

CHAPTER 448

AN ACT reducing the tobacco products wholesale sales and use tax rate and establishing the manufacturers' wholesale price as the base upon which the tax is determined, amending P.L.1990, c.39.

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

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

C.54:40B-2 Definitions.

2. As used in sections 2 through 14 and section 20 of this act:

"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;

"Distributor" means

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 be paid by another distributor;

"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;

"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 any tobacco for personal consumption including, but not limited to, cigars, little cigars, cigarillos, chewing tobacco, pipe tobacco, smoking tobacco and their substitutes, and snuff, 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; and

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

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

- a. 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

- b. 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.

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

C.54:40B-3 Tax of 30 percent imposed on wholesale sale, use, distribution of tobacco product.

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.

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.

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, which shall be collected in the manner provided in subsection b. of section 5 of this act.

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

C.54:40B-4 Payment of tax by distributor, wholesaler.

4. Every distributor or wholesaler shall be liable to pay the tax when it has sold or otherwise disposed of the tobacco product to the retail dealer or consumer. The retail dealer or consumer shall be given an invoice, receipt or other statement or memorandum stating that the tax has been paid or will be paid by the distributor or wholesaler.

The director may provide by regulation that the tax upon tobacco products, sold to a retail dealer or consumer who pays the distributor or wholesaler in installments, may be paid and the return filed on the amount of each installment.

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

C.54:40B-5 Liability for payment of tax.

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

b. If a distributor or wholesaler fails to pay the tax imposed by this act when required to pay the same, then in addition to all other rights, obligations and remedies provided, the compensating use tax imposed in subsection c. of section 3 shall be payable by the retail dealer or consumer directly to the director, and it shall be the duty of the retail dealer or consumer to file a return, on a form prescribed by the director, with the director and to pay the tax to the director within 20 days of the date the tax was required to be paid or at other times as specified by the director.

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

C.54:40B-6 Filing of certificate of registration, issuance of certificate of authority.

6. Within 15 days from the effective date of this act, or in the case of distributors or wholesalers commencing business or opening new places of business after that date, within three days after the commencement or opening, every distributor or wholesaler required to pay the taxes imposed by this act shall file with the director a certificate of registration in a form prescribed by the director unless a certificate of authority has been previously issued to any distributor or wholesaler. The director shall issue, without charge, to each registrant a certificate of authority requiring the registrant to pay the tax and a duplicate thereof for each additional place of business of the registrant. Each certificate or duplicate shall state the place of business to which it is applicable. The certificate of authority shall be prominently displayed in the place of business of the registrant. Certificates shall be nonassignable and nontransferable and shall be surrendered to the director immediately upon the registrant's ceasing to do business at the

place named.

6. Section 7 of P.L.1990, c.39 (C.54:40B-7) is amended to read as follows:

C.54:40B-7 Records of charges, amounts to be kept by distributor, wholesaler.

7. Every distributor or wholesaler required to pay any tax imposed by this act shall keep records of every charge for and of all amounts of wholesale price paid or due thereon and of the tax payable thereon, in such form as the director may require. Records shall include a true copy of each invoice, receipt, statement or memorandum upon which the provisions of section 4 of this act require that the tax paid be stated. Records shall be available for inspection and examination at any time upon demand by the director or duly authorized agent or employee and shall be preserved for a period of three years, except that the director may consent to their destruction within that period or may require that they be kept longer.

7. Section 8 of P.L.1990, c.39 (C.54:40B-8) is amended to read as follows:

C.54:40B-8 Contents of return.

8. a. Every distributor or wholesaler required to pay tax under this act shall on or before August 20, 1990, and on or before the 20th day of each month thereafter, make and file a return for the preceding month with the director. The return shall show the total amount of wholesale price paid for sales to the distributor or wholesaler for tobacco products that are payable during the period and the amount of taxes required to be paid with respect to such amount. The return shall also reflect any use tax due.

b. The director may permit or require returns to be made covering other periods and upon such dates as the director may specify. In addition, the director may require payments of tax liability at such intervals and based upon such classifications as the director may designate. In prescribing other periods to be covered by the return or intervals or classifications for payment of tax liability, the director may take into account the dollar volume of tax involved as well as the need for ensuring the prompt and orderly collection of the taxes imposed.

c. The form of returns shall be prescribed by the director and shall contain such information as the director may deem necessary for the proper administration of this act. The director may require amended returns to be filed within 20 days after notice and to contain the information specified in the notice.

