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SENATE BILL 231

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Howie C. Morales

AN ACT

RELATING TO TAXATION; INCREASING THE CIGARETTE TAX RATES;
INCREASING THE TOBACCO PRODUCTS TAX RATE; INCLUDING E-
CIGARETTES IN THE DEFINITION OF "TOBACCO PRODUCTS" IN THE
TOBACCO PRODUCTS TAX ACT; DISTRIBUTING THE NEW REVENUE FROM THE
INCREASES IN THE CIGARETTE TAX AND THE TOBACCO PRODUCTS TAX TO
THE GENERAL FUND; CONFORMING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 6-21-6.7 NMSA 1978 (being Laws 2003,
Chapter 341, Section 5, as amended) is amended to read:

"6-21-6.7. CREDIT ENHANCEMENT ACCOUNT CREATED--USE OF
ACCOUNT--RELEASE OF MONEY TO THE GENERAL FUND.--

A. The "credit enhancement account" is created as a
separate account within the authority for use only as provided
in this section.

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1 B. All cigarette tax proceeds distributed each
2 month to the authority pursuant to Subsection [~~G~~] E of Section
3 7-1-6.11 NMSA 1978 shall be deposited in the credit enhancement
4 account.

5 C. Amounts deposited in the credit enhancement
6 account may be pledged irrevocably as additional security for
7 the payment of the principal, interest, premiums and expenses
8 on bonds issued by the authority for:

9 (1) designing, constructing, equipping and
10 furnishing additions and improvements to the university of New
11 Mexico hospital and the cancer research and treatment center at
12 the university of New Mexico health sciences center; and

13 (2) land acquisition and the planning,
14 designing, construction and equipping of department of health
15 facilities or improvements to such facilities.

16 D. The authority shall determine monthly upon
17 receipt of cigarette tax proceeds if the individual amounts of
18 cigarette tax proceeds distributed pursuant to Subsection [~~E~~] C
19 or Subsection [~~F~~] D, respectively, of Section 7-1-6.11 NMSA
20 1978 are sufficient to meet the monthly amount required for
21 immediate payment or designation for payment of principal,
22 interest, premiums and expenses on bonds additionally secured
23 by the credit enhancement account. Any insufficient amount
24 shall be paid immediately from the credit enhancement account.

25 A payment from the credit enhancement account shall be

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1 reimbursed in succeeding months from the individual amount of
2 cigarette tax proceeds distributed pursuant to Subsection [E] C
3 or Subsection [F] D, as applicable, of Section 7-1-6.11 NMSA
4 1978 in excess of the amount required for immediate payment or
5 designation for payment of principal, interest, premiums and
6 expenses on bonds. All money in the credit enhancement account
7 in excess of the monthly amount required for immediate payment
8 or designation for payment of principal, interest, premiums and
9 expenses on bonds shall be transferred monthly by the authority
10 to the general fund.

11 E. Upon payment of all principal, interest,
12 premiums and expenses on bonds additionally secured by a pledge
13 of amounts deposited in the credit enhancement account, the
14 authority shall certify to the secretary of taxation and
15 revenue that all obligations for bonds have been fully
16 discharged and shall direct the secretary of taxation and
17 revenue and the state treasurer to cease distributing cigarette
18 tax proceeds to the authority pursuant to Subsection [G] E of
19 Section 7-1-6.11 NMSA 1978 and to distribute those cigarette
20 tax proceeds to the general fund.

21 F. Any law authorizing the imposition, collection
22 or distribution of the cigarette tax or that affects the
23 cigarette tax shall not be amended, repealed or otherwise
24 directly or indirectly modified so as to impair or reduce debt
25 service coverage for any outstanding revenue bonds that may be

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1 secured by a pledge of those cigarette tax proceeds distributed
2 to the credit enhancement account, unless the revenue bonds
3 have been discharged in full or provisions have been made for a
4 full discharge."

5 SECTION 2. Section 6-21-6.10 NMSA 1978 (being Laws 2005,
6 Chapter 58, Section 1, as amended) is amended to read:

7 "6-21-6.10. NEW MEXICO FINANCE AUTHORITY REVENUE BONDS--
8 PURPOSE--APPROPRIATION.--

9 A. The authority may issue and sell revenue bonds
10 in compliance with the New Mexico Finance Authority Act in an
11 amount not exceeding two million five hundred thousand dollars
12 (\$2,500,000) for the behavioral health capital fund to make
13 loans to eligible entities for capital projects pursuant to the
14 Behavioral Health Capital Funding Act.

15 B. The net proceeds from the sale of the bonds are
16 appropriated to the behavioral health capital fund for the
17 purposes described in Subsection A of this section.

