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HOUSE BILL 617

**47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006**

INTRODUCED BY

Gail C. Chasey

AN ACT

RELATING TO TAX ADMINISTRATION; ENHANCING CIGARETTE STAMP PROCEDURES; PROVIDING FOR TAX-EXEMPT STAMPS; ADJUSTING CERTAIN TAX STAMP DISCOUNTS; EXPANDING REPORTING AND LICENSING REQUIREMENTS; AUTHORIZING INTERGOVERNMENTAL AGREEMENTS; PROVIDING CIVIL AND CRIMINAL PENALTIES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE CIGARETTE TAX ACT.

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]~~ for tobacco wrapped in paper or ~~[any substance other than tobacco]~~ in anything that is not one hundred percent tobacco; "cigarette" includes bidis and kreteks

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1 and small cigars sold in packages similar to cigarettes, unless  
2 the cigar is wrapped in one hundred percent tobacco;

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

6 B. "contraband cigarettes" means cigarette packages  
7 with counterfeit stamps, counterfeit cigarettes, cigarettes  
8 that have false or fraudulent manufacturing labels and  
9 cigarette packages without the tax or tax-exempt stamps  
10 required by the Cigarette Tax Act;

11 C. "department" means the taxation and revenue  
12 department, the secretary of taxation and revenue or any  
13 employee of the department exercising authority lawfully  
14 delegated to that employee; ~~[by the secretary;~~

15 ~~D. "secretary" means the secretary of taxation and~~  
16 ~~revenue;]~~

17 D. "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 E. "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 F. "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 G. "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 H. "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 I. "retailer" means a person, whether located  
22 within or outside of New Mexico, that sells cigarettes at  
23 retail to a consumer in New Mexico and the sale is not for  
24 resale;

25 ~~[E.]~~ J. "stamp" means ~~[any authorized label which~~

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1 ~~is issued to cover the tax in multiples of five cigarettes] an~~  
2 adhesive label issued and authorized by the department to be  
3 affixed to cigarette packages for excise tax purposes and upon  
4 which is printed a serial number and the words "State of New  
5 Mexico" and "tobacco tax"; ~~[and which is coated with an~~  
6 ~~adhesive to affix the stamp to a package so that the stamp,~~  
7 ~~once affixed, cannot be removed without destroying it;~~

8 F. ~~"stamped" means a package or container of~~  
9 ~~cigarettes to which a cigarette tax stamp has been affixed as~~  
10 ~~provided in the Cigarette Tax Act; and~~

11 G. ~~"unstamped" means a package or container of~~  
12 ~~cigarettes to which the cigarette tax stamp provided for in the~~  
13 ~~Cigarette Tax Act has not been affixed]~~

14 K. "tax stamp" means a stamp that has a specific  
15 cigarette tax value pursuant to the Cigarette Tax Act; and

16 L. "tax-exempt stamp" means a stamp that indicates  
17 a tax-exempt status pursuant to the Cigarette Tax Act."

18 Section 2. Section 7-12-3.1 NMSA 1978 (being Laws 1986,  
19 Chapter 13, Section 3, as amended) is amended to read:

20 "7-12-3.1. CIGARETTE INVENTORY TAX--IMPOSITION OF TAX--  
21 DATE PAYMENT OF TAX DUE.--

22 A. A tax that may be identified as the "cigarette  
23 inventory tax" is imposed ~~[measured by the quantity of~~  
24 ~~cigarette stamps, whether or not affixed to packages of~~  
25 ~~cigarettes, in the possession of a person who is required by~~

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1 ~~Subsection C of Section 7-12-5 NMSA 1978 to affix stamps~~ on a  
2 distributor that has in its possession tax-exempt stamps or tax  
3 stamps, whether or not affixed to packages of cigarettes, on  
4 the date on which an increase in the [excise] cigarette tax  
5 imposed by Section 7-12-3 NMSA 1978 is effective. [The taxable  
6 event is the existence of an inventory of cigarette stamps,  
7 whether or not affixed to packages of cigarettes, in the  
8 possession of a person who is required by Subsection C of  
9 Section 7-12-5 NMSA 1978 to affix stamps on the date on which  
10 an increase in the excise tax imposed by Section 7-12-3 NMSA  
11 1978 is effective. The rate of the cigarette inventory tax to  
12 apply to cigarette stamps held in inventory shall be the amount  
13 of the increase in the cigarette tax imposed by Section 7-12-3  
14 NMSA 1978.]

