3) Uniform Unclaimed Property Act (1995);

(4) 911 emergency surcharge and the network and database surcharge, which surcharges shall be considered taxes for purposes of the Tax Administration Act;

(5) the solid waste assessment fee authorized by the Solid Waste Act, which fee shall be considered a tax for purposes of the Tax Administration Act;

(6) the water conservation fee imposed by

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Section 74-1-13 NMSA 1978, which fee shall be considered a tax for the purposes of the Tax Administration Act; and

(7) the gaming tax imposed pursuant to the Gaming Control Act; and

D. the administration and enforcement of all other laws, with respect to which the department is charged with responsibilities pursuant to the Tax Administration Act, but only to the extent that the other laws do not conflict with the Tax Administration Act."

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

"7-12A-1. SHORT TITLE.--Chapter 7, Article 12A NMSA 1978 may be cited as the "Tobacco and Nicotine Products Tax Act"."

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 and Nicotine 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. "electronic delivery device" means any electronic device, whether composed of a heating element and battery or an electronic circuit, that provides a vapor of

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nicotine, the use or inhalation of which simulates smoking;

[~~C.~~] D. "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit;

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

F. "nicotine product" means a liquid solution containing nicotine that is intended for human consumption via an electronic delivery device;

[~~E.~~] G. "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.~~] H. "product value" means the amount paid, net of any discounts taken and allowed, for tobacco products or, in

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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.~~] I. "tobacco product" means any product, other than cigarettes, made from or containing tobacco but does not include a nicotine product."

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

"7-12A-4. EXEMPTION--TOBACCO PRODUCTS TAX AND NICOTINE PRODUCTS TAX.--

A. Exempted from the [~~tobacco products~~] tax [~~is the product value of~~] imposed by Sections 7-12A-3 and 7-12A-11 NMSA 1978 are tobacco products and nicotine products sold:

(1) to or by the United States or any agency or instrumentality thereof;

(2) to the governing body or any enrolled tribal member licensed by the governing body of an Indian nation, tribe or pueblo to be distributed on the reservation or pueblo grant of that Indian nation, tribe or pueblo; or

(3) to the state of New Mexico or any political subdivision thereof.

B. As used in this section, the term "agency or instrumentality" does not include persons who are agents or instrumentalities of the United States for a particular purpose

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or only when acting in a particular capacity or corporate agencies or instrumentalities."

SECTION 5. Section 7-12A-5 NMSA 1978 (being Laws 1986, Chapter 112, Section 6) is amended to read:

"7-12A-5. DEDUCTION--INTERSTATE SALES.--

A. The product value of tobacco products sold and shipped or given and shipped to a person in another state may be deducted from the product value subject to the tax imposed by the Tobacco and Nicotine Products Tax Act; provided that the department may require the person to submit proof satisfactory to the department that the tobacco products have been sold and shipped or given and shipped to a person in another state.

B. The milligrams of nicotine contained in nicotine products sold and shipped or given and shipped to a person in another state may be deducted from the milligrams of nicotine contained in nicotine products subject to the tax imposed by the Tobacco and Nicotine Products Tax Act; provided that the department may require the person to submit proof satisfactory to the department that the nicotine products have been sold and shipped or given and shipped to a person in another state."

SECTION 6. Section 7-12A-6 NMSA 1978 (being Laws 1986, Chapter 112, Section 7, as amended) is amended to read:

"7-12A-6. REFUND OR CREDIT OF TAX.--The department shall allow a claim for refund or credit, as provided in Sections 7-1-26 and 7-1-29 NMSA 1978, for tobacco products tax and

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nicotine products tax paid on tobacco products or nicotine products destroyed or returned to the seller by the first purchaser as spoiled or otherwise unfit for sale or consumption; provided that the department may require proof satisfactory to the department that the tobacco products or nicotine products have been destroyed or returned and that the person claiming the refund is the person who paid the tobacco products tax or nicotine products tax on the destroyed or returned tobacco products or nicotine products."