18 C. The cigarette tax proceeds distributed to the
19 authority pursuant to Subsection [D] B of Section 7-1-6.11 NMSA
20 1978:

21 (1) are appropriated to the authority to be
22 pledged irrevocably for the payment of the principal, interest,
23 premiums and related expenses on the bonds and for payment of
24 the expenses incurred by the authority related to the issuance,
25 sale and administration of the bonds; and

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1 (2) shall be deposited in a separate fund or
2 account of the authority; provided that money in the separate
3 fund or account in excess of the amount necessary for payment
4 of principal and interest on the bonds and necessary reserves
5 or sinking funds may be transferred to any other account of the
6 authority and used for purposes of the New Mexico Finance
7 Authority Act.

8 D. The authority may issue and sell revenue bonds
9 in compliance with the New Mexico Finance Authority Act in an
10 amount not to exceed five million dollars (\$5,000,000) for
11 acquiring land for and planning, designing, constructing and
12 equipping department of health facilities or improvements to
13 those facilities, upon certification from the secretary of
14 health that such projects are needed. The costs associated
15 with issuing the bonds shall be paid from the net proceeds from
16 the sale of the bonds, and the remainder is appropriated to the
17 facilities management division of the general services
18 department for the projects certified pursuant to this
19 subsection.

20 E. The cigarette tax proceeds distributed to the
21 authority pursuant to Subsection ~~[F]~~ D of Section 7-1-6.11 NMSA
22 1978:

23 (1) are appropriated to the authority to be
24 pledged irrevocably for the payment of the principal, interest,
25 premiums and related expenses of the bonds and for payment of

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1 the expenses incurred by the authority related to the issuance,
2 sale and administration of the bonds; and

3 (2) shall be deposited in a separate fund or
4 account of the authority.

5 F. Any law authorizing the imposition, collection
6 or distribution of the cigarette tax or that affects the
7 cigarette tax shall not be amended, repealed or otherwise
8 directly or indirectly modified so as to impair or reduce debt
9 service coverage for any outstanding revenue bonds that may be
10 secured by a pledge of those cigarette tax revenues, unless the
11 revenue bonds have been discharged in full or provisions have
12 been made for a full discharge.

13 G. The authority may secure the revenue bonds
14 issued pursuant to this section by a pledge of money in the
15 public project revolving fund with a lien priority on the money
16 in the public project revolving fund as determined by the
17 authority."

18 SECTION 3. Section 6-22-2 NMSA 1978 (being Laws 1992,
19 Chapter 105, Section 2) is amended to read:

20 "6-22-2. DEFINITIONS.--As used in the State Aid Intercept
21 Act:

22 A. "default" means the actual nonpayment of
23 principal or interest on a local revenue bond when payment is
24 scheduled by the indenture relating the local revenue bond;

25 B. "local government" means a municipality or

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1 county;

2 C. "local revenue bond" means a bond issued after
3 July 1, 1992 pursuant to Sections 3-33-1 through 3-33-43 NMSA
4 1978 or Chapter 4, Article 62 NMSA 1978;

5 D. "qualified local revenue bond" means a local
6 revenue bond for which a state distributions intercept
7 authorization has been granted pursuant to this section;

8 E. "secretary" means the secretary of finance and
9 administration; and

10 F. "state distributions" means any or all of the
11 funds distributed to local governments pursuant to [~~Section~~]
12 Sections 7-1-6.4 and 7-1-6.9 [~~and Subsection B of Section~~
13 ~~7-1-6.11~~] NMSA 1978."

14 SECTION 4. Section 7-1-6.11 NMSA 1978 (being Laws 1983,
15 Chapter 211, Section 16, as amended) is amended to read:

16 "7-1-6.11. DISTRIBUTIONS OF CIGARETTE TAXES.--

17 [~~G.~~] A. A distribution pursuant to Section 7-1-6.1
18 NMSA 1978 shall be made to the cancer research and treatment
19 center at the university of New Mexico health sciences center
20 in an amount equal to [~~eighty-three~~] forty-four hundredths
21 percent of the net receipts, exclusive of penalties and
22 interest, attributable to the cigarette tax.

23 [~~D.~~] B. A distribution pursuant to Section 7-1-6.1
24 NMSA 1978 shall be made to the New Mexico finance authority in
25 an amount equal to [~~one and twenty-five~~] sixty-six hundredths

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1 percent of the net receipts, exclusive of penalties and
2 interest, attributable to the cigarette tax.

3 ~~[E.]~~ C. A distribution pursuant to Section 7-1-6.1
4 NMSA 1978 in an amount equal to ~~[eight and eighty-nine]~~ four
5 and sixty-eight hundredths percent of the net receipts,
6 exclusive of penalties and interest, attributable to the
7 cigarette tax, shall be made, on behalf of and for the benefit
8 of the university of New Mexico health sciences center, to the
9 New Mexico finance authority.

