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HOUSE BILL 611

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

J. Paul Taylor

AN ACT

RELATING TO TOBACCO; ENACTING MODEL STATUTE REGARDING TOBACCO
PRODUCT MANUFACTURERS.

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

Section 1. DEFINITIONS. -- As used in this act:

A. "adjusted for inflation" means increased in
accordance with the formula for inflation adjustment set forth
in Exhibit C to the master settlement agreement;

B. "affiliate" means a person who directly or
indirectly owns or controls, is owned or controlled by, or is
under common ownership or control with, another person.

Solely for purposes of this definition, the terms "owns", "is
owned" and "ownership" mean ownership of an equity interest,
or the equivalent thereof, of ten percent or more, and the
term "person" means an individual, partnership, committee,

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1 association, corporation or any other organization or group of
2 persons;

3 C. "allocable share" means Allocable Share as that
4 term is defined in the master settlement agreement;

5 D. "cigarette" means any product that contains
6 nicotine, is intended to be burned or heated under ordinary
7 conditions of use, and consists of or contains (1) any roll of
8 tobacco wrapped in paper or in any substance not containing
9 tobacco; or (2) tobacco, in any form, that is functional in
10 the product, which, because of its appearance, the type of
11 tobacco used in the filler, or its packaging and labeling, is
12 likely to be offered to, or purchased by, consumers as a
13 cigarette; or (3) any roll of tobacco wrapped in any substance
14 containing tobacco which, because of its appearance, the type
15 of tobacco used in the filler, or its packaging and labeling,
16 is likely to be offered to, or purchased by, consumers as a
17 cigarette described in clause (1) of this definition. The
18 term "cigarette" includes "roll-your-own" (i.e., any tobacco
19 which, because of its appearance, type, packaging, or labeling
20 is suitable for use and likely to be offered to, or purchased
21 by, consumers as tobacco for making cigarettes). For purposes
22 of this definition of "cigarette", 0.09 ounces of "roll-your-
23 own" tobacco shall constitute one individual "cigarette";

24 E. "master settlement agreement" means the
25 settlement agreement (and related documents) entered into on

. 125444. 3ms

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1 November 23, 1998 by the state and leading United States
2 tobacco product manufacturers;

3 F. "qualified escrow fund" means an escrow
4 arrangement with a federally or state chartered financial
5 institution having no affiliation with any tobacco product
6 manufacturer and having assets of at least one billion dollars
7 (\$1,000,000,000) where such arrangement requires that such
8 financial institution hold the escrowed funds' principal for
9 the benefit of releasing parties and prohibits the tobacco
10 product manufacturer placing the funds into escrow from using,
11 accessing or directing the use of the funds' principal except
12 as consistent with Subsection B of Section 2 of this act;

13 G. "released claims" means Released Claims as that
14 term is defined in the master settlement agreement;

15 H. "releasing parties" means Releasing Parties as
16 that term is defined in the master settlement agreement;

17 I. "tobacco product manufacturer" means an entity
18 that after the date of enactment of this act directly (and not
19 exclusively through any affiliate):

20 (1) manufactures cigarettes anywhere that
21 such manufacturer intends to be sold in the United States,
22 including cigarettes intended to be sold in the United States
23 through an importer (except where such importer is an original
24 participating manufacturer (as that term is defined in the
25 master settlement agreement) that will be responsible for the

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1 payments under the master settlement agreement with respect to
2 such cigarettes as a result of the provisions of subsections
3 II(mm) of the master settlement agreement and that pays the
4 taxes specified in subsection II(z) of the master settlement
5 agreement, and provided that the manufacturer of such
6 cigarettes does not market or advertise such cigarettes in the
7 United States);

8 (2) is the first purchaser anywhere for
9 resale in the United States of cigarettes manufactured
10 anywhere that the manufacturer does not intend to be sold in
11 the United States; or

12 (3) becomes a successor of an entity
13 described in Paragraph (1) or (2) of this subsection.

14 The term "tobacco product manufacturer" shall not include
15 an affiliate of a tobacco product manufacturer unless such
16 affiliate itself falls within Paragraph (1), (2) or (3) of
17 this subsection; and

18 J. "units sold" means the number of individual
19 cigarettes sold in the state by the applicable tobacco product
20 manufacturer (whether directly or through a distributor,
21 retailer or similar intermediary or intermediaries) during the
22 year in question, as measured by excise taxes collected by the
23 state on packs (or "roll-your-own" tobacco containers) bearing
24 the excise tax stamp of the state. The secretary of taxation
25 and revenue shall promulgate such regulations as are necessary

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1 to ascertain the amount of state excise tax paid on the
2 cigarettes of such tobacco product manufacturer for each year.

3 Section 2. REQUIREMENTS. --

4 A. Any tobacco product manufacturer selling
5 cigarettes to consumers within the state (whether directly or
6 through a distributor, retailer or similar intermediary or
7 intermediaries) after the date of enactment of this act shall
8 do one of the following:

9 (1) become a participating manufacturer (as
10 that term is defined in section II(jj) of the master
11 settlement agreement) and generally perform its financial
12 obligations under the master settlement agreement; or

13 (2) place into a qualified escrow fund by
14 April 15 of the year following the year in question the
15 following amounts (as such amounts are adjusted for
16 inflation):

17 (a) 1999: \$.0094241 per unit sold
18 after the date of enactment of this act;

19 (b) 2000: \$.0104712 per unit sold;

20 (c) for each of 2001 and 2002:
21 \$.0136125 per unit sold;

22 (d) for each of 2003 through 2006:
23 \$.0167539 per unit sold; and

24 (e) for each of 2007 and each year
25 thereafter: \$.0188482 per unit sold.

