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HOUSE BILL 86

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Gail C. Beam

FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO TOBACCO; ENHANCING CIGARETTE STAMP PROCEDURES;
PROVIDING FOR TAX-EXEMPT STAMPS; EXPANDING REPORTING AND
LICENSING REQUIREMENTS; PROVIDING CIVIL AND CRIMINAL PENALTIES;
AMENDING, REPEALING AND ENACTING SECTIONS OF THE CIGARETTE TAX
ACT; MAKING AN APPROPRIATION.

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]~~ a roll of tobacco ~~[or
any substitute therefor]~~ wrapped in paper or ~~[any]~~ in a
substance ~~[other than]~~ not containing tobacco, and "cigarette"
includes bidis and kreteks;

~~[B. "person" means any individual, estate, trust,~~

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1 ~~receiver, cooperative association, club, corporation, company,~~
2 ~~firm, partnership, joint venture, syndicate or other entity;~~

3 ~~C.]~~ B. "department" means the taxation and revenue
4 department, the secretary of taxation and revenue or any
5 employee of the department exercising authority lawfully
6 delegated to that employee; [by the secretary

7 ~~D. "secretary" means the secretary of taxation and~~
8 ~~revenue;]~~

9 C. "distributor" means a person, other than a
10 retailer, that sells or distributes cigarettes in New Mexico.

11 "Distributor" does not include:

12 (1) a cigarette manufacturer, export warehouse
13 proprietor or an importer with a valid permit pursuant to 26
14 U.S.C. 5713 if such a person sells cigarettes in New Mexico
15 only to distributors that hold valid licenses under the laws of
16 a state or sells to an export warehouse proprietor or to
17 another manufacturer; or

18 (2) a common or contract carrier transporting
19 cigarettes under a bill of lading or freight bill, or a person
20 who ships cigarettes through the state by a common or contract
21 carrier under a bill of lading or freight bill;

22 D. "license" means a license granted pursuant to
23 the Cigarette Tax Act that authorizes the holder to conduct
24 business as a manufacturer or distributor of cigarettes;

25 E. "manufacturer" means a person that manufactures,

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1 fabricates, assembles, processes or labels a cigarette or that
2 imports from outside the United States, directly or indirectly,
3 a finished cigarette for sale or distribution in the United
4 States;

5 F. "master settlement agreement" means the
6 settlement agreement and related documents entered into on
7 November 23, 1998 by the state and leading United States
8 tobacco product manufacturers;

9 G. "package" means the individual pack, box or
10 other container that contains cigarettes, but "package" does
11 not include a container that itself contains other containers,
12 such as a carton of cigarettes;

13 H. "retailer" means a person, whether located
14 within or outside New Mexico, that sells or distributes
15 cigarettes to a consumer in New Mexico;

16 ~~[E.] I. "stamp" means [any authorized label which~~
17 ~~is issued to cover the tax in multiples of five cigarettes] an~~
18 ~~adhesive label issued and authorized by the department to be~~
19 ~~affixed to cigarette packages for excise tax purposes and upon~~
20 ~~which is printed a serial number and the words "State of New~~
21 ~~Mexico" and "tobacco tax" [and which is coated with an adhesive~~
22 ~~to affix the stamp to a package so that the stamp, once~~
23 ~~affixed, cannot be removed without destroying it;~~

24 ~~F. "stamped" means a package or container of~~
25 ~~cigarettes to which a cigarette tax stamp has been affixed as~~

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1 ~~provided in the Cigarette Tax Act; and~~

