

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 452

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

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; 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 roll of tobacco or any
substitute ~~[therefor]~~ for tobacco wrapped in paper or ~~[any
substance other than tobacco]~~ in anything that is not one

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underscored material = new
[bracketed material] = delete

1 hundred percent tobacco; "cigarette" includes bidis and kreteks
2 and small cigars sold in packages similar to cigarettes, unless
3 the cigar is wrapped in one hundred percent tobacco;

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

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

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

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

18 D. "distributor" means a person licensed pursuant
19 to the Cigarette Tax Act to sell or distribute cigarettes in
20 New Mexico. "Distributor" does not include:

21 (1) a retailer;

22 (2) a cigarette manufacturer, export warehouse
23 proprietor or an importer with a valid permit pursuant to 26
24 U.S.C. 5713, if that person sells cigarettes in New Mexico only
25 to distributors that hold valid licenses under the laws of a

1 state or sells to an export warehouse proprietor or to another
2 manufacturer; or

3 (3) a common or contract carrier transporting
4 cigarettes pursuant to a bill of lading or freight bill, or a
5 person who ships cigarettes through the state by a common or
6 contract carrier pursuant to a bill of lading or freight bill;

7 E. "license" means a license granted pursuant to
8 the Cigarette Tax Act that authorizes the holder to conduct
9 business as a manufacturer or distributor of cigarettes;

10 F. "manufacturer" means a person that manufactures,
11 fabricates, assembles, processes or labels a cigarette or that
12 imports from outside the United States, directly or indirectly,
13 a finished cigarette for sale or distribution in the United
14 States;

15 G. "master settlement agreement" means the
16 settlement agreement and related documents entered into on
17 November 23, 1998 by the state and leading United States
18 tobacco product manufacturers;

19 H. "package" means an individual pack, box or other
20 container; "package" does not include a container that itself
21 contains other containers, such as a carton of cigarettes;

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

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

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

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

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

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

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

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

23 A. A tax that may be identified as the "cigarette
24 inventory tax" is imposed ~~[measured by the quantity of~~
25 ~~cigarette stamps, whether or not affixed to packages of~~

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underscored material = new
[bracketed material] = delete

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

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

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

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

3 "7-12-3.2. CIGARETTE INVENTORIES.--

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

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

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

19 "7-12-5. AFFIXING STAMPS.--

20 A. Except as provided in Section 7-12-6 NMSA 1978,
21 all cigarettes ~~[the sale, gift or consumption of which is~~
22 ~~subject to the cigarette tax]~~ shall be placed in packages or
23 containers to which a stamp ~~[may]~~ shall be affixed. Only a
24 distributor with a valid license issued pursuant to the
25 Cigarette Tax Act may purchase or obtain unaffixed tax-exempt

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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 ten days of receipt of those packages.

8 C. A distributor shall apply stamps only to
9 packages of cigarettes 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.]~~ D. Packages ~~[or containers to which a stamp is~~
13 ~~required to be affixed and which]~~ shall contain cigarettes
14 ~~[that are not in multiples of five cigarettes shall have~~
15 ~~affixed a stamp of the next higher multiple of five cigarettes]~~
16 in lots of twenty or twenty-five.

17 ~~[G.]~~ E. Unless the requirements of this section are
18 waived pursuant to Section 7-12-6 NMSA 1978, a tax stamp shall
19 be affixed to each package ~~[or container]~~ of cigarettes ~~[the~~
20 ~~sale, gift or consumption of which is subject to the cigarette~~
21 ~~tax. The stamp shall be affixed by any person who sells in New~~
22 ~~Mexico cigarettes manufactured by that person or who receives~~
23 ~~on consignment or buys unstamped cigarettes for sale, gift or~~
24 ~~consumption in New Mexico]~~ subject to the cigarette tax and a
25 tax-exempt stamp shall be affixed to each package of cigarettes

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

3 ~~[D.]~~ F. 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 cigarettes
11 is waived if the cigarettes are distributed by a manufacturer
12 pursuant to federal regulations and are exempt from tax
13 pursuant to 26 U.S.C. 5704.

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

21 ~~B. the cigarettes are distributed by a cigarette~~
22 ~~manufacturer to consumers within the state of New Mexico as~~
23 ~~free samples. When unstamped cigarettes are distributed by a~~
24 ~~cigarette manufacturer in New Mexico as free samples, the~~
25 ~~manufacturer shall remit to the department the tax imposed in~~

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1 ~~Section 7-12-3 NMSA 1978 on or before the twenty-fifth day of~~
2 ~~the month following the month in which distributions of~~
3 ~~unstamped cigarettes are made.]"~~

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.--

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

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

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

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

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

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

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

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

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

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

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

20 "7-12-9.1. [NEW MATERIAL] LICENSING--GENERAL LICENSING
21 PROVISIONS.--

22 A. A person shall not engage in the manufacture or
23 distribution of cigarettes in New Mexico without a license
24 issued by the department.

25 B. The department shall issue a license for a term

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1 not to exceed one year.

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

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

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

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

12 (b) if the applicant is a corporation,
13 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. The department may issue a distributor's license
20 and a manufacturer's license to the same person.

21 F. Persons licensed as manufactures or distributors
22 may sell stamped cigarettes at retail.

23 G. A license may not be granted, maintained or
24 renewed if one or more of the following conditions applies to
25 an applicant:

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

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

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

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

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

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

23 I. As used in this section, "applicant" includes a
24 person or persons owning, directly or indirectly, in the
25 aggregate, more than ten percent of the ownership interest in

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1 the business holding or applying for a license pursuant to the
2 Cigarette Tax Act."

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

5 "7-12-9.2. [NEW MATERIAL] DISTRIBUTOR'S LICENSE.--

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

10 B. A person licensed to distribute cigarettes is
11 authorized to:

12 (1) receive unstamped packages of cigarettes
13 from a manufacturer;

14 (2) purchase tax stamps and receive tax-exempt
15 stamps from the department;

16 (3) affix tax stamps or tax-exempt stamps to
17 unstamped packages of cigarettes;

18 (4) sell stamped packages of cigarettes to a
19 retailer for resale; and

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

23 Section 9. A new section of the Cigarette Tax Act,
24 Section 7-12-9.3 NMSA 1978, is enacted to read:

25 "7-12-9.3. [NEW MATERIAL] MANUFACTURER'S LICENSE.--

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1 A. A person shall not manufacture cigarettes in New
2 Mexico unless licensed by the department.

3 B. A person licensed to manufacture cigarettes in
4 New Mexico is authorized to:

5 (1) manufacture, produce and package
6 cigarettes;

7 (2) receive imported cigarettes;

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

11 (4) sell unstamped cigarettes outside of New
12 Mexico."

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

15 "7-12-9.4. [NEW MATERIAL] RETAIL SALE OF CIGARETTES.--A
16 retailer of cigarettes shall:

17 A. only obtain cigarettes for resale from a
18 distributor;

19 B. only obtain stamped cigarettes;

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

22 D. comply with the provisions of the Cigarette
23 Tax Act or any law or rule that applies to retailers of
24 cigarettes."

25 Section 11. A new section of the Cigarette Tax Act,

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1 Section 7-12-10.1 NMSA 1978, is enacted to read:

2 "7-12-10.1. [NEW MATERIAL] RETENTION OF INVOICES AND
3 RECORDS--INSPECTION BY DEPARTMENT.--

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

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

16 (2) the date;

17 (3) the price; and

18 (4) the quantity of each brand of cigarettes
19 involved in each transaction.

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

25 C. The records required to be maintained pursuant

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

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

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

15 "7-12-11. EXPORT SELLERS--PHYSICAL SEGREGATION OF
16 CIGARETTES TO BE EXPORTED.--~~[Any person]~~

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

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1 packages of cigarettes to be sold inside New Mexico, they shall
2 be stamped and treated for purposes of the Cigarette Tax Act as
3 packages of cigarettes to be sold inside New Mexico.

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

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

11 Section 13. 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 packages of
16 cigarettes into New Mexico other than to a distributor shall
17 first file a notice of the shipment with the department.

18 B. A person that transports unstamped packages of
19 cigarettes 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:

23 (1) the name and address of the consignor or
24 seller;

25 (2) the name and address of the consignee or

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1 purchaser; and

2 (3) the quantity of each brand of cigarettes
3 transported.

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

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

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

15 "[NEW MATERIAL] REPORTS.--

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

23 (1) an inventory of stamped and unstamped
24 packages of cigarettes held for sale or distribution within New
25 Mexico at the beginning of the reporting period;

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

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

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

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

22 (6) an inventory of stamped and unstamped
23 packages of cigarettes held for sale or distribution within New
24 Mexico at the end of the reporting period;

25 (7) an inventory of stamped and unstamped

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

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

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

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

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

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

18 (13) the number of each type of stamp applied
19 during the reporting period; and

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

22 B. A manufacturer shall submit periodic reports in
23 the manner and on the form prescribed by the department. The
24 information in the report shall be itemized to clearly disclose
25 cigarette brands and quantities. The reports shall be provided

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1 separately with respect to each of the facilities operated by
2 the manufacturer. A report shall contain the quantity of
3 packages of cigarettes that were distributed or shipped:

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

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

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

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

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

23 "[NEW MATERIAL] INTERGOVERNMENTAL AGREEMENTS--NO WAIVER OF
24 SOVEREIGN IMMUNITY.--

25 A. The department may enter into an

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1 intergovernmental agreement with a tribe to:

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

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

7 (3) provide for cooperative tax collection or
8 tax administration of the cigarette tax.

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

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

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

17 "7-12-13.1. [NEW MATERIAL] CIVIL PENALTIES.--

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

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

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

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1 more than two thousand five hundred dollars (\$2,500); and

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

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

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

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

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

20 "[NEW MATERIAL] CRIMINAL OFFENSES--CRIMINAL PENALTIES--
21 SEIZURE AND DESTRUCTION OF EVIDENCE.--

22 A. Whoever violates a provision of the Cigarette
23 Tax Act or a rule adopted pursuant to that act is guilty of a
24 misdemeanor and shall be sentenced in accordance with the
25 provisions of Section 31-19-1 NMSA 1978.

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

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

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

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

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

21 E. Whoever sells or possesses for the purpose of
22 sale contraband cigarettes is in violation of the Cigarette Tax
23 Act and shall have the product and related equipment seized.
24 If convicted of selling or possessing for sale contraband
25 cigarettes, the person shall be sentenced as follows:

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

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

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

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

22 G. Prosecution for a violation of a provision of
23 this section does not preclude prosecution under other
24 applicable laws."

25 Section 18. APPROPRIATION.--Five hundred thousand dollars

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1 (\$500,000) is appropriated from the general fund to the
2 taxation and revenue department for expenditure in fiscal year
3 2006 to implement the provisions of Sections 1 through 16 of
4 this act. Any unexpended or unencumbered balance remaining at
5 the end of fiscal year 2006 shall revert to the general fund.

6 Section 19. REPEAL.--Sections 7-12-9, 7-12-10 and 7-12-13
7 NMSA 1978 (being Laws 1971, Chapter 77, Sections 9, 10 and 13,
8 as amended) are repealed.