

1 AN ACT
2 RELATING TO TOBACCO SALES; CLARIFYING THAT CIGARETTE PACKS
3 STAMPED WITH TAX-CREDIT STAMPS ARE "UNITS SOLD" FOR THE
4 PURPOSE OF DETERMINING ESCROW PAYMENTS DUE PURSUANT TO THE
5 MASTER SETTLEMENT AGREEMENT; AMENDING THE CIGARETTE TAX ACT.

6
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

10 "6-4-12. DEFINITIONS.--As used in Sections 6-4-12
11 through 6-4-13.2 NMSA 1978:

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

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

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

24 C. "allocable share" means "Allocable Share" as
25 that term is defined in the Master Settlement Agreement;

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

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

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

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

23 E. "Master Settlement Agreement" means the
24 settlement agreement (and related documents) entered into on
25 November 23, 1998 by the state and leading United States

1 tobacco product manufacturers;

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

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

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

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

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

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

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

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

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

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

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

25 (2) ounces of "roll-your-own" tobacco sold

1 on which the tobacco products tax is due pursuant to the
2 Tobacco Products Tax Act; or

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

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

7 "6-4-13.2. RULES--AMOUNT OF STATE EXCISE TAX PAID ON
8 CIGARETTES OF TOBACCO PRODUCT MANUFACTURER.--The secretary of
9 taxation and revenue shall adopt rules regarding how to
10 determine for each year:

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

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

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

18 "7-12-5. AFFIXING STAMPS.--

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

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

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

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

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

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

19 F. Unless the requirements of this section are
20 waived pursuant to Section 7-12-6 NMSA 1978, a tax stamp
21 shall be affixed to each package of cigarettes subject to the
22 cigarette tax, a tax-credit stamp shall be affixed to each
23 package of cigarettes subject to a qualifying tribal
24 cigarette tax and a tax-exempt stamp shall be affixed to each
25 package of cigarettes not subject to the cigarette tax

1 pursuant to Section 7-12-4 NMSA 1978.

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

5 SECTION 4. APPLICABILITY.--The provisions of this act
6 shall apply to units sold on or after July 1, 2012 pursuant to
7 Section 6-4-13 NMSA 1978.

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