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HOUSE BILL 428

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO TAXATION; INCREASING THE RATE OF THE TOBACCO PRODUCTS TAX; CLARIFYING THE DEFINITION OF "TOBACCO PRODUCTS"; PROVIDING FOR A DISTRIBUTION TO THE BEN LUJAN LUNG CANCER RESEARCH FUND; MAKING AN APPROPRIATION.

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. "distribute" means to sell or to give;

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

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

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

18 F. "product value" means the amount paid, net of  
19 any discounts taken and allowed, for tobacco products or, in  
20 the case of tobacco products received on consignment, the value  
21 of the tobacco products received or, in the case of tobacco  
22 products manufactured and sold in New Mexico, the proceeds from  
23 the sale by the manufacturer of the tobacco products; and

24 G. "tobacco product" means any product, other than  
25 cigarettes, made from or containing tobacco that is intended

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1 for human consumption whether chewed, smoked, heated, absorbed,  
2 dissolved, inhaled, snorted, sniffed or ingested by any other  
3 means, unless the product has been approved by the United  
4 States food and drug administration as a tobacco-use cessation  
5 product and is being marketed and sold for that approved  
6 purpose."

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 RATE OF TAX--DENOMINATION AS  
10 "TOBACCO PRODUCTS TAX"--DATE PAYMENT OF TAX DUE.--

11 A. For the [~~manufacture or acquisition of~~]  
12 privilege of engaging in business to manufacture or acquire  
13 tobacco products in New Mexico to be distributed in the  
14 ordinary course of business and for the consumption of tobacco  
15 products in New Mexico, there is imposed an excise tax at the  
16 rate of [~~twenty-five~~] fifty-three percent of the product value  
17 of the tobacco products.

18 B. The tax imposed by Subsection A of this section  
19 may be referred to as the "tobacco products tax".

20 C. The tobacco products tax shall be paid by the  
21 first purchaser on or before the twenty-fifth day of the month  
22 following the month in which the taxable event occurs."

23 SECTION 3. A new section of the Tax Administration Act is  
24 enacted to read:

25 "[NEW MATERIAL] DISTRIBUTION OF TOBACCO PRODUCTS TAX.--A

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1 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be  
2 made to the Ben Lujan lung cancer research fund at the  
3 university of New Mexico health sciences center in an amount  
4 equal to seven percent of the net receipts, exclusive of  
5 penalties and interest, attributable to the tobacco products  
6 tax."

7 SECTION 4. APPLICABILITY.--The distribution pursuant to  
8 Section 3 of this act applies to receipts from the tobacco  
9 products tax that are attributable to payments from the first  
10 purchaser on taxable events that occur on or after July 1,  
11 2013.

12 SECTION 5. EFFECTIVE DATE.--The effective date of the  
13 provisions of this act is July 1, 2013.