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

5 J. "tax stamp" means a stamp that has a specific
6 excise tax value pursuant to Section 7-12-3 NMSA 1978; and

7 K. "tax-exempt stamp" means a stamp that indicates
8 a tax-exempt status pursuant to Section 7-12-4 NMSA 1978. "

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

11 "7-12-3.1. CIGARETTE INVENTORY TAX--IMPOSITION OF TAX--
12 DATE PAYMENT OF TAX DUE. --

13 A. A cigarette inventory tax is imposed, measured
14 by the quantity of cigarette stamps, whether or not affixed to
15 packages of cigarettes, in the possession of a person who is
16 required by Subsection [€] A of Section 7-12-5 NMSA 1978 to
17 affix stamps on the date on which an increase in the excise tax
18 imposed by Section 7-12-3 NMSA 1978 is effective. The taxable
19 event is the existence of an inventory of cigarette stamps,
20 whether or not affixed to packages of cigarettes, in the
21 possession of a person who is required by Subsection [€] A of
22 Section 7-12-5 NMSA 1978 to affix stamps on the date on which
23 an increase in the excise tax imposed by Section 7-12-3 NMSA
24 1978 is effective. The rate of the cigarette inventory tax to
25 apply to cigarette stamps held in inventory shall be the amount
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1 of the increase in the cigarette tax imposed by Section 7-12-3
2 NMSA 1978.

3 B. The cigarette inventory tax is to be paid to the
4 department on or before the twenty-fifth day of the month
5 following the month in which the taxable event occurs. "

6 Section 3. Section 7-12-3.2 NMSA 1978 (being Laws 1986,
7 Chapter 13, Section 4) is amended to read:

8 "7-12-3.2. CIGARETTE INVENTORIES. --

9 A. On any date on which the excise tax imposed by
10 Section 7-12-3 NMSA 1978 is increased, each person who is
11 required by Subsection [€] A of Section 7-12-5 NMSA 1978 to
12 affix stamps shall take inventory of cigarette stamps on hand,
13 including stamps affixed to packages of cigarettes.

14 B. Each person required to take an inventory by
15 Subsection A of this section shall report the total number of
16 cigarette stamps in inventory on the date on which the tax
17 imposed by Section 7-12-3 NMSA 1978 changes and pay any tax due
18 imposed by Section 7-12-3.1 NMSA 1978. "

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

21 "7-12-5. AFFIXING STAMPS. --

22 A. Except as provided in Section 7-12-6 NMSA 1978,
23 all cigarettes [~~the sale, gift or consumption of which is~~
24 ~~subject to the cigarette tax~~] shall be placed in packages [~~or~~
25 ~~containers~~] to which a stamp [~~may~~] shall be affixed. Only a

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1 distributor with a valid license issued pursuant to the
2 Cigarette Tax Act may purchase or obtain stamps. Stamps shall
3 be applied by the licensed distributor to each package of
4 cigarettes to be sold or distributed in New Mexico within
5 seventy-two hours of receipt of those packages. A distributor
6 shall not sell or provide stamps to another distributor or
7 person.

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

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

16 ~~[C.]~~ D. 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] of cigarettes subject to the~~
24 cigarette tax pursuant to Section 7-12-3 NMSA 1978, and a tax-
25 exempt stamp shall be affixed to each package of cigarettes not

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1 subject to the cigarette tax pursuant to Section 7-12-4 NMSA
2 1978.

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

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

8 "7-12-6. WAIVER OF REQUIREMENT THAT STAMPS BE
9 AFFIXED. --The requirement imposed in Section 7-12-5 NMSA 1978
10 that stamps be affixed to packages ~~[or containers]~~ of
11 cigarettes is waived if

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

19 ~~B. the cigarettes are distributed by a cigarette~~
20 ~~manufacturer to consumers within the state of New Mexico as~~
21 ~~free samples. When unstamped cigarettes are distributed by a~~
22 ~~cigarette manufacturer in New Mexico as free samples, the~~
23 ~~manufacturer shall remit to the department the tax imposed in~~
24 ~~Section 7-12-3 NMSA 1978 on or before the twenty-fifth day of~~
25 ~~the month following the month in which distributions of~~

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1 ~~unstamped cigarettes are made~~ the cigarettes are distributed
2 by a manufacturer pursuant to federal regulations and are
3 exempt from tax pursuant to 26 U. S. C. 5704. "

