

ASSEMBLY, No. 4936

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED NOVEMBER 9, 2020

Sponsored by:

Assemblyman BRIAN BERGEN

District 25 (Morris and Somerset)

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

Assemblyman JAY WEBBER

District 26 (Essex, Morris and Passaic)

Co-Sponsored by:

**Assemblymen DiMaio, Scharfenberger, Assemblywoman Stanfield,
Assemblyman Rooney, Assemblywoman B.DeCroce, Assemblyman Peters,
Assemblywoman N.Munoz, Assemblymen Space, Wirths, Catalano and
Thomson**

SYNOPSIS

Limits “tobacco and vapor products tax” on cigars to up to \$0.50 per cigar.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/14/2020)

1 AN ACT limiting the tobacco and vapor products tax on cigars and
2 amending 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. Section 2 of P.L.1990, c.39 (C.54:40B-2) is amended to read
8 as follows:

9 2. As used in sections 2 through 14 and section 20 of
10 P.L.1990, c.39 (C.54:40B-1 et seq.):

11 "Cigar" means any roll of tobacco for smoking that is wrapped in
12 leaf tobacco, or any other substance or material containing tobacco,
13 and is offered to, or purchased by, consumers without a mouthpiece,
14 tip, or filter for smoking;

15 "Consumer" means a person except a distributor, manufacturer,
16 or wholesaler who acquires a tobacco product for consumption,
17 storage, or use in this State;

18 "Container e-liquid" means a container of liquid nicotine or other
19 liquid where the liquid is marketed, sold, or intended for use in an
20 electronic smoking device, but does not include a prefilled cartridge
21 or other container where the cartridge or container is marketed,
22 sold, or intended for use as, or as a part of, an electronic smoking
23 device;

24 "Director" means the Director of the Division of Taxation in the
25 Department of the Treasury;

26 "Distributor" means:

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

30 a person who makes or manufactures tobacco products in this
31 State for sale in the State,

32 a person engaged in the business of selling tobacco products
33 without this State who ships or transports tobacco products to a
34 person in this State to be sold to a retail dealer, or

35 a person who receives tobacco products without receiving proof
36 that the tax has been or will be paid by another distributor;

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

40 "Electronic smoking device" means a nonlighted,
41 noncombustible device that may be used to simulate smoking and
42 that employs a mechanical heating element, battery, or circuit,
43 regardless of shape or size, to produce aerosolized or vaporized
44 nicotine or other substance for inhalation into the body of a person,
45 including but not limited to a device that is manufactured,

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 distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-
2 hookah, vape pen, or any other similar product with any other
3 product name or descriptor;

4 "Liquid nicotine" means any solution containing nicotine that is
5 designed or sold for use with an electronic smoking device;

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

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

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

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

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

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

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

39 "Treasurer" means the State Treasurer;

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

42 "Vapor business" means a retail business where more than 50
43 percent of its retail sales are derived from electronic smoking
44 devices, related accessories, and liquid nicotine, but does not
45 include a retail business that does not sell container e-liquid;

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

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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.2019, c.147, s.2)

12

13 2. 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%】** 30 percent upon the
16 wholesale price upon the sale, use, or distribution of a tobacco
17 product within this 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.2018, c.50 (C.54:40B-3.2); or

22 (3) a cigar, the tax imposed pursuant to this section shall not
23 exceed \$0.50 per cigar.

24 b. Unless a tobacco product has already been or will be subject
25 to the wholesale sales tax imposed in subsection a. of this section, if
26 a distributor or wholesaler uses a tobacco product within this State,
27 there is imposed upon the distributor or wholesaler a compensating
28 use tax of **【30%】** 30 percent measured by the sales price of a
29 similar tobacco product to a distributor, except that if the product is:

30 (1) moist snuff or liquid nicotine, the tax shall be imposed as
31 provided in section 3 of P.L.2006, c.37 (C.54:40B-3.1) or section 5
32 of P.L.2018, c.50 (C.54:40B-3.2), respectively;

33 (2) a cigar, the tax imposed pursuant to this section shall not
34 exceed \$0.50 per cigar.

35 c. Unless a wholesale use tax is due pursuant to subsection b.
36 of this section, if a distributor or wholesaler has not paid the
37 wholesale sales tax imposed in subsection a. of this section upon a
38 sale that is subject to the wholesale sales tax imposed in that
39 subsection a., there is imposed upon the retail dealer or consumer
40 chargeable for the sale a compensating use tax of **【30%】** 30 percent
41 of the price paid or charged for the tobacco product, except that if
42 the product is:

43 (1) moist snuff or liquid nicotine, the tax shall be imposed as
44 provided in section 3 of P.L.2006, c.37 (C.54:40B-3.1) or section 5
45 of P.L.2018, c.50 (C.54:40B-3.2), respectively**【.】** ; or

46 (2) a cigar, the tax imposed pursuant to this section shall not
47 exceed \$0.50 per cigar;

1 which shall be collected in the manner provided in subsection b.
2 of section 5 of P.L.1990, c.39 (C.54:40B-5).

3 (cf: P.L.2018, c.50, s.4)
4

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

7 5. a. Every distributor or wholesaler required to pay the tax
8 imposed by this act shall be personally liable for the tax imposed
9 under this act.

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

20 (cf: P.L.2001, c.448, s.4)
21

22 4. This act shall take effect on the first day of the second month
23 after enactment and apply to the sale, use, or distribution of cigars
24 on and after that date.
25

26
27 STATEMENT
28

29 This bill limits the taxation of cigars under the Tobacco and
30 Vapor Products Tax Act to a maximum of 50 cents per cigar.
31 Currently, the tax on cigars is 30 percent of the wholesale price.
32 Under this bill, the tax will still be 30 percent of the wholesale
33 price, but the tax will be capped at 50 cents per cigar.

34 The bill also amends current law to clarify tax payment
35 responsibilities of tobacco product wholesalers and distributors.

36 Every state imposes some tax on non-cigarette tobacco products.
37 Ten states have adopted a tax cap per cigar. Cigar retailers with
38 establishments in those states have claimed that prior to the
39 establishment of the cap their retail sales prices suffered a serious
40 competitive disadvantage with out-of-state, Internet, and catalog
41 businesses that did not collect state tobacco products tax.

42 Setting a maximum tax per cigar is proposed to encourage New
43 Jersey consumers to make more of their cigar purchases from New
44 Jersey “brick and mortar” retailers who are often small locally-
45 owned businesses. A 50 cent per cigar tax cap will level the
46 playing field for New Jersey retailers and potentially increase State
47 revenues collected under the tax.