

1 SENATE BILL 166

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Clemente Sanchez

5
6
7
8
9
10 AN ACT

11 RELATING TO TAXATION; INCREASING THE CIGARETTE TAX RATE;
12 IMPOSING A TOBACCO PRODUCTS TAX ON CERTAIN CIGARS AND ON E-
13 LIQUID USED IN E-CIGARETTES; PROVIDING A DISCOUNT IN TAX FOR
14 CERTAIN CIGARETTES AND TOBACCO PRODUCTS.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 7-12-3 NMSA 1978 (being Laws 1971,
18 Chapter 77, Section 3, as amended) is amended to read:

19 "7-12-3. EXCISE TAX ON CIGARETTES--~~[RATES]~~ REDUCTION OF
20 RATE FOR CERTAIN CIGARETTES.--

21 A. For the privilege of selling, giving or
22 consuming cigarettes in New Mexico, there is levied an excise
23 tax at ~~[the following rates]~~ a rate of ten cents (\$.10) for
24 each cigarette sold, given or consumed in this state.

25 [~~(1) eight and three-tenths cents (\$.083) if~~

.211360.3

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 ~~the cigarettes are packaged in lots of twenty or twenty-five;~~

2 ~~(2) sixteen and six-tenths cents (\$.166) if~~

3 ~~the cigarettes are packaged in lots of ten; or~~

4 ~~(3) thirty-three and two-tenths cents (\$.332)~~

5 ~~if the cigarettes are packaged in lots of five.]~~

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

8 C. The tax imposed by this section shall be reduced
9 by fifty percent for a cigarette for which a modified risk
10 tobacco product order has been issued by the United States
11 secretary of health and human services pursuant to Section 21
12 U.S.C. 387k(g)(1).

13 D. The tax imposed by this section shall be reduced
14 by twenty-five percent for a cigarette for which a modified
15 risk tobacco product order has been issued by the United States
16 secretary of health and human services pursuant to Section 21
17 U.S.C. 387k(g)(2)."

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

20 "7-12-5. AFFIXING STAMPS.--

21 A. Except as provided in Section 7-12-6 NMSA 1978,
22 all cigarettes shall be placed in packages or containers to
23 which a stamp shall be affixed. Only a distributor with a
24 valid license issued pursuant to the Cigarette Tax Act may
25 purchase or obtain unaffixed tax-exempt stamps, tax-credit

.211360.3

underscoring material = new
~~[bracketed material] = delete~~

1 stamps or tax stamps. A distributor shall not sell or provide
2 unaffixed stamps to another distributor, manufacturer, export
3 warehouse proprietor or importer with a valid permit pursuant
4 to 26 U.S.C. 5713 or any other person.

5 B. Stamps shall be affixed by the distributor to
6 each package of cigarettes to be sold or distributed in New
7 Mexico within thirty days of receipt of those packages.

8 C. A distributor shall apply stamps only to
9 packages of cigarettes that the distributor has received
10 directly from another distributor or from a manufacturer or
11 importer of cigarettes that possesses a valid and current
12 permit pursuant to 26 U.S.C. 5713.

13 D. A distributor shall not affix a stamp to a
14 package of cigarettes of a manufacturer or a brand family that
15 is not included in the directory or sell, offer or possess for
16 sale cigarettes of a manufacturer or brand family that is not
17 included in the directory.

18 E. Packages shall contain cigarettes in lots of
19 [~~five, ten~~] twenty or twenty-five.

20 F. Unless the requirements of this section are
21 waived pursuant to Section 7-12-6 NMSA 1978, a tax stamp shall
22 be affixed to each package of cigarettes subject to the
23 cigarette tax, a tax-credit stamp shall be affixed to each
24 package of cigarettes subject to a qualifying tribal cigarette
25 tax, and a tax-exempt stamp shall be affixed to each package of

.211360.3

underscored material = new
[bracketed material] = delete

1 cigarettes not subject to the cigarette tax pursuant to Section
2 7-12-4 NMSA 1978.

3 G. A tax-exempt stamp or tax-credit stamp is not an
4 excise tax stamp for purposes of determining units sold
5 pursuant to Section 6-4-12 NMSA 1978.

6 H. Stamps shall be affixed inside the boundaries of
7 New Mexico, unless the department has granted a license
8 allowing a person to affix stamps outside New Mexico."

