

# ASSEMBLY, No. 1832

## STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

**Sponsored by:**

**Assemblyman HERB CONAWAY, JR.**

**District 7 (Burlington)**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**Assemblyman DANIEL R. BENSON**

**District 14 (Mercer and Middlesex)**

**SYNOPSIS**

Imposes a wholesale sales tax on electronic cigarettes and similar nicotine delivery products, changes tax base and requires licenses to conduct business in tobacco products.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT taxing certain sales of electronic cigarettes and similar  
2 nicotine delivery products, and concerning the licensing and  
3 taxation of tobacco products, amending and supplementing  
4 P.L.1990, c.39 and amending the title thereof.

5

6 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
7 *of New Jersey:*

8

9 1. The title of P.L.1990, c.39 (C.54:40B-1 et seq.) is amended  
10 to read as follows:

11 **AN ACT** concerning the taxation of cigarettes, electronic cigarettes  
12 and other tobacco products, supplementing Title 54 of the  
13 Revised Statutes, amending P.L.1982, c.40, amending and  
14 supplementing P.L.1948, c.65 and repealing section 4 of  
15 P.L.1982, c.40.

16 (cf: P.L.1990, c.39, title)

17

18 2. Section 1 of P.L.1990, c.39 (C.54:40B-1) is amended to read  
19 as follows:

20 1. Sections 1 through 14 of this act shall be known and may be  
21 cited as the "Tobacco Products and Nicotine Delivery Products  
22 Wholesale Sales and Use Tax Act."

23 (cf: P.L.1990, c.39, s.1)

24

25 3. Section 2 of P.L.1990, c.39 (C.54:40B-2) is amended to read  
26 as follows:

27 2. As used in sections 2 through 14 and section 20 of this act:

28 "Consumer" means a person except a distributor, manufacturer or  
29 wholesaler who acquires a tobacco product for consumption,  
30 storage or use in this State;

31 "Director" means the Director of the Division of Taxation in the  
32 Department of the Treasury;

33 "Distributor" means

34 a person engaged in the business of selling tobacco products in  
35 this State who brings, or causes to be brought into this State from  
36 without the State a tobacco product for sale within this State,

37 a person who makes or manufactures tobacco products in this  
38 State for sale in the State,

39 a person engaged in the business of selling tobacco products  
40 without this State who ships or transports tobacco products to a  
41 person in this State to be sold to a retail dealer, or

42 a person who receives tobacco products **【on which the tax has**  
43 **not or will not be】** without receiving proof that the tax has been or  
44 will be paid by another distributor;

45 "Dry snuff" means any finely cut, ground or powdered smokeless  
46 tobacco that is intended to be sniffed through the nasal cavity, but  
47 does not include moist snuff;

**EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1       "Electronic cigarette" means a device that can deliver nicotine,  
2 nicotine and flavor, or other chemicals or substances to a person  
3 inhaling from the device that electronically or by other means  
4 vaporizes a liquid solution into an aerosol mist or vapor, simulating  
5 the act of tobacco smoking. An electronic cigarette includes but is  
6 not limited to any components, parts or accessories thereof which  
7 contain nicotine, such as cartridges and vials, and includes any  
8 delivery device components, whether or not sold separately;

9       "Manufacturer" means a person, wherever resident or located,  
10 who manufactures or produces, or causes to be manufactured or  
11 produced, a tobacco product and sells, uses, stores or distributes the  
12 product regardless of whether it is intended for sale, use or  
13 distribution within or without this State;

14       "Moist snuff" means any finely cut, ground or powdered  
15 smokeless tobacco that is intended to be placed or dipped in the oral  
16 cavity, but does not include dry snuff;

17       "Person" means an individual, firm, corporation, copartnership,  
18 joint venture, association, receiver, trustee, guardian, executor,  
19 administrator, or any other person acting in a fiduciary capacity, or  
20 an estate, trust or group or combination acting as a unit, the State  
21 Government and any political subdivision thereof, and the plural as  
22 well as the singular, unless the intention to give a more limited  
23 meaning is disclosed by the context;

