

ASSEMBLY, No. 4132

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED JUNE 11, 2018

Sponsored by:

Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex)

Assemblywoman BRITNEE N. TIMBERLAKE

District 34 (Essex and Passaic)

SYNOPSIS

Imposes \$0.10 per fluid milliliter tax related to sales of liquid nicotine.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the taxation of liquid nicotine and amending
2 the title and body of, and supplementing, P.L.1990, c.39.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. The title of P.L.1990, c.39 (C.54:40B-1 et seq.) is amended
8 to read as follows:

9 AN ACT concerning the taxation of cigarettes and other tobacco and
10 nicotine products, supplementing Title 54 of the Revised
11 Statutes, amending P.L.1982, c.40, amending and supplementing
12 P.L.1948, c.65 and repealing section 4 of P.L.1982, c.40.
13 (cf: P.L.1990, c.39, title)

14
15 2. Section 1 of P.L.1990, c.39 (C.54:40B-1) is amended to read
16 as follows:

17 Sections 1 through 14 of **[this act]** P.L.1990, c.39 (C.54:40B-1
18 et seq.) shall be known and may be cited as the "Tobacco and
19 Nicotine Products Wholesale Sales and Use Tax Act."
20 (cf: P.L.1990, c.39, s.1)

21
22 3. Section 2 of P.L.1990, c.39 (C.54:40B-2) is amended to read
23 as follows:

24 2. As used in sections 2 through 14 and section 20 of **[this act]**
25 P.L.1990, c.39 (C.54:40B-1 et seq.):

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

29 "Director" means the Director of the Division of Taxation in the
30 Department of the Treasury;

31 "Distributor" means:

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

35 a person who makes or manufactures tobacco products in this
36 State for sale in the State,

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

40 a person who receives tobacco products **[on which the tax has**
41 **not or will not]** without receiving proof that the tax has been or will
42 be paid by another distributor;

43 "Dry snuff" means any finely cut, ground, or powdered
44 smokeless tobacco that is intended to be sniffed through the nasal
45 cavity, but 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 smoking device" means a nonlighted,
2 noncombustible device that employs a mechanical heating element,
3 battery, or circuit, regardless of shape or size, to produce
4 aerosolized or vaporized nicotine for inhalation into the body of a
5 person, including but not limited to a device that is manufactured,
6 distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-
7 hookah, vape pen, or any other similar product with any other
8 product name or descriptor.

9 "Liquid nicotine" means any solution containing nicotine that is
10 designed or sold for use with an electronic smoking device.

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

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

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

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

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

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

36 "Tobacco product" means any product containing, made, or
37 derived from any tobacco, nicotine, or other chemicals or
38 substances for [personal] consumption by a person, including, but
39 not limited to, cigars, little cigars, cigarillos, chewing tobacco, pipe
40 tobacco, smoking tobacco and their substitutes, [and] dry and moist
41 snuff, and liquid nicotine, but does not include cigarette as defined
42 in section 102 of the "Cigarette Tax Act," P.L.1948, c.65
43 (C.54:40A-1 et seq.);

44 "Treasurer" means the State Treasurer;

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

47 "Wholesale price" means the actual price for which a
48 manufacturer sells tobacco products to a distributor; and

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

3 a. purchases tobacco products from any other person who
4 purchases from the manufacturer and who acquires tobacco
5 products solely for the purpose of bona fide resale to retail dealers
6 or to other persons for the purposes of resale only; or

7 b. services retail outlets by the maintenance of an established
8 place of business for the purchase of tobacco products including,
9 but not limited to, the maintenance of warehousing facilities for the
10 storage and distribution of tobacco products.

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

12

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

15 3. a. There is imposed a tax of 30% upon the wholesale price
16 upon the sale, use, or distribution of a tobacco product within this
17 State, except that if the product is:

18 (1) moist snuff, the tax shall be imposed as provided in section 3
19 of P.L.2006, c.37 (C.54:40B-3.1); or

20 (2) liquid nicotine, the tax shall be imposed as provided in
21 section 5 of P.L. , c. (C.) (pending before the Legislature
22 as this bill).

23 b. Unless a tobacco product has already been or will be subject
24 to the wholesale sales tax imposed in subsection a. of this section, if
25 a distributor or wholesaler uses a tobacco product within this State,
26 there is imposed upon the distributor or wholesaler a compensating
27 use tax of 30% measured by the sales price of a similar tobacco
28 product to a distributor, except that if the product is moist snuff or
29 liquid nicotine, the tax shall be imposed as provided in section 3 of
30 P.L.2006, c.37 (C.54:40B-3.1) or section 5 of P.L. , c. (C.)
31 (pending before the Legislature as this bill), respectively.

