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SENATE BILL 4

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO TAXATION; AMENDING AND ENACTING SECTIONS OF THE TOBACCO PRODUCTS TAX ACT TO CHANGE THE TITLE OF THE ACT TO THE "TOBACCO AND NICOTINE PRODUCTS TAX ACT", TO IMPOSE A TAX ON NICOTINE PRODUCTS, TO REQUIRE NICOTINE CONTENT LABELING ON ALL NICOTINE PRODUCTS AND TO PERMIT THE TAXATION AND REVENUE DEPARTMENT TO CONDUCT PERIODIC COMPLIANCE CHECKS TO ENSURE ACCURATE NICOTINE CONTENT LABELING ON NICOTINE PRODUCTS.

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

SECTION 1. Section 7-1-2 NMSA 1978 (being Laws 1965, Chapter 248, Section 2, as amended) is amended to read:

"7-1-2. APPLICABILITY.--The Tax Administration Act applies to and governs:

A. the administration and enforcement of the following taxes or tax acts as they now exist or may hereafter

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1 be amended:

- 2 (1) Income Tax Act;
- 3 (2) Withholding Tax Act;
- 4 (3) Venture Capital Investment Act;
- 5 (4) Gross Receipts and Compensating Tax Act
- 6 and any state gross receipts tax;
- 7 (5) Liquor Excise Tax Act;
- 8 (6) Local Liquor Excise Tax Act;
- 9 (7) any municipal local option gross receipts
- 10 tax;
- 11 (8) any county local option gross receipts
- 12 tax;
- 13 (9) Special Fuels Supplier Tax Act;
- 14 (10) Gasoline Tax Act;
- 15 (11) petroleum products loading fee, which fee
- 16 shall be considered a tax for the purpose of the Tax
- 17 Administration Act;
- 18 (12) Alternative Fuel Tax Act;
- 19 (13) Cigarette Tax Act;
- 20 (14) Estate Tax Act;
- 21 (15) Railroad Car Company Tax Act;
- 22 (16) Investment Credit Act, rural job tax
- 23 credit, Laboratory Partnership with Small Business Tax Credit
- 24 Act, Technology Jobs and Research and Development Tax Credit
- 25 Act, film production tax credit, New Mexico filmmaker tax

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1 credit, Affordable Housing Tax Credit Act and high-wage jobs
2 tax credit [~~and Research and Development Small Business Tax~~
3 ~~Credit Act~~];

4 (17) Corporate Income and Franchise Tax Act;

5 (18) Uniform Division of Income for Tax

6 Purposes Act;

7 (19) Multistate Tax Compact;

8 (20) Tobacco and Nicotine Products Tax Act;

9 and

10 (21) the telecommunications relay service
11 surcharge imposed by Section 63-9F-11 NMSA 1978, which
12 surcharge shall be considered a tax for the purposes of the Tax
13 Administration Act;

14 B. the administration and enforcement of the
15 following taxes, surtaxes, advanced payments or tax acts as
16 they now exist or may hereafter be amended:

17 (1) Resources Excise Tax Act;

18 (2) Severance Tax Act;

19 (3) any severance surtax;

20 (4) Oil and Gas Severance Tax Act;

21 (5) Oil and Gas Conservation Tax Act;

22 (6) Oil and Gas Emergency School Tax Act;

23 (7) Oil and Gas Ad Valorem Production Tax Act;

24 (8) Natural Gas Processors Tax Act;

25 (9) Oil and Gas Production Equipment Ad

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1 Valorem Tax Act;

2 (10) Copper Production Ad Valorem Tax Act;

3 (11) any advance payment required to be made
4 by any act specified in this subsection, which advance payment
5 shall be considered a tax for the purposes of the Tax

6 Administration Act;

7 (12) Enhanced Oil Recovery Act;

8 (13) Natural Gas and Crude Oil Production
9 Incentive Act; and

10 (14) intergovernmental production tax credit
11 and intergovernmental production equipment tax credit;

