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SENATE BILL 166

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

INTRODUCED BY

Clemente Sanchez

AN ACT

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

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

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

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

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

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

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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

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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

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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

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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;

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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

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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".

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[~~G.~~] G. The tobacco products tax shall be paid by the first purchaser on or before the twenty-fifth day of the month following the month in which the taxable event occurs."

SECTION 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.