24       "Place of business" means a place where a tobacco product is  
25 sold or where a tobacco product is brought or kept for the purpose  
26 of sale or consumption, including so far as may be applicable a  
27 vessel, vehicle, airplane, train or vending machine;

28       "Receipt" means the sale price of a tobacco product valued in  
29 money, whether received in money or otherwise, including early  
30 payment discounts, and without any deduction or exclusion for  
31 expenses or costs whatsoever;

32       "Retail dealer" means a person who is engaged in this State in  
33 the business of selling any tobacco product at retail. A person  
34 placing a tobacco product vending machine at, or on any premises  
35 shall be deemed to be a retail dealer for each vending machine;

36       "Sale" means any sale, transfer, exchange, barter, or gift, in any  
37 manner or by any means whatsoever;

38       "Tobacco product" means any product containing, made, or  
39 derived from any tobacco, nicotine or other chemicals or substances  
40 for [personal] human consumption, or placement in the oral or  
41 nasal cavity or otherwise into the human body, whether chewed,  
42 smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested  
43 by other means, including, but not limited to, cigars, little cigars,  
44 cigarillos, chewing tobacco, pipe tobacco, smoking tobacco and  
45 their substitutes, [and] dry and moist snuff, and electronic  
46 cigarette, but does not include cigarette as defined in section 102 of  
47 the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.).  
48 "Tobacco product" does not include any product that is approved by

1 the United State Food and Drug Administration for tobacco  
2 cessation, nicotine cessation, or other therapeutic purpose if that  
3 product is marketed and sold solely for that approved purpose;

4 "Treasurer" means the State Treasurer;

5 "Use" means the exercise of any right or power incidental to the  
6 ownership of a tobacco product, including a sale at retail;

7 **["Wholesale price" means the actual price for which a**  
8 **manufacturer sells tobacco products to a distributor;]** and

9 "Wholesaler" means a person, wherever resident or located, other  
10 than a distributor as defined herein, who:

11 a. purchases tobacco products from any other person who  
12 purchases from the manufacturer and who acquires tobacco  
13 products solely for the purpose of bona fide resale to retail dealers  
14 or to other persons for the purposes of resale only; or

15 b. services retail outlets by the maintenance of an established  
16 place of business for the purchase of tobacco products including,  
17 but not limited to, the maintenance of warehousing facilities for the  
18 storage and distribution of tobacco products.

19 (cf: P.L.2006, c.37, s.4)

20  
21 4. Section 3 of P.L.1990, c.39 (C.54:40B-3) is amended to read  
22 as follows:

23 3. a. There is imposed a tax of 30% upon the **["wholesale price**  
24 **upon the]** receipt from every sale, use or distribution of a tobacco  
25 product **["within]" by a distributor or a wholesaler to a retail dealer**  
26 or **consumer in** this State, except that if the product is moist snuff,  
27 the tax shall be imposed as provided in section 3 of P.L.2006, c.37  
28 (C.54:40B-3.1) , and except that if the product is an electronic  
29 cigarette the tax shall be imposed as provided in section 5 of  
30 P.L. , c. (C. ) (pending before the Legislature as this bill).

31 b. Unless a tobacco product has already been or will be subject  
32 to the wholesale sales tax imposed in subsection a. of this section, if  
33 a distributor or wholesaler uses a tobacco product within this State,  
34 there is imposed upon the distributor or wholesaler a compensating  
35 use tax of 30% measured by the **["sales price]" receipt from a sale of**  
36 **a similar tobacco product to a distributor, except that if the product**  
37 **is moist snuff, the tax shall be imposed as provided in section 3 of**  
38 **P.L.2006, c.37 (C.54:40B-3.1), and except that if the product is an**  
39 **electronic cigarette the tax shall be imposed as provided in section 5**  
40 **of P.L. , c. (C. ) (pending before the Legislature as this bill).**

