

CHAPTER 80

AN ACT concerning the forfeiture of certain contraband tobacco products and cigarettes, supplementing P.L.1990, c.39 (C.54:40B-1 et seq.), and amending P.L.1948, c.65 and N.J.S.2C:64-1.

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

C.54:40B-13.1 Seizure of certain contraband tobacco products and cigarettes.

1. a. All tobacco products subject to the tax imposed under P.L.1990, c.39 (C.54:40B-1 et seq.), on which the tax has not been paid as required by section 4 or section 5 of P.L.1990, c.39 (C.54:40B-4 and 54:40B-5), found in any place in this State are declared to be prima facie contraband goods and may be seized by the director, the director's agents or employees, or by any peace officer of this State, when so ordered by the director, without a warrant.

b. The director may order the return of any seized tobacco product when the director shall have reason to believe, upon the presentation of satisfactory proof, that the owner has not willfully or intentionally evaded any tax imposed by P.L.1990, c.39 (C.54:40B-1 et seq.). Any tobacco product seized under the provisions of this section shall be disposed of according to law.

c. (1) Except as otherwise provided in this section, the director shall destroy any seized untaxed tobacco product not subject to other disposition pursuant to P.L.1990, c.39 (C.54:40B-1 et seq.).

(2) As an alternative to destruction, the director may resell any untaxed tobacco product to the manufacturer of that tobacco product, but such tobacco product shall be resold only for export or destruction.

(3) Notