

CHAPTER 37

AN ACT raising the cigarette tax rate, changing the tobacco products wholesale sales tax on moist snuff to a weight-based tax and increasing funds deposited in the Health Care Subsidy Fund, amending and supplementing P.L.1990, c.39 and P.L.1948, c.65 and amending P.L.1997, c.264.

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

1. Section 301 of P.L.1948, c.65 (C.54:40A-8) is amended to read as follows:

C.54:40A-8 Tax imposed; rate.

301. Tax imposed; rate. A tax is hereby imposed on the sale, use or possession for sale or use within this State of all cigarettes at the rate of \$0.12875 for each cigarette.

2. a. Each retail licensee under P.L.1948, c.65 (C.54:40A-1 et seq.), shall, on or before the first day of the second month after the effective date of P.L.2006, c.37, file a return under oath or certified under the penalties of perjury with the director on forms furnished by the director, showing the amount of cigarettes in the retail licensee's possession in the State at 12:01 a.m. on the effective date of P.L.2006, c.37, and shall at the time of filing that return pay the tax to the director. Failure to obtain such forms shall not be an excuse for the failure to make a return containing the information required by the director.

b. Notwithstanding the provisions of section 401 of P.L.1948, c.65 (C.54:40A-11) to the contrary, each licensed distributor and wholesale dealer under P.L.1948, c.65 (C.54:40A-1 et seq.), shall, on or before the first day of the second month after the effective date of P.L.2006, c.37, file a return under oath or certified under the penalties of perjury with the director on forms furnished by the director, showing the amount of cigarettes in the dealer's or wholesaler's possession in the State at the close of business prior to the effective date of P.L.2006, c.37. An amount of tax shall be due equal to the additional tax on the number of cigarettes bearing stamps, and unaffixed stamps on hand. Each licensed distributor and wholesale dealer shall at the time of filing that return pay the tax to the director. Failure to obtain such forms shall not be an excuse for the failure to make a return containing the information required by the director.

C.54:40B-3.1 Tax imposed upon sale, use, distribution of moist snuff.

3. a. There is imposed a tax upon the sale, use or distribution of moist snuff within this State by a distributor or wholesaler to a retail dealer or consumer at the rate of \$0.75 per ounce on the net weight, as listed by the manufacturer, of the moist snuff, and a proportionate rate on all fractional parts of an ounce of the net weight of moist snuff.

b. Unless a moist snuff 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 the moist snuff within this State, there is imposed upon the distributor or wholesaler a compensating use tax of \$0.75 per ounce on the net weight, as listed by the manufacturer, of the moist snuff, and a proportionate rate on all fractional parts of an ounce of the net weight of moist snuff.

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 \$0.75 per ounce on the net weight, as listed by the manufacturer, of the moist snuff, and a proportionate rate on all fractional parts of an ounce of the net weight of moist

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

4. 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;

"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;

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

"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:

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.

5. 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, except that if the product is moist snuff, the tax shall be imposed as provided in section 3 of P.L.2006, c.37 (C.54:40B-3.1).

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, the tax shall be imposed as provided in section 3 of P.L.2006, c.37 (C.54:40B-3.1).

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, the tax shall be imposed as provided in section 3 of P.L.2006, c.37 (C.54:40B-3.1), which shall be collected in the manner provided in subsection b. of section 5 of this act.

6. Each retail dealer shall take a physical inventory of all moist snuff in that dealer's possession at the close of business on the last day of the first month following enactment 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 following enactment, showing the amount of moist snuff in that dealer's possession and shall at the time of filing that return pay to the director the tax imposed pursuant to section 3 of P.L.2006, c.37 (C.54:40B-3.1) that is in excess of any tax already paid pursuant to section 3 of P.L.1990, c.39 (C.54:40B-3) on that moist snuff as reflected on that return.

7. Section 4 of P.L.1997, c.264 (C.26:2H-18.58g) is amended to read as follows:

C.26:2H-18.58g Disposition of revenue collected from cigarette tax.

4. Notwithstanding the provisions of any other law to the contrary,

a. commencing July 1, 1998 and ending June 30, 2006: after the deposit required pursuant to section 5 of P.L.1982, c.40 (C.54:40A-37.1), the first \$150,000,000 of revenue collected annually from the cigarette tax imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et

seq.) and the first \$5,000,000 of revenue collected annually from the "Tobacco Products Wholesale Sales and Use Tax Act," P.L.1990, c.39 (C.54:40B-1 et seq.), shall be deposited into the Health Care Subsidy Fund established pursuant to section 8 of P.L.1992, c.160 (C.26:2H-18.58); and the next \$390,000,000 of revenue collected annually from the cigarette tax imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) shall be appropriated annually for health programs, and the next \$50,000,000 of revenue collected annually from the cigarette tax imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) shall be appropriated annually to the New Jersey Economic Development Authority for payment of debt service incurred by the authority for school facilities projects and in fiscal years commencing July 1, 2002 and July 1, 2003, the next \$30,000,000 of revenue collected annually from the cigarette tax imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) shall be directed to the Department of Health and Senior Services to fund anti-smoking initiatives, except that the amount shall be \$40,000,000 in the fiscal year commencing July 1, 2004 and \$45,000,000 in the fiscal year commencing July 1, 2005; and

b. commencing with fiscal years beginning on and after July 1, 2006, after the deposit required pursuant to section 5 of P.L.1982, c.40 (C.54:40A-37.1), the first \$365,000,000 of revenue collected annually from the cigarette tax imposed pursuant to P.L.1948, c.65 (C.54:40A-1 et seq.) and the first \$5,000,000 of revenue collected annually from the "Tobacco Products Wholesale Sales and Use Tax Act," P.L.1990, c.39 (C.54:40B-1 et seq.), shall be deposited into the Health Care Subsidy Fund established pursuant to section 8 of P.L.1992, c.160 (C.26:2H-18.58).

8. This act shall take effect July 15, 2006 and sections 3 through 5 shall apply to sales, uses or distributions occurring on or after the first day of the first month following enactment.

Approved July 8, 2006.