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1 B. A tobacco product manufacturer that places
2 funds into escrow pursuant to Paragraph (2) of Subsection A of
3 this section shall receive the interest or other appreciation
4 on such funds as earned. Such funds themselves shall be
5 released from escrow only under the following circumstances:

6 (1) to pay a judgment or settlement on any
7 released claim brought against such tobacco product
8 manufacturer by the state or any releasing party located or
9 residing in the state. Funds shall be released from escrow
10 under this paragraph:

11 (a) in the order in which they were
12 placed into escrow and

13 (b) only to the extent and at the time
14 necessary to make payments required under such judgment or
15 settlement;

16 (2) to the extent that a tobacco product
17 manufacturer establishes that the amount it was required to
18 place into escrow in a particular year was greater than the
19 state's allocable share of the total payments that such
20 manufacturer would have been required to make in that year
21 under the master settlement agreement (as determined pursuant
22 to section IX(i)(2) of the master settlement agreement, and
23 before any of the adjustments or offsets described in section
24 IX(i)(3) of that agreement other than the inflation
25 adjustment) had it been a participating manufacturer, the

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1 excess shall be released from escrow and revert back to such
2 tobacco product manufacturer; or

3 (3) to the extent not released from escrow
4 under Paragraphs (1) or (2) of this subsection, funds shall be
5 released from escrow and revert back to such tobacco product
6 manufacturer twenty-five years after the date on which they
7 were placed into escrow.

8 C. Each tobacco product manufacturer that elects
9 to place funds into escrow pursuant to Paragraph (2) of
10 Subsection A of this section shall annually certify to the
11 attorney general that it is in compliance with Paragraph (2)
12 of Subsection A of this section. The attorney general may
13 bring a civil action on behalf of the state against any
14 tobacco product manufacturer that fails to place into escrow
15 the funds required under Paragraph (2) of Subsection A of this
16 section. Any tobacco product manufacturer that fails in any
17 year to place into escrow the funds required under Paragraph
18 (2) of Subsection A of this section shall:

19 (1) be required within fifteen days to place
20 such funds into escrow as shall bring it into compliance with
21 Paragraph (2) of Subsection A of this section. The court,
22 upon a finding of a violation of Paragraph (2) of Subsection A
23 of this section, may impose a civil penalty to be paid to the
24 state general fund in an amount not to exceed five percent of
25 the amount improperly withheld from escrow per day of the

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1 violation and in a total amount not to exceed one hundred
2 percent of the original amount improperly withheld from
3 escrow;

4 (2) in the case of a knowing violation, be
5 required within fifteen days to place such funds into escrow
6 as shall bring it into compliance with Paragraph (2) of
7 Subsection A of this section. The court, upon a finding of a
8 knowing violation of Paragraph (2) of Subsection A of this
9 section, may impose a civil penalty to be paid to the state
10 general fund in an amount not to exceed fifteen percent of the
11 amount improperly withheld from escrow per day of the
12 violation and in a total amount not to exceed three hundred
13 percent of the original amount improperly withheld from
14 escrow; and

15 (3) in the case of a second knowing
16 violation, be prohibited from selling cigarettes to consumers
17 within the state (whether directly or through a distributor,
18 retailer or similar intermediary) for a period not to exceed
19 two years.

20 Each failure to make an annual deposit required under
21 Paragraph (2) of Subsection A of this section shall constitute
22 a separate violation.

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

3
4
5
6 February 27, 1999

7
8 Mr. Speaker:

9
10 Your JUDICIARY COMMITTEE, to whom has been referred

11
12 HOUSE BILL 611

13
14 has had it under consideration and reports same with
15 recommendation that it DO PASS, amended as follows:

16
17 1. On page 4, line 2, strike "subsections" and insert
18 in lieu thereof "subsection".

19
20 2. On page 7, line 12, after "section" insert "and
21 Subsection B of this section".

22
23 3. On page 7, line 16, after "section" insert "and
24 Subsection B of this section".

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26 4. On page 7, line 18, after "section" insert "and
27 Subsection B of this section".

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5. On page 7, line 21, after "section" insert "and
Subsection B of this section".

6. On page 7, line 23, after "section" insert "or
Subsection B of this section".

7. On page 8, line 7, after "section" insert "and
Subsection B of this section".

8. On page 8, line 9, after "section" insert "or
Subsection B of this section".,

and thence referred to the APPROPRIATIONS AND FINANCE
COMMI TTEE.

Respectfully submitted,

R. David Pederson, Chairman

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HJC/HB 611

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Luna, Taylor, T., Pederson

Absent: None

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J: \99BillSWP\H0611

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1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999

3
4 March 2, 1999

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7 Mr. Speaker:

8
9 Your APPROPRIATIONS AND FINANCE COMMITTEE, to
10 whom has been referred

11 HOUSE BILL 611, as amended

12
13 has had it under consideration and reports same with
14 recommendation that it DO PASS.

15
16 Respectfully submitted,

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20 _____
21 Max Coll, Chairman
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

Page 13

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 13 For 4 Against

Yes: 13

No: Larrañaga, Pearce, Wallace, Watchman

Excused: None

Absent: None

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

March 12, 1999

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 611, as amended

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Michael S. Sanchez, Chairman

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 5 For 1 Against

Yes: 5

No: Davis

Excused: Payne, Tsosie

Absent: None

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