12 C. the administration and enforcement of the
13 following taxes, surcharges, fees or acts as they now exist or
14 may hereafter be amended:

15 (1) Weight Distance Tax Act;

16 (2) the workers' compensation fee authorized
17 by Section 52-5-19 NMSA 1978, which fee shall be considered a
18 tax for purposes of the Tax Administration Act;

19 (3) Uniform Unclaimed Property Act (1995);

20 (4) 911 emergency surcharge and the network
21 and database surcharge, which surcharges shall be considered
22 taxes for purposes of the Tax Administration Act;

23 (5) the solid waste assessment fee authorized
24 by the Solid Waste Act, which fee shall be considered a tax for
25 purposes of the Tax Administration Act;

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1 (6) the water conservation fee imposed by
2 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
3 for the purposes of the Tax Administration Act; and

4 (7) the gaming tax imposed pursuant to the
5 Gaming Control Act; and

6 D. the administration and enforcement of all other
7 laws, with respect to which the department is charged with
8 responsibilities pursuant to the Tax Administration Act, but
9 only to the extent that the other laws do not conflict with the
10 Tax Administration Act."

11 SECTION 2. Section 7-12A-1 NMSA 1978 (being Laws 1986,
12 Chapter 112, Section 2) is amended to read:

13 "7-12A-1. SHORT TITLE.--Chapter 7, Article 12A NMSA 1978
14 may be cited as the "Tobacco and Nicotine Products Tax Act."

15 SECTION 3. Section 7-12A-2 NMSA 1978 (being Laws 1986,
16 Chapter 112, Section 3, as amended) is amended to read:

17 "7-12A-2. DEFINITIONS.--As used in the Tobacco and
18 Nicotine Products Tax Act:

19 A. "department" means the taxation and revenue
20 department, the secretary or any employee of the department
21 exercising authority lawfully delegated to that employee by the
22 secretary;

23 B. "distribute" means to sell or to give;

24 C. "electronic delivery device" means any
25 electronic device, whether composed of a heating element and

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1 battery or an electronic circuit, that provides a vapor of
2 nicotine, the use or inhalation of which simulates smoking;

3 ~~[G-]~~ D. "engaging in business" means carrying on or
4 causing to be carried on any activity with the purpose of
5 direct or indirect benefit;

6 ~~[D-]~~ E. "first purchaser" means a person engaging
7 in business in New Mexico who manufactures tobacco products or
8 nicotine products or who purchases or receives on consignment
9 tobacco products or nicotine products from any person outside
10 of New Mexico, which tobacco products or nicotine products are
11 to be distributed in New Mexico in the ordinary course of
12 business;

13 F. "nicotine product" means a liquid solution
14 containing nicotine that is intended for human consumption via
15 an electronic delivery device;

16 ~~[E-]~~ G. "person" means any individual, estate,
17 trust, receiver, cooperative association, club, corporation,
18 company, firm, partnership, joint venture, syndicate, limited
19 liability company, limited liability partnership, other
20 association or gas, water or electric utility owned or operated
21 by a county or municipality or other entity of the state;
22 "person" also means, to the extent permitted by law, a federal,
23 state or other governmental unit or subdivision or an agency,
24 department or instrumentality;

25 ~~[F-]~~ H. "product value" means the amount paid, net

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1 of any discounts taken and allowed, for tobacco products or, in
2 the case of tobacco products received on consignment, the value
3 of the tobacco products received or, in the case of tobacco
4 products manufactured and sold in New Mexico, the proceeds from
5 the sale by the manufacturer of the tobacco products; and

6 ~~[G-]~~ I. "tobacco product" means any product, other
7 than cigarettes, made from or containing tobacco but does not
8 include a nicotine product."