41 c. Unless a wholesale use tax is due pursuant to subsection b.  
42 of this section, if a distributor or wholesaler has not paid the  
43 wholesale sales tax imposed in subsection a. of this section upon a  
44 sale that is subject to the wholesale sales tax imposed in that  
45 subsection a., there is imposed upon the retail dealer or consumer  
46 chargeable for the sale a compensating use tax of 30% of the price  
47 paid or charged for the tobacco product, except that if the product is  
48 moist snuff, the tax shall be imposed as provided in section 3 of

1 P.L.2006, c.37 (C.54:40B-3.1), and except that if the product is an  
2 electronic cigarette the tax shall be imposed as provided in section 5  
3 of P.L. , c. (C. ) (pending before the Legislature as this bill),  
4 which shall be collected in the manner provided in subsection b. of  
5 section 5 of this act.

6 (cf: P.L.2006, c.37, s.5)

7  
8 5. (New section) a. There is imposed a tax of 75% upon the  
9 receipt from every sale, use or distribution of an electronic cigarette  
10 by a distributor or a wholesaler to a retail dealer or consumer in this  
11 State.

12 b. Unless an electronic cigarette has already been or will be  
13 subject to the wholesale sales tax imposed in subsection a. of this  
14 section, if a distributor or wholesaler uses an electronic cigarette  
15 within this State, there is imposed upon the distributor or  
16 wholesaler a compensating use tax of 75% measured by the receipt  
17 from a sale of a similar electronic cigarette by a distributor to a  
18 retail dealer.

19 c. Unless a wholesale use tax is due pursuant to subsection b.  
20 of this section, if a distributor or wholesaler has not paid the  
21 wholesale sales tax imposed in subsection a. of this section upon the  
22 receipt from a sale that is subject to the wholesale sales tax imposed  
23 in that subsection a., there is imposed upon the retail dealer or  
24 consumer chargeable for the sale a compensating use tax of 75% of  
25 the price paid or charged for the electronic cigarette, which shall be  
26 collected in the manner provided in subsection b. of section 5 of  
27 P.L.1990, c.39 (C.54:40B-5).

28  
29 6. Section 4 of P.L.1990, c.39 (C.54:40B-4) is amended to read  
30 as follows:

31 4. Every distributor or wholesaler shall be liable to pay the tax  
32 when it has sold or otherwise disposed of the tobacco product to the  
33 retail dealer or consumer. The retail dealer or consumer shall be  
34 given a true copy of an invoice, receipt or other statement or  
35 memorandum **【stating that】** of the charge made for the sale or other  
36 disposition and the tax that has been or will be paid by the  
37 distributor of wholesaler, which amount of tax shall be stated and  
38 shown separately on the document given to the retail dealer or  
39 consumer.

40 The director may provide by regulation that the tax upon tobacco  
41 products, sold to a retail dealer or consumer who pays the  
42 distributor or wholesaler in installments, may be paid and the return  
43 filed on the amount of each installment.

44 (cf: P.L.2001, c.448, s.3)

45  
46 7. Section 5 of P.L.1990, c.39 (C.54:40B-5) is amended to read  
47 as follows:

1       5. a. Every distributor or wholesaler required to pay the tax  
2 imposed by this act shall be personally liable for the tax imposed  
3 under this act.

4       b. If a distributor or wholesaler fails to pay the tax imposed by  
5 this act when required to pay the same, then in addition to all other  
6 rights, obligations and remedies provided, the compensating use tax  
7 imposed in either subsection c. of section 3 of P.L.1990, c.39  
8 (C.54:40B-3), subsection c. of section 3 of P.L.2006, c.37  
9 (C.54:40B-3.1) or subsection c. of section 5 of P.L. \_\_\_\_\_,  
10 c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the Legislature as this bill), as the  
11 case may be, shall be payable by the retail dealer or consumer  
12 directly to the director, and it shall be the duty of the retail dealer or  
13 consumer to file a return, on a form prescribed by the director, with  
14 the director and to pay the tax to the director within 20 days of the  
15 date the tax was required to be paid or at other times as specified by  
16 the director.

