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HOUSE BILL 232

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Elizabeth "Liz" Thomson

AN ACT

RELATING TO TAXATION; INCREASING THE CIGARETTE TAX RATES;
INCREASING THE TOBACCO PRODUCTS TAX RATE; CREATING THE MEDICAID
TRUST FUND TO SUPPORT THE STATE MEDICAID PROGRAM; INCLUDING
ELECTRONIC SMOKING DEVICES IN THE DEFINITION OF "TOBACCO
PRODUCTS" IN THE TOBACCO PRODUCTS TAX ACT; DISTRIBUTING THE NEW
REVENUE FROM THE INCREASES IN THE CIGARETTE TAX AND THE TOBACCO
PRODUCTS TAX TO THE PUBLIC SCHOOL FUND FOR THE STATE
EQUALIZATION GUARANTEE DISTRIBUTION, THE MEDICAID TRUST FUND
AND THE DEPARTMENT OF HEALTH; AMENDING AND ENACTING SECTIONS OF
THE NMSA 1978.

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

SECTION 1. [NEW MATERIAL] MEDICAID TRUST FUND CREATED TO
SUPPORT STATE MEDICAID PROGRAM.--The "medicaid trust fund" is
created in the state treasury. The fund consists of

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1 distributions, appropriations, intergovernmental transfers to
2 the medicaid trust fund in compliance with federal law as
3 determined by the human services department, gifts, grants,
4 donations and bequests made to the fund. All income earned on
5 investment of the fund shall be credited to the fund, and money
6 in the fund shall not revert to any other fund at the end of a
7 fiscal year. Money in the fund may be appropriated by the
8 legislature to support the state medicaid program. Money
9 appropriated from the medicaid trust fund to the state medicaid
10 program shall be supplemental to any general fund
11 appropriations to the state medicaid program.

12 SECTION 2. Section 7-1-6.11 NMSA 1978 (being Laws 1983,
13 Chapter 211, Section 16, as amended by Laws 2017, Chapter 34,
14 Section 2 and by Laws 2017, Chapter 63, Section 9) is amended
15 to read:

16 "7-1-6.11. DISTRIBUTIONS OF CIGARETTE TAXES.--

17 A. A distribution pursuant to Section 7-1-6.1 NMSA
18 1978 shall be made to the comprehensive cancer center at the
19 university of New Mexico health sciences center in an amount
20 equal to [~~eighty-three~~] forty-six hundredths percent of the net
21 receipts, exclusive of penalties and interest, attributable to
22 the cigarette tax.

23 B. A distribution pursuant to Section 7-1-6.1 NMSA
24 1978 in an amount equal to [~~eight and eighty-nine~~] four and
25 eighty-three hundredths percent of the net receipts, exclusive

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1 of penalties and interest, attributable to the cigarette tax,
2 shall be made, on behalf of and for the benefit of the
3 university of New Mexico health sciences center, to the New
4 Mexico finance authority.

5 C. A distribution pursuant to Section 7-1-6.1 NMSA
6 1978 in an amount equal to [~~three and seventy-four~~] two and
7 four hundredths percent of the net receipts, exclusive of
8 penalties and interest, attributable to the cigarette tax shall
9 be made to the New Mexico finance authority for land
10 acquisition and the planning, designing, construction and
11 equipping of department of health facilities or improvements to
12 such facilities.

13 D. A distribution pursuant to Section 7-1-6.1 NMSA
14 1978 in an amount equal to [~~nine and seventy-seven hundredths~~]
15 five and three-tenths percent of the net receipts, exclusive of
16 penalties and interest, attributable to the cigarette tax shall
17 be made to the New Mexico finance authority for deposit in the
18 credit enhancement account created in the authority.

19 E. A distribution pursuant to Section 7-1-6.1 NMSA
20 1978 in an amount equal to [~~sixty-two~~] thirty-five hundredths
21 percent of the net receipts, exclusive of penalties and
22 interest, attributable to the cigarette tax shall be made, on
23 behalf of and for the benefit of the rural county cancer
24 treatment fund, to the New Mexico finance authority.

25 F. A distribution pursuant to Section 7-1-6.1 NMSA

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1 1978 in an amount equal to nineteen and three hundredths
2 percent of the net receipts, exclusive of penalties and
3 interest, attributable to the cigarette tax shall be made to
4 the public school fund for the state equalization guarantee
5 distribution.

6 G. A distribution pursuant to Section 7-1-6.1 NMSA
7 1978 in an amount equal to nineteen and three hundredths
8 percent of the net receipts, exclusive of penalties and
9 interest, attributable to the cigarette tax shall be made to
10 the medicaid trust fund.