9 SECTION 4. Section 7-12A-4 NMSA 1978 (being Laws 1986,
10 Chapter 112, Section 5, as amended) is amended to read:

11 "7-12A-4. EXEMPTION--TOBACCO PRODUCTS TAX AND NICOTINE
12 PRODUCTS TAX.--

13 A. Exempted from the [~~tobacco products~~] tax [~~is the~~
14 ~~product value of~~] imposed by Sections 7-12A-3 and 7-12A-11 NMSA
15 1978 are tobacco products and nicotine products sold:

16 (1) to or by the United States or any agency
17 or instrumentality thereof;

18 (2) to the governing body or any enrolled
19 tribal member licensed by the governing body of an Indian
20 nation, tribe or pueblo to be distributed on the reservation or
21 pueblo grant of that Indian nation, tribe or pueblo; or

22 (3) to the state of New Mexico or any
23 political subdivision thereof.

24 B. As used in this section, the term "agency or
25 instrumentality" does not include persons who are agents or

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1 instrumentalities of the United States for a particular purpose
2 or only when acting in a particular capacity or corporate
3 agencies or instrumentalities."

4 SECTION 5. Section 7-12A-5 NMSA 1978 (being Laws 1986,
5 Chapter 112, Section 6) is amended to read:

6 "7-12A-5. DEDUCTION--INTERSTATE SALES.--

7 A. The product value of tobacco products sold and
8 shipped or given and shipped to a person in another state may
9 be deducted from the product value subject to the tax imposed
10 by the Tobacco and Nicotine Products Tax Act; provided that the
11 department may require the person to submit proof satisfactory
12 to the department that the tobacco products have been sold and
13 shipped or given and shipped to a person in another state.

14 B. The milligrams of nicotine contained in nicotine
15 products sold and shipped or given and shipped to a person in
16 another state may be deducted from the milligrams of nicotine
17 contained in nicotine products subject to the tax imposed by
18 the Tobacco and Nicotine Products Tax Act; provided that the
19 department may require the person to submit proof satisfactory
20 to the department that the nicotine products have been sold and
21 shipped or given and shipped to a person in another state."

22 SECTION 6. Section 7-12A-6 NMSA 1978 (being Laws 1986,
23 Chapter 112, Section 7, as amended) is amended to read:

24 "7-12A-6. REFUND OR CREDIT OF TAX.--The department shall
25 allow a claim for refund or credit, as provided in Sections

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1 7-1-26 and 7-1-29 NMSA 1978, for tobacco products tax and
2 nicotine products tax paid on tobacco products or nicotine
3 products destroyed or returned to the seller by the first
4 purchaser as spoiled or otherwise unfit for sale or
5 consumption; provided that the department may require proof
6 satisfactory to the department that the tobacco products or
7 nicotine products have been destroyed or returned and that the
8 person claiming the refund is the person who paid the tobacco
9 products tax or nicotine products tax on the destroyed or
10 returned tobacco products or nicotine products."

11 SECTION 7. Section 7-12A-7 NMSA 1978 (being Laws 1986,
12 Chapter 112, Section 8) is amended to read:

13 "7-12A-7. REGISTRATION NECESSARY TO ENGAGE IN BUSINESS OF
14 SELLING TOBACCO PRODUCTS OR NICOTINE PRODUCTS IN NEW MEXICO.--
15 Each person engaged in the business of selling tobacco products
16 or nicotine products in New Mexico shall register and comply
17 with the provisions of Section 7-1-12 NMSA 1978. Every person
18 selling tobacco products or nicotine products in New Mexico
19 shall furnish such information as may be requested by the
20 department concerning the person's vending machines or other
21 places of business where tobacco products or nicotine products
22 are sold."