17 (cf: P.L.2001, c.448, s.4)

18  
19       8. Section 6 of P.L.1990, c.39 (C.54:40B-6) is amended to read  
20 as follows:

21       6. a. **【Within 15 days from the effective date of this act, or in】**  
22 **In** the case of manufacturers, distributors, 【or】 wholesalers or retail  
23 dealers commencing business or opening new places of business  
24 **【after that】** on or after the effective date of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (pending  
25 before the Legislature as this bill), within three days after the  
26 commencement or opening, every distributor or wholesaler required  
27 to pay the taxes imposed by this act and every manufacturer or  
28 retail dealer who sells tobacco products shall file with the director  
29 **【a certificate of registration】** an application for the applicable  
30 license in a form prescribed by the director **【unless】** which shall be  
31 in addition to a certificate of authority that has been previously  
32 issued to any distributor or wholesaler. The director shall issue,  
33 without charge, to each **【registrant】** manufacturer, distributor, and  
34 wholesaler a certificate of authority requiring the **【registrant】**  
35 licensee to pay the tax and a duplicate thereof for each additional  
36 place of business of the **【registrant】** licensee. Each certificate or  
37 duplicate shall state the place of business to which it is applicable.  
38 The certificate of authority shall be prominently displayed in the  
39 place of business of the **【registrant】** licensee. Certificates shall be  
40 nonassignable and nontransferable and shall be surrendered to the  
41 director immediately upon the **【registrant's】** licensee's ceasing to do  
42 business at the place named.

43       b. On and after the effective date of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (pending  
44 before the Legislature as this bill), no person who is a manufacturer,  
45 distributor, wholesaler or retail dealer shall engage in that business  
46 without having first obtained the appropriate license for that  
47 purpose as prescribed by P.L.1990, c.39 (C.54:40B-1 et seq.). All  
48 licenses shall be issued by the director, who shall make rules and

1 regulations respecting applications therefor and issuance thereof,  
2 which may include, in the discretion of the director, requirements  
3 based upon the provisions of subsections a. through f. of section  
4 202 of P.L.1948, c.65 (C.54:40A-4).

5 c. Each license shall lapse on March 31 of the period for which  
6 it is issued, and each license shall be continued annually upon the  
7 conditions that the licensee shall have paid the required fee for  
8 continuance thereof and complied with all the provisions of  
9 P.L.1990, c.39 (C.54:40B-1 et seq.) and the rules and regulations of  
10 the director made pursuant thereto.

11 d. For each license issued to a manufacturer, and for each  
12 continuance thereof, there shall be paid to the director a fee of  
13 \$350.

14 For each license issued to a distributor, and for each continuance  
15 thereof, there shall be paid to the director a fee of \$350. If a  
16 distributor sells or intends to sell tobacco products at two or more  
17 places of business, whether established or temporary, a separate  
18 license shall be required for each place of business. Each license,  
19 or certificate thereof, or other evidence of license, shall be exhibited  
20 in the place of business for which it is issued and in the manner as  
21 may be prescribed by the director. The director shall require each  
22 licensed distributor to file with the director a bond in an amount not  
23 less than \$10,000 to guarantee the proper performance of the  
24 distributor's duties and the discharge of the distributor's liabilities  
25 under this act. The bond shall be executed by the licensed  
26 distributor as principal, and by a corporation approved by the  
27 director and duly authorized to engage in business as a surety  
28 company in the State of New Jersey, as surety. The bond shall run  
29 concurrently with the distributor's license.

30 For each license issued to a wholesaler, and for each continuance  
31 thereof, there shall be paid to the director a fee of \$250. If a  
32 wholesaler sells or intends to sell tobacco products at two or more  
33 places of business, whether established or temporary, a separate  
34 license shall be required for each place of business. Each license, or  
35 certificate thereof, or other evidence of license, shall be exhibited in  
36 the place of business for which it is issued and in the manner as  
37 may be prescribed by the director.

