

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 56

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

INTRODUCED BY

Mary Jane M. Garcia

FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

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; 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 hundred percent tobacco; "cigarette" includes bidis and kreteks

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

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 an 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

.153914.1

underscoring material = new
[bracketed material] = delete

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 or distributes
23 cigarettes to a consumer in New Mexico;

24 ~~[E.]~~ J. "stamp" means [any authorized label which
25 ~~is issued to cover the tax in multiples of five cigarettes] an~~

.153914.1

underscored material = new
[bracketed material] = delete

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

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

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

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

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

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

19 "7-12-3.1. CIGARETTE INVENTORY TAX--IMPOSITION OF TAX--
20 DATE PAYMENT OF TAX DUE.--

21 A. A tax that may be identified as the "cigarette
22 inventory tax" is imposed [~~measured by the quantity of~~
23 ~~cigarette stamps, whether or not affixed to packages of~~
24 ~~cigarettes, in the possession of a person who is required by~~
25 ~~Subsection C of Section 7-12-5 NMSA 1978 to affix stamps] on a~~

.153914.1

underscored material = new
[bracketed material] = delete

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

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

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

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

.153914.1

underscored material = new
[bracketed material] = delete

1 "7-12-3.2. CIGARETTE INVENTORIES.--

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

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

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

17 "7-12-5. AFFIXING STAMPS.--

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

.153914.1

underscored material = new
[bracketed material] = delete

1 warehouse proprietor or importer with a valid permit pursuant
2 to 26 U.S.C. 5713 or any other person.

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

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

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

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

.153914.1

underscored material = new
[bracketed material] = delete

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

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

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

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~~

.153914.1

underscored material = new
[bracketed material] = delete

1 ~~unstamped cigarettes are made.]"~~

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

4 "7-12-7. SALE OF STAMPS--PRICES.--

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

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

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

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

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

24 (2) [~~three~~] eight-tenths percent less than the
25 face value of the second thirty thousand dollars (\$30,000) of

.153914.1

underscoring material = new
[bracketed material] = delete

1 stamps purchased in one calendar month; and

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

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

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

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

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

18 "7-12-9.1. [NEW MATERIAL] LICENSING--GENERAL LICENSING
19 PROVISIONS--REGISTRATION FOR ALL CIGARETTE SALES.--

20 A. A person shall not engage in the manufacture or
21 distribution of cigarettes in New Mexico without a license
22 issued by the department. A person who sells cigarettes at
23 retail shall register with the department and comply with the
24 provisions of Section 7-1-12 NMSA 1978.

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

.153914.1

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 license to distribute
20 and a license to manufacture cigarettes to the same person.

21 F. Persons licensed to manufacture or to distribute
22 cigarettes 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:

.153914.1

underscoring material = new
[bracketed material] = delete

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 convicted of a felony;

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

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

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

24 I. As used in this section, "applicant" includes a
25 person or persons owning, directly or indirectly, in the

.153914.1

underscored material = new
[bracketed material] = delete

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

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

6 "7-12-9.2. [NEW MATERIAL] DISTRIBUTOR'S LICENSE.--

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

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

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

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

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

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

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

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

.153914.1

underscored material = new
[bracketed material] = delete

1 "7-12-9.3. [NEW MATERIAL] MANUFACTURER'S LICENSE.--

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

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

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

8 (2) receive imported cigarettes;

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

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

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

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

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

20 B. only obtain stamped cigarettes;

21 C. not sell cigarettes at wholesale or for resale
22 unless that person is also a distributor;

23 D. register with the department pursuant to Section
24 7-1-12 NMSA 1978; and

25 E. comply with the provisions of the Cigarette Tax

.153914.1

underscored material = new
[bracketed material] = delete

1 Act or any law or rule that applies to retailers of
2 cigarettes."

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

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

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

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

19 (2) the date;

20 (3) the price; and

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

23 B. Records required to be maintained pursuant to
24 Subsection A of this section shall be preserved on the premises
25 described in the license in a manner that ensures permanency

.153914.1

underscored material = new
[bracketed material] = delete

1 and accessibility for inspection at reasonable hours by the
2 department. With the department's permission, manufacturers,
3 distributors and retailers with multiple business sites may
4 retain centralized records, but shall transmit duplicates of
5 the records to another site of the business within twenty-four
6 hours upon the request of the department.

7 C. The records required to be maintained pursuant
8 to Subsection A of this section shall be retained for a period
9 of three years from the end of the year in which the
10 transaction occurred, unless otherwise required by law to be
11 retained for a longer period of time.

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

20 E. The department shall have authority to enter and
21 inspect the facilities and records of a manufacturer,
22 distributor or retailer without a warrant during normal
23 business hours and with a warrant during non-business hours.

24 F. If the department or a law enforcement officer
25 has reasonable suspicion to believe that a vehicle is

.153914.1

underscored material = new
[bracketed material] = delete

1 transporting cigarettes in violation of the Cigarette Tax Act,
2 the department or the law enforcement officer is authorized to
3 stop the vehicle and, with probable cause, inspect it for
4 contraband cigarettes or cigarettes in violation of the
5 provisions of the Cigarette Tax Act."