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

6 "7-12-7. SALE OF STAMPS-- ~~[PRICES]~~ NUMBERING-- DISCOUNTS. --

7 A. The department shall sell stamps ~~[to any person~~
8 ~~who sells in New Mexico cigarettes manufactured by that person~~
9 ~~and to any person who receives on consignment or buys unstamped~~
10 ~~cigarettes for sale, gift or consumption in New Mexico,~~
11 ~~provided such persons are registered with the department under~~
12 ~~the provisions of Section 7-1-12 NMSA 1978]~~ only to
13 distributors licensed pursuant to the Cigarette Tax Act.

14 B. Each roll or group of sheets of stamps shall
15 have a separate serial number, which shall be legible at the
16 point of sale. The department shall keep records of which
17 distributor purchases each roll or group of sheets. Stamps
18 bearing the same serial number shall not be sold to more than
19 one distributor.

20 C. Tax stamps shall be sold at their face value
21 with the following discounts:

22 (1) ~~[four]~~ nine-tenths percent less than the
23 face value of the first thirty thousand dollars (\$30,000) of
24 stamps purchased in one calendar month;

25 (2) ~~[three]~~ seven-tenths percent less than the

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

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

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

9 [~~C.~~] E. Payment for tax stamps shall be made on or
10 before the twenty-fifth day of the month following the month in
11 which the sale of stamps by the department is made.

12 F. Tax-exempt stamps shall be provided only to
13 licensed distributors and shall be free of charge; provided
14 that the distributor is in full compliance with the reporting
15 requirements of the Cigarette Tax Act and rules promulgated
16 pursuant to that act."

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

19 "7-12-9. LICENSE NECESSARY TO ENGAGE IN BUSINESS OF
20 SELLING CIGARETTES IN NEW MEXICO. -- [~~Each~~]

21 A. A person shall not engage in business as a
22 manufacturer or distributor without first obtaining a license
23 from the department.

24 B. A manufacturer or distributor shall sell or
25 distribute cigarettes within New Mexico only to a distributor

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1 with a valid current license or to a retailer. A distributor
2 or retailer shall obtain cigarettes within New Mexico only from
3 a manufacturer or distributor with a valid current license.

4 C. The department shall, by rule, specify the
5 length of time for which a license remains in effect, except
6 that a license issued pursuant to this section shall not remain
7 in effect for longer than two years.

8 D. An application for a license shall be submitted
9 on a form established by the department and shall provide:

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

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

17 (3) any other information the department may
18 require.

19 E. A person engaging in business as a distributor
20 or manufacturer or a combination of these activities shall
21 obtain a separate license for each activity.

22 F. A license may not be granted, maintained or
23 renewed if any of the following conditions applies to the
24 applicant:

25 (1) the applicant owes five hundred dollars

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1 (\$500) or more in delinquent cigarette taxes;

2 (2) the applicant had a manufacturer or
3 distributor license revoked by the department within the past
4 two years;

5 (3) the applicant was convicted of a crime
6 relating to cigarettes;

7 (4) the applicant was convicted of a felony;

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

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

18 G. In addition to any civil or criminal penalty
19 provided by law, upon a finding that a licensee has violated a
20 provision of the Cigarette Tax Act, the department may revoke
21 or suspend the license or licenses of the licensee.

22 H. The department shall create and maintain a web
23 site listing all current licensees and the licenses they hold
24 pursuant to the Cigarette Tax Act.

25 I. A person engaged in the business of selling

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1 cigarettes in New Mexico shall register and comply with the
2 provisions of Section 7-1-12 NMSA 1978. ~~Every~~

3 J. A person selling cigarettes in New Mexico shall
4 furnish ~~such~~ information ~~as may be~~ requested by the
5 department concerning that person's vending machines or other
6 places of business where cigarettes are sold.

