

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR

HOUSE BILL 3

49<sup>TH</sup> LEGISLATURE - STATE OF NEW MEXICO - SECOND SPECIAL SESSION, 2010

AN ACT

RELATING TO TAXATION; TEMPORARILY INCREASING THE CIGARETTE TAX BY SEVENTY-FIVE CENTS (\$.75) PER PACK; PROVIDING FOR A TRIBAL TAX-CREDIT STAMP FOR TRIBES THAT IMPOSE A TRIBAL CIGARETTE TAX; ADJUSTING THE DISTRIBUTIONS OF THE CIGARETTE TAX AND DISCOUNTS FOR TAX STAMPS; AMENDING EXEMPTIONS FROM THE CIGARETTE TAX; DISTRIBUTING ADDITIONAL REVENUE ATTRIBUTABLE TO THE INCREASE IN THE CIGARETTE TAX TO THE GENERAL FUND AND THE PUBLIC SCHOOL FUND.

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

Section 1. Section 7-1-6.11 NMSA 1978 (being Laws 1983, Chapter 211, Section 16, as amended) is amended to read:

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

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county and municipality recreational fund in an amount equal to [one and thirty five] eighty-three hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county and municipal cigarette tax fund in an amount equal to [two and sixty-nine] one and sixty-six hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

C. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the cancer research and treatment center at the university of New Mexico health sciences center in an

amount equal to [one and thirty-five] eighty-three hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

D. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the New Mexico finance authority in an amount equal to [two and two] one and twenty-five hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

E. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to [fourteen and thirty-seven] eight and eighty-nine hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax, shall be made, on behalf of and for the benefit of the university of New Mexico health sciences center, to the New Mexico finance authority.

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

G. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to [fifteen and seventy-nine] nine and seventy-seven hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax shall be made to the New Mexico finance authority for deposit in the credit enhancement account created in the authority.

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

I. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the public

school fund in an amount equal to twelve and twenty-two hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax, which amount is appropriated to the state equalization guarantee distribution to increase the unit value for fiscal year 2011 and subsequent fiscal years and shall not revert to the general fund."

Section 2. 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:

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

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

(3) bidis and kreteks; or

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

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

[B-] C. "contraband cigarettes" means cigarette packages with counterfeit stamps, counterfeit cigarettes, cigarettes that have false or fraudulent manufacturing labels, cigarettes not sold in packages of five, ten, twenty or twenty-five, cigarette packages without the tax, tax-credit or tax-exempt stamps required by the Cigarette Tax Act and

cigarettes produced by a manufacturer or in a brand family not included in the directory;

[C.] D. "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.] E. "directory" means a listing of tobacco product manufacturers and brand families that is developed, maintained and published by the attorney general under the Tobacco Escrow Fund Act;

[E.] F. "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;

[F.] G. "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;

[G.] H. "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;

[H.] I. "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;

[I.] J. "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;

K. "qualifying tribal cigarette tax" means an excise, privilege or similar tax at a minimum rate of:

(1) three and seventy-five hundredths cents (\$.0375) per cigarette if the cigarettes are packaged in lots of twenty or twenty-five;

(2) seven and one-half cents (\$.075) per cigarette if the cigarettes are packaged in lots of ten; or

(3) fifteen cents (\$.15) per cigarette if the cigarettes are packaged in lots of five;

[J.] L. "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;

[K.] M. "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";

[L.] N. "tax stamp" means a stamp that has a specific cigarette tax value pursuant to the Cigarette Tax Act; [and]

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

[N.] P. "tax-exempt stamp" means a stamp that indicates a tax-exempt status pursuant to the Cigarette Tax Act;

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

R. "tribe" means a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico, including:

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

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

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

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

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

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

A. For the privilege of selling, giving or consuming cigarettes in New Mexico, there is levied an excise tax at the following rates for each cigarette sold, given or consumed in this state:

(1) [four and fifty five hundredths cents (\$.0455)] eight and three-tenths cents (\$.083) if the cigarettes are packaged in lots of twenty or twenty-five;

(2) [nine and ten hundredths cents (\$.091)] sixteen and six-tenths cents (\$.166) if the cigarettes are packaged in lots of ten; or

(3) [eighteen and twenty hundredths cents (\$.182)] thirty-three and two-tenths cents (\$.332) if the cigarettes are packaged in lots of five.

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

Section 4. 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, tax-credit stamps or tax stamps, whether or not affixed to packages of cigarettes, [or] at the close of business on the day prior to 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 and tax-credit 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 5. Section 7-12-3.2 NMSA 1978 (being Laws 1986, Chapter 13, Section 4, as amended) is amended to read:

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

A. [Or] At the close of business on the day prior to 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, tax-credit 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, tax-credit stamps and tax stamps in inventory [or] at the close of business on the day prior to the date on which the cigarette tax increases and pay the cigarette inventory tax due."