38 For each license issued to a retail dealer, and for each  
39 continuance thereof, there shall be paid to the director a fee of \$50.  
40 Of the license fee \$40 shall be credited to the special projects and  
41 development fund in the Department of Health established pursuant  
42 to section 7 of P.L.1966, c.36 (C.26:2F-7) for the purposes  
43 specified therein. The director shall determine and certify to the  
44 State Treasurer on a monthly basis the amount of revenues collected  
45 by the director which are to be credited to the special projects and  
46 development fund in the Department of Health.

47 If a retail dealer sells or intends to sell tobacco products at two or  
48 more places of business, whether established or temporary, or  
49 whether in the same building or not, a separate license shall be

1 required for each place of business. Each license, or certificate  
2 thereof, or other evidence of license, shall be exhibited in the place  
3 of business for which it is issued and in the manner as may be  
4 prescribed by the director.

5 A person licensed only as a distributor or as a manufacturer or as  
6 a wholesaler or as a retail dealer shall not operate in any other  
7 capacity except under that for which that person is licensed herein,  
8 unless the appropriate license or licenses therefor are first secured.

9 No license shall be issued to a person except upon the payment  
10 of the full fee therefor, any statute or exemption to the contrary  
11 notwithstanding. No license shall be assignable or transferable,  
12 except as hereinafter provided, but in the case of death, bankruptcy,  
13 receivership, or incompetency of the licensee, or if for any other  
14 reason whatsoever the business of the licensee shall devolve upon  
15 another by operation of law, the director may, in the director's  
16 discretion, extend that license for a limited time to the executor,  
17 administrator, trustee, receiver, or person upon whom the same has  
18 devolved. A purchaser or assignee of a licensed wholesaler or  
19 licensed distributor, or an other person upon whom the business of a  
20 licensed wholesaler or licensed distributor shall devolve by  
21 operation of law, shall upon application to the director, be entitled  
22 to an assignment or transfer of the wholesale or distributor license  
23 for the balance of the existing license period upon payment of a  
24 transfer fee of \$5 and subject to that person's qualification to be a  
25 licensed wholesaler or licensed distributor under the provisions of  
26 this act. No refund of the license fee shall be paid to a person upon  
27 the surrender or revocation of any license except a license fee paid  
28 or collected in error. But, upon payment of a \$5 fee, there may be  
29 obtained (1) a duplicate license, or certificate thereof, in the event  
30 the original is lost, destroyed or defaced, and (2) an amended  
31 license, or certificate thereof, upon a change in the location of the  
32 place of business of a wholesaler, distributor or retail dealer.

33 e. The director shall require an applicant for a tobacco products  
34 retail dealer license to include on the application the address of the  
35 place of business where the tobacco products will be sold. If the  
36 place of business is moved to a different address than that provided  
37 on the license application, the licensee shall notify the director  
38 within 30 days of the change of address.

39 (cf: P.L.2001, c.448, s.5)

40  
41 9. Section 7 of P.L.1990, c.39 (C.54:40B-7) is amended to read  
42 as follows:

43 7. Every distributor or wholesaler required to pay any tax  
44 imposed by **【this act】** P.L.1990, c.39 (C.54:40B-1 et seq.) shall  
45 keep records of every charge for and of all amounts of **【wholesale**  
46 **price paid or due thereon】** each sale, use or distribution of a tobacco  
47 product by the distributor or wholesaler and of the tax payable  
48 thereon, in such form as the director may require. Records shall



1 include a true copy of each invoice, receipt, statement or  
2 memorandum upon which the provisions of section 4 of **【this act】**  
3 P.L.1990, c.39 (C.54:40B-4) require that the tax paid be stated.  
4 Records shall be available for inspection and examination at any  
5 time upon demand by the director or duly authorized agent or  
6 employee and shall be preserved for a period of three years, except  
7 that the director may consent to their destruction within that period  
8 or may require that they be kept longer.