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

8 "7-12-11. EXPORT SELLERS--PHYSICAL SEGREGATION OF
9 CIGARETTES TO BE EXPORTED.--[Any person]

10 A. A distributor selling and shipping cigarettes
11 outside New Mexico may maintain unstamped packages of
12 cigarettes on [his] the distributor's premises if the unstamped
13 [cigarettes] packages to be shipped outside the state are kept
14 in a separate part of [his] the distributor's place of
15 business, physically segregated from packages of cigarettes to
16 be sold inside New Mexico and clearly identified as packages of
17 cigarettes for shipment outside the state. If packages of
18 cigarettes to be sold outside New Mexico are intermingled with
19 packages of cigarettes to be sold inside New Mexico, they shall
20 be stamped and treated for purposes of the Cigarette Tax Act as
21 packages of cigarettes to be sold inside New Mexico.

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

25 C. A person doing business as both a distributor

.153914.1

underscored material = new
[bracketed material] = delete

1 and a retailer or both a distributor and a manufacturer shall
2 maintain separate areas for stamped and unstamped packages of
3 cigarettes."

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

6 "7-12-12. SHIPMENT OF UNSTAMPED CIGARETTES IN NEW
7 MEXICO.--

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

11 B. A person that transports unstamped packages of
12 cigarettes into or within New Mexico shall carry, in the
13 transporting vehicle, invoices or equivalent documents
14 applicable to all cigarettes in the shipment. The invoices or
15 documents shall show:

16 (1) the name and address of the consignor or
17 seller;

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

20 (3) the quantity of each brand of cigarettes
21 transported.

22 C. The provisions of Subsections A and B of this
23 section shall not apply to a common or contract carrier
24 transporting cigarettes through New Mexico to another location
25 pursuant to a proper bill of lading or freight bill that states

.153914.1

underscored material = new
[bracketed material] = delete

1 the quantity, source and destination of the cigarettes.

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

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

8 "[NEW MATERIAL] REPORTS.--

9 A. A distributor shall submit periodic reports to
10 the department, in the manner and on the form prescribed by the
11 department. A distributor shall submit a separate report for
12 each of its facilities. The information in the report shall be
13 itemized and shall clearly disclose cigarette brands,
14 quantities and the type of stamp applied to the packages of
15 cigarettes. A report shall include:

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

19 (2) the quantity of stamped packages of
20 cigarettes held for sale or distribution within New Mexico that
21 were received from another person during the reporting period
22 and the name and address of each person from whom each quantity
23 was received;

24 (3) the quantity of New Mexico stamped
25 packages of cigarettes that were distributed or shipped to

.153914.1

underscoring material = new
[bracketed material] = delete

1 another distributor or retailer within New Mexico during the
2 reporting period and the name and address of each person to
3 whom each quantity was distributed or shipped;

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

8 (5) the quantity of stamped cigarette packages
9 that were distributed or shipped within New Mexico to an Indian
10 nation, tribe or pueblo or to a person located on the land of
11 an Indian nation, tribe or pueblo or to instrumentalities of
12 the federal government during the reporting period and the name
13 and address of each person, entity or instrumentality to whom
14 each quantity was distributed or shipped;

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

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

21 (8) the quantity of packages of cigarettes
22 held for sale or distribution outside of New Mexico that were
23 received from another person during the reporting period and
24 the name and address of each person from whom each quantity was
25 received;

.153914.1

underscoring material = new
[bracketed material] = delete

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

4 (10) an inventory of packages of cigarettes
5 held for sale or distribution outside of New Mexico at the end
6 of the reporting period;

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

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

11 (13) the number of each type of stamp applied
12 during the reporting period; and

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

15 B. A manufacturer shall submit periodic reports in
16 the manner and on the form prescribed by the department. The
17 information in the report shall be itemized to clearly disclose
18 cigarette brands and quantities. The reports shall be provided
19 separately with respect to each of the facilities operated by
20 the manufacturer. A report shall contain the quantity of
21 packages of cigarettes that were distributed or shipped:

22 (1) to a manufacturer, distributor or retailer
23 within New Mexico during the reporting period and the name and
24 address of each person to whom each quantity was distributed or
25 shipped;

.153914.1

underscored material = new
[bracketed material] = delete

1 (2) to another facility within New Mexico of
2 the same manufacturer during the reporting period and the
3 address of the facility; and

4 (3) within New Mexico to an Indian nation,
5 tribe or pueblo or to a person located on the land of an Indian
6 nation, tribe or pueblo or to instrumentalities of the federal
7 government during the reporting period and the name and address
8 of each person, entity or instrumentality to whom each quantity
9 was distributed or shipped.

10 C. The department may require additional
11 information to be submitted. The department shall establish
12 the reporting period, which shall be no longer than three
13 calendar months and no shorter than one calendar month."

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

16 "7-12-13.1. [NEW MATERIAL] CIVIL PENALTIES.--

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

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

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

.153914.1

underscored material = new
[bracketed material] = delete

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

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

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

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

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

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

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

25 B. Whoever, with intent to defraud, fails to comply

.153914.1

underscored material = new
[bracketed material] = delete

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

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

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

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

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

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

25 (1) a violation with a quantity of fewer than

.153914.1

underscored material = new
[bracketed material] = delete

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

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

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

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

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

24 Section 17. APPROPRIATION.--Five hundred thousand dollars
25 (\$500,000) is appropriated from the general fund to the

.153914.1

underscored material = new
~~[bracketed material]~~ = delete

1 taxation and revenue department for expenditure in fiscal year
2 2006 to implement the provisions of Sections 1 through 16 of
3 this act. Any unexpended or unencumbered balance remaining at
4 the end of fiscal year 2006 shall revert to the general fund.

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

8 - 26 -

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25