



The Legislature
of the
State of New Mexico

50th Legislature, 1st Session

LAWS 2011

CHAPTER _____

SENATE BILL 397,

with emergency clause

Introduced by

SENATOR LYNDA M. LOVEJOY



VETOED

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

AN ACT

RELATING TO TOBACCO SALES; INCLUDING CIGARETTE PACKS STAMPED
WITH TAX-CREDIT STAMPS IN THE DEFINITION OF "UNITS SOLD" FOR
DETERMINING ESCROW PAYMENTS DUE PURSUANT TO THE MASTER
SETTLEMENT AGREEMENT; AMENDING THE CIGARETTE TAX ACT;
DECLARING AN EMERGENCY.

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

SECTION 1. Section 6-4-12 NMSA 1978 (being Laws 1999,
Chapter 208, Section 1, as amended) is amended to read:

"6-4-12. DEFINITIONS.--As used in Sections 6-4-12
through 6-4-13.2 NMSA 1978:

A. "adjusted for inflation" means increased in
accordance with the formula for inflation adjustment set
forth in Exhibit C to the Master Settlement Agreement;

B. "affiliate" means a person who directly or
indirectly owns or controls, is owned or controlled by, or is
under common ownership or control with, another person.

Solely for purposes of this definition, the terms "owns", "is
owned" and "ownership" mean ownership of an equity interest,
or the equivalent thereof, of ten percent or more, and the
term "person" means an individual, partnership, committee,
association, corporation or any other organization or group
of persons;

C. "allocable share" means "Allocable Share" as

1 that term is defined in the Master Settlement Agreement;

2 D. "cigarette" means any product that contains
3 nicotine, is intended to be burned or heated under ordinary
4 conditions of use, and consists of or contains:

5 (1) any roll of tobacco wrapped in paper or
6 in any substance not containing tobacco;

7 (2) tobacco, in any form, that is functional
8 in the product and that, because of its appearance, the type
9 of tobacco used in the filler or its packaging and labeling,
10 is likely to be offered to, or purchased by, consumers as a
11 cigarette; or

12 (3) any roll of tobacco wrapped in any
13 substance containing tobacco that, because of its appearance,
14 the type of tobacco used in the filler or its packaging and
15 labeling, is likely to be offered to, or purchased by,
16 consumers as a cigarette described in Paragraph (1) of this
17 subsection. The term "cigarette" includes "roll-your-own"
18 (i.e., any tobacco that, because of its appearance, type,
19 packaging or labeling, is suitable for use and likely to be
20 offered to, or purchased by, consumers as tobacco for making
21 cigarettes). For purposes of this definition of "cigarette",
22 0.09 ounces of "roll-your-own" tobacco shall constitute one
23 individual "cigarette";

24 E. "Master Settlement Agreement" means the
25 settlement agreement (and related documents) entered into on

1 November 23, 1998 by the state and leading United States
2 tobacco product manufacturers;

3 F. "qualified escrow fund" means an escrow
4 arrangement with a federally or state chartered financial
5 institution having no affiliation with any tobacco product
6 manufacturer and having assets of at least one billion
7 dollars (\$1,000,000,000) where such arrangement requires that
8 such financial institution hold the escrowed funds' principal
9 for the benefit of releasing parties and prohibits the
10 tobacco product manufacturer placing the funds into escrow
11 from using, accessing or directing the use of the funds'
12 principal except as consistent with Subsection B of Section
13 6-4-13 NMSA 1978;

14 G. "released claims" means "Released Claims" as
15 that term is defined in the Master Settlement Agreement;

16 H. "releasing parties" means "Releasing Parties"
17 as that term is defined in the Master Settlement Agreement;

18 I. "tobacco product manufacturer" means an entity
19 that, after the date of enactment of this act, directly (and
20 not exclusively through any affiliate):

21 (1) manufactures cigarettes anywhere that
22 such manufacturer intends to be sold in the United States,
23 including cigarettes intended to be sold in the United States
24 through an importer (except where such importer is an
25 original participating manufacturer (as that term is defined

1 in the Master Settlement Agreement) that will be responsible
2 for the payments under the Master Settlement Agreement with
3 respect to such cigarettes as a result of the provisions of
4 Subsection II(mm) of the Master Settlement Agreement and that
5 pays the taxes specified in Subsection II(z) of the Master
6 Settlement Agreement, and provided that the manufacturer of
7 such cigarettes does not market or advertise such cigarettes
8 in the United States);

9 (2) is the first purchaser anywhere for
10 resale in the United States of cigarettes manufactured
11 anywhere that the manufacturer does not intend to be sold in
12 the United States; or

13 (3) becomes a successor of an entity
14 described in Paragraph (1) or (2) of this subsection.