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

"7-12-4. EXEMPTION.--

A. Exempted from the cigarette tax are sales of cigarettes:

(1) to the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof;

(2) to ~~[the governing body]~~ a tribe, or to ~~[any enrolled]~~ a tribal member licensed by the governing body of ~~[any Indian nation]~~ a tribe ~~[or pueblo]~~ for use or sale on that ~~[reservation or pueblo grant]~~ tribe's land, if the tribe has in place a qualifying tribal cigarette tax; and

(3) sales ~~[which]~~ that the state is prohibited from taxing by a provision of the United States constitution or the constitution of the state of New Mexico.

B. As used in this section, the term "agency or instrumentality" does not include persons who are agents or instrumentalities of the United States for a particular purpose or only when acting in a particular capacity or corporate agencies or instrumentalities."

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

"[NEW MATERIAL] CIGARETTE TAX--TRIBAL SALES--TAX-CREDIT STAMPS.--

A. A distributor shall obtain from the department tax-credit stamps to affix to packages of cigarettes sold to a tribe or a tribal member licensed or otherwise approved by a tribe to sell cigarettes under the authority of the tribe on that tribe's land; provided that the tribe has certified to the department that the tribe has in effect a qualifying tribal cigarette tax.

B. Cigarettes sold by a tribe or tribal member bearing a tax-credit stamp shall be sold for use or sale on that tribe's land or on the land of another tribe or for use but not for resale in the state at a location off any tribe's land."

Section 8. 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, tax-credit 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 thirty days of receipt of those packages.

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

D. A distributor shall not affix a stamp to a package of cigarettes of a manufacturer or a brand family that is not included in the directory or sell, offer or possess for sale cigarettes of a manufacturer or brand family that is not included in the directory.

E. Packages shall contain cigarettes in lots of five, ten, twenty or twenty-five.

F. 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, a tax-credit stamp shall be affixed to each package of cigarettes subject to a qualifying tribal 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.

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

H. 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 9. Section 7-12-7 NMSA 1978 (being Laws 1971, Chapter 77, Section 7, as

amended by Laws 2006, Chapter 89, Section 3 and by Laws 2006, Chapter 91, Section 6) 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~~] fifty-five hundredths percent less than the face value of the first thirty thousand dollars (\$30,000) of stamps purchased in one calendar month;

(2) [~~eight tenths~~] forty-four hundredths 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~~] twenty-seven hundredths percent less than the face value of stamps purchased in excess of sixty thousand dollars (\$60,000) in one calendar month.

E. Tax-credit stamps shall be provided only to distributors and shall be provided 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.

[E.] F. 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.] G. 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.] H. 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 10. Section 7-12-9.2 NMSA 1978 (being Laws 2006, Chapter 91, Section 8, as amended) is amended 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 or a distributor;

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

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

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

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

Section 11. Section 7-12-17 NMSA 1978 (being Laws 1971, Chapter 77, Section 14, as amended) is amended to read:

**"7-12-17. REPORTING REQUIREMENTS--PENALTY.--**

A. Each person who sells in New Mexico cigarettes manufactured by that person or who receives on consignment or buys cigarettes either directly from the manufacturer or

from any out-of-state person for resale in New Mexico shall report to the department by the twenty-fifth day of each month that person's sales of cigarettes during the preceding month in each municipality and within that portion of each county outside of the municipalities located in that county. The department shall then advise the state treasurer of the proportion of the total sales of cigarettes for the month within each municipality and within that portion of each county outside of municipalities, including sales of cigarettes to tribes or tribal members in a county or municipality. The reports of such persons shall, upon receipt by the department, become public records.

B. Any person who sells in New Mexico cigarettes manufactured by that person or who receives on consignment or buys cigarettes for resale in New Mexico who willfully fails to render accurately the reports required by this section and any municipal or county officer who approves any expenditure or expends funds distributed from the county and municipality recreational fund for any purposes other than permitted by Section 7-12-15 NMSA 1978 is guilty of a petty misdemeanor.

C. Any tobacco product manufacturer, stamping agent or importer of cigarettes, or any officer, employee or agent of any such entity, who knowingly makes a materially false statement in any record required to be kept by the Cigarette Tax Act, or in any report or return required to be filed with the department by the Cigarette Tax Act, is guilty of a fourth degree felony."