9 (cf: P.L.2001, c.448, s.6)

10

11 10. Section 8 of P.L.1990, c.39 (C.54:40B-8) is amended to read  
12 as follows:

13 8. a. Every distributor or wholesaler required to pay tax under  
14 **【this act】** P.L.1990, c.39 (C.54:40B-1 et seq.) shall on or before  
15 August 20, 1990, and on or before the 20th day of each month  
16 thereafter, make and file a return for the preceding month with the  
17 director. The return shall show the total amount of **【wholesale**  
18 **price paid】** receipts for sales **【to】** and use by the distributor or  
19 wholesaler for tobacco products that are payable during the period  
20 and the amount of taxes required to be paid with respect to such  
21 amount. The return shall also reflect any use tax due.

22 b. The director may permit or require returns to be made  
23 covering other periods and upon such dates as the director may  
24 specify. In addition, the director may require payments of tax  
25 liability at such intervals and based upon such classifications as the  
26 director may designate. In prescribing other periods to be covered  
27 by the return or intervals or classifications for payment of tax  
28 liability, the director may take into account the dollar volume of tax  
29 involved as well as the need for ensuring the prompt and orderly  
30 collection of the taxes imposed.

31 c. The form of returns shall be prescribed by the director and  
32 shall contain such information as the director may deem necessary  
33 for the proper administration of this act. The director may require  
34 amended returns to be filed within 20 days after notice and to  
35 contain the information specified in the notice.

36 d. The director may require that in addition to any return  
37 required to be filed, each licensee file a report quarterly upon those  
38 dates as the director may specify, concerning, but not limited to,  
39 amounts and quantities of purchases and sales and use of tobacco  
40 products and the prices paid and collected thereon for each type of  
41 tobacco product and for each premise of the licensee to ensure the  
42 proper administration of P.L.1990, c.39 (C.54:40B-1 et seq.).

43 (cf: P.L.2001, c.448, s.7)

44

45 11. Section 9 of P.L.1990, c.39 (C.54:40B-9) is amended to read  
46 as follows:

47 9. Every distributor or wholesaler required to file a return  
48 under this act shall, at the time of filing the return, pay to the

1 director the taxes imposed by this act. Taxes for the period for  
2 which a return is required to be filed or for a lesser interval as shall  
3 have been designated by the director, shall be due and payable to  
4 the director on the date limited for the filing of the return for the  
5 period, or on the date limited for such lesser interval as the director  
6 has designated, without regard to whether a return is filed or  
7 whether the return which is filed correctly shows the total amount  
8 of the **【wholesale price paid for】** receipts from sales 【to】 or use by  
9 the distributor or wholesaler for tobacco products that are taxable  
10 during the period or the taxes due thereon. **【If】** In addition to the  
11 requirements in subsection d. of section 6 of P.L.1990, c.39  
12 (C.54:40B-6), if the director deems it necessary to protect the  
13 revenues to be obtained under this act, the director shall require a  
14 distributor or wholesaler required to pay the tax imposed by this act  
15 to file with the director a bond, issued by a surety company  
16 authorized to transact business in this State as to solvency and  
17 responsibility, in an amount as the director may fix, but not less  
18 than the amount provided in subsection d. of section 6 of P.L.1990,  
19 c.39, to secure the payment of any tax or penalties or interest due or  
20 which may become due from the distributor or wholesaler under  
21 this act. If the director determines that a distributor or wholesaler is  
22 to file a bond, the director shall give notice to the distributor or  
23 wholesaler to that effect specifying the amount of the bond  
24 required. The distributor or wholesaler shall file the bond within  
25 five days after the giving of notice unless within the five days the  
26 distributor or wholesaler requests in writing a hearing before the  
27 director at which the necessity, propriety and amount of the bond  
28 shall be determined by the director. The determination shall be  
29 final and shall be complied with within 15 days after the giving of  
30 notice thereof. In lieu of bond, securities approved by the director  
31 or cash in an amount as the director may prescribe, may be  
32 deposited, which shall be kept in the custody of the director who  
33 may at any time without notice to the depositor apply them to any  
34 tax or interest or penalties due, and for that purpose the securities  
35 may be sold by the director at public or private sale without notice  
36 to the depositor thereof.

