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. HOUSE BILL 275
42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996
INTRODUCED BY
ROBERT A. PERLS

AN ACT
RELATING TO TAXATION; AUTHORIZING IMPOSITION OF A MUNICIPAL
TOBACCO PRODUCTS TAX FOR THE PURPOSE OF RAISING REVENUES FOR
PUBLIC SCHOOL CONSTRUCTION; ENACTING THE MUNICIPAL TOBACCO
PRODUCTS TAX ACT.

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

Section 1. SHORT TITLE. -- This act may be cited as the
"Municipal Tobacco Products Tax Act".

Section 2. DEFINITIONS. -- As used in the Municipal Tobacco
Products Tax Act:

A. "cigarette" means any roll of tobacco or any
substitute therefor wrapped in paper or any substance other than
tobacco;

B. "engaging in business" means carrying on or
causing to be carried on any activity with the purpose of direct

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1 or indirect benefit;

2 C. "governing body" means the city council or city
3 commission of a city, the board of trustees of a town or village
4 or the board of county commissioners of an H class county;

5 D. "municipality" means any incorporated city, town
6 or village and H class county;

7 E. "person" means any individual or other legal
8 entity;

9 F. "price" means the total amount of money or the
10 reasonable value or other consideration or both paid to a
11 retailer for tobacco products;

12 G. "retailer" means any person engaging in business
13 who sells, offers for sale or possesses for the purpose of
14 selling cigarettes at retail; and

15 H. "tobacco product" means any product, including
16 cigarettes, made from or containing tobacco.

17 Section 3. IMPOSITION OF MUNICIPAL TOBACCO PRODUCTS

18 TAX- -RATE- -ELECTION REQUIRED. - -

19 A. The majority of the members of the governing body
20 of a municipality may enact an ordinance imposing an excise tax
21 on the sale of tobacco products by a retailer within the
22 boundaries of the municipality at a rate not to exceed thirty
23 percent of the price paid for the tobacco products upon which
24 the tax imposed by this subsection has not been paid. The tax
25 may be imposed in increments of one percent.

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1 B. The tax imposed by this section may be referred
2 to as the "municipal tobacco products tax" and is in addition to
3 the cigarette tax imposed pursuant to the Cigarette Tax Act and
4 the tobacco products tax imposed pursuant to the Tobacco
5 Products Tax Act.

6 C. The ordinance imposing the municipal tobacco
7 products tax or any increment of the tax shall not go into
8 effect until after the governing body submits the question of
9 imposing the tax to the voters in the municipality and a
10 majority of the voters voting on the question votes in favor of
11 imposing the municipal tobacco products tax.

12 D. The governing body shall hold the election on the
13 question of imposing the municipal tobacco products tax within
14 sixty days after the adoption of the ordinance. The question
15 may be submitted to the voters at any regular or special
16 election or at any special election called for that purpose by
17 the governing body. Any special election shall be called,
18 conducted and canvassed as provided for special municipal
19 elections in the Municipal Election Code. If a majority of
20 voters voting on the question votes in favor of adoption of the
21 ordinance, the municipal tobacco products tax or increment of
22 the tax shall be imposed. If the question of imposing a
23 municipal tobacco products tax fails, the governing body shall
24 not again adopt an ordinance imposing a municipal tobacco
25 products tax or increment of the tax for a period of one year

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1 after the election.

2 E. Upon approval by the voters of the municipality
3 of imposition of a municipal tobacco products tax, the governing
4 body shall submit a certified copy of the ordinance to the
5 taxation and revenue department.

6 Section 4. REGISTRATION REQUIRED. -- Every retailer engaging
7 in business within the boundaries of a municipality that imposes
8 a municipal tobacco products tax shall register with the
9 municipality as a retailer.

10 Section 5. COLLECTION OF MUNICIPAL TOBACCO PRODUCTS
11 TAX--DATE TAX DUE. --

12 A. The municipality shall collect the municipal
13 tobacco products tax imposed by the Municipal Tobacco Products
14 Tax Act.

15 B. Every retailer subject to the municipal tobacco
16 products tax shall file a tax return on forms provided by and
17 with such information as may be required by the municipality.
18 The municipal tobacco products tax shall be due on or before the
19 twenty-fifth day of the month following the month in which the
20 tobacco products are sold at retail within the boundaries of the
21 municipality.