7 K. As used in this section, "applicant" includes a
8 person or persons owning, directly or indirectly, in the
9 aggregate, more than ten percent of the ownership interest in
10 the business holding or applying for a license. "

11 Section 8. Section 7-12-10 NMSA 1978 (being Laws 1971,
12 Chapter 77, Section 10, as amended) is repealed and a new
13 Section 7-12-10 NMSA 1978 is enacted to read:

14 "7-12-10. [NEW MATERIAL] RETENTION OF INVOICES AND
15 RECORDS--INSPECTION BY DEPARTMENT.--

16 A. A distributor, retailer or manufacturer shall
17 maintain copies of invoices for each of its facilities for
18 every transaction involving a cigarette sale, purchase,
19 transfer, receipt or consignment; provided that a retailer need
20 not retain copies of invoices for sales of cigarettes to
21 consumers. An invoice shall show:

22 (1) the names and addresses of all persons
23 involved in the transaction, including sellers, purchasers,
24 consignors and consignees; provided that if a transaction
25 involves another facility of the same distributor, retailer or

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1 manufacturer, the invoice shall show the address of that
2 facility;

3 (2) the date;

4 (3) the price; and

5 (4) the quantity of each brand of cigarettes
6 involved in each transaction.

7 B. Records required pursuant to Subsection A of
8 this section shall be preserved on the premises described in
9 the license in such a manner as to ensure permanency and
10 accessibility for inspection at reasonable hours by the
11 department. With the department's permission, manufacturers,
12 distributors and retailers with multiple places of business may
13 retain centralized records, but shall transmit duplicates of
14 the records to each place of business within twenty-four hours
15 upon the request of the department.

16 C. The records required pursuant to Subsection A of
17 this section shall be retained for a period of three years from
18 the end of the year in which the transaction occurred unless
19 otherwise required by law to be retained for a longer period of
20 time.

21 D. The department and the secretary of the United
22 States department of treasury, or a designee, may inspect the
23 reports and records required pursuant to the Cigarette Tax Act
24 along with any stock of cigarettes in the possession of the
25 manufacturer, distributor or retailer. The department, at its

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1 sole discretion, may share those records and reports with law
2 enforcement officials of the federal government, other states
3 and international authorities.

4 E. The department shall have authority to enter and
5 inspect, without a warrant during normal business hours and
6 with a warrant during non-business hours, the facilities and
7 records of a manufacturer, distributor or retailer.

8 F. If the department or a law enforcement officer
9 has reasonable grounds to believe that a vehicle is
10 transporting cigarettes in violation of the Cigarette Tax Act,
11 the department or the law enforcement officer is authorized to
12 stop the vehicle and to inspect it for contraband cigarettes or
13 cigarettes in violation of the provisions of the Cigarette Tax
14 Act. "

15 Section 9. 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 [~~eigarettes~~]
21 cigarette packages on [~~his~~] the distributor's premises if the
22 unstamped [~~eigarettes~~] packages to be shipped outside the state
23 are kept in a separate part of [~~his~~] the distributor's place of
24 business, physically segregated from cigarettes to be sold
25 inside New Mexico and clearly identified as cigarettes for

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1 shipment outside the state. Unstamped cigarette packages shall
2 not be transferred by a distributor to another facility of the
3 distributor or to another person within New Mexico. If
4 cigarettes to be sold outside New Mexico are intermingled with
5 cigarettes to be sold inside New Mexico, they shall be stamped
6 and treated for purposes of the Cigarette Tax Act as cigarettes
7 to be sold inside New Mexico.

8 B. A person doing business as both a distributor
9 and a retailer shall maintain separate areas for stamped and
10 unstamped cigarette packages. "

11 Section 10. Section 7-12-12 NMSA 1978 (being Laws 1971,
12 Chapter 77, Section 12, as amended) is amended to read:

13 "7-12-12. SHIPMENT OF UNSTAMPED CIGARETTES IN NEW
14 MEXICO. --

15 A. A person that ships unstamped cigarette packages
16 into New Mexico other than to a licensed distributor shall
17 first file a notice of the shipment with the department.