11 H. A distribution pursuant to Section 7-1-6.1 NMSA
12 1978 in an amount equal to seven and one-half percent of the
13 net receipts, exclusive of penalties and interest, attributable
14 to the cigarette tax shall be made to the department of health
15 for tobacco use prevention and cessation programs."

16 SECTION 3. A new section of the Tax Administration Act is
17 enacted to read:

18 "[NEW MATERIAL] DISTRIBUTION--TOBACCO PRODUCTS TAX TO THE
19 PUBLIC SCHOOL FUND FOR THE STATE EQUALIZATION GUARANTEE
20 DISTRIBUTION AND THE MEDICAID TRUST FUND.--

21 A. A distribution pursuant to Section 7-1-6.1 NMSA
22 1978 in an amount equal to thirty percent of the net receipts,
23 exclusive of penalties and interest, attributable to the
24 tobacco products tax shall be made to the public school fund
25 for the state equalization guarantee distribution.

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1 B. A distribution pursuant to Section 7-1-6.1 NMSA
2 1978 in an amount equal to thirty percent of the net receipts,
3 exclusive of penalties and interest, attributable to the
4 tobacco products tax shall be made to the medicaid trust fund."

5 SECTION 4. Section 7-12-2 NMSA 1978 (being Laws 1971,
6 Chapter 77, Section 2, as amended) is amended to read:

7 "7-12-2. DEFINITIONS.--As used in the Cigarette Tax Act:

8 A. "cigarette" means:

9 (1) any roll of tobacco or any substitute for
10 tobacco wrapped in paper or in any substance not containing
11 tobacco;

12 (2) any roll of tobacco that is wrapped in any
13 substance containing tobacco, other than one hundred percent
14 natural leaf tobacco, which, because of its appearance, the
15 type of tobacco used in the filler, its packaging and labeling,
16 or its marketing and advertising, is likely to be offered to,
17 or purchased by, consumers as a cigarette, as described in
18 Paragraph (1) of this subsection;

19 (3) bidis and kreteks; or

20 (4) any other roll of tobacco that is defined
21 as a "cigarette" in Subsection D of Section 6-4-12 NMSA 1978;

22 B. "close of business" means that time when a
23 business ceases to operate for the remainder of the day or
24 12:00 a.m., if the business is open and conducting business at
25 12:00 a.m.;

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1 C. "contraband cigarettes" means cigarette packages
2 with counterfeit stamps, counterfeit cigarettes, cigarettes
3 that have false or fraudulent manufacturing labels, cigarettes
4 not sold in packages of [~~five, ten~~] twenty or twenty-five,
5 cigarette packages without the tax, tax-credit or tax-exempt
6 stamps required by the Cigarette Tax Act and cigarettes
7 produced by a manufacturer or in a brand family not included in
8 the directory;

9 D. "department" means the taxation and revenue
10 department, the secretary of taxation and revenue or any
11 employee of the department exercising authority lawfully
12 delegated to that employee;

13 E. "directory" means a listing of tobacco product
14 manufacturers and brand families that is developed, maintained
15 and published by the attorney general under the Tobacco Escrow
16 Fund Act;

17 F. "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 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

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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 G. "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 H. "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 I. "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 J. "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 K. "qualifying tribal cigarette tax" means an
22 excise, privilege or similar tax at a minimum rate of

23 [~~(1) three and seventy-five hundredths cents~~
24 ~~(\$.0375)] eleven and one-fourth cents (\$.1125) per cigarette if
25 the cigarettes are packaged in lots of twenty or twenty-five;~~

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1 [~~(2) seven and one-half cents (\$.075) per~~
2 ~~cigarette if the cigarettes are packaged in lots of ten; or~~
3 ~~(3) fifteen cents (\$.15) per cigarette if the~~
4 ~~cigarettes are packaged in lots of five]~~

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

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

14 N. "tax stamp" means a stamp that has a specific
15 cigarette tax value pursuant to the Cigarette Tax Act;

16 O. "tax-credit stamp" means a stamp that indicates
17 the cigarette package bearing the stamp is to be or has been
18 sold by a retailer located on land of a tribe that has imposed
19 a qualifying tribal cigarette tax;

20 P. "tax-exempt stamp" means a stamp that indicates
21 a tax-exempt status pursuant to the Cigarette Tax Act;

22 Q. "tribal member" means a person who is recognized
23 by the governing body of an Indian tribe to be an enrolled
24 member of that Indian tribe;

25 R. "tribe" means a federally recognized Indian

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1 nation, tribe or pueblo located wholly or partially in New
2 Mexico, including:

3 (1) a political subdivision, agency or
4 department of a tribe;

5 (2) an incorporated or unincorporated
6 enterprise of a tribe, one or more tribes or a political
7 subdivision of a tribe; or

8 (3) a corporation considered to be an Indian
9 or a tribe by the federal government or the state; and

10 S. "tribe's land" means the reservation, pueblo
11 grant or trust land of a tribe and property held by the United
12 States in trust jointly for the nineteen New Mexico Indian
13 pueblos pursuant to Public Law 95-232."