15 The term "tobacco product manufacturer" shall not
16 include an affiliate of a tobacco product manufacturer unless
17 such affiliate itself falls within Paragraph (1), (2) or (3)
18 of this subsection; and

19 J. "units sold" means the number of individual
20 cigarettes sold in the state by the applicable tobacco
21 product manufacturer (whether directly or through a
22 distributor, retailer or similar intermediary or
23 intermediaries) during the year in question, as measured by:

24 (1) the excise tax due from cigarettes sold
25 bearing tax stamps pursuant to the Cigarette Tax Act;

1 (2) ounces of "roll-your-own" tobacco sold
2 on which the tobacco products tax is due pursuant to the
3 Tobacco Products Tax Act; or

4 (3) cigarettes sold bearing tax-exempt or
5 tax-credit stamps pursuant to the Cigarette Tax Act."

6 SECTION 2. A new Section 6-4-13.2 NMSA 1978 is enacted
7 to read:

8 "6-4-13.2. RULES--AMOUNT OF STATE EXCISE TAX PAID ON
9 CIGARETTES OF TOBACCO PRODUCT MANUFACTURER.--The secretary of
10 taxation and revenue shall adopt rules regarding how to
11 determine for each year:

12 A. the amount of state excise tax paid on the
13 cigarettes of a tobacco product manufacturer and on the
14 number of ounces of "roll-your-own" tobacco sold; and

15 B. the number of cigarettes bearing tax-exempt or
16 tax-credit stamps that are sold."

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

19 "7-12-5. AFFIXING STAMPS.--

20 A. Except as provided in Section 7-12-6 NMSA 1978,
21 all cigarettes shall be placed in packages or containers to
22 which a stamp shall be affixed. Only a distributor with a
23 valid license issued pursuant to the Cigarette Tax Act may
24 purchase or obtain unaffixed tax-exempt stamps, tax-credit
25 stamps or tax stamps. A distributor shall not sell or

1 provide unaffixed stamps to another distributor,
2 manufacturer, export warehouse proprietor or importer with a
3 valid permit pursuant to 26 U.S.C. 5713 or any other person.

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

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

12 D. A distributor shall not affix a tax stamp, a
13 tax-exempt stamp or a tax-credit stamp to a package of
14 cigarettes of a manufacturer or a brand family that is not
15 included in the directory or sell, offer or possess for sale
16 cigarettes of a manufacturer or brand family that is not
17 included in the directory.

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

20 F. Unless the requirements of this section are
21 waived pursuant to Section 7-12-6 NMSA 1978, a tax stamp
22 shall be affixed to each package of cigarettes subject to the
23 cigarette tax, a tax-credit stamp shall be affixed to each
24 package of cigarettes subject to a qualifying tribal
25 cigarette tax and a tax-exempt stamp shall be affixed to each

1 package of cigarettes not subject to the cigarette tax
2 pursuant to Section 7-12-4 NMSA 1978.

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

6 SECTION 4. EMERGENCY.--It is necessary for the public
7 peace, health and safety that this act take effect
8 immediately. _____

SB 397
Page 7

24 OFFICE OF THE GOVERNOR

25 STATE OF NEW MEXICO

RECEIVED

s/John A. Sanchez
John A. Sanchez, President
Senate

s/Lenore M. Naranjo
Lenore M. Naranjo, Chief Clerk
Senate

s/Ben Lujan
Ben Lujan, Speaker
House of Representatives

s/Stephen R. Arias
Stephen R. Arias, Chief Clerk
House of Representatives

Approved by me this _____ day of _____, 2011

s/Governor Susana Martinez
Governor Susana Martinez
State of New Mexico

11666100