32 c. Unless a wholesale use tax is due pursuant to subsection b.
33 of this section, if a distributor or wholesaler has not paid the
34 wholesale sales tax imposed in subsection a. of this section upon a
35 sale that is subject to the wholesale sales tax imposed in that
36 subsection a., there is imposed upon the retail dealer or consumer
37 chargeable for the sale a compensating use tax of 30% of the price
38 paid or charged for the tobacco product, except that if the product is
39 moist snuff or liquid nicotine, the tax shall be imposed as provided
40 in section 3 of P.L.2006, c.37 (C.54:40B-3.1) or section 5 of
41 P.L. , c. (C.) (pending before the Legislature as this bill),
42 respectively, which shall be collected in the manner provided in
43 subsection b. of section 5 of **[this act]** P.L.1990, c.39 (C.54:40B-5).
44 (cf: P.L.2006, c.37, s.5)

45

46 5. (New section) a. There is imposed a tax upon the sale, use,
47 or distribution of liquid nicotine within this State by a distributor or
48 wholesaler to a retail dealer or consumer at the rate of \$0.10 per

1 fluid milliliter on the volume of the liquid nicotine as listed by the
2 manufacturer, and a proportionate rate on all fractional parts of a
3 fluid milliliter of volume of liquid nicotine as listed by the
4 manufacturer.

5 b. Unless liquid nicotine has already been or will be subject to
6 the tax imposed in subsection a. of this section, if a distributor or
7 wholesaler uses the liquid nicotine within the State, there is
8 imposed upon the distributor or wholesaler a compensating use tax
9 of \$0.10 per fluid milliliter of the volume of liquid nicotine as listed
10 by the manufacturer, and a proportionate rate on all fractional parts
11 of a fluid milliliter of the volume of liquid nicotine as listed by the
12 manufacturer.

13 c. Unless a tax is due pursuant to subsection b. of this section, if
14 a distributor or wholesaler has not paid the tax imposed in
15 subsection a. of this section upon a sale that is subject to the tax
16 imposed in that subsection a., there is imposed upon the retail
17 dealer or consumer chargeable for the sale a compensating use tax
18 of \$0.10 per fluid milliliter on the volume of the liquid nicotine as
19 listed by the manufacturer, and a proportionate rate on all fractional
20 parts of a fluid milliliter of the volume of liquid nicotine as listed
21 by the manufacturer, which shall be collected in the manner
22 provided in subsection b. of section 5 of P.L.1990, c.39 (C.54:40B-
23 5).
24

25 6. (New section) a. Each distributor and wholesaler shall take a
26 physical inventory of all liquid nicotine in that distributor's or
27 wholesaler's possession in the State at the close of business on the
28 first day of the first month next following the date of enactment of
29 P.L. , c. (C.) (pending before the Legislature as this bill),
30 or such other date as the director may prescribe, and shall file a
31 return with the director in such form as the director may prescribe
32 by the twentieth day of the third month next following the date of
33 enactment, showing the amount of liquid nicotine in that
34 distributor's or wholesaler's possession in the State and shall at the
35 time of filing that return pay to the director the tax imposed
36 pursuant to section 5 of P.L. , c. (C.) (pending before the
37 Legislature as this bill).

38 b. Each retail dealer shall take a physical inventory of all liquid
39 nicotine in that dealer's possession in the State at the close of
40 business on the first day of the first month next following the date
41 of enactment of P.L. , c. (C.) (pending before the
42 Legislature as this bill), or such other date as the director may
43 prescribe, and shall file a return with the director in such form as
44 the director may prescribe by the twentieth day of the third month
45 next following the date of enactment, showing the amount of liquid
46 nicotine in that retail dealer's possession in the State and shall at the
47 time of filing that return pay to the director the tax imposed

1 pursuant to section 5 of P.L. , c. (C.) (pending before the
2 Legislature as this bill).

3
4 7. This act shall take effect on the first day of the first month
5 next following the date of enactment.

6
7
8 STATEMENT

9
10 This bill extends the New Jersey tobacco products wholesale
11 sales and use tax to liquid nicotine used in electronic cigarettes and
12 similar devices, at the rate of \$0.10 per milliliter of liquid nicotine.

13 Electronic cigarettes and similar tobacco-substitute smoking
14 devices are designed to deliver liquid nicotine to users of the
15 product. The term “liquid nicotine” is defined in the bill to mean
16 any solution containing nicotine that is designed or sold for use
17 with an electronic smoking device.

18 The bill imposes the tax at the rate of \$0.10 per milliliter of
19 liquid nicotine, and a proportionate rate on fractional parts of a
20 milliliter of liquid nicotine, as listed by the manufacturer. The tax
21 is imposed on the sale, use, or distribution of liquid nicotine within
22 this State by a distributor or wholesaler to a retailer dealer or
23 consumer. However, distributors and wholesalers who sell liquid
24 nicotine at retail or otherwise use the liquid nicotine are required to
25 pay a compensating use tax at the same rate.

26 Finally, each wholesaler, distributor, and retail dealer is required
27 to take a physical inventory of all liquid nicotine in that entity’s
28 possession in the State at the close of business on the first day of
29 the first month next following the date of enactment, or such other
30 date as permitted by the Director of the Division of Taxation in the
31 Department of the Treasury, and is required file a return with the
32 director, by the twentieth day of the third month next following the
33 date of enactment, that indicates the amount of liquid nicotine in
34 that entity’s possession and then pay to the director the tax the
35 amount of tax due on the liquid nicotine.