Section 12. Section 7-12-18 NMSA 1978 (being Laws 2006, Chapter 91, Section 14, as amended) is amended to read:

"7-12-18. 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 unstamped packages of cigarettes that were distributed or shipped to another distributor within New Mexico during the reporting period and the name and address of each person to whom each quantity was distributed or shipped;
- (5) 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;
- (6) 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]~~ a tribe or tribal member 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;
- (7) an inventory of stamped and unstamped packages of cigarettes held for sale or distribution within New Mexico at the end of the reporting period;
- (8) an inventory of stamped and unstamped packages of cigarettes for sale or distribution outside of New Mexico at the beginning of the reporting period;

(9) 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;

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

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

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

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

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

(15) 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]~~ a tribe or tribal member 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 13. Section 7-12-19 NMSA 1978 (being Laws 2006, Chapter 91, Section 15) is amended to read:

**"7-12-19. 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 14. Section 7-1-6.11 NMSA 1978 (being Laws 1983, Chapter 211, Section 16, as amended) is repealed and a new Section 7-1-6.11 NMSA 1978 is enacted to read:

**"7-1-6.11. [NEW MATERIAL] DISTRIBUTIONS OF CIGARETTE TAXES--**

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county and municipality recreational fund in an amount equal to one and thirty-five hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette

tax.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county and municipal cigarette tax fund in an amount equal to two and sixty-nine hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

C. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the cancer research and treatment center at the university of New Mexico health sciences center in an amount equal to one and thirty-five hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

D. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the New Mexico finance authority in an amount equal to two and two-hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

E. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to fourteen and thirty-seven hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax, shall be made, on behalf of and for the benefit of the university of New Mexico health sciences center, to the New Mexico finance authority.

F. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to six and five-hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax shall be made to the New Mexico finance authority for land acquisition and the planning, designing, construction and equipping of department of health facilities or improvements to such facilities.

G. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to fifteen and seventy-nine hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax shall be made to the New Mexico finance authority for deposit in the credit enhancement account created in the authority.

H. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to one

percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax shall be made, on behalf of and for the benefit of the rural county cancer treatment fund, to the New Mexico finance authority."

Section 15. Section 7-12-2 NMSA 1978 (being Laws 1971, Chapter 77, Section 2, as amended) is repealed and a new Section 7-12-2 NMSA 1978 is enacted to read:

"7-12-2. [NEW MATERIAL] DEFINITIONS.--As used in the Cigarette Tax Act:

A. "cigarette" means:

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

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

(3) bidis and kreteks; or

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

B. "contraband cigarettes" means cigarette packages with counterfeit stamps, counterfeit cigarettes, cigarettes that have false or fraudulent manufacturing labels, cigarettes not sold in packages of five, ten, twenty or twenty-five, cigarette packages without the tax or tax-exempt stamps required by the Cigarette Tax Act and cigarettes produced by a manufacturer or in a brand family not included in the directory;

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

E. "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;

F. "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;

G. "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;

H. "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;

I. "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;

J. "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;

K. "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";

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

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

Section 16. Section 7-12-3 NMSA 1978 (being Laws 1971, Chapter 77, Section 3, as amended) is repealed a new Section 7-12-3 NMSA 1978 is enacted to read:

**"7-12-3. [NEW MATERIAL] EXCISE TAX ON CIGARETTES--RATES--**

A. For the privilege of selling, giving or consuming cigarettes in New Mexico, there is levied an excise tax at the following rates for each cigarette sold, given or consumed in this state:

(1) four and fifty-five hundredths cents (\$.0455) if the cigarettes are packaged in lots of twenty or twenty-five;

(2) nine and ten-hundredths cents (\$.091) if the cigarettes are packaged in lots of ten; or

(3) eighteen and twenty-hundredths cents (\$.182) if the cigarettes are packaged in lots of five.

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

Section 17. Section 7-12-3.1 NMSA 1978 (being Laws 1986, Chapter 13, Section 3, as amended) is repealed and a new Section 7-12-3.1 NMSA 1978 is enacted to read:

**"7-12-3.1. [NEW MATERIAL] 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 18. Section 7-12-3.2 NMSA 1978 (being Laws 1986, Chapter 13, Section 4, as amended) is repealed and a new Section 7-12-3.2 NMSA 1978 is enacted to read:

**"7-12-3.2. [NEW MATERIAL] 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 19. Section 7-12-4 NMSA 1978 (being Laws 1971, Chapter 77, Section 4, as amended) is repealed and a new Section 7-12-4 NMSA 1978 is enacted to read:

**"7-12-4. [NEW MATERIAL] EXEMPTION.--**

A. Exempted from the cigarette tax are sales of cigarettes:

(1) to the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof;

(2) to the governing body, or to any enrolled tribal member licensed by the governing body, of any Indian nation, tribe or pueblo for use or sale on that reservation or pueblo grant; and

(3) sales that the state is prohibited from taxing by a provision of the United States constitution or the constitution of the state of New Mexico.

B. As used in this section, the term "agency or instrumentality" does not include persons who are agents or instrumentalities of the United States for a particular purpose or only when acting in a particular capacity or corporate agencies or instrumentalities."