23 SECTION 8. Section 7-12A-8 NMSA 1978 (being Laws 1986,
24 Chapter 112, Section 9, as amended) is amended to read:

25 "7-12A-8. RETENTION OF INVOICES AND RECORDS--INSPECTION

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1 BY DEPARTMENT.--

2 A. Each person who sells tobacco products or
3 nicotine products in New Mexico for resale in New Mexico shall
4 maintain a file of copies of the invoices of sale for three
5 years from the end of the year the sale was made. The invoices
6 shall indicate the date of sale of the tobacco products or
7 nicotine products, quantity of tobacco products or nicotine
8 products sold, the price received and the name and address of
9 the purchaser.

10 B. Each person who sells tobacco products or
11 nicotine products in New Mexico shall maintain a file of copies
12 of invoices under which the person purchased tobacco products
13 or nicotine products for three years from the end of the year
14 during which tobacco products or nicotine products were
15 purchased. The invoices shall indicate the date of purchase,
16 the quantity of tobacco products or nicotine products
17 purchased, the price paid and the name and address of the
18 seller.

19 C. All invoices required to be kept under this
20 section may be inspected by the department along with any stock
21 of tobacco products or nicotine products in the possession of
22 the purchaser or seller."

23 SECTION 9. Section 7-12A-9 NMSA 1978 (being Laws 1986,
24 Chapter 112, Section 10) is amended to read:

25 "7-12A-9. PENALTIES.--Any person selling tobacco products

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1 or nicotine products in New Mexico and required by the
2 provisions of Section 7-12A-8 NMSA 1978 to retain invoices who
3 willfully fails to retain the invoices shall, upon conviction
4 thereof, be fined not less than fifty dollars (\$50.00) or more
5 than five hundred dollars (\$500). Jurisdiction over such
6 actions is [~~hereby~~] granted to the magistrate courts."

7 SECTION 10. Section 7-12A-10 NMSA 1978 (being Laws 1986,
8 Chapter 112, Section 11) is amended to read:

9 "7-12A-10. PROHIBITION.--The provisions of the Tobacco
10 and Nicotine Products Tax Act shall not apply in any case in
11 which New Mexico is prohibited from taxing under the
12 constitution of New Mexico or the constitution or laws of the
13 United States."

14 SECTION 11. A new section of the Tobacco and Nicotine
15 Products Tax Act, Section 7-12A-11 NMSA 1978, is enacted to
16 read:

17 "7-12A-11. [NEW MATERIAL] IMPOSITION AND RATE OF TAX--
18 DENOMINATION AS "NICOTINE PRODUCTS TAX"--DATE PAYMENT OF TAX
19 DUE.--

20 A. For the manufacture or acquisition of nicotine
21 products in New Mexico to be distributed in the ordinary course
22 of business and for the consumption of nicotine products in New
23 Mexico, there is imposed an excise tax at the rate of four
24 cents (\$.04) per milligram of nicotine contained in the
25 nicotine products.

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1 B. The tax imposed by Subsection A of this section
2 may be referred to as the "nicotine products tax".

3 C. The nicotine products tax shall be paid by the
4 first purchaser on or before the twenty-fifth day of the month
5 following the month in which the taxable event occurs."

6 SECTION 12. A new section of the Tobacco and Nicotine
7 Products Tax Act, Section 7-12A-12 NMSA 1978, is enacted to
8 read:

9 "7-12A-12. [NEW MATERIAL] NICOTINE PRODUCTS LABELING--
10 PERIODIC COMPLIANCE TESTING.--

11 A. Every manufacturer of nicotine products shall
12 affix a label to each unit containing a nicotine product to be
13 distributed in the state identifying the total quantity in
14 milligrams of nicotine contained in the nicotine product.

15 B. The department shall conduct periodic compliance
16 checks to ensure accurate reporting of nicotine content as
17 required by Subsection A of this section by obtaining samples
18 of nicotine products from retail locations throughout the
19 state. Samples collected pursuant to this subsection shall be
20 forwarded to the scientific laboratory division of the
21 department of health, which shall determine the nicotine
22 content of each sample and forward the results to the
23 department."

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