15 B. The cigarette inventory tax due from the  
16 distributor is calculated by multiplying the number of tax  
17 stamps in the distributor's possession by the increase in the  
18 excise tax. Tax-exempt stamps are not included in the  
19 calculation to determine the amount of cigarette inventory tax  
20 to be paid by a distributor.

21 ~~[B.]~~ C. The cigarette inventory tax is to be paid  
22 to the department on or before the twenty-fifth day of the  
23 month following the month in which the [taxable event occurs]  
24 increase in the cigarette tax is effective."

25 Section 3. Section 7-12-3.2 NMSA 1978 (being Laws 1986,

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1 Chapter 13, Section 4) is amended to read:

2 "7-12-3.2. CIGARETTE INVENTORIES.--

3 A. On any date on which the ~~[excise]~~ cigarette tax  
4 imposed by Section 7-12-3 NMSA 1978 is increased, each ~~[person~~  
5 ~~who is required by Subsection C of Section 7-12-5 NMSA 1978 to~~  
6 ~~affix stamps]~~ distributor shall take inventory of ~~[cigarette]~~  
7 tax-exempt stamps and tax stamps on hand, including stamps  
8 affixed to packages of cigarettes.

9 B. Each ~~[person required to take an inventory by~~  
10 ~~Subsection A of this section]~~ distributor shall report the  
11 total number of ~~[cigarette]~~ tax-exempt stamps and tax stamps in  
12 inventory on the date on which the cigarette tax ~~[imposed by~~  
13 ~~Section 7-12-3 NMSA 1978 changes]~~ increases and pay ~~[any]~~ the  
14 cigarette inventory tax due [imposed by Section 7-12-3.1 NMSA  
15 1978]."

16 Section 4. Section 7-12-5 NMSA 1978 (being Laws 1971,  
17 Chapter 77, Section 5, as amended) is amended to read:

18 "7-12-5. AFFIXING STAMPS.--

19 A. Except as provided in Section 7-12-6 NMSA 1978,  
20 all cigarettes ~~[the sale, gift or consumption of which is~~  
21 ~~subject to the cigarette tax]~~ shall be placed in packages or  
22 containers to which a stamp ~~[may]~~ shall be affixed. Only a  
23 distributor with a valid license issued pursuant to the  
24 Cigarette Tax Act may purchase or obtain unaffixed tax-exempt  
25 stamps or tax stamps. A distributor shall not sell or provide

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1 unaffixed stamps to another distributor, manufacturer, export  
2 warehouse proprietor or importer with a valid permit pursuant  
3 to 26 U.S.C. 5713 or any other person.

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

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

11 ~~[B.]~~ D. Packages ~~[or containers to which a stamp is~~  
12 ~~required to be affixed and which]~~ shall contain cigarettes  
13 ~~[that are not in multiples of five cigarettes shall have~~  
14 ~~affixed a stamp of the next higher multiple of five cigarettes]~~  
15 in lots of twenty or twenty-five.

16 ~~[G.]~~ E. Unless the requirements of this section are  
17 waived pursuant to Section 7-12-6 NMSA 1978, a tax stamp shall  
18 be affixed to each package ~~[or container]~~ of cigarettes ~~[the~~  
19 ~~sale, gift or consumption of which is subject to the cigarette~~  
20 ~~tax. The stamp shall be affixed by any person who sells in New~~  
21 ~~Mexico cigarettes manufactured by that person or who receives~~  
22 ~~on consignment or buys unstamped cigarettes for sale, gift or~~  
23 ~~consumption in New Mexico]~~ subject to the cigarette tax and a  
24 tax-exempt stamp shall be affixed to each package of cigarettes  
25 not subject to the cigarette tax pursuant to Section 7-12-4

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1 NMSA 1978.