18 B. A person that transports unstamped cigarette
19 packages into or within New Mexico shall carry, in the
20 transporting vehicle, invoices or equivalent documents
21 applicable to all cigarettes in the shipment. The invoices or
22 documents shall show the name and address of the consignor or
23 seller, the name and address of the consignee or purchaser and
24 the quantity of each brand of cigarettes transported.

25 C. The provisions of Subsections A and B of this

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1 section shall not apply to a common or contract carrier
2 transporting cigarettes through New Mexico to another location
3 under a proper bill of lading or freight bill that states the
4 quantity, source and destination of the cigarettes.

5 D. The ~~[secretary]~~ department may, by regulation,
6 require and prescribe the contents of reports to be filed with
7 the department by persons transporting unstamped ~~[cigarettes]~~
8 cigarette packages in New Mexico. "

9 Section 11. Section 7-12-13 NMSA 1978 (being Laws 1971,
10 Chapter 77, Section 13, as amended) is repealed and a new
11 Section 7-12-13 NMSA 1978 is enacted to read:

12 "7-12-13. [NEW MATERIAL] CIVIL PENALTIES. --

13 A. Whoever knowingly omits, neglects or refuses to
14 comply with the provisions of the Cigarette Tax Act shall, in
15 addition to any other penalty provided in that act, be liable
16 for a penalty up to one thousand dollars (\$1,000).

17 B. Whoever fails to pay a tax imposed pursuant to
18 the Cigarette Tax Act at the time due shall, in addition to any
19 other penalty provided in that act, be liable for a penalty of
20 five hundred percent of the tax due but unpaid.

21 C. Cigarettes held for sale or distribution within
22 New Mexico in violation of the provisions of the Cigarette Tax
23 Act, and the machinery used to manufacture them, shall be
24 subject to seizure, forfeiture and destruction. "

25 Section 12. A new section of the Cigarette Tax Act is

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1 enacted to read:

2 "[NEW MATERIAL] REPORTS. --

3 A. A distributor shall submit periodic reports to
4 the department, in the manner and on the form prescribed by the
5 department. A distributor shall submit a separate report for
6 each of its facilities. The information in the report shall be
7 itemized and shall clearly disclose cigarette brands,
8 quantities and the type of stamp applied to cigarette packages.

9 A report shall include:

10 (1) an inventory of stamped and unstamped
11 cigarette packages held for sale or distribution within New
12 Mexico at the beginning of the reporting period;

13 (2) the quantity of stamped cigarette packages
14 held for sale or distribution within New Mexico that were
15 received from another person during the reporting period and
16 the name and address of each person from whom each quantity was
17 received;

18 (3) the quantity of New Mexico stamped
19 cigarette packages that were distributed or shipped to another
20 distributor or retailer within New Mexico during the reporting
21 period and the name and address of each person to whom each
22 quantity was distributed or shipped;

23 (4) the quantity of New Mexico stamped
24 cigarette packages that were distributed or shipped to another
25 facility of the same distributor within New Mexico during the

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1 reporting period and the address of the facility;

2 (5) the quantity of stamped cigarette packages
3 that were distributed or shipped within New Mexico to Indian
4 tribal entities, pueblos or smoke shops or to instrumentalities
5 of the federal government during the reporting period and the
6 name and address of each person, entity or instrumentality to
7 whom each quantity was distributed or shipped;

8 (6) an inventory of stamped and unstamped
9 cigarette packages held for sale or distribution within New
10 Mexico at the end of the reporting period;

11 (7) an inventory of cigarette packages held
12 for sale or distribution outside of New Mexico at the beginning
13 of the reporting period;

14 (8) the quantity of cigarette packages held
15 for sale or distribution outside New Mexico that were received
16 from another person during the reporting period and the name
17 and address of each person from whom each quantity was
18 received;

