

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.

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 for tobacco wrapped in paper or in anything that is not one hundred percent tobacco; "cigarette" includes bidis and kreteks and small cigars sold in packages similar to cigarettes, unless the cigar is wrapped in one hundred percent tobacco;

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

C. "department" means the taxation and revenue

department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee;

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

(1) a retailer;

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

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

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

F. "manufacturer" means a person that manufactures, fabricates, assembles, processes or labels a cigarette or that imports from outside the United States, directly or indirectly, a finished cigarette for sale or

distribution in the United States;

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

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

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

J. "stamp" means an adhesive label issued and authorized by the department to be affixed to cigarette packages for excise tax purposes and upon which is printed a serial number and the words "State of New Mexico" and "tobacco tax";

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

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

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

"7-12-3.1. CIGARETTE INVENTORY TAX--IMPOSITION OF TAX--

DATE PAYMENT OF TAX DUE.--

A. A tax that may be identified as the "cigarette inventory tax" is imposed on a distributor that has in its possession tax-exempt stamps or tax stamps, whether or not affixed to packages of cigarettes, on the date on which an increase in the cigarette tax imposed by Section 7-12-3 NMSA 1978 is effective.

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

C. The cigarette inventory tax is to be paid to the department on or before the twenty-fifth day of the month following the month in which the increase in the cigarette tax is effective."

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

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

A. On any date on which the cigarette tax imposed by Section 7-12-3 NMSA 1978 is increased, each distributor shall take inventory of tax-exempt stamps and tax stamps on hand, including stamps affixed to packages of cigarettes.

B. Each distributor shall report the total number

of tax-exempt stamps and tax stamps in inventory on the date on which the cigarette tax increases and pay the cigarette inventory tax due."

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

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

A. Except as provided in Section 7-12-6 NMSA 1978, all cigarettes shall be placed in packages or containers to which a stamp shall be affixed. Only a distributor with a valid license issued pursuant to the Cigarette Tax Act may purchase or obtain unaffixed tax-exempt stamps or tax stamps. A distributor shall not sell or provide unaffixed stamps to another distributor, manufacturer, export warehouse proprietor or importer with a valid permit pursuant to 26 U.S.C. 5713 or any other person.

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

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

D. Packages shall contain cigarettes in lots of twenty or twenty-five.

E. Unless the requirements of this section are

waived pursuant to Section 7-12-6 NMSA 1978, a tax stamp shall be affixed to each package of cigarettes subject to the cigarette tax and a tax-exempt stamp shall be affixed to each package of cigarettes not subject to the cigarette tax pursuant to Section 7-12-4 NMSA 1978.

F. A tax-exempt stamp is not an excise tax stamp for purposes of determining units sold pursuant to Section 6-4-12 NMSA 1978.

G. Stamps shall be affixed inside the boundaries of New Mexico, unless the department has granted a license allowing a person to affix stamps outside New Mexico."

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

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

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

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

A. Only the department shall sell stamps. Stamps may be sold by the department only to a distributor.

B. Stamps shall display a serial number. Stamps

bearing the same serial number shall not be sold to more than one distributor. The department shall keep records of the serial numbers of the stamps provided to each distributor.

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

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

(1) one percent less than the face value of the first thirty thousand dollars (\$30,000) of stamps purchased in one calendar month;

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

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

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

F. Payment for tax stamps shall be made on or before the twenty-fifth day of the month following the month in which the sale of stamps by the department is made.

G. Tax-exempt stamps shall be provided only to distributors and shall be free of charge; provided that the

distributor is in full compliance with the reporting requirements of the Cigarette Tax Act and rules adopted pursuant to that act."

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

"7-12-9.1. LICENSING--GENERAL LICENSING PROVISIONS.--

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

B. The department shall issue a license for a term not to exceed one year.

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

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

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

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

(b) if the applicant is a corporation, the name and address of each of its officers;

(2) the address of the applicant's principal

place of business and every location where the applicant's business is conducted; and

(3) any other information the department may require.

E. The department may issue a distributor's license and a manufacturer's license to the same person.

F. Persons licensed as manufacturers or distributors may sell stamped cigarettes at retail.

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

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

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

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

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

(5) the applicant is a manufacturer and

imports cigarettes into the United States that are in violation of 19 U.S.C. 1681a or manufactures cigarettes that do not comply with the Federal Cigarette Labeling and Advertising Act.