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

5 ~~[D-]~~ G. Stamps shall be affixed inside the  
6 boundaries of New Mexico, unless the department has granted a  
7 license allowing a person to affix stamps outside New Mexico."

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

10 "7-12-6. WAIVER OF REQUIREMENT THAT STAMPS BE  
11 AFFIXED.--The requirement imposed in Section 7-12-5 NMSA 1978  
12 that stamps be affixed to packages or containers of cigarettes  
13 is waived if the cigarettes are distributed by a manufacturer  
14 pursuant to federal regulations and are exempt from tax  
15 pursuant to 26 U.S.C. 5704.

16 ~~[A. the cigarettes are sold on railroad passenger~~  
17 ~~trains in New Mexico. When unstamped cigarettes are sold on~~  
18 ~~railroad passenger trains in New Mexico, the seller shall remit~~  
19 ~~to the department the tax imposed in Section 7-12-3 NMSA 1978~~  
20 ~~on or before the twenty-fifth day of the month following the~~  
21 ~~month in which sales of unstamped cigarettes are made on~~  
22 ~~railroad passenger trains in New Mexico; or~~

23 ~~B. the cigarettes are distributed by a cigarette~~  
24 ~~manufacturer to consumers within the state of New Mexico as~~  
25 ~~free samples. When unstamped cigarettes are distributed by a~~

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1 ~~cigarette manufacturer in New Mexico as free samples, the~~  
2 ~~manufacturer shall remit to the department the tax imposed in~~  
3 ~~Section 7-12-3 NMSA 1978 on or before the twenty-fifth day of~~  
4 ~~the month following the month in which distributions of~~  
5 ~~unstamped cigarettes are made.]"~~

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

8 "7-12-7. SALE OF STAMPS--PRICES.--

9 A. Only the department shall sell stamps. [~~to any~~  
10 ~~person who sells in New Mexico cigarettes manufactured by that~~  
11 ~~person and to any person who receives on consignment or buys~~  
12 ~~unstamped cigarettes for sale, gift or consumption in New~~  
13 ~~Mexico, provided such persons are registered with the~~  
14 ~~department under the provisions of Section 7-1-12 NMSA 1978]~~  
15 Stamps may be sold by the department only to a distributor.

16 B. Stamps shall display a serial number. Stamps  
17 bearing the same serial number shall not be sold to more than  
18 one distributor. The department shall keep records of the  
19 serial numbers of the stamps provided to each distributor.

20 C. A stamp shall be affixed to a package of  
21 cigarettes in such a manner as to clearly display the serial  
22 number at the point of sale.

23 D. Tax stamps shall be sold at their face value  
24 with the following discounts:

25 (1) [~~four~~] one percent less than the face

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1 value of the first thirty thousand dollars (\$30,000) of stamps  
2 purchased in one calendar month;

3 (2) [~~three~~] eight-tenths percent less than the  
4 face value of the second thirty thousand dollars (\$30,000) of  
5 stamps purchased in one calendar month; and

6 (3) [~~two~~] one-half percent less than the face  
7 value of [~~all~~] stamps purchased in excess of sixty thousand  
8 dollars (\$60,000) in one calendar month.

9 [~~B-~~] E. If the face value of tax stamps sold in a  
10 single sale is less than one thousand dollars (\$1,000), the  
11 discount provided for in this section shall not be allowed.

12 [~~G-~~] F. Payment for tax stamps shall be made on or  
13 before the twenty-fifth day of the month following the month in  
14 which the sale of stamps by the department is made.

