

[First Reprint]

ASSEMBLY, No. 4132

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED JUNE 11, 2018

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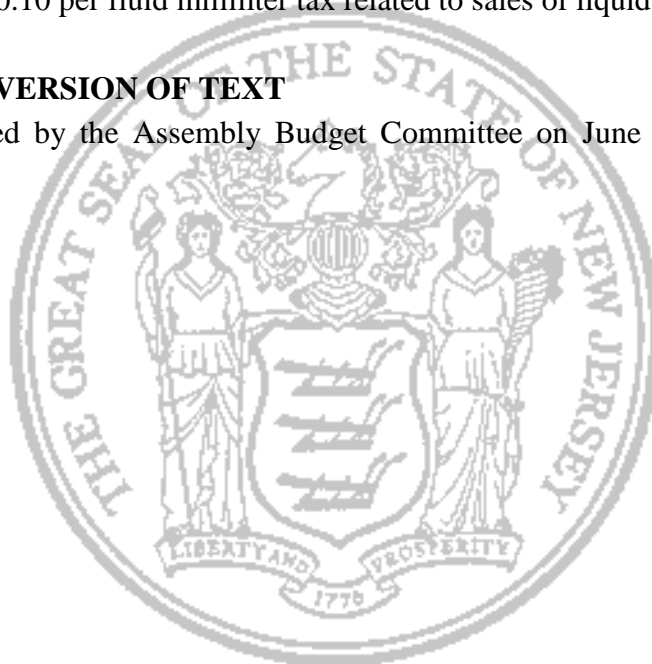
Assemblywoman Mosquera

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Assembly Budget Committee on June 18, 2018, with amendments.



(Sponsorship Updated As Of: 6/22/2018)

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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ABU committee amendments adopted June 18, 2018.

1 cavity, but does not include moist snuff;

2 "Electronic smoking device" means a nonlighted,
3 noncombustible device that employs a mechanical heating element,
4 battery, or circuit, regardless of shape or size, to produce
5 aerosolized or vaporized nicotine for inhalation into the body of a
6 person, including but not limited to a device that is manufactured,
7 distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-
8 hookah, vape pen, or any other similar product with any other
9 product name or descriptor.

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

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

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

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

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

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

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

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

45 "Treasurer" means the State Treasurer;

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

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

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

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

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

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

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

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

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

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

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

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

1 5. (New section) a. There is imposed a tax upon the sale, use,
2 or distribution of liquid nicotine within this State by a distributor or
3 wholesaler to a retail dealer or consumer at the rate of \$0.10 per
4 fluid milliliter on the volume of the liquid nicotine as listed by the
5 manufacturer, and a proportionate rate on all fractional parts of a
6 fluid milliliter of volume of liquid nicotine as listed by the
7 manufacturer.

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

16 c. Unless a tax is due pursuant to subsection b. of this section,
17 if a distributor or wholesaler has not paid the tax imposed in
18 subsection a. of this section upon a sale that is subject to the tax
19 imposed in that subsection a., there is imposed upon the retail
20 dealer or consumer chargeable for the sale a compensating use tax
21 of \$0.10 per fluid milliliter on the volume of the liquid nicotine as
22 listed by the manufacturer, and a proportionate rate on all fractional
23 parts of a fluid milliliter of the volume of liquid nicotine as listed
24 by the manufacturer, which shall be collected in the manner
25 provided in subsection b. of section 5 of P.L.1990, c.39 (C.54:40B-
26 5).
27

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

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

1 nicotine in that retail dealer's possession in the State and shall at the
2 time of filing that return pay to the director the tax imposed
3 pursuant to section 5 of P.L. , c. (C.) (pending before the
4 Legislature as this bill).

5

6 7. This act shall take effect on the ¹**【first】** 90th¹ day ¹**【of the**
7 first month next following **】** after¹ the date of enactment.