10 ~~[F.]~~ D. A distribution pursuant to Section 7-1-6.1
11 NMSA 1978 in an amount equal to ~~[three and seventy-four]~~ one
12 and ninety-seven hundredths percent of the net receipts,
13 exclusive of penalties and interest, attributable to the
14 cigarette tax shall be made to the New Mexico finance authority
15 for land acquisition and the planning, designing, construction
16 and equipping of department of health facilities or
17 improvements to such facilities.

18 ~~[G.]~~ E. A distribution pursuant to Section 7-1-6.1
19 NMSA 1978 in an amount equal to ~~[nine and seventy-seven]~~ five
20 and fourteen hundredths percent of the net receipts, exclusive
21 of penalties and interest, attributable to the cigarette tax
22 shall be made to the New Mexico finance authority for deposit
23 in the credit enhancement account created in the authority.

24 ~~[H.]~~ F. A distribution pursuant to Section 7-1-6.1
25 NMSA 1978 in an amount equal to ~~[sixty-two]~~ thirty-three

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1 hundredths percent of the net receipts, exclusive of penalties
2 and interest, attributable to the cigarette tax shall be made,
3 on behalf of and for the benefit of the rural county cancer
4 treatment fund, to the New Mexico finance authority."

5 SECTION 5. Section 7-12-2 NMSA 1978 (being Laws 1971,
6 Chapter 77, Section 2, as amended) is amended to read:

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

8 A. "cigarette" means:

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

12 (2) any roll of tobacco that is wrapped in any
13 substance containing tobacco, other than one hundred percent
14 natural leaf tobacco, which, because of its appearance, the
15 type of tobacco used in the filler, its packaging and labeling,
16 or its marketing and advertising, is likely to be offered to,
17 or purchased by, consumers as a cigarette, as described in
18 Paragraph (1) of this subsection;

19 (3) bidis and kreteks; or

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

22 B. "close of business" means that time when a
23 business ceases to operate for the remainder of the day or
24 12:00 a.m., if the business is open and conducting business at
25 12:00 a.m.;

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1 C. "contraband cigarettes" means cigarette packages
2 with counterfeit stamps, counterfeit cigarettes, cigarettes
3 that have false or fraudulent manufacturing labels, cigarettes
4 not sold in packages of five, ten, twenty or twenty-five,
5 cigarette packages without the tax, tax-credit or tax-exempt
6 stamps required by the Cigarette Tax Act and cigarettes
7 produced by a manufacturer or in a brand family not included in
8 the directory;

9 D. "department" means the taxation and revenue
10 department, the secretary of taxation and revenue or any
11 employee of the department exercising authority lawfully
12 delegated to that employee;

13 E. "directory" means a listing of tobacco product
14 manufacturers and brand families that is developed, maintained
15 and published by the attorney general under the Tobacco Escrow
16 Fund Act;

17 F. "distributor" means a person licensed pursuant
18 to the Cigarette Tax Act to sell or distribute cigarettes in
19 New Mexico. "Distributor" does not include:

20 (1) a retailer;

21 (2) a cigarette manufacturer, export warehouse
22 proprietor or importer with a valid permit pursuant to 26
23 U.S.C. 5713, if that person sells cigarettes in New Mexico only
24 to distributors that hold valid licenses under the laws of a
25 state or sells to an export warehouse proprietor or to another

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1 manufacturer; or

2 (3) a common or contract carrier transporting
3 cigarettes pursuant to a bill of lading or freight bill, or a
4 person who ships cigarettes through the state by a common or
5 contract carrier pursuant to a bill of lading or freight bill;

6 G. "license" means a license granted pursuant to
7 the Cigarette Tax Act that authorizes the holder to conduct
8 business as a manufacturer or distributor of cigarettes;

9 H. "manufacturer" means a person that manufactures,
10 fabricates, assembles, processes or labels a cigarette or that
11 imports from outside the United States, directly or indirectly,
12 a finished cigarette for sale or distribution in the United
13 States;

14 I. "master settlement agreement" means the
15 settlement agreement and related documents entered into on
16 November 23, 1998 by the state and leading United States
17 tobacco product manufacturers;

18 J. "package" means an individual pack, box or other
19 container; "package" does not include a container that itself
20 contains other containers, such as a carton of cigarettes;

21 K. "qualifying tribal cigarette tax" means an
22 excise, privilege or similar tax at a minimum rate of:

23 (1) [~~three and seventy-five hundredths cents~~
24 ~~(\$.0375)~~] eleven and one-fourth cents (\$.1125) per cigarette if
25 the cigarettes are packaged in lots of twenty or twenty-five;

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1 (2) [~~seven and one-half cents (\$.075)~~] twenty-
2 two and one-half cents (\$.225) per cigarette if the cigarettes
3 are packaged in lots of ten; or