15 G. Tax-exempt stamps shall be provided only to  
16 distributors and shall be free of charge; provided that the  
17 distributor is in full compliance with the reporting  
18 requirements of the Cigarette Tax Act and rules adopted  
19 pursuant to that act."

20 Section 7. A new section of the Cigarette Tax Act,  
21 Section 7-12-9.1 NMSA 1978, is enacted to read:

22 "7-12-9.1. [NEW MATERIAL] LICENSING--GENERAL LICENSING  
23 PROVISIONS.--

24 A. A person shall not engage in the manufacture or  
25 distribution of cigarettes in New Mexico without a license

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1 issued by the department.

2 B. The department shall issue a license for a term  
3 not to exceed one year.

4 C. The department may charge a license fee of up to  
5 one hundred dollars (\$100) for each manufacturer's or  
6 distributor's license issued or renewed.

7 D. An application for a license or renewal of a  
8 license shall be submitted on a form determined by the  
9 department and shall include:

10 (1) the name and address of the applicant and:

11 (a) if the applicant is a firm,  
12 partnership or association, the name and address of each of its  
13 members; or

14 (b) if the applicant is a corporation,  
15 the name and address of each of its officers;

16 (2) the address of the applicant's principal  
17 place of business and every location where the applicant's  
18 business is conducted; and

19 (3) any other information the department may  
20 require.

21 E. The department may issue a distributor's license  
22 and a manufacturer's license to the same person.

23 F. Persons licensed as manufactures or distributors  
24 may sell stamped cigarettes at retail.

25 G. A license may not be granted, maintained or

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1 renewed if one or more of the following conditions applies to  
2 an applicant:

3 (1) the applicant owes five hundred dollars  
4 (\$500) or more in delinquent cigarette taxes;

5 (2) the applicant has had a manufacturer's or  
6 distributor's license revoked by the department or any other  
7 state within the past two years;

8 (3) the applicant is convicted of a crime  
9 related to contraband cigarettes, stolen cigarettes or  
10 counterfeit stamps;

11 (4) the applicant is a manufacturer but not a  
12 participating manufacturer as defined in Section II(jj) of the  
13 master settlement agreement and the applicant is not in  
14 compliance with the provisions of Section 6-4-13 NMSA 1978 or  
15 the Tobacco Escrow Fund Act; or

16 (5) the applicant is a manufacturer and  
17 imports cigarettes into the United States that are in violation  
18 of 19 U.S.C. 1681a or manufactures cigarettes that do not  
19 comply with the Federal Cigarette Labeling and Advertising Act.

20 H. In addition to a civil or criminal penalty  
21 provided by law, upon a finding that a licensee has violated a  
22 provision of the Cigarette Tax Act or a rule adopted pursuant  
23 to that act, the department may revoke or suspend the license  
24 or licenses of the licensee.

25 I. As used in this section, "applicant" includes a

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1 person or persons owning, directly or indirectly, in the  
2 aggregate, more than ten percent of the ownership interest in  
3 the business holding or applying for a license pursuant to the  
4 Cigarette Tax Act."

5 Section 8. A new section of the Cigarette Tax Act,  
6 Section 7-12-9.2 NMSA 1978, is enacted to read:

7 "7-12-9.2. [NEW MATERIAL] DISTRIBUTOR'S LICENSE.--

8 A. A person shall not distribute stamped packages  
9 of cigarettes for resale or sell stamped packages of cigarettes  
10 at wholesale without first obtaining a distributor's license  
11 from the department.

12 B. A person licensed to distribute cigarettes is  
13 authorized to:

14 (1) receive unstamped packages of cigarettes  
15 from a manufacturer;

16 (2) purchase tax stamps and receive tax-exempt  
17 stamps from the department;

18 (3) affix tax stamps or tax-exempt stamps to  
19 unstamped packages of cigarettes;

20 (4) sell stamped packages of cigarettes to a  
21 retailer for resale; and

22 (5) sell unstamped packages of cigarettes to a  
23 person licensed to distribute cigarettes outside of New  
24 Mexico."