9 SECTION 3. 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" means any electronic oral device,
19 whether composed of a heating element and battery or an
20 electronic circuit, that provides a vapor of nicotine or any
21 other substance the use or inhalation of which simulates
22 smoking and includes any such device, or any part thereof,
23 whether manufactured, distributed, marketed or sold as an
24 e-cigarette, e-cigar, e-pipe or any other product, name or
25 descriptor. "E-cigarette" does not include any product

.211360.3

underscored material = new
[bracketed material] = delete

1 regulated as a drug or device by the United States food and
2 drug administration under the Federal Food, Drug, and Cosmetic
3 Act;

4 D. "e-liquid" means liquid or other substance
5 intended for use in an e-cigarette, not including any substance
6 containing cannabis or oil derived from cannabis;

7 [~~E.~~] E. "engaging in business" means carrying on or
8 causing to be carried on any activity with the purpose of
9 direct or indirect benefit;

10 [~~D.~~] F. "first purchaser" means a person engaging
11 in business in New Mexico [~~who~~] that manufactures tobacco
12 products or [~~who~~] that purchases or receives on consignment
13 tobacco products from any person outside of New Mexico, which
14 tobacco products are to be distributed in New Mexico in the
15 ordinary course of business;

16 G. "little cigar" means a roll for smoking made
17 wholly or in part of tobacco, using an integrated cellulose
18 acetate or other similar filter, and weighing not more than
19 four and one-half pounds per thousand;

20 [~~E.~~] H. "person" means any individual, estate,
21 trust, receiver, cooperative association, club, corporation,
22 company, firm, partnership, joint venture, syndicate, limited
23 liability company, limited liability partnership, other
24 association or gas, water or electric utility owned or operated
25 by a county or municipality or other entity of the state;

.211360.3

underscored material = new
[bracketed material] = delete

1 "person" also means, to the extent permitted by law, a federal,
2 state or other governmental unit or subdivision or an agency,
3 department or instrumentality;

4 ~~[F-]~~ I. "product value" means the amount paid, net
5 of any discounts taken and allowed, for tobacco products or, in
6 the case of tobacco products received on consignment, the value
7 of the tobacco products received or, in the case of tobacco
8 products manufactured and sold in New Mexico, the proceeds from
9 the sale by the manufacturer of the tobacco products; and

10 ~~[G-]~~ J. "tobacco product" means:

11 (1) any product, other than cigarettes, made
12 from or containing tobacco; and

13 (2) e-cigarettes."

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

16 "7-12A-3. IMPOSITION AND ~~[RATE]~~ RATES OF TAX--REDUCTION
17 OF RATE FOR CERTAIN TOBACCO PRODUCTS--DENOMINATION AS "TOBACCO
18 PRODUCTS TAX"--DATE PAYMENT OF TAX DUE.--

19 A. For the manufacture or acquisition of tobacco
20 products in New Mexico, not including little cigars, e-liquid
21 or e-cigarettes, to be distributed in the ordinary course of
22 business and for the consumption of tobacco products in New
23 Mexico, there is imposed an excise tax at the rate of twenty-
24 five percent of the product value of the tobacco products.

25 B. For the manufacture or acquisition of little

underscored material = new
[bracketed material] = delete

1 cigars in New Mexico to be distributed in the ordinary course
2 of business and for the consumption of little cigars in New
3 Mexico, there is imposed an excise tax at a rate equal to the
4 rate imposed on cigarettes pursuant to Section 7-12-3 NMSA 1978
5 per package of little cigars.

6 C. For the manufacture or acquisition of e-liquid
7 in New Mexico to be distributed in the ordinary course of
8 business and for the consumption of e-liquid in New Mexico,
9 there is imposed an excise tax at a rate of five cents (\$.05)
10 per milliliter of the e-liquid. Such tax shall be computed
11 based on the net volume of the e-liquid, as listed by the
12 manufacturer.

13 D. The taxes imposed by this section shall be
14 reduced by fifty percent for a tobacco product for which a
15 modified risk tobacco product order has been issued by the
16 United States secretary of health and human services pursuant
17 to Section 21 U.S.C. 387k(g)(1).

18 E. The taxes imposed by this section shall be
19 reduced by twenty-five percent for a tobacco product for which
20 a modified risk tobacco product order has been issued by the
21 United States secretary of health and human services pursuant
22 to Section 21 U.S.C. 387k(g)(2).

23 ~~[B-]~~ F. The ~~[tax]~~ taxes imposed by ~~[Subsection A~~
24 ~~of]~~ this section may be referred to as the "tobacco products
25 tax".

.211360.3

