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HOUSE BILL 274

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

INTRODUCED BY

ROBERT A. PERLS

AN ACT

RELATING TO TAXATION; ENACTING THE HEALTH PROMOTION TAXES ACT;
IMPOSING A RETAIL SALES TAX ON CIGARETTES, TOBACCO PRODUCTS AND
ALCOHOLIC BEVERAGES; MAKING AND CHANGING DISTRIBUTIONS;
AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. [NEW MATERIAL] SHORT TITLE. --Sections 1 through 6 of this act may be cited as the "Health Promotion Taxes Act".

Section 2. [NEW MATERIAL] PURPOSE. --The purpose of the Health Promotion Taxes Act is to increase substantially the taxation of tobacco and alcoholic beverages to promote the health of New Mexicans through reduced use and consumption of such products.

Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the

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1 Health Promotion Taxes Act:

2 A. "alcoholic beverages" means distilled or
3 rectified spirits, potable alcohol, brandy, whiskey, rum, gin
4 and aromatic bitters or any similar alcoholic beverage,
5 including blended or fermented beverages, dilutions or mixtures
6 of one or more of the foregoing containing more than one-half of
7 one percent alcohol, but excluding medicinal bitters;

8 B. "cigarette" means any roll of tobacco or any
9 substitute wrapped in paper or any substance other than tobacco;

10 C. "department" means the taxation and revenue
11 department;

12 D. "engaging in business" means carrying on or
13 causing to be carried on any activity with the purpose of direct
14 or indirect benefit;

15 E. "person" means any individual, estate, trust,
16 receiver, cooperative association, club, corporation, company,
17 firm, partnership, limited liability company, joint venture,
18 syndicate or other entity or the state or any political
19 subdivision of the state; "person" also includes, to the extent
20 permitted by law, any governmental entity;

21 F. "price" means the total amount of money or the
22 reasonable value or other consideration or both paid to a
23 retailer for alcoholic beverages, cigarettes or tobacco
24 products;

25 G. "retailer" means any person engaging in business

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1 who sells, offers for sale or possesses for the purpose of
2 selling at retail alcoholic beverages, cigarettes or tobacco
3 products;

4 H. "secretary" means the secretary of taxation and
5 revenue or the secretary's designee; and

6 I. "tobacco product" means any product, other than
7 cigarettes, made from or containing tobacco.

8 Section 4. [NEW MATERIAL] IMPOSITION OF CIGARETTE TAX,
9 TOBACCO PRODUCTS TAX AND LIQUOR EXCISE TAX--RATES.--

10 A. An excise tax is imposed on the sale of
11 cigarettes by a retailer at a rate of forty-two and three-tenths
12 percent of the price paid for cigarettes upon which the tax
13 imposed by this subsection has not been paid. This tax may be
14 referred to as the "cigarette tax".

15 B. An excise tax is imposed on the sale of tobacco
16 products by a retailer at a rate of forty-two and three-tenths
17 percent of the price paid for tobacco products upon which the
18 tax imposed by this subsection has not been paid. This tax may
19 be referred to as the "tobacco products tax".

20 C. An excise tax is imposed on the sale of alcoholic
21 beverages by a retailer at a rate of eleven and one-half percent
22 of the price paid for alcoholic beverages upon which the tax
23 imposed by this subsection has not been paid. This tax may be
24 referred to as the "liquor excise tax".

25 Section 5. [NEW MATERIAL] DATE PAYMENT DUE.--The taxes

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1 imposed by the Health Promotion Taxes Act shall be paid by the
2 retailer on or before the twenty-fifth day of the month
3 following the month in which the taxable event occurs.

4 Section 6. [NEW MATERIAL] INTERPRETATION OF ACT--
5 ADMINISTRATION AND ENFORCEMENT OF TAX. --

6 A. The department shall interpret the provisions of
7 the Health Promotion Taxes Act.

8 B. The department shall administer and enforce the
9 collection of the cigarette tax, the tobacco products tax and
10 the liquor excise tax, and the Tax Administration Act applies to
11 the administration and enforcement of the taxes.