25 Section 9. A new section of the Cigarette Tax Act,

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1 Section 7-12-9.3 NMSA 1978, is enacted to read:

2 "7-12-9.3. [NEW MATERIAL] MANUFACTURER'S LICENSE.--

3 A. A person shall not manufacture cigarettes in New  
4 Mexico unless licensed by the department.

5 B. A person licensed to manufacture cigarettes in  
6 New Mexico is authorized to:

7 (1) manufacture, produce and package  
8 cigarettes;

9 (2) receive imported cigarettes;

10 (3) sell unstamped cigarettes to a  
11 distributor, another manufacturer or an export warehouse  
12 proprietor; and

13 (4) sell unstamped cigarettes outside of New  
14 Mexico."

15 Section 10. A new section of the Cigarette Tax Act,  
16 Section 7-12-9.4 NMSA 1978, is enacted to read:

17 "7-12-9.4. [NEW MATERIAL] RETAIL SALE OF CIGARETTES.--A  
18 retailer of cigarettes shall:

19 A. only obtain cigarettes for resale from a  
20 distributor;

21 B. only obtain stamped cigarettes;

22 C. not sell cigarettes at wholesale or for  
23 resale unless the retailer is also a distributor; and

24 D. comply with the provisions of the Cigarette  
25 Tax Act or any law or rule that applies to retailers of

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1 cigarettes."

2 Section 11. A new section of the Cigarette Tax Act,  
3 Section 7-12-10.1 NMSA 1978, is enacted to read:

4 "7-12-10.1. [NEW MATERIAL] RETENTION OF INVOICES AND  
5 RECORDS--INSPECTION BY DEPARTMENT.--

6 A. A manufacturer or distributor shall maintain  
7 copies of invoices for each of its facilities for every  
8 transaction involving a cigarette sale, purchase, transfer,  
9 receipt or consignment. A retailer need not retain copies of  
10 invoices for sales of cigarettes to consumers. An invoice  
11 shall show:

12 (1) the names and addresses of all persons  
13 involved in the transaction, including the seller, purchaser,  
14 consignor and consignee. If a transaction involves an  
15 additional facility of the same manufacturer, distributor or  
16 retailer, the invoice shall also show the address of the  
17 additional facility;

18 (2) the date;

19 (3) the price; and

20 (4) the quantity of each brand of cigarettes  
21 involved in each transaction.

22 B. Records required to be maintained pursuant to  
23 Subsection A of this section shall be preserved on the premises  
24 described in the license in a manner that ensures permanency  
25 and accessibility for inspection at reasonable hours by the

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1 department.

2 C. The records required to be maintained pursuant  
3 to Subsection A of this section shall be retained for a period  
4 of three years from the end of the year in which the  
5 transaction occurred, unless otherwise required by law to be  
6 retained for a longer period of time.

7 D. The department and the secretary of the United  
8 States department of the treasury, or a designee, may inspect  
9 the reports and records required pursuant to the Cigarette Tax  
10 Act along with any stock of cigarettes in the possession of the  
11 manufacturer, distributor or retailer. The department, at its  
12 sole discretion, may share those records and reports with law  
13 enforcement officials of the federal government, other states  
14 and international authorities."

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

17 "7-12-11. EXPORT SELLERS--PHYSICAL SEGREGATION OF  
18 CIGARETTES TO BE EXPORTED.--[Any person]

19 A. A distributor selling and shipping cigarettes  
20 outside New Mexico may maintain unstamped packages of  
21 cigarettes on [~~his~~] the distributor's premises if the unstamped  
22 [~~cigarettes~~] packages to be shipped outside the state are kept  
23 in a separate part of [~~his~~] the distributor's place of  
24 business, physically segregated from packages of cigarettes to  
25 be sold inside New Mexico and clearly identified as packages of

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1 cigarettes for shipment outside the state. If packages of  
2 cigarettes to be sold outside New Mexico are intermingled with  
3 packages of cigarettes to be sold inside New Mexico, they shall  
4 be stamped and treated for purposes of the Cigarette Tax Act as  
5 packages of cigarettes to be sold inside New Mexico.

