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HOUSE BILL 719

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

ROBERT A. PERLS

AN ACT

RELATING TO TAXATION; PROVIDING FOR IMPOSITION AND COLLECTION OF
CIGARETTE TAXES; PROVIDING FOR AGREEMENTS WITH INDIAN NATIONS,
TRIBES OR PUEBLOS; AMENDING SECTIONS OF THE NMSA 1978.

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 any roll of tobacco or any
substitute therefor wrapped in paper or any substance other than
tobacco;

B. "person" means any individual, estate, trust,
receiver, cooperative association, club, corporation, company,
firm, partnership, joint venture, syndicate or other entity;

C. "department" means the taxation and revenue

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1 department, the secretary of taxation and revenue or any
2 employee of the department exercising authority lawfully
3 delegated to that employee by the secretary;

4 D. "secretary" means the secretary of taxation and
5 revenue;

6 E. "stamp" means any authorized label [~~which~~] that
7 is issued to cover the tax in multiples of five cigarettes and
8 upon which is printed the words "State of New Mexico" and
9 "tobacco tax" and [~~which~~] that is coated with an adhesive to
10 affix the stamp to a package so that the stamp, once affixed,
11 cannot be removed without destroying it;

12 F. "stamped" means a package or container of
13 cigarettes to which a cigarette tax stamp has been affixed as
14 provided in the Cigarette Tax Act; [~~and~~]

15 G. "unstamped" means a package or container of
16 cigarettes to which the cigarette tax stamp provided for in the
17 Cigarette Tax Act has not been affixed; and

18 H. "use or consumption" means the exercise of any
19 right or power over cigarettes incident to the ownership other
20 than the sale of the cigarettes or the keeping or retention for
21 the purpose of sale. "

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

24 "7-12-3. EXCISE TAX ON CIGARETTES--RATES.--

25 A. For the [~~privilege of selling, giving or~~

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1 ~~consuming~~ use or consumption of cigarettes in New Mexico, there
2 is levied an excise tax at the rate of one and five hundredths
3 cents (\$.0105) for each cigarette ~~[sold, given]~~ used or consumed
4 in this state.

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

7 C. All taxes paid pursuant to the provisions of the
8 Cigarette Tax Act shall be presumed to be direct taxes on the
9 retail consumer precollected for the purpose of convenience and
10 facility. When the taxes are paid by any other person, the
11 payment shall be considered an advance payment and shall be
12 added to the price of the cigarettes and recovered from the
13 ultimate consumer or user. Any person selling cigarettes at
14 retail shall state or separately display in the retail premises,
15 or upon the vending machine, a notice of the amount of the tax
16 included in the selling price and charged or payable pursuant to
17 the Cigarette Tax Act. The provisions of this subsection shall
18 not affect the method of collection of the tax as provided by
19 the Cigarette Tax Act.

20 D. The cigarette tax shall be precollected by the
21 persons set forth in Subsection C of Section 7-12-5 NMSA 1978
22 through the purchase of stamps as set forth in Section 7-12-7
23 NMSA 1978. "

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

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1 "7-12-4. EXEMPTION. --

2 A. Exempted from the cigarette tax [~~are sales~~] is
3 the use or consumption of cigarettes purchased from:

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; and

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~~] consumption on that
10 reservation or pueblo grant [~~and~~

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

14 B. As used in this section, the term "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 4. Section 7-12-5 NMSA 1978 (being Laws 1971,
20 Chapter 77, Section 5, as amended) is amended to read:

21 "7-12-5. AFFIXING STAMPS--LICENSE FEE. --

22 A. All cigarettes [~~the sale, gift~~] the use or
23 consumption of which is subject to the cigarette tax shall be
24 placed in packages or containers to which a stamp may be
25 affixed.

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1 B. Packages or containers to which a stamp is
2 required to be affixed and ~~[which]~~ that contain cigarettes that
3 are not in multiples of five cigarettes shall have affixed a
4 stamp of the next higher multiple of five cigarettes.

5 C. Unless the requirements of this section are
6 waived pursuant to Section 7-12-6 NMSA 1978, a stamp shall be
7 affixed to each package or container of cigarettes ~~[the sale,~~
8 ~~gift]~~ the use or consumption of which is subject to the
9 cigarette tax. The stamp shall be affixed by any person who
10 sells in New Mexico cigarettes manufactured by that person or
11 who receives on consignment or buys unstamped cigarettes for
12 sale, gift, use or consumption in New Mexico.