12 Section 7. Section 7-1-6.4 NMSA 1978 (being Laws 1983,
13 Chapter 211, Section 9, as amended) is amended to read:

14 "7-1-6.4. DISTRIBUTION--MUNICIPALITY FROM GROSS RECEIPTS
15 TAX. --

16 A. Except as provided in Subsection B of this
17 section, a distribution pursuant to Section 7-1-6.1 NMSA 1978
18 shall be made to each municipality in an amount, subject to any
19 increase or decrease made pursuant to Section 7-1-6.15 NMSA
20 1978, equal to the product of the quotient of [~~one and two~~
21 ~~hundred twenty five thousandths~~] one and forty-four hundredths
22 percent divided by the tax rate imposed by Section 7-9-4 NMSA
23 1978 times the net receipts for the month attributable to the
24 gross receipts tax from business locations:

25 (1) within that municipality;

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1 (2) on land owned by the state, commonly known
2 as the "state fair grounds", within the exterior boundaries of
3 that municipality;

4 (3) outside the boundaries of any municipality
5 on land owned by that municipality; and

6 (4) on an Indian reservation or pueblo grant in
7 an area that is contiguous to that municipality and in which the
8 municipality performs services pursuant to a contract between
9 the municipality and the Indian tribe or Indian pueblo if:

10 (a) the contract describes an area in
11 which the municipality is required to perform services and
12 requires the municipality to perform services that are
13 substantially the same as the services the municipality performs
14 for itself; and

15 (b) the governing body of the
16 municipality has submitted a copy of the contract to the
17 secretary.

18 B. If the reduction made by Laws 1991, Chapter 9,
19 Section 9 to the distribution under this section impairs the
20 ability of a municipality to meet its principal or interest
21 payment obligations for revenue bonds outstanding prior to July
22 1, 1991 that are secured by the pledge of all or part of the
23 municipality's revenue from the distribution made under this
24 section, then the amount distributed pursuant to this section to
25 that municipality shall be increased by an amount sufficient to

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1 meet any required payment, provided that the distribution amount
2 does not exceed the amount that would have been due that
3 municipality under this section as it was in effect on June 30,
4 1992. "

5 Section 8. Section 7-1-6.11 NMSA 1978 (being Laws 1983,
6 Chapter 211, Section 16, as amended) is amended to read:

7 "7-1-6.11. DISTRIBUTIONS OF CIGARETTE TAXES. --

8 A. A distribution pursuant to Section 7-1-6.1 NMSA
9 1978 shall be made to the county and municipality recreational
10 fund in an amount equal to [~~four and three quarters~~] two percent
11 of the net receipts, exclusive of penalties and interest,
12 attributable to the cigarette tax.

13 B. A distribution pursuant to Section 7-1-6.1 NMSA
14 1978 shall be made to the county and municipal cigarette tax
15 fund in an amount equal to [~~nine and one half~~] four percent of
16 the net receipts, exclusive of penalties and interest,
17 attributable to the cigarette tax.

18 C. A distribution pursuant to Section 7-1-6.1 NMSA
19 1978 shall be made to the cancer center at the university of New
20 Mexico school of medicine in an amount equal to [~~four and three-~~
21 ~~quarters~~] two percent of the net receipts, exclusive of
22 penalties and interest, attributable to the cigarette tax.

23 D. A distribution pursuant to Section 7-1-6.1 NMSA
24 1978 shall be made to the New Mexico finance authority in an
25 amount equal to [~~seven and one eighth~~] three percent of the net

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1 receipts, exclusive of penalties and interest, attributable to
2 the cigarette tax.

3 E. A distribution pursuant to Section 7-1-6.1 NMSA
4 1978 shall be made to each county in an amount equal to twelve
5 and one-half percent of the net receipts for the month
6 attributable to the cigarette tax times a fraction, the
7 denominator of which is the total population of the state
8 according to the most recent federal decennial census and the
9 numerator of which is the population of the county according to
10 the most recent federal decennial census."

11 Section 9. Section 7-12-17 NMSA 1978 (being Laws 1971,
12 Chapter 77, Section 14, as amended) is amended to read:

13 "7-12-17. REPORTING REQUIREMENTS--PENALTY.--

14 A. Each person who sells cigarettes at retail in New
15 Mexico [~~cigarettes manufactured by that person or who receives~~
16 ~~on consignment or buys cigarettes either directly from the~~
17 ~~manufacturer or from any out of state person for resale in New~~
18 ~~Mexico~~] shall report to the department by the twenty-fifth day
19 of each month that person's sales of cigarettes during the
20 preceding month in each municipality and within that portion of
21 each county outside of the municipalities located in that
22 county. The department shall then advise the state treasurer of
23 the proportion of the total sales of cigarettes for the month
24 within each municipality and within that portion of each county
25 outside of municipalities. The reports of such persons shall,

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1 upon receipt by the department, become public records.