19 (9) the quantity of cigarette packages that
20 were distributed or shipped outside New Mexico during the
21 reporting period;

22 (10) an inventory of cigarette packages held
23 for sale or distribution outside New Mexico at the end of the
24 reporting period;

25 (11) the number of each type of stamp on hand

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1 at the beginning of the reporting period;

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

4 (13) the number of each type of stamp applied
5 during the reporting period; and

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

8 B. A manufacturer shall submit periodic reports, in
9 the manner and on the form prescribed by the department. The
10 information in the report shall be itemized to clearly disclose
11 cigarette brands and quantities. The reports shall be provided
12 separately with respect to each of the facilities operated by
13 the manufacturer. A report shall contain the quantity of
14 cigarette packages that were distributed or shipped:

15 (1) to a manufacturer, distributor or retailer
16 within New Mexico during the reporting period and the name and
17 address of each person to whom each quantity was distributed or
18 shipped;

19 (2) to another facility within New Mexico of
20 the same manufacturer during the reporting period and the
21 address of the facility; and

22 (3) within New Mexico to Indian tribal
23 entities, pueblos or smoke shops or instrumentalities of the
24 federal government during the reporting period and the name and
25 address of each person to whom each quantity was distributed or

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1 shipped.

2 C. The department may require additional
3 information to be submitted. The department shall establish
4 the reporting period, which shall be no longer than three
5 calendar months and no shorter than one calendar month."

6 Section 13. A new section of the Cigarette Tax Act is
7 enacted to read:

8 "[NEW MATERIAL] CRIMINAL PENALTIES. --

9 A. Whoever violates a provision of the Cigarette
10 Tax Act or a rule promulgated pursuant to that act is guilty of
11 a misdemeanor and shall be sentenced in accordance with the
12 provisions of Section 31-19-1 NMSA 1978.

13 B. Whoever, with intent to defraud, fails to comply
14 with a requirement of the Cigarette Tax Act or with a rule
15 promulgated pursuant to that act is guilty of a fourth degree
16 felony and shall be sentenced in accordance with the provisions
17 of Section 31-18-15 NMSA 1978.

18 C. Notwithstanding any other provision of law, the
19 sale or possession for sale of counterfeit cigarettes is
20 unlawful and shall result in the seizure of the product and
21 related machinery and be punishable as follows:

22 (1) a violation with a quantity of fewer than
23 two cartons of counterfeit cigarettes, or the equivalent, is a
24 petty misdemeanor punishable in accordance with the provisions
25 of Section 31-19-1 NMSA 1978;

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

5 (3) a second or subsequent violation with a
6 quantity of two cartons or more of counterfeit cigarettes, or
7 the equivalent, is a fourth degree felony punishable by a fine
8 not to exceed fifty thousand dollars (\$50,000) or imprisonment
9 for a definite term not to exceed eighteen months, or both, and
10 shall also result in the revocation by the department of the
11 manufacturer or distributor license, if any.

12 D. A counterfeit cigarette seized by the department
13 or by a law enforcement agency shall be destroyed.

14 E. Prosecution for a violation of a provision of
15 this section does not preclude prosecution under other
16 applicable laws.

17 F. As used in this section, "counterfeit
18 cigarettes" means cigarette packages with counterfeit stamps,
19 cigarettes that have false or fraudulent manufacturing labels
20 and cigarette packages without the tax or tax-exempt stamps
21 required under the Cigarette Tax Act. "

22 Section 14. APPROPRIATION. -- Four hundred thousand dollars
23 (\$400,000) is appropriated from the general fund to the
24 taxation and revenue department for expenditure in fiscal year
25 2005 to implement the provisions of this act. Any unexpended

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1 or unencumbered balance remaining at the end of the fiscal year
2 2005 shall revert to the general fund.

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underscoring material = new
[bracketed material] = delete