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

I. As used in this section, "applicant" includes a person or persons owning, directly or indirectly, in the aggregate, more than ten percent of the ownership interest in the business holding or applying for a license pursuant to the Cigarette Tax Act."

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

"7-12-9.2. DISTRIBUTOR'S LICENSE.--

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

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

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

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

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

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

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

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

"7-12-9.3. MANUFACTURER'S LICENSE.--

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

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

(1) manufacture, produce and package cigarettes;

(2) receive imported cigarettes;

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

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

Section 10. A new section of the Cigarette Tax Act,

Section 7-12-9.4 NMSA 1978, is enacted to read:

"7-12-9.4. RETAIL SALE OF CIGARETTES.--A retailer of cigarettes shall:

- A. only obtain cigarettes for resale from a distributor;
- B. only obtain stamped cigarettes;
- C. not sell cigarettes at wholesale or for resale unless the retailer is also a distributor; and
- D. comply with the provisions of the Cigarette Tax Act or any law or rule that applies to retailers of cigarettes."

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

"7-12-10.1. RETENTION OF INVOICES AND RECORDS--
INSPECTION BY DEPARTMENT.--

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

- (1) the names and addresses of all persons involved in the transaction, including the seller, purchaser, consignor and consignee. If a transaction involves an additional facility of the same manufacturer, distributor or

retailer, the invoice shall also show the address of the additional facility;

(2) the date;

(3) the price; and

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

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

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

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

Chapter 77, Section 11) is amended to read:

"7-12-11. EXPORT SELLERS--PHYSICAL SEGREGATION OF CIGARETTES TO BE EXPORTED.--

A. A distributor selling and shipping cigarettes outside New Mexico may maintain unstamped packages of cigarettes on the distributor's premises if the unstamped packages to be shipped outside the state are kept in a separate part of the distributor's place of business, physically segregated from packages of cigarettes to be sold inside New Mexico and clearly identified as packages of cigarettes for shipment outside the state. If packages of cigarettes to be sold outside New Mexico are intermingled with packages of cigarettes to be sold inside New Mexico, they shall be stamped and treated for purposes of the Cigarette Tax Act as packages of cigarettes to be sold inside New Mexico.

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

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

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

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

MEXICO.--

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

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

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

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

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

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

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

Section 14. A new section of the Cigarette Tax Act is

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enacted to read:

"REPORTS.--

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

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

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

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

(4) the quantity of New Mexico stamped packages of cigarettes that were distributed or shipped to another facility of the same distributor within New Mexico

during the reporting period and the address of that facility;

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

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

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

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

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

(10) an inventory of packages of cigarettes held for sale or distribution outside of New Mexico at the end

of the reporting period;

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

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

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

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

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

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

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

(3) within New Mexico to an Indian nation,

tribe or pueblo or to a person located on the land of an Indian nation, tribe or pueblo or to instrumentalities of the federal government during the reporting period and the name and address of each person, entity or instrumentality to whom each quantity was distributed or shipped.

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

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

"INTERGOVERNMENTAL AGREEMENTS--NO WAIVER OF SOVEREIGN IMMUNITY.--

A. The department may enter into an intergovernmental agreement with a tribe to:

- (1) enforce, administer or otherwise implement the provisions of the Cigarette Tax Act;
- (2) increase the ability of the department to account for packages of cigarettes imported into, sold or transferred within and exported from the state; and
- (3) provide for cooperative tax collection or tax administration of the cigarette tax.

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

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

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

"7-12-13.1. CIVIL PENALTIES.--

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

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

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

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

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

C. Contraband cigarettes in New Mexico and the equipment used to manufacture, package or stamp them are subject to seizure, forfeiture and destruction by the

department, its revenue officers or its agents or by other state or local peace officers.

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

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

"CRIMINAL OFFENSES--CRIMINAL PENALTIES--SEIZURE AND DESTRUCTION OF EVIDENCE.--

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

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

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

(1) for the first offense, guilty of a

misdemeanor and when convicted shall be sentenced pursuant to Section 31-19-1 NMSA 1978; and

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

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

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

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

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

(3) a second or subsequent violation with a

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

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

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

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