6 B. Unstamped packages of cigarettes shall not be  
7 transferred by a distributor to another facility of the  
8 distributor's or to another person within New Mexico.

9 C. A person doing business as both a distributor  
10 and a retailer or both a distributor and a manufacturer shall  
11 maintain separate areas for stamped and unstamped packages of  
12 cigarettes."

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

15 "7-12-12. SHIPMENT OF UNSTAMPED CIGARETTES IN NEW  
16 MEXICO.--

17 A. A person that ships unstamped packages of  
18 cigarettes into New Mexico other than to a distributor shall  
19 first file a notice of the shipment with the department.

20 B. A person that transports unstamped packages of  
21 cigarettes into or within New Mexico shall carry, in the  
22 transporting vehicle, invoices or equivalent documents  
23 applicable to all cigarettes in the shipment. The invoices or  
24 documents shall show:

25 (1) the name and address of the consignor or

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1 seller;

2 (2) the name and address of the consignee or  
3 purchaser; and

4 (3) the quantity of each brand of cigarettes  
5 transported.

6 C. The provisions of Subsections A and B of this  
7 section shall not apply to a common or contract carrier  
8 transporting cigarettes through New Mexico to another location  
9 pursuant to a proper bill of lading or freight bill that states  
10 the quantity, source and destination of the cigarettes.

11 D. The [secretary] department may, by regulation,  
12 require and prescribe the contents of reports to be filed with  
13 the department by persons transporting unstamped packages of  
14 cigarettes in New Mexico."

15 Section 14. A new section of the Cigarette Tax Act is  
16 enacted to read:

17 "[NEW MATERIAL] REPORTS.--

18 A. A distributor shall submit periodic reports to  
19 the department, in the manner and on the form prescribed by the  
20 department. A distributor shall submit a separate report for  
21 each of its facilities. The information in the report shall be  
22 itemized and shall clearly disclose cigarette brands,  
23 quantities and the type of stamp applied to the packages of  
24 cigarettes. A report shall include:

25 (1) an inventory of stamped and unstamped

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1 packages of cigarettes held for sale or distribution within New  
2 Mexico at the beginning of the reporting period;

3 (2) the quantity of stamped packages of  
4 cigarettes held for sale or distribution within New Mexico that  
5 were received from another person during the reporting period  
6 and the name and address of each person from whom each quantity  
7 was received;

8 (3) the quantity of New Mexico stamped  
9 packages of cigarettes that were distributed or shipped to  
10 another distributor or retailer within New Mexico during the  
11 reporting period and the name and address of each person to  
12 whom each quantity was distributed or shipped;

13 (4) the quantity of New Mexico stamped  
14 packages of cigarettes that were distributed or shipped to  
15 another facility of the same distributor within New Mexico  
16 during the reporting period and the address of that facility;

17 (5) the quantity of stamped cigarette packages  
18 that were distributed or shipped within New Mexico to an Indian  
19 nation, tribe or pueblo or to a person located on the land of  
20 an Indian nation, tribe or pueblo or to instrumentalities of  
21 the federal government during the reporting period and the name  
22 and address of each person, entity or instrumentality to whom  
23 each quantity was distributed or shipped;

24 (6) an inventory of stamped and unstamped  
25 packages of cigarettes held for sale or distribution within New

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1 Mexico at the end of the reporting period;

2 (7) an inventory of stamped and unstamped  
3 packages of cigarettes for sale or distribution outside of New  
4 Mexico at the beginning of the reporting period;