4 (3) [~~fifteen cents (\$.15)~~] forty-five cents
5 (\$.45) per cigarette if the cigarettes are packaged in lots of
6 five;

7 L. "retailer" means a person, whether located
8 within or outside of New Mexico, that sells cigarettes at
9 retail to a consumer in New Mexico and the sale is not for
10 resale;

11 M. "stamp" means an adhesive label issued and
12 authorized by the department to be affixed to cigarette
13 packages for excise tax purposes and upon which is printed a
14 serial number and the words "State of New Mexico" and "tobacco
15 tax";

16 N. "tax stamp" means a stamp that has a specific
17 cigarette tax value pursuant to the Cigarette Tax Act;

18 O. "tax-credit stamp" means a stamp that indicates
19 the cigarette package bearing the stamp is to be or has been
20 sold by a retailer located on land of a tribe that has imposed
21 a qualifying tribal cigarette tax;

22 P. "tax-exempt stamp" means a stamp that indicates
23 a tax-exempt status pursuant to the Cigarette Tax Act;

24 Q. "tribal member" means a person who is recognized
25 by the governing body of an Indian tribe to be an enrolled

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1 member of that Indian tribe;

2 R. "tribe" means a federally recognized Indian
3 nation, tribe or pueblo located wholly or partially in New
4 Mexico, including:

5 (1) a political subdivision, agency or
6 department of a tribe;

7 (2) an incorporated or unincorporated
8 enterprise of a tribe, one or more tribes or a political
9 subdivision of a tribe; or

10 (3) a corporation considered to be an Indian
11 or a tribe by the federal government or the state; and

12 S. "tribe's land" means the reservation, pueblo
13 grant or trust land of a tribe and property held by the United
14 States in trust jointly for the nineteen New Mexico Indian
15 pueblos pursuant to Public Law 95-232."

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

18 "7-12-3. EXCISE TAX ON CIGARETTES--RATES.--

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

23 (1) [~~eight and three-tenths cents (\$.083)~~]
24 fifteen and eight-tenths cents (\$.158) if the cigarettes are
25 packaged in lots of twenty or twenty-five;

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1 (2) [~~sixteen and six-tenths cents (\$.166)~~]
2 thirty-one and six-tenths cents (\$.316) if the cigarettes are
3 packaged in lots of ten; or

4 (3) [~~thirty-three and two-tenths cents~~
5 ~~(\$.332)~~] sixty-three and two-tenths cents (\$.632) if the
6 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 SECTION 7. Section 7-12A-2 NMSA 1978 (being Laws 1986,
10 Chapter 112, Section 3, as amended) is amended to read:

11 "7-12A-2. DEFINITIONS.--As used in the Tobacco Products
12 Tax Act:

13 A. "department" means the taxation and revenue
14 department, the secretary or any employee of the department
15 exercising authority lawfully delegated to that employee by the
16 secretary;

17 B. "distribute" means to sell or to give;

18 C. "e-cigarette":

19 (1) means any electronic oral device that can
20 be used to provide a vapor or aerosol of nicotine or any other
21 substance to the person inhaling from the device; and

22 (2) includes any such device, or any part
23 thereof, whether manufactured, distributed, marketed or sold as
24 an e-cigarette, e-cigar, e-pipe or any other product, name or
25 descriptor;

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

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

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

25 ~~[G-]~~ H. "tobacco product" means:

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1 (1) any product, other than cigarettes, made
2 of or derived from ~~[or containing]~~ tobacco or nicotine that is
3 intended for human consumption, whether smoked, heated, chewed,
4 absorbed, dissolved, inhaled, snorted, sniffed or ingested by
5 any other means, including cigars, chewing tobacco,
6 e-cigarettes, pipe tobacco or snuff; and

7 (2) any component, part or accessory used to
8 consume tobacco but does include any product that has been
9 approved by the United States food and drug administration for
10 sale as a tobacco cessation product or for other therapeutic
11 purposes where such product is marketed and sold solely for
12 such an approved use."

13 SECTION 8. Section 7-12A-3 NMSA 1978 (being Laws 1986,
14 Chapter 112, Section 4, as amended) is amended to read:

15 "7-12A-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS
16 "TOBACCO PRODUCTS TAX"--DATE PAYMENT OF TAX DUE.--

17 A. For the privilege of engaging in business to
18 manufacture, ~~[or acquisition of]~~ acquire or distribute tobacco
19 products ~~[in New Mexico to be distributed]~~ in the ordinary
20 course of business and for the ~~[consumption of]~~ privilege of
21 consuming tobacco products in New Mexico, there is imposed an
22 excise tax at the rate of ~~[twenty-five]~~ seventy-six percent of
23 the product value of the tobacco products.

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

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

4 SECTION 9. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2017.

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