37 (cf: P.L.2001, c.448, s.8)

38

39 12. Section 12 of P.L.1990, c.39 (C.54:40B-12) is amended to  
40 read as follows:

41 12. In addition to the powers granted in **【this act】** P.L.1990,  
42 c.39 (C.54:40B-1 et seq.), the director may:

43 a. Make, adopt and amend rules and regulations appropriate to  
44 the carrying out of this act.

45 b. Extend, for cause shown by general regulation or individual  
46 authorization, the time of filing any return for a period not  
47 exceeding three months on such terms and conditions as the director  
48 may require; and for cause shown, remit penalties and interest as

1 provided for in the State Uniform Tax Procedure Law, R.S.54:48-1  
2 et seq.

3 c. Delegate functions and powers to any officer or employee of  
4 the division, and such of the director's powers as the director may  
5 deem necessary to carry out efficiently the provisions of this act,  
6 and the person or persons to whom such power has been delegated  
7 shall possess and may exercise all of the power and perform all of  
8 the duties as delegated.

9 d. Require any distributor or wholesaler required to pay tax to  
10 keep detailed records of all amounts of **【wholesale prices paid for】**  
11 receipts from sales or use of the tobacco products on which taxes  
12 are payable, and names and addresses of wholesalers, distributors,  
13 retail dealers and consumers, and other facts relevant in determining  
14 the amount of tax due and to furnish such information upon request  
15 to the director.

16 e. Assess, determine, revise and readjust the taxes imposed by  
17 this act.

18 f. Enter into agreements with other states and the District of  
19 Columbia, providing for the reciprocal enforcement of similar tax  
20 laws imposed by the states entering into such an agreement. The  
21 agreement may empower the duly authorized officer of any  
22 contracting state, which extends like authority to officers or  
23 employees of this State, to sue for the collection of that state's taxes  
24 in the courts of this State.

25 (cf: P.L.2001, c.448, s.10)

26

27 13. (New section) a. Notwithstanding the provisions of section  
28 8 of P.L.1990, c.39 (C.54:40B-8) to the contrary, each distributor  
29 and wholesaler under P.L.1990, c.39 (C.54:40B-1 et seq.), shall  
30 take a physical inventory of all items of electronic cigarettes in that  
31 distributor's or wholesaler's possession at the close of business on  
32 the last day of the first month following the date of enactment of  
33 P.L. , c. (C. ) (pending before the Legislature as this bill) or  
34 another date as the director may prescribe, and shall file a return  
35 under oath or certified under the penalties of perjury with the  
36 director in the form as the director may prescribe by the twentieth  
37 day of the third month following that date of enactment, showing  
38 the amount of all items of electronic cigarettes in that distributor's  
39 or wholesaler's possession in the State at the close of business on  
40 the day prior to the effective date of P.L. , c. (pending before  
41 the Legislature as this bill) and shall at the time of filing that return  
42 pay to the director the tax imposed pursuant to section 5 of P.L. ,  
43 c. (C. ) (pending before the Legislature as this bill) as  
44 reflected on that return.

45 Failure to obtain those forms shall not be an excuse for the  
46 failure to make a return containing the information required by the  
47 director.

1        b. Each retail dealer shall take a physical inventory of all of  
2 electronic cigarettes in that dealer's possession in this State at the  
3 close of business on the last day of the first month following the  
4 date of enactment of P.L.     , c.     (C.     ) (pending before the  
5 Legislature as this bill) or another date as the director may  
6 prescribe, and shall file a return under oath or certified under the  
7 penalties of perjury with the director in such form as the director  
8 may prescribe by the twentieth day of the third month following  
9 that date of enactment, showing the amount of all items of  
10 electronic cigarettes in that dealer's possession in this State at the  
11 close of business on that day and shall at the time of filing that  
12 return pay to the director the tax imposed pursuant to section 5 of  
13 P.L.     , c.     (C.     ) (pending before the Legislature as this bill)  
14 as reflected on that return.

15        Failure to obtain those forms shall not be an excuse for the  
16 failure to make a return containing the information required by the  
17 director.