2 B. Any person who sells cigarettes at retail in New
3 Mexico [~~cigarettes manufactured by that person or who receives~~
4 ~~on consignment or buys cigarettes for resale in New Mexico~~] who
5 willfully fails to render accurately the reports required by
6 this section and any municipal or county officer who approves
7 any expenditure or expends funds distributed from the county and
8 municipality recreational fund for any purposes other than
9 permitted by Section 7-12-15 NMSA 1978 is guilty of a petty
10 misdemeanor. "

11 Section 10. TEMPORARY PROVISION-- CREDIT AGAINST TAXES
12 DUE. --

13 A. A retailer may claim a credit against the
14 cigarette tax due under the Health Promotion Taxes Act for
15 cigarettes sold at retail on or after July 1, 1996 in an amount
16 equal to the tax paid under the Cigarette Tax Act on those
17 cigarettes that were stamped pursuant to the Cigarette Tax Act
18 and sold at retail on or after July 1, 1996.

19 B. A retailer may claim a credit against the tobacco
20 products tax due under the Health Promotion Taxes Act for
21 tobacco products sold at retail on or after July 1, 1996 in an
22 amount equal to the tax paid pursuant to the Tobacco Products
23 Tax Act on those tobacco products sold at retail on or after
24 July 1, 1996.

25 C. A retailer may claim a credit against the liquor

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1 excise tax due under the Health Promotion Taxes Act for
2 alcoholic beverages sold at retail on or after July 1, 1996 in
3 an amount equal to the tax paid pursuant to the Liquor Excise
4 Tax Act on those alcoholic beverages sold at retail on or after
5 July 1, 1996.

6 D. The taxation and revenue department shall
7 interpret this section and may require evidence satisfactory to
8 the department from a retailer claiming a credit pursuant to
9 this section that the tax has been paid under the Cigarette Tax
10 Act, the Tobacco Products Tax Act or the Liquor Excise Tax Act
11 on cigarettes, tobacco products or alcoholic beverages sold at
12 retail on or after July 1, 1996.

13 Section 11. TEMPORARY PROVISION--CONTINUITY OF ACTIONS.--

14 A. All taxes due but unpaid under the Cigarette Tax
15 Act, the Tobacco Products Tax Act and the Liquor Excise Tax Act
16 remain due until paid or until a final determination is made
17 that the taxes are not due.

18 B. Any protests, claims for refund, court
19 proceedings or other actions ongoing with respect to the
20 provisions of the Cigarette Tax Act, the Tobacco Products Tax
21 Act and the Liquor Excise Tax Act on the effective date of the
22 Health Promotion Taxes Act shall be finally determined with
23 respect to the applicable provisions of the Cigarette Tax Act,
24 the Tobacco Products Tax Act or the Liquor Excise Tax Act, as
25 applicable.

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1 Section 12. REPEAL. -- Sections 7-12-1 through 7-12-13,
2 7-12A-1 through 7-12A-10, 7-17-1, 7-17-2, 7-17-5, 7-17-6
3 and 7-17-9 through 7-17-12 NMSA 1978 (being Laws 1971, Chapter
4 77, Sections 1 through 3, Laws 1986, Chapter 13, Sections 3 and
5 4, Laws 1971, Chapter 77, Sections 4 through 13, Laws 1986,
6 Chapter 112, Sections 2 through 11, Laws 1966, Chapter 49,
7 Sections 1 and 2, Laws 1993, Chapter 65, Section 8, Laws 1984,
8 Chapter 85, Section 4, Laws 1966, Chapter 49, Sections 7 and 8,
9 Laws 1969, Chapter 80, Section 1 and Laws 1984, Chapter 85,
10 Section 8, as amended) are repealed.

11 Section 13. EFFECTIVE DATE. --

12 A. The effective date of the provisions of Sections
13 1 through 6 and 9 through 12 of this act is July 1, 1996.

14 B. The effective date of the provisions of Sections
15 7 and 8 of this act is August 1, 1996.

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