13 D. Stamps shall be affixed inside the boundaries of
14 New Mexico, unless the department has granted a ~~[license]~~ permit
15 allowing a person to affix stamps outside New Mexico. The
16 ~~[license]~~ permit fee shall be one-eighth of one percent of the
17 gross receipts derived from selling cigarettes stamped outside
18 New Mexico. The ~~[license]~~ permit fee imposed by this subsection
19 is to be paid on or before the twenty-fifth day of the month
20 following the month in which sales of cigarettes stamped outside
21 New Mexico are made. "

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

24 "7-12-7. SALE OF STAMPS--PRICES. --

25 A. The department shall sell stamps to any person

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1 ~~[who sells in New Mexico cigarettes manufactured by that person~~
2 ~~and to any person who receives on consignment or buys unstamped~~
3 ~~cigarettes for sale, gift or consumption in New Mexico, provided~~
4 ~~such persons are registered with the department under the~~
5 ~~provisions of Section 7-1-12 NMSA 1978]~~ required to affix stamps
6 under the provisions of Subsection C of Section 7-12-5 NMSA
7 1978, provided such persons are licensed by the department to
8 affix stamps pursuant to the provisions of Section 7-12-7.1 NMSA
9 1978. Stamps shall be sold at their face value with the
10 following discounts:

11 (1) four percent less than the face value of
12 the first thirty thousand dollars (\$30,000) of stamps purchased
13 in one calendar month;

14 (2) three percent less than the face value of
15 the second thirty thousand dollars (\$30,000) of stamps purchased
16 in one calendar month; and

17 (3) two percent less than the face value of all
18 stamps purchased in excess of sixty thousand dollars (\$60,000)
19 in one calendar month.

20 B. If the face value of stamps sold in a single sale
21 is less than one thousand dollars (\$1,000), the discount
22 provided for in this section shall not be allowed.

23 C. Payment for stamps shall be made on or before the
24 twenty-fifth day of the month following the month in which the
25 sale of stamps by the department is made. "

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1 Section 6. A new Section 7-12-7.1 NMSA 1978 is enacted to
2 read:

3 "7-12-7.1. [NEW MATERIAL] LICENSE TO AFFIX STAMPS. --

4 A. Every person required to affix stamps under the
5 provisions of Subsection C of Section 7-12-5 NMSA 1978 shall
6 obtain a license to affix stamps from the secretary.

7 B. The secretary shall prescribe by regulation the
8 form, content and manner for application for a license to affix
9 stamps. The secretary shall prescribe by regulation conditions
10 for granting of the license so as to ensure compliance by
11 licensees with the provisions of the Cigarette Tax Act.

12 C. For failure to comply with the conditions of
13 license prescribed by the secretary under the provisions of
14 Subsection B of this section the secretary may deny an
15 application for or revoke the license to affix stamps. Any
16 person whose application for license has been denied or whose
17 license has been revoked may protest the denial or revocation of
18 license pursuant to the procedures of the Tax Administration
19 Act. "

20 Section 7. Section 7-12-11 NMSA 1978 (being Laws 1971,
21 Chapter 77, Section 11) is amended to read:

22 "7-12-11. [EXPORT SELLERS] PHYSICAL SEGREGATION OF
23 UNSTAMPED CIGARETTES [TO BE EXPORTED]. -- Any person [selling and
24 shipping cigarettes outside New Mexico] licensed to affix stamps
25 under Section 7-12-7.1 NMSA 1978 may maintain unstamped

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1 cigarettes on his premises if the unstamped cigarettes are not
2 subject to the Cigarette Tax Act or are to be shipped outside
3 the state. ~~[are]~~ All such unstamped cigarettes shall be kept in
4 a separate part of his place of business, physically segregated
5 from cigarettes to be sold inside New Mexico and clearly
6 identified as cigarettes for shipment outside the state or for
7 sale, gift, use or consumption not subject to the Cigarette Tax
8 Act. If ~~[cigarettes to be sold outside New Mexico]~~ such
9 unstamped cigarettes are intermingled with stamped cigarettes
10 ~~[to be sold inside New Mexico]~~ they shall be stamped ~~[and~~
11 ~~treated for purposes of]~~ as cigarettes subject to the Cigarette
12 Tax Act [as cigarettes to be sold inside New Mexico] pursuant to
13 the provisions of Section 7-12-12 NMSA 1978. "

14 Section 8. Section 7-12-12 NMSA 1978 (being Laws 1971,
15 Chapter 77, Section 12, as amended) is amended to read:

16 "7-12-12. SHIPMENT OF UNSTAMPED CIGARETTES IN NEW MEXICO. --

17 A. The secretary may, by regulation, require and
18 prescribe the contents of reports to be filed with the
19 department by persons transporting unstamped cigarettes in New
20 Mexico.

