

1 BILL
2 50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

3 INTRODUCED BY

4
5
6 DISCUSSION DRAFT

7
8
9
10 AN ACT

11 RELATING TO TOBACCO SALES; CLARIFYING THAT CIGARETTE PACKS
12 STAMPED WITH TAX-CREDIT STAMPS ARE "UNITS SOLD" FOR THE PURPOSE
13 OF DETERMINING ESCROW PAYMENTS DUE PURSUANT TO THE MASTER
14 SETTLEMENT AGREEMENT; AMENDING THE CIGARETTE TAX ACT; DECLARING
15 AN EMERGENCY.

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

18 SECTION 1. Section 6-4-12 NMSA 1978 (being Laws 1999,
19 Chapter 208, Section 1, as amended) is amended to read:

20 "6-4-12. DEFINITIONS.--As used in Sections 6-4-12 [~~and~~
21 ~~6-4-13~~] through 6-4-13.2 NMSA 1978:

22 A. "adjusted for inflation" means increased in
23 accordance with the formula for inflation adjustment set forth
24 in Exhibit C to the Master Settlement Agreement;

25 B. "affiliate" means a person who directly or

underscoring material = new
[bracketed material] = delete

1 indirectly owns or controls, is owned or controlled by, or is
2 under common ownership or control with, another person. Solely
3 for purposes of this definition, the terms "owns", "is owned"
4 and "ownership" mean ownership of an equity interest, or the
5 equivalent thereof, of ten percent or more, and the term
6 "person" means an individual, partnership, committee,
7 association, corporation or any other organization or group of
8 persons;

9 C. "allocable share" means "Allocable Share" as
10 that term is defined in the Master Settlement Agreement;

11 D. "cigarette" means any product that contains
12 nicotine, is intended to be burned or heated under ordinary
13 conditions of use and consists of or contains:

14 (1) any roll of tobacco wrapped in paper or in
15 any substance not containing tobacco;

16 (2) tobacco, in any form, that is functional
17 in the product [~~which~~] and that, because of its appearance, the
18 type of tobacco used in the filler or its packaging and
19 labeling, is likely to be offered to, or purchased by,
20 consumers as a cigarette; or

21 (3) any roll of tobacco wrapped in any
22 substance containing tobacco [~~which~~] that, because of its
23 appearance, the type of tobacco used in the filler or its
24 packaging and labeling, is likely to be offered to, or
25 purchased by, consumers as a cigarette described in Paragraph

.187675.1

underscored material = new
[bracketed material] = delete

1 (1) of this subsection. The term "cigarette" includes "roll-
2 your-own" (i.e., any tobacco [~~which~~] that, because of its
3 appearance, type, packaging or labeling, is suitable for use
4 and likely to be offered to, or purchased by, consumers as
5 tobacco for making cigarettes). For purposes of this
6 definition of "cigarette", 0.09 ounces of "roll-your-own"
7 tobacco shall constitute one individual "cigarette";

8 E. "Master Settlement Agreement" means the
9 settlement agreement (and related documents) entered into on
10 November 23, 1998 by the state and leading United States
11 tobacco product manufacturers;

12 F. "qualified escrow fund" means an escrow
13 arrangement with a federally chartered or state-chartered
14 financial institution having no affiliation with any tobacco
15 product manufacturer and having assets of at least one billion
16 dollars (\$1,000,000,000) where such arrangement requires that
17 such financial institution hold the escrowed funds' principal
18 for the benefit of releasing parties and prohibits the tobacco
19 product manufacturer placing the funds into escrow from using,
20 accessing or directing the use of the funds' principal except
21 as consistent with Subsection B of Section 6-4-13 NMSA 1978;

22 G. "released claims" means "Released Claims" as
23 that term is defined in the Master Settlement Agreement;

24 H. "releasing parties" means "Releasing Parties" as
25 that term is defined in the Master Settlement Agreement;

.187675.1

1 I. "tobacco product manufacturer" means an entity
2 that, after the date of enactment of this act, directly (and
3 not exclusively through any affiliate):

4 (1) manufactures cigarettes anywhere that such
5 manufacturer intends to be sold in the United States, including
6 cigarettes intended to be sold in the United States through an
7 importer (except where such importer is an original
8 participating manufacturer (as that term is defined in the
9 Master Settlement Agreement) that will be responsible for the
10 payments under the Master Settlement Agreement with respect to
11 such cigarettes as a result of the provisions of Subsection
12 II(mm) of the Master Settlement Agreement and that pays the
13 taxes specified in Subsection II(z) of the Master Settlement
14 Agreement, and provided that the manufacturer of such
15 cigarettes does not market or advertise such cigarettes in the
16 United States);

17 (2) is the first purchaser anywhere for resale
18 in the United States of cigarettes manufactured anywhere that
19 the manufacturer does not intend to be sold in the United
20 States; or

21 (3) becomes a successor of an entity described
22 in Paragraph (1) or (2) of this subsection.