5 (8) the quantity of packages of cigarettes  
6 held for sale or distribution outside of New Mexico that were  
7 received from another person during the reporting period and  
8 the name and address of each person from whom each quantity was  
9 received;

10 (9) the quantity of packages of cigarettes  
11 that were distributed or shipped outside New Mexico during the  
12 reporting period;

13 (10) an inventory of packages of cigarettes  
14 held for sale or distribution outside of New Mexico at the end  
15 of the reporting period;

16 (11) the number of each type of stamp on hand  
17 at the beginning of the reporting period;

18 (12) the number of each type of stamp  
19 purchased or received during the reporting period;

20 (13) the number of each type of stamp applied  
21 during the reporting period; and

22 (14) the number of each type of stamp on hand  
23 at the end of the reporting period.

24 B. A manufacturer shall submit periodic reports in  
25 the manner and on the form prescribed by the department. The

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1 information in the report shall be itemized to clearly disclose  
2 cigarette brands and quantities. The reports shall be provided  
3 separately with respect to each of the facilities operated by  
4 the manufacturer. A report shall contain the quantity of  
5 packages of cigarettes that were distributed or shipped:

6 (1) to a manufacturer, distributor or retailer  
7 within New Mexico during the reporting period and the name and  
8 address of each person to whom each quantity was distributed or  
9 shipped;

10 (2) to another facility within New Mexico of  
11 the same manufacturer during the reporting period and the  
12 address of the facility; and

13 (3) within New Mexico to an Indian nation,  
14 tribe or pueblo or to a person located on the land of an Indian  
15 nation, tribe or pueblo or to instrumentalities of the federal  
16 government during the reporting period and the name and address  
17 of each person, entity or instrumentality to whom each quantity  
18 was distributed or shipped.

19 C. The department may require additional  
20 information to be submitted. The department shall establish  
21 the reporting period, which shall be no longer than three  
22 calendar months and no shorter than one calendar month."

23 Section 15. A new section of the Cigarette Tax Act is  
24 enacted to read:

25 "[NEW MATERIAL] INTERGOVERNMENTAL AGREEMENTS--NO WAIVER OF  
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1 SOVEREIGN IMMUNITY.--

2 A. The department may enter into an  
3 intergovernmental agreement with a tribe to:

4 (1) enforce, administer or otherwise implement  
5 the provisions of the Cigarette Tax Act;

6 (2) increase the ability of the department to  
7 account for packages of cigarettes imported into, sold or  
8 transferred within and exported from the state; and

9 (3) provide for cooperative tax collection or  
10 tax administration of the cigarette tax.

11 B. Nothing in the Cigarette Tax Act shall be  
12 construed to waive or restrict the sovereign immunity of a  
13 tribe or the state.

14 C. As used in this section, "tribe" means an Indian  
15 nation, tribe or pueblo located wholly or partially in New  
16 Mexico."

17 Section 16. A new section of the Cigarette Tax Act,  
18 Section 7-12-13.1 NMSA 1978, is enacted to read:

19 "7-12-13.1. [NEW MATERIAL] CIVIL PENALTIES.--

20 A. Whoever knowingly fails, neglects or refuses to  
21 comply with the provisions of the Cigarette Tax Act shall be  
22 liable for, in addition to any other penalty provided in that  
23 act:

24 (1) for a first offense, a penalty of up to  
25 one thousand dollars (\$1,000);

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1 (2) for a second offense, a penalty of not  
2 less than one thousand five hundred dollars (\$1,500) and no  
3 more than two thousand five hundred dollars (\$2,500); and

4 (3) for a third or subsequent offense, a  
5 penalty of not less than five thousand dollars (\$5,000).

6 B. Whoever fails to pay a tax imposed pursuant to  
7 the Cigarette Tax Act at the time the tax is due shall, in  
8 addition to any other penalty provided in that act, be liable  
9 for a penalty of five hundred percent of the tax due but  
10 unpaid.

