

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 158

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY

Clinton D. Harden

AN ACT

RELATING TO TAXATION; AMENDING THE CIGARETTE TAX ACT; REPEALING  
THE EXEMPTION FOR TRIBAL CIGARETTE SALES TO NON-TRIBAL MEMBERS.

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

Section 1. Section 7-12-2 NMSA 1978 (being Laws 1971,  
Chapter 77, Section 2, as amended) is amended to read:

"7-12-2. DEFINITIONS.--As used in the Cigarette Tax Act:

A. "cigarette" means:

(1) any roll of tobacco or any substitute for  
tobacco wrapped in paper or in any substance not containing  
tobacco;

(2) any roll of tobacco that is wrapped in any  
substance containing tobacco, other than one hundred percent  
natural leaf tobacco, which, because of its appearance, the  
type of tobacco used in the filler, its packaging and labeling,

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

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

1 or its marketing and advertising, is likely to be offered to,  
2 or purchased by, consumers as a cigarette, as described in  
3 Paragraph (1) of this subsection;

4 (3) bidis and kreteks; or

5 (4) any other roll of tobacco that is defined  
6 as a "cigarette" in Subsection D of Section 6-4-12 NMSA 1978;

7 B. "contraband cigarettes" means cigarette packages  
8 with counterfeit stamps, counterfeit cigarettes, cigarettes  
9 that have false or fraudulent manufacturing labels, cigarettes  
10 not sold in packages of five, ten, twenty or twenty-five,  
11 cigarette packages without the tax or tax-exempt stamps  
12 required by the Cigarette Tax Act and cigarettes produced by a  
13 manufacturer or in a brand family not included in the  
14 directory;

15 C. "department" means the taxation and revenue  
16 department, the secretary of taxation and revenue or any  
17 employee of the department exercising authority lawfully  
18 delegated to that employee;

19 D. "directory" means a listing of tobacco product  
20 manufacturers and brand families that is developed, maintained  
21 and published by the attorney general under the Tobacco Escrow  
22 Fund Act;

23 E. "distributor" means a person licensed pursuant  
24 to the Cigarette Tax Act to sell or distribute cigarettes in  
25 New Mexico. "Distributor" does not include:

.180124.2

1 (1) a retailer;

2 (2) a cigarette manufacturer, export warehouse  
3 proprietor or importer with a valid permit pursuant to 26  
4 U.S.C. 5713, if that person sells cigarettes in New Mexico only  
5 to distributors that hold valid licenses under the laws of a  
6 state or sells to an export warehouse proprietor or to another  
7 manufacturer; or

8 (3) a common or contract carrier transporting  
9 cigarettes pursuant to a bill of lading or freight bill, or a  
10 person who ships cigarettes through the state by a common or  
11 contract carrier pursuant to a bill of lading or freight bill;

12 F. "license" means a license granted pursuant to  
13 the Cigarette Tax Act that authorizes the holder to conduct  
14 business as a manufacturer or distributor of cigarettes;

15 G. "manufacturer" means a person that manufactures,  
16 fabricates, assembles, processes or labels a cigarette or that  
17 imports from outside the United States, directly or indirectly,  
18 a finished cigarette for sale or distribution in the United  
19 States;

20 H. "master settlement agreement" means the  
21 settlement agreement and related documents entered into on  
22 November 23, 1998 by the state and leading United States  
23 tobacco product manufacturers;

24 I. "package" means an individual pack, box or other  
25 container; "package" does not include a container that itself

underscoring material = new  
[bracketed material] = delete

1 contains other containers, such as a carton of cigarettes;

2 J. "retailer" means a person, whether located  
3 within or outside of New Mexico, that sells cigarettes at  
4 retail to a consumer in New Mexico and the sale is not for  
5 resale;

6 K. "stamp" means an adhesive label issued and  
7 authorized by the department to be affixed to cigarette  
8 packages for excise tax purposes and upon which is printed a  
9 serial number and the words "State of New Mexico" and "tobacco  
10 tax";

11 L. "tax stamp" means a stamp that has a specific  
12 cigarette tax value pursuant to the Cigarette Tax Act; ~~and~~

13 M. "tax-exempt stamp" means a stamp that indicates  
14 a tax-exempt status pursuant to the Cigarette Tax Act; and

15 N. "tribe" means a federally recognized Indian  
16 nation, tribe or pueblo located wholly or partially in New  
17 Mexico."

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

20 "7-12-3. EXCISE TAX ON CIGARETTES--RATES.--

21 A. For the privilege of selling, giving or  
22 consuming cigarettes in New Mexico, there is levied an excise  
23 tax at the following rates for each cigarette sold, given or  
24 consumed in this state:

25 (1) four and fifty-five hundredths cents

.180124.2

underscored material = new  
[bracketed material] = delete

1 (\$0.0455) if the cigarettes are packaged in lots of twenty or  
2 twenty-five;

3 (2) nine and ten-hundredths cents (\$.091) if  
4 the cigarettes are packaged in lots of ten; or

5 (3) eighteen and twenty-hundredths cents  
6 (\$.182) if the cigarettes are packaged in lots of five.

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

9 C. It shall be presumed that all cigarettes within  
10 the state are subject to the cigarette tax until the contrary  
11 is established, and the burden of proof that any cigarettes are  
12 not taxable shall be upon the person in possession of the  
13 cigarettes."

14 Section 3. Section 7-12-4 NMSA 1978 (being Laws 1971,  
15 Chapter 77, Section 4, as amended) is amended to read:

16 "7-12-4. EXEMPTION.--

17 A. Exempted from the cigarette tax are sales of  
18 cigarettes:

19 (1) to the United States or any agency or  
20 instrumentality thereof or the state of New Mexico or any  
21 political subdivision thereof; and

22 [~~(2) to the governing body, or to any enrolled~~  
23 ~~tribal member licensed by the governing body, of any Indian~~  
24 ~~nation, tribe or pueblo for use or sale on that reservation or~~  
25 ~~pueblo grant; and~~

.180124.2

underscored material = new  
[bracketed material] = delete

1                   ~~(3)~~ (2) sales ~~[which]~~ that the state is  
2 prohibited from taxing by a provision of federal law, the  
3 United States constitution or the constitution of the state of  
4 New Mexico.

5                   B. As used in this section, the term "agency or  
6 instrumentality" does not include persons who are agents or  
7 instrumentalities of the United States for a particular purpose  
8 or only when acting in a particular capacity or corporate  
9 agencies or instrumentalities."

10                  Section 4. Section 7-12-19 NMSA 1978 (being Laws 2006,  
11 Chapter 91, Section 15) is amended to read:

12                  "7-12-19. INTERGOVERNMENTAL AGREEMENTS--NO WAIVER OF  
13 SOVEREIGN IMMUNITY.--

14                  A. The department may enter into an  
15 intergovernmental agreement with a tribe to:

16                         (1) enforce, administer or otherwise implement  
17 the provisions of the Cigarette Tax Act;

18                         (2) increase the ability of the department to  
19 account for packages of cigarettes imported into, sold or  
20 transferred within and exported from the state; and

21                         (3) provide for cooperative tax collection or  
22 tax administration of the cigarette tax.

23                  B. The department, in conjunction with each tribe,  
24 shall determine the number of tax exempt stamps needed to be  
25 provided to distributors for cigarette sales to tribal members

.180124.2

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

on tribal land.

[~~B.~~] C. Nothing in the Cigarette Tax Act shall be construed to waive or restrict the sovereign immunity of a tribe or the state.

[~~G. As used in this section, "tribe" means an Indian nation, tribe or pueblo located wholly or partially in New Mexico.~~]"

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2010.