14 SECTION 5. Section 7-12-3 NMSA 1978 (being Laws 1971,
15 Chapter 77, Section 3, as amended) is amended to read:

16 "7-12-3. EXCISE TAX ON CIGARETTES--RATES.--

17 A. For the privilege of selling, giving or
18 consuming cigarettes in New Mexico, there is levied an excise
19 tax [~~at the following rates~~] of fifteen and eight-tenths cents
20 (\$.158) for each cigarette sold, given or consumed in this
21 state

22 [~~(1) eight and three-tenths cents (\$.083)~~] if
23 the cigarettes are packaged in lots of twenty or twenty-five

24 [~~(2) sixteen and six-tenths cents (\$.166) if~~
25 ~~the cigarettes are packaged in lots of ten; or~~

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1 ~~(3) thirty-three and two-tenths cents (\$.332)~~
2 ~~if the cigarettes are packaged in lots of five].~~

3 B. The tax imposed by this section shall be
4 referred to as the "cigarette tax".

5 SECTION 6. Section 7-12A-2 NMSA 1978 (being Laws 1986,
6 Chapter 112, Section 3, as amended) is amended to read:

7 "7-12A-2. DEFINITIONS.--As used in the Tobacco Products
8 Tax Act:

9 A. "department" means the taxation and revenue
10 department, the secretary or any employee of the department
11 exercising authority lawfully delegated to that employee by the
12 secretary;

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

14 C. "electronic smoking device" means any device
15 that can be used to deliver aerosolized or vaporized nicotine
16 to a person inhaling from the device, including an e-cigarette,
17 e-cigar, e-pipe, vape pen or hookah, and any:

18 (1) component, part or accessory of such a
19 device, whether or not sold separately; or

20 (2) substance intended to be aerosolized or
21 vaporized during the use of the device; but "electronic smoking
22 device" does not include any battery or battery charger when
23 sold separately or drugs, devices or combination products as
24 defined in the federal Food, Drug, and Cosmetic Act and as
25 authorized for sale by the United States food and drug

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1 administration;

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

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

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

20 [F-] G. "product value" means the amount paid, net
21 of any discounts taken and allowed, for tobacco products or, in
22 the case of tobacco products received on consignment, the value
23 of the tobacco products received or, in the case of tobacco
24 products manufactured and sold in New Mexico, the proceeds from
25 the sale by the manufacturer of the tobacco products; and

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1 [~~G-~~] H. "tobacco product" means:

2 (1) any product, other than cigarettes, made
3 of or derived from [~~or containing~~] tobacco and intended for
4 human consumption or likely to be consumed, whether smoked,
5 heated, chewed, absorbed, dissolved, inhaled or ingested by any
6 means, including a cigar, pipe tobacco, chewing tobacco, snuff,
7 snus or an electronic smoking device; and

8 (2) any component or accessory used to consume
9 a tobacco product, including filters, rolling papers, pipes or
10 liquids used in electronic smoking devices, but not including
11 drugs, devices or combination products as defined in the
12 federal Food, Drug, and Cosmetic Act and as authorized for sale
13 by the United States food and drug administration."

14 SECTION 7. Section 7-12A-3 NMSA 1978 (being Laws 1986,
15 Chapter 112, Section 4, as amended) is amended to read:

16 "7-12A-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS
17 "TOBACCO PRODUCTS TAX"--DATE PAYMENT OF TAX DUE.--

18 A. For the privilege of engaging in business to
19 manufacture [~~or acquisition of~~], acquire or distribute tobacco
20 products [~~in New Mexico to be distributed~~] in the ordinary
21 course of business and for the [~~consumption of~~] privilege of
22 consuming tobacco products in New Mexico, there is imposed an
23 excise tax at the rate of [~~twenty-five~~] seventy-six percent of
24 the product value of the tobacco products.

25 B. The tax imposed by Subsection A of this section

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may be referred to as the "tobacco products tax".

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

SECTION 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2018.