11 C. Contraband cigarettes in New Mexico and the  
12 equipment used to manufacture, package or stamp them are  
13 subject to seizure, forfeiture and destruction by the  
14 department, its revenue officers or its agents or by other  
15 state or local peace officers.

16 D. Counterfeit stamps for use in New Mexico in the  
17 possession of any person and the equipment used to produce them  
18 are subject to seizure by the department, its revenue officers  
19 or its agents or by other state or local peace officers."

20 Section 17. A new section of the Cigarette Tax Act is  
21 enacted to read:

22 "[NEW MATERIAL] CRIMINAL OFFENSES--CRIMINAL PENALTIES--  
23 SEIZURE AND DESTRUCTION OF EVIDENCE.--

24 A. Whoever violates a provision of the Cigarette  
25 Tax Act or a rule adopted pursuant to that act is guilty of a

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1 misdemeanor and shall be sentenced in accordance with the  
2 provisions of Section 31-19-1 NMSA 1978.

3 B. Whoever, with intent to defraud, fails to comply  
4 with a licensing, reporting or stamping requirement of the  
5 Cigarette Tax Act or with a licensing, reporting or stamping  
6 rule adopted pursuant to that act is guilty of a fourth degree  
7 felony and upon conviction shall be sentenced pursuant to the  
8 provisions of Section 31-18-15 NMSA 1978.

9 C. Whoever packages cigarettes for sale in New  
10 Mexico or whoever sells cigarettes in New Mexico, in packages  
11 of other than twenty or twenty-five cigarettes is:

12 (1) for the first offense, guilty of a  
13 misdemeanor and when convicted shall be sentenced pursuant to  
14 Section 31-19-1 NMSA 1978; and

15 (2) for the second or subsequent offense,  
16 guilty of a fourth degree felony and when convicted shall be  
17 sentenced pursuant to Section 31-18-15 NMSA 1978.

18 D. Whoever purchases or otherwise knowingly obtains  
19 counterfeit stamps or whoever produces, uses or causes  
20 counterfeit stamps to be used is guilty of a fourth degree  
21 felony and upon conviction shall be sentenced pursuant to the  
22 provisions of Section 31-18-15 NMSA 1978.

23 E. Whoever sells or possesses for the purpose of  
24 sale contraband cigarettes is in violation of the Cigarette Tax  
25 Act and shall have the product and related equipment seized.

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1 If convicted of selling or possessing for sale contraband  
2 cigarettes, the person shall be sentenced as follows:

3 (1) a violation with a quantity of fewer than  
4 two cartons of contraband cigarettes, or the equivalent, is a  
5 petty misdemeanor and is punishable in accordance with the  
6 provisions of Section 31-19-1 NMSA 1978;

7 (2) a first violation with a quantity of two  
8 cartons or more of contraband cigarettes, or the equivalent, is  
9 a misdemeanor and is punishable in accordance with the  
10 provisions of Section 31-19-1 NMSA 1978; and

11 (3) a second or subsequent violation with a  
12 quantity of two cartons or more of contraband cigarettes, or  
13 the equivalent, is a fourth degree felony and is punishable by  
14 a fine not to exceed fifty thousand dollars (\$50,000) or  
15 imprisonment for a definite term not to exceed eighteen months,  
16 or both, and shall also result in the revocation by the  
17 department of the manufacturer's or distributor's license, if  
18 any.

19 F. Contraband cigarettes or counterfeit stamps  
20 seized by the department or by a law enforcement agency shall  
21 be retained as evidence to the extent necessary. Contraband  
22 cigarettes or counterfeit stamps no longer needed as evidence  
23 shall be destroyed.

24 G. Prosecution for a violation of a provision of  
25 this section does not preclude prosecution under other

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1 applicable laws."

2 Section 18. REPEAL.--Sections 7-12-9, 7-12-10 and 7-12-13  
3 NMSA 1978 (being Laws 1971, Chapter 77, Sections 9, 10 and 13,  
4 as amended) are repealed.

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