8. Section 9 of P.L.1990, c.39 (C.54:40B-9) is amended to read as follows:

C.54:40B-9 Payment of taxes; bond; security.

9. Every distributor or wholesaler required to file a return under this act shall, at the time of filing the return, pay to the director the taxes imposed by this act. Taxes for the period for which a return is required to be filed or for a lesser interval as shall have been designated by the director, shall be due and payable to the director on the date limited for the filing of the return for the period, or on the date limited for such lesser interval as the director has designated, without regard to whether a return is filed or whether the return which is filed correctly shows the total amount of the wholesale price paid for sales to the distributor or wholesaler for tobacco products that are taxable during the period or the taxes due thereon. If the director deems it necessary to protect the revenues to be obtained under this act, the director may require a distributor or wholesaler required to pay the tax imposed by this act to file with the director a bond, issued by a surety company authorized to transact business in this State as to solvency and responsibility, in an amount as the director may fix, to secure the payment of any tax or penalties or interest due or which may become due from the distributor or wholesaler under this act. If the director determines that a distributor or wholesaler is to file a bond, the director shall give notice to the distributor or wholesaler to that effect specifying the amount of the bond required. The distributor or wholesaler shall file the bond within five days after the giving of notice unless within the five days the distributor or wholesaler requests in writing a hearing before the director at which the necessity, propriety and amount of the bond shall be determined by the director.

The determination shall be final and shall be complied with within 15 days after the giving of notice thereof. In lieu of bond, securities approved by the director or cash in an amount as the director may prescribe, may be deposited, which shall be kept in the custody of the director who may at any time without notice to the depositor apply them to any tax or interest or penalties due, and for that purpose the securities may be sold by the director at public or private sale without notice to the depositor thereof.

9. Section 10 of P.L.1990, c.39 (C.54:40B-10) is amended to read as follows:

C.54:40B-10 Estimation of taxes; notice of determination.

10. If a return required by this act is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the director from such information as may be available. If necessary, the tax may be estimated on the basis of external indices, such as purchases, location, scale of charges, comparable charges, number of employees or other factors. Notice of the determination shall be given to the distributor, wholesaler, retail dealer or consumer liable for the payment of the tax. The determination shall finally and irrevocably fix the tax unless the wholesaler, distributor, retail dealer or consumer against whom it is assessed, within 30 days after the notice date of the determination, shall apply to the director for a hearing, or unless the director on the director's motion shall redetermine the same. After the hearing the director shall give notice of the determination to the wholesaler, distributor, retail dealer or consumer against whom the tax is assessed.

10. Section 12 of P.L.1990, c.39 (C.54:40B-12) is amended to read as follows:

C.54:40B-12 Powers of director.

12. In addition to the powers granted in this act, the director may:

- a. Make, adopt and amend rules and regulations appropriate to the carrying out of this act.
- b. Extend, for cause shown by general regulation or individual authorization, the time of filing any return for a period not exceeding three months on such terms and conditions as the director may require; and for cause shown, remit penalties and interest as provided for in the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.
- c. Delegate functions and powers to any officer or employee of the division, and such of the director's powers as the director may deem necessary to carry out efficiently the provisions of this act, and the person or persons to whom such power has been delegated shall possess and may exercise all of the power and perform all of the duties as delegated.
- d. Require any distributor or wholesaler required to pay tax to keep detailed records of all amounts of wholesale prices paid for the tobacco products on which taxes are payable, and names and addresses of wholesalers, distributors, retail dealers and consumers, and other facts relevant in determining the amount of tax due and to furnish such information upon request to the director.
- e. Assess, determine, revise and readjust the taxes imposed by this act.
- f. Enter into agreements with other states and the District of Columbia, providing for the reciprocal enforcement of similar tax laws imposed by the states entering into such an agreement. The agreement may empower the duly authorized officer of any contracting state, which extends like authority to officers or employees of this State, to sue for the collection of that state's taxes in the courts of this State.

11. This act shall take effect on the first day of the second month beginning after enactment and shall apply to tobacco products sold or otherwise disposed of on and after that date, except for those tobacco products for which the tax was paid prior to the effective date

Approved January 11, 2002.