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

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

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

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

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

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

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

"Consumer" means a person except a distributor, manufacturer, or wholesaler who acquires a tobacco product for consumption, storage, or use in this State;
"Director" means the Director of the Division of Taxation in the Department of the Treasury;

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:

\*Assembly ABU committee amendments adopted June 18, 2018.
a person engaged in the business of selling tobacco products in
this State who brings, or causes to be brought into this State from
without the State a tobacco product for sale within this State,
a person who makes or manufactures tobacco products in this
State for sale in the State,
a person engaged in the business of selling tobacco products
without this State who ships or transports tobacco products to a
person in this State to be sold to a retail dealer, or
a person who receives tobacco products [on which the tax has
not or will not] without receiving proof that the tax has been or will
be paid by another distributor;
"Dry snuff" means any finely cut, ground, or powdered
smokeless tobacco that is intended to be sniffed through the nasal
cavity, but does not include moist snuff;
"Electronic smoking device" means a nonlighted,
noncombustible device that employs a mechanical heating element,
battery, or circuit, regardless of shape or size, to produce
aerosolized or vaporized nicotine for inhalation into the body of a
person, including but not limited to a device that is manufactured,
distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-
hookah, vape pen, or any other similar product with any other
product name or descriptor.
"Liquid nicotine" means any solution containing nicotine that is
designed or sold for use with an electronic smoking device.
"Manufacturer" means a person, wherever resident or located,
who manufactures or produces, or causes to be manufactured or
produced, a tobacco product and sells, uses, stores, or distributes
the product regardless of whether it is intended for sale, use, or
distribution within or without this State;
"Moist snuff" means any finely cut, ground, or powdered
smokeless tobacco that is intended to be placed or dipped in the oral
cavity, but does not include dry snuff;
"Person" means an individual, firm, corporation, copartnership,
joint venture, association, receiver, trustee, guardian, executor,
administrator, or any other person acting in a fiduciary capacity, or
an estate, trust, or group or combination acting as a unit, the State
Government and any political subdivision thereof, and the plural as
well as the singular, unless the intention to give a more limited
meaning is disclosed by the context;
"Place of business" means a place where a tobacco product is
sold or where a tobacco product is brought or kept for the purpose
of sale or consumption, including so far as may be applicable a
vessel, vehicle, airplane, train or vending machine;
"Retail dealer" means a person who is engaged in this State in
the business of selling any tobacco product at retail. A person
placing a tobacco product vending machine at, or on any premises
shall be deemed to be a retail dealer for each vending machine;
"Sale" means any sale, transfer, exchange, barter, or gift, in any manner or by any means whatsoever;
"Tobacco product" means any product containing, made, or derived from any tobacco, nicotine, or other chemicals or substances for personal consumption by a person, including, but not limited to, cigars, little cigars, cigarillos, chewing tobacco, pipe tobacco, smoking tobacco and their substitutes, and dry and moist snuff, and liquid nicotine, but does not include cigarette as defined in section 102 of the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.);
"Treasurer" means the State Treasurer;
"Use" means the exercise of any right or power incidental to the ownership of a tobacco product, including a sale at retail;
"Wholesale price" means the actual price for which a manufacturer sells tobacco products to a distributor; and
"Wholesaler" means a person, wherever resident or located, other than a distributor as defined herein, who:
1. purchases tobacco products from any other person who purchases from the manufacturer and who acquires tobacco products solely for the purpose of bona fide resale to retail dealers or to other persons for the purposes of resale only; or
2. services retail outlets by the maintenance of an established place of business for the purchase of tobacco products including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of tobacco products.
(cf: P.L.2006, c.37, s.4)

4. Section 3 of P.L.1990, c.39 (C.54:40B-3) is amended to read as follows:
3. a. There is imposed a tax of 30% upon the wholesale price upon the sale, use or distribution of a tobacco product within this State, except that if the product is:
(1) moist snuff, the tax shall be imposed as provided in section 3 of P.L.2006, c.37 (C.54:40B-3.1); or
(2) liquid nicotine, the tax shall be imposed as provided in section 5 of P.L.1990, c. (C. ) (pending before the Legislature as this bill).
3. b. Unless a tobacco product has already been or will be subject to the wholesale sales tax imposed in subsection a. of this section, if a distributor or wholesaler uses a tobacco product within this State, there is imposed upon the distributor or wholesaler a compensating use tax of 30% measured by the sales price of a similar tobacco product to a distributor, except that if the product is moist snuff or liquid nicotine, the tax shall be imposed as provided in section 3 of P.L.2006, c.37 (C.54:40B-3.1) or section 5 of P.L.1990, c. (C. ) (pending before the Legislature as this bill), respectively.
3. c. Unless a wholesale use tax is due pursuant to subsection b. of this section, if a distributor or wholesaler has not paid the
wholesale sales tax imposed in subsection a. of this section upon a sale that is subject to the wholesale sales tax imposed in that subsection a., there is imposed upon the retail dealer or consumer chargeable for the sale a compensating use tax of 30% of the price paid or charged for the tobacco product, except that if the product is moist snuff or liquid nicotine, the tax shall be imposed as provided in section 3 of P.L.2006, c.37 (C.54:40B-3.1) or section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill), respectively, which shall be collected in the manner provided in subsection b. of section 5 of this act P.L.1990, c.39 (C.54:40B-5).

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

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

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

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

6. (New section) a. Each distributor and wholesaler shall take a physical inventory of all liquid nicotine in that distributor’s or wholesaler’s possession in the State at the close of business on the first day of the first month next following the date of enactment of P.L. , c. (C. ) (pending before the Legislature as this bill), or such other date as the director may prescribe, and shall file a return with the director in such form as the director may prescribe by the twentieth day of the third month next following the date of enactment, showing the amount of liquid nicotine in that
A4132 [1R]

1 distributor’s or wholesaler’s possession in the State and shall at the
time of filing that return pay to the director the tax imposed
pursuant to section 5 of P.L. , c. (C. ) (pending before the
Legislature as this bill).

b. Each retail dealer shall take a physical inventory of all liquid
nicotine in that dealer’s possession in the State at the close of
business on the first day of the first month next following the date
of enactment of P.L. , c. (C. ) (pending before the
Legislature as this bill), or such other date as the director may
prescribe, and shall file a return with the director in such form as
the director may prescribe by the twentieth day of the third month
next following the date of enactment, showing the amount of liquid
nicotine in that retail dealer’s possession in the State and shall at the
time of filing that return pay to the director the tax imposed
pursuant to section 5 of P.L. , c. (C. ) (pending before the
Legislature as this bill).

7. This act shall take effect on the 90th day of the
first month next following after the date of enactment.

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