22 Section 6. USE OF MUNICIPAL TOBACCO PRODUCTS TAX--
23 DISTRIBUTION TO SCHOOL DISTRICTS. --

24 A. The net receipts from the municipal tobacco
25 products tax shall be used for the design, construction,

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1 remodeling, renovation, equipping or furnishing of public
2 schools. To carry out this purpose, the municipality shall
3 distribute the net receipts from the tax at least quarterly to
4 the school district within the boundaries of the municipality or
5 in equal amounts to the school districts, if there are more than
6 one, within the municipality.

7 B. The municipality may retain an amount not to
8 exceed five percent of the proceeds from the municipal tobacco
9 products tax as an administrative fee.

10 C. The local school board of each school district
11 receiving municipal tobacco products tax proceeds shall report
12 annually to the governing body of the municipality on the public
13 school projects funded with the proceeds.

14 Section 7. ENFORCEMENT OF MUNICIPAL TOBACCO PRODUCTS
15 TAX. --To enforce the provisions of the Municipal Tobacco
16 Products Tax Act and prevent evasion of the municipal tobacco
17 products tax, the municipality shall require that all tobacco
18 products sold by any retailer within the boundaries of the
19 municipality bear a municipal stamp. Each person who sells
20 tobacco products to a retailer for resale within the boundaries
21 of the municipality shall affix a municipal stamp to each
22 package or container of tobacco products sold to the retailer
23 for resale and report to the governing body of the municipality
24 the quantities of municipal-stamped tobacco products sold to
25 each retailer for resale in the municipality.

1 Section 8. EXEMPTION. --

2 A. Exempted from the municipal tobacco products tax
3 are sales of tobacco products:

4 (1) to the United States or any agency or
5 instrumentality thereof or the state of New Mexico or any
6 political subdivision thereof;

7 (2) to the governing body or to any enrolled
8 tribal member licensed by the governing body of any Indian
9 nation, tribe or pueblo for use or sale on that reservation or
10 pueblo grant; and

11 (3) sales that the state is prohibited from
12 taxing by a provision of the United States constitution or the
13 constitution of New Mexico.

14 B. As used in this section, "agency or
15 instrumentality" does not include persons who are agents or
16 instrumentalities of the United States for a particular purpose
17 or only when acting in a particular capacity or corporate
18 agencies or instrumentalities.

19 Section 9. PENALTIES. --

20 A. The governing body of a municipality imposing a
21 municipal tobacco products tax may provide by ordinance for
22 penalties not exceeding ninety days in jail or a fine of three
23 hundred dollars (\$300) for failure to pay the municipal tobacco
24 products tax due, to remit the proceeds of the tax to the
25 municipality or to account for the tobacco products subject to

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1 the tax and the tax proceeds as required by the municipality.

2 B. The governing body of the municipality may
3 provide by ordinance that a retailer is liable for the payment
4 of the proceeds of the municipal tobacco products tax that the
5 retailer failed to remit to the municipality and may provide for
6 a civil penalty for any such failure in an amount not exceeding
7 ten percent of the tax due but not remitted to the municipality
8 but in an amount not less than one hundred dollars (\$100).

9 C. The municipality may bring an action in district
10 court for the collection of any amount due, including without
11 limitation penalties on that amount, interest on the unpaid
12 balance at a rate not exceeding one percent a month, the costs
13 of collection and reasonable attorneys' fees incurred in
14 connection with the action.

State of New Mexico House of Representatives

FORTY- SECOND LEGISLATURE

SECOND SESSION, 1996

February 7, 1996

Mr. Speaker:

Your GOVERNMENT AND URBAN AFFAIRS COMMITTEE, to
whom has been referred

HOUSE BILL 275

has had it under consideration and reports same with
recommendation that it DO NOT PASS, and thence referred to
the BUSINESS AND INDUSTRY COMMITTEE.

Respectfully submitted,

Lynda M. Lovejoy, Chairwoman

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

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Adopted _____ Not Adopted _____

(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 6 For 2 Against

Yes: 6

No: Pederson, Perls

Excused: Macko, Roberts, Wallace

Absent: None

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