Section 20. Section 7-12-5 NMSA 1978 (being Laws 1971, Chapter 77, Section 5, as amended) is repealed and a new Section 7-12-5 NMSA 1978 is enacted to read:

**"7-12-5. [NEW MATERIAL] 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 thirty days of receipt of those packages.

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

D. A distributor shall not affix a stamp to a package of cigarettes of a manufacturer or a brand family that is not included in the directory or sell, offer or possess for sale

cigarettes of a manufacturer or brand family that is not included in the directory.

E. Packages shall contain cigarettes in lots of five, ten, twenty or twenty-five.

F. 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.

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

H. 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 21. Section 7-12-7 NMSA 1978 (being Laws 1971, Chapter 77, Section 7, as amended) is repealed and a new Section 7-12-7 NMSA 1978 is enacted to read:

**"7-12-7. [NEW MATERIAL] 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 22. Section 7-12-9.2 NMSA 1978 (being Laws 2006, Chapter 91, Section 8, as amended) is repealed and a new Section 7-12-9.2 NMSA 1978 is enacted to read:

**"7-12-9.2. [NEW MATERIAL] 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 or a distributor;

(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 or to a distributor; and

(5) sell unstamped packages of cigarettes to a person licensed to distribute

cigarettes outside of New Mexico or to a distributor."

Section 23. Section 7-12-17 NMSA 1978 (being Laws 1971, Chapter 77, Section 14, as amended) is repealed and a new Section 7-12-17 NMSA 1978 is enacted to read:

**"7-12-17. [NEW MATERIAL] REPORTING REQUIREMENTS--PENALTY.--**

A. Each person who sells in New Mexico cigarettes manufactured by that person or who receives on consignment or buys cigarettes either directly from the manufacturer or from any out-of-state person for resale in New Mexico shall report to the department by the twenty-fifth day of each month that person's sales of cigarettes during the preceding month in each municipality and within that portion of each county outside of the municipalities located in that county. The department shall then advise the state treasurer of the proportion of the total sales of cigarettes for the month within each municipality and within that portion of each county outside of municipalities. The reports of such persons shall, upon receipt by the department, become public records.

B. Any person who sells in New Mexico cigarettes manufactured by that person or who receives on consignment or buys cigarettes for resale in New Mexico who willfully fails to render accurately the reports required by this section and any municipal or county officer who approves any expenditure or expends funds distributed from the county and municipality recreational fund for any purposes other than permitted by Section 7-12-15 NMSA 1978 is guilty of a petty misdemeanor.

C. Any tobacco product manufacturer, stamping agent or importer of cigarettes, or any officer, employee or agent of any such entity, who knowingly makes a materially false statement in any record required to be kept by the Cigarette Tax Act, or in any report or return required to be filed with the department by the Cigarette Tax Act is guilty of a fourth degree felony."

Section 24. Section 7-12-18 NMSA 1978 (being Laws 2006, Chapter 91, Section 14, as amended) is repealed and a new Section 7-12-18 NMSA 1978 is enacted to read:

"7-12-18. [NEW MATERIAL] 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 unstamped packages of cigarettes that were distributed or shipped to another distributor within New Mexico during the reporting period and the name and address of each person to whom each quantity was distributed or shipped;
- (5) 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;
- (6) 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;

- (7) an inventory of stamped and unstamped packages of cigarettes held for sale or distribution within New Mexico at the end of the reporting period;
- (8) an inventory of stamped and unstamped packages of cigarettes for sale or distribution outside of New Mexico at the beginning of the reporting period;
- (9) 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;
- (10) the quantity of packages of cigarettes that were distributed or shipped outside New Mexico during the reporting period;
- (11) an inventory of packages of cigarettes held for sale or distribution outside of New Mexico at the end of the reporting period;
- (12) the number of each type of stamp on hand at the beginning of the reporting period;
- (13) the number of each type of stamp purchased or received during the reporting period;
- (14) the number of each type of stamp applied during the reporting period; and
- (15) 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 25. Section 7-12-19 NMSA 1978 (being Laws 2006, Chapter 91, Section 15) is repealed and a new Section 7-12-19 NMSA 1978 is enacted to read:

**"7-12-19. [NEW MATERIAL] 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 26. **DELAYED REPEAL.--**Section 7 of this act is repealed effective July 1, 2014.

Section 27. **APPLICABILITY.--**

A. The distributions pursuant to the provisions of Section 1 of this act apply to receipts from the cigarette tax that are attributable to sales that occur on or after July 1, 2010.

B. The distributions pursuant to the provisions of Section 14 of this act apply to receipts from the cigarette tax that are attributable to sales that occur on or after July 1, 2014.

Section 28. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1 through 13 of this act is July 1, 2010.

B. The effective date of the provisions of Sections 14 through 25 of this act is July 1, 2014.