21 B. Every person who transports upon the public
22 highways, roads or streets of New Mexico cigarettes not having
23 the stamps affixed to the packages or container shall have in
24 his actual possession invoices or delivery tickets for such
25 cigarettes that shall show the true name and address of the

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1 consignor or seller, the true name of the consignee or purchaser
2 and the quantity and brands of the cigarettes transported. If
3 the cigarettes are consigned to or purchased by any person in
4 this state, the purchaser or consignee shall be a person who is
5 authorized to possess unstamped cigarettes in this state. In
6 the absence of such invoices or delivery tickets, or if the name
7 or address of the consignee or purchaser is falsified or the
8 purchaser or consignee is not a person who is authorized to
9 possess unstamped cigarettes in the state, the cigarettes
10 transported shall be deemed contraband subject to seizure and
11 sale pursuant to the provisions of Subsection C of Section
12 7-12-13 NMSA 1978.

13 C. Transportation of cigarettes through New Mexico
14 from a point outside this state to a point in some other state
15 will not be considered a violation of this section, provided
16 that the person so transporting the cigarettes has in his
17 possession adequate invoices or delivery tickets that give the
18 true name and address of the out-of-state seller or consignor
19 and the out-of-state purchaser or consignee.

20 D. In any case where the department or its duly
21 authorized agent or any state police officer has knowledge or
22 reasonable grounds to believe that any vehicle is transporting
23 cigarettes in violation of this section, the department, the
24 agent or the police officer is authorized to stop the vehicle
25 and to inspect it for contraband cigarettes.

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1 E. For purposes of this section, the term "person
2 authorized to possess unstamped cigarettes in this state" means
3 a person licensed to affix stamps under the provisions of
4 Section 7-12-7.1 NMSA 1978 or a person for whom the requirement
5 that stamps be affixed has been waived under the provisions of
6 Section 7-12-6 NMSA 1978. "

7 Section 9. Section 7-12-13 NMSA 1978 (being Laws 1971,
8 Chapter 77, Section 13, as amended) is amended to read:

9 "7-12-13. PENALTIES. --

10 A. Any person selling cigarettes in New Mexico and
11 required by the provisions of Section 7-12-10 NMSA 1978 to
12 retain invoices who willfully fails to retain such invoices
13 shall, upon conviction, be fined not less than twenty-five
14 dollars (\$25.00) or more than two hundred dollars (\$200).
15 Jurisdiction over such actions is granted to the magistrate
16 courts.

17 B. Any person not a manufacturer of cigarettes who
18 sells cigarettes in New Mexico without the stamps required by
19 Section 7-12-5 NMSA 1978 affixed thereto and without that
20 requirement having been waived under Section 7-12-6 NMSA 1978
21 shall, upon conviction, be fined not less than one hundred
22 dollars (\$100) or more than five hundred dollars (\$500) or
23 imprisoned not more than ninety days in the county jail, or
24 both. Jurisdiction over such actions is granted to the
25 magistrate courts.

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1 C. ~~[The department shall seize and sell cigarettes~~
2 ~~which are not stamped as required by the Cigarette Tax Act. The~~
3 ~~sale shall be made pursuant to the provisions of Sections 7-1-41~~
4 ~~through 7-1-49 and 7-1-51 NMSA 1978]~~ In addition to the
5 provision of Section 7-12-12 NMSA 1978, any cigarettes that are
6 not stamped as required by the Cigarette Tax Act and that are
7 not in the possession of a person authorized to possess
8 unstamped cigarettes in the state, as that term is used in
9 Section 7-12-12 NMSA 1978, are declared to be contraband goods
10 that shall be seized by the department or its duly authorized
11 agent or by any state police officer when directed by the
12 department to do so, without a warrant, and the goods shall be
13 offered by the department for sale pursuant to the provisions of
14 Sections 7-1-41 through 7-1-49 and 7-1-51 NMSA 1978. The
15 department shall collect the amount of cigarette tax due on such
16 unstamped cigarettes plus [fifty] one hundred percent thereof as
17 penalty, from the proceeds of sale. "