23 The term "tobacco product manufacturer" shall not include
24 an affiliate of a tobacco product manufacturer unless such
25 affiliate itself falls within Paragraph (1), (2) or (3) of this

.187675.1

1 subsection; and

2 J. "units sold" means the number of individual
3 cigarettes sold in the state by the applicable tobacco product
4 manufacturer, whether directly or through a distributor,
5 retailer or similar intermediary or intermediaries, during the
6 year in question, as measured by [~~excise taxes collected,~~
7 ~~ounces of "roll-your-own" tobacco sold and sales of products~~
8 ~~bearing tax-exempt stamps on packs or "roll-your-own" tobacco~~
9 ~~containers. The secretary of taxation and revenue shall~~
10 ~~promulgate such rules as are necessary to ascertain the amount~~
11 ~~of state excise tax paid on the cigarettes of such tobacco~~
12 ~~product manufacturer for each year]~~:

13 (1) the excise tax due from cigarettes sold
14 bearing tax stamps pursuant to the Cigarette Tax Act;

15 (2) ounces of "roll-your-own" tobacco sold on
16 which the tobacco products tax is due pursuant to the Tobacco
17 Products Tax Act; or

18 (3) cigarettes sold bearing tax-exempt or tax-
19 credit stamps pursuant to the Cigarette Tax Act."

20 SECTION 2. A new Section 6-4-13.2 NMSA 1978 is enacted to
21 read:

22 "6-4-13.2. [NEW MATERIAL] RULES--AMOUNT OF STATE EXCISE
23 TAX PAID ON CIGARETTES OF TOBACCO PRODUCT MANUFACTURER.--The
24 secretary of taxation and revenue shall adopt rules regarding
25 how to determine for each year:

.187675.1

1 A. the amount of state excise tax paid on the
2 cigarettes of a tobacco product manufacturer and on the number
3 of ounces of "roll-your-own" tobacco sold; and

4 B. the number of cigarettes bearing tax-exempt or
5 tax-credit stamps that are sold."

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

8 "7-12-5. AFFIXING STAMPS.--

9 A. Except as provided in Section 7-12-6 NMSA 1978,
10 all cigarettes shall be placed in packages or containers to
11 which a stamp shall be affixed. Only a distributor with a
12 valid license issued pursuant to the Cigarette Tax Act may
13 purchase or obtain unaffixed tax-exempt stamps, tax-credit
14 stamps or tax stamps. A distributor shall not sell or provide
15 unaffixed stamps to another distributor, manufacturer, export
16 warehouse proprietor or importer with a valid permit pursuant
17 to 26 U.S.C. 5713 or any other person.

18 B. Stamps shall be affixed by the distributor to
19 each package of cigarettes to be sold or distributed in New
20 Mexico within thirty days of receipt of those packages.

21 C. A distributor shall apply stamps only to
22 packages of cigarettes that the distributor has received
23 directly from another distributor or from a manufacturer or
24 importer of cigarettes that possesses a valid and current
25 permit pursuant to 26 U.S.C. 5713.

.187675.1

1 D. A distributor shall not affix a tax stamp, a
2 tax-exempt stamp or a tax-credit stamp to a package of
3 cigarettes of a manufacturer or a brand family that is not
4 included in the directory or sell, offer or possess for sale
5 cigarettes of a manufacturer or brand family that is not
6 included in the directory.

7 E. Packages shall contain cigarettes in lots of
8 five, ten, twenty or twenty-five.

9 F. Unless the requirements of this section are
10 waived pursuant to Section 7-12-6 NMSA 1978, a tax stamp shall
11 be affixed to each package of cigarettes subject to the
12 cigarette tax, a tax-credit stamp shall be affixed to each
13 package of cigarettes subject to a qualifying tribal cigarette
14 tax and a tax-exempt stamp shall be affixed to each package of
15 cigarettes not subject to the cigarette tax pursuant to Section
16 7-12-4 NMSA 1978.

17 ~~[G. A tax-exempt stamp or tax-credit stamp is not~~
18 ~~an excise tax stamp for purposes of determining units sold~~
19 ~~pursuant to Section 6-4-12 NMSA 1978.~~

20 H.] G. Stamps shall be affixed inside the
21 boundaries of New Mexico, unless the department has granted a
22 license allowing a person to affix stamps outside New Mexico."

23 SECTION 4. APPLICABILITY.--The provisions of this act
24 shall apply to units sold on or after January 1, 2010 pursuant
25 to Section 6-4-13 NMSA 1978.

.187675.1

1 SECTION 5. EMERGENCY.--It is necessary for the public
2 peace, health and safety that this act take effect immediately.

3 - 8 -
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

underscoring material = new
[bracketed material] = delete