

Title 54.
Subtitle 7A.
Chapter 40B.
(Rename)
Tobacco and
Nicotine Products
Wholesale Tax
§5 - C.54:40B-3.2
§6 - T&E
§7 - Note

P.L. 2018, CHAPTER 50, *approved July 1, 2018*
Assembly, No. 4132 (*First Reprint*)

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:

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

4 a person who makes or manufactures tobacco products in this
5 State for sale in the State,

6 a person engaged in the business of selling tobacco products
7 without this State who ships or transports tobacco products to a
8 person in this State to be sold to a retail dealer, or

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

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

15 "Electronic smoking device" means a nonlighted,
16 noncombustible device that employs a mechanical heating element,
17 battery, or circuit, regardless of shape or size, to produce
18 aerosolized or vaporized nicotine for inhalation into the body of a
19 person, including but not limited to a device that is manufactured,
20 distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-
21 hookah, vape pen, or any other similar product with any other
22 product name or descriptor.

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

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

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

33 "Person" means an individual, firm, corporation, copartnership,
34 joint venture, association, receiver, trustee, guardian, executor,
35 administrator, or any other person acting in a fiduciary capacity, or
36 an estate, trust, or group or combination acting as a unit, the State
37 Government and any political subdivision thereof, and the plural as
38 well as the singular, unless the intention to give a more limited
39 meaning is disclosed by the context;

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

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

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

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

11 "Treasurer" means the State Treasurer;

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

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

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

18 a. purchases tobacco products from any other person who
19 purchases from the manufacturer and who acquires tobacco
20 products solely for the purpose of bona fide resale to retail dealers
21 or to other persons for the purposes of resale only; or

22 b. services retail outlets by the maintenance of an established
23 place of business for the purchase of tobacco products including,
24 but not limited to, the maintenance of warehousing facilities for the
25 storage and distribution of tobacco products.

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

27

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

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

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

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

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

47 c. Unless a wholesale use tax is due pursuant to subsection b.
48 of this section, if a distributor or wholesaler has not paid the

1 wholesale sales tax imposed in subsection a. of this section upon a
2 sale that is subject to the wholesale sales tax imposed in that
3 subsection a., there is imposed upon the retail dealer or consumer
4 chargeable for the sale a compensating use tax of 30% of the price
5 paid or charged for the tobacco product, except that if the product is
6 moist snuff or liquid nicotine, the tax shall be imposed as provided
7 in section 3 of P.L.2006, c.37 (C.54:40B-3.1) or section 5 of
8 P.L. , c. (C.) (pending before the Legislature as this bill),
9 respectively, which shall be collected in the manner provided in
10 subsection b. of section 5 of **[this act]** P.L.1990, c.39 (C.54:40B-5).
11 (cf: P.L.2006, c.37, s.5)

12

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

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

28 c. Unless a tax is due pursuant to subsection b. of this section,
29 if a distributor or wholesaler has not paid the tax imposed in
30 subsection a. of this section upon a sale that is subject to the tax
31 imposed in that subsection a., there is imposed upon the retail
32 dealer or consumer chargeable for the sale a compensating use tax
33 of \$0.10 per fluid milliliter on the volume of the liquid nicotine as
34 listed by the manufacturer, and a proportionate rate on all fractional
35 parts of a fluid milliliter of the volume of liquid nicotine as listed
36 by the manufacturer, which shall be collected in the manner
37 provided in subsection b. of section 5 of P.L.1990, c.39 (C.54:40B-
38 5).

39

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

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

17

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

20

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22

23

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