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

"7-12A-7. REGISTRATION NECESSARY TO ENGAGE IN BUSINESS OF SELLING TOBACCO PRODUCTS OR NICOTINE PRODUCTS IN NEW MEXICO.--Each person engaged in the business of selling tobacco products or nicotine products in New Mexico shall register and comply with the provisions of Section 7-1-12 NMSA 1978. Every person selling tobacco products or nicotine products in New Mexico shall furnish such information as may be requested by the department concerning the person's vending machines or other places of business where tobacco products or nicotine products are sold."

SECTION 8. Section 7-12A-8 NMSA 1978 (being Laws 1986, Chapter 112, Section 9, as amended) is amended to read:

"7-12A-8. RETENTION OF INVOICES AND RECORDS--INSPECTION BY DEPARTMENT.--

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A. Each person who sells tobacco products or nicotine products in New Mexico for resale in New Mexico shall maintain a file of copies of the invoices of sale for three years from the end of the year the sale was made. The invoices shall indicate the date of sale of the tobacco products or nicotine products, quantity of tobacco products or nicotine products sold, the price received and the name and address of the purchaser.

B. Each person who sells tobacco products or nicotine products in New Mexico shall maintain a file of copies of invoices under which the person purchased tobacco products or nicotine products for three years from the end of the year during which tobacco products or nicotine products were purchased. The invoices shall indicate the date of purchase, the quantity of tobacco products or nicotine products purchased, the price paid and the name and address of the seller.

C. All invoices required to be kept under this section may be inspected by the department along with any stock of tobacco products or nicotine products in the possession of the purchaser or seller."

SECTION 9. Section 7-12A-9 NMSA 1978 (being Laws 1986, Chapter 112, Section 10) is amended to read:

"7-12A-9. PENALTIES.--Any person selling tobacco products or nicotine products in New Mexico and required by the

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provisions of Section 7-12A-8 NMSA 1978 to retain invoices who willfully fails to retain the invoices shall, upon conviction thereof, be fined not less than fifty dollars ($50.00) or more than five hundred dollars ($500). Jurisdiction over such actions is [~~hereby~~] granted to the magistrate courts."

SECTION 10. Section 7-12A-10 NMSA 1978 (being Laws 1986, Chapter 112, Section 11) is amended to read:

"7-12A-10. PROHIBITION.--The provisions of the Tobacco and Nicotine Products Tax Act shall not apply in any case in which New Mexico is prohibited from taxing under the constitution of New Mexico or the constitution or laws of the United States."

SECTION 11. A new section of the Tobacco and Nicotine Products Tax Act, Section 7-12A-11 NMSA 1978, is enacted to read:

"7-12A-11. [NEW MATERIAL] IMPOSITION AND RATE OF TAX--DENOMINATION AS "NICOTINE PRODUCTS TAX"--DATE PAYMENT OF TAX DUE.--

A. For the manufacture or acquisition of nicotine products in New Mexico to be distributed in the ordinary course of business and for the consumption of nicotine products in New Mexico, there is imposed an excise tax at the rate of four cents ($.04) per milligram of nicotine contained in the nicotine products.

B. The tax imposed by Subsection A of this section

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

C. The nicotine 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 12. A new section of the Tobacco and Nicotine Products Tax Act, Section 7-12A-12 NMSA 1978, is enacted to read:

"7-12A-12. [NEW MATERIAL] NICOTINE PRODUCTS LABELING--PERIODIC COMPLIANCE TESTING.--

A. Every manufacturer of nicotine products shall affix a label to each unit containing a nicotine product to be distributed in the state identifying the total quantity in milligrams of nicotine contained in the nicotine product.

B. The department shall conduct periodic compliance checks to ensure accurate reporting of nicotine content as required by Subsection A of this section by obtaining samples of nicotine products from retail locations throughout the state. Samples collected pursuant to this subsection shall be forwarded to the scientific laboratory division of the department of health, which shall determine the nicotine content of each sample and forward the results to the department."

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