18 Section 10. Section 7-12-17 NMSA 1978 (being Laws 1971,
19 Chapter 77, Section 14, as amended) is amended to read:

20 "7-12-17. REPORTING REQUIREMENTS--PENALTY.--

21 A. Each person [~~who sells in New Mexico cigarettes~~
22 ~~manufactured by that person]~~ licensed to affix stamps in New
23 Mexico or who receives on consignment or buys cigarettes either
24 directly from the manufacturer or from any out-of-state person
25 for resale in New Mexico shall report to the department by the

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1 twenty-fifth day of each month that person's sales of cigarettes
2 during the preceding month in each municipality and within that
3 portion of each county outside of the municipalities located in
4 that county. The department shall then advise the state
5 treasurer of the proportion of the total sales of cigarettes for
6 the month within each municipality and within that portion of
7 each county outside of municipalities. The reports of such
8 persons shall, upon receipt by the department, become public
9 records.

10 B. Any person who sells in New Mexico cigarettes
11 manufactured by that person or who receives on consignment or
12 buys cigarettes for resale in New Mexico subject to the
13 provisions of Subsection A of this section and who willfully
14 fails to render accurately the reports required by this section
15 and any municipal or county officer who approves any expenditure
16 or expends funds distributed from the county and municipality
17 recreational fund for any purposes other than permitted by
18 Section 7-12-15 NMSA 1978 is guilty of a petty misdemeanor. "

19 Section 11. A new Section 7-12-18 NMSA 1978 is enacted to
20 read:

21 "7-12-18. [NEW MATERIAL] PROHIBITION. -- The provisions of
22 the Cigarette Tax Act shall not apply in any case in which New
23 Mexico is prohibited from taxing under the constitution of New
24 Mexico or the constitution or laws of the United States. "

25 Section 12. A new Section 7-12-19 NMSA 1978 is enacted to

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1 read:

2 "7-12-19. [NEW MATERIAL] AGREEMENTS WITH INDIAN TRIBES OR
3 PUEBLOS. --

4 A. The secretary or his delegate may enter into a
5 written agreement with the governing body of any Indian nation,
6 tribe or pueblo concerning the administration and enforcement of
7 any tax administered under the provisions of the Tax
8 Administration Act.

9 B. The secretary or his delegate shall refund
10 cigarette taxes to the governing body of any Indian nation,
11 tribe or pueblo acting as agent for its individual members for
12 cigarette taxes collected from pueblo or tribal members for the
13 use or consumption of cigarettes purchased upon the pueblo or
14 tribal lands. "

15 Section 13. A new Section 7-12-20 NMSA 1978 is enacted to
16 read:

17 "7-12-20. [NEW MATERIAL] SEVERABILITY. -- If any part or
18 application of the Cigarette Tax Act is held invalid, the
19 remainder or its application to other situations or persons
20 shall not be affected. "

21 Section 14. EFFECTIVE DATE. -- The effective date of the
22 provisions of this act is July 1, 1996.

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State of New Mexico House of Representatives

FORTY- SECOND LEGISLATURE

SECOND SESSION, 1996

February 2, 1996

Mr. Speaker:

Your RULES AND ORDER OF BUSINESS COMMITTEE, to
whom has been referred

HOUSE BILL 719

has had it under consideration and finds same to be
GERMANE in accordance with constitutional provisions.

Respectfully submitted,

Barbara A. Perea Casey,

Chairperson

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

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Date _____

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4 The roll call vote was 8 For 0 Against

5 Yes: 8

6 Excused: Nicely, Olguin, Pederson, Picraux, Rodella,

7 J. G. Taylor, Wallach

8 Absent: None

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State of New Mexico House of Representatives

FORTY- SECOND LEGISLATURE

SECOND SESSION, 1996

February 11, 1996

Mr. Speaker:

Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
been referred

HOUSE BILL 719

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

Respectfully submitted,

Fred Luna, Chairman

Adopted _____

Not Adopted _____

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

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(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 9 For 0 Against

Yes: 9

Excused: None

Absent: Gubbels, Macko, Varela

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