18

19        14. This act shall take effect on the first day of the second  
20 month beginning after the date of enactment, and shall apply to  
21 tobacco products sold or otherwise disposed of on and after that  
22 date, except for those tobacco products for which the tax was paid  
23 prior to the effective date of this act, except that sections 13 and 14  
24 of this act shall take effect immediately.

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#### STATEMENT

28

29        This bill imposes the New Jersey Tobacco Products Wholesale  
30 Sales and Use Tax on electronic cigarettes. Electronic cigarettes  
31 and similar tobacco-substitute smoking devices are designed to  
32 deliver a nicotine-based or other substance-based vapor and are  
33 often manufactured to resemble cigarettes, cigars and pipes. Under  
34 this bill, the wholesale sales tax rate for these unregulated products  
35 and their components is imposed at a rate of 75% to impose a tax  
36 burden in line with a similar tax burden imposed upon cigarettes  
37 under the cigarette tax act.

38        The bill also reestablishes the wholesaler's price charged by the  
39 wholesaler upon their sale of any tobacco product to a retail dealer  
40 as the base upon which the tax is determined. This was the tax base  
41 imposed under the tax first enacted in 1990 but was changed in  
42 2002 to the manufacturer's wholesale price, which has complicated  
43 the calculation, collection and enforcement of the tax as the sale by  
44 a manufacturer to a wholesaler does not trigger the wholesaler's tax  
45 liability.

46        The bill also requires licensing by the Division of Taxation of  
47 businesses of a manufacturer, distributor, wholesaler or retailer of  
48 tobacco products under the New Jersey Tobacco Products  
49 Wholesale Sales and Use Tax Act. Currently, a tax license is not

1 required for conducting sales of tobacco products such as cigars,  
2 chewing tobacco, pipe tobacco, moist snuff, etc. The license will  
3 be in addition to the certificate of authority to collect the tax and  
4 will allow the Director of the Division of Taxation the ability to  
5 conduct the same review of the background and qualifications of  
6 such businesses as under the cigarette tax act. The director will  
7 have the authority to issue the license and make rules and  
8 regulations concerning the same and impose licensing fees. Eighty  
9 percent of the State revenue from the \$50 annual licensing fees  
10 collected from retailer dealers will be credited to the special  
11 projects and development fund in the Department of Health to  
12 provide grants to local health agencies for local enforcement efforts  
13 concerning the sale and commercial distribution of tobacco products  
14 to persons under the age of 19 years.

15 Data released by the Centers for Disease Control and Prevention  
16 (CDC) indicate that the use of electronic smoking devices has  
17 increased nationwide and, during 2011-2012, doubled among  
18 middle and high school students. The CDC data further indicate  
19 that use of electronic smoking devices has been associated with  
20 increased use of conventional tobacco products and may serve as an  
21 "entry point" to use of conventional tobacco products by minors,  
22 particularly as the cartridges used in the devices, which are often  
23 made with flavors such as fruit, mint, or chocolate, may be  
24 attractive to minors. While New Jersey became the first state to ban  
25 the use of electronic smoking devices in public places and  
26 workplaces, and to ban sale of the devices to minors, comparable  
27 State tax treatment is necessary to avoid an unintended tax  
28 preference that is gaining the attention of the tobacco industry that  
29 has turned to marketing these products to younger "smokers of legal  
30 age."

31 The health and safety implications of using electronic smoking  
32 devices are not known. However, limited studies conducted by the  
33 CDC and FDA found potential health concerns and quality control  
34 issues with the devices: harmful substances were found in some  
35 products, including irritants, genotoxins, and animal carcinogens;  
36 nicotine was found in products labeled as containing no nicotine;  
37 and large variations were found in the quantity of nicotine delivered  
38 in each puff. The bill exempts from the tax any product that is  
39 approved by the United State Food and Drug Administration for  
40 tobacco cessation, nicotine cessation, or other therapeutic purpose if  
41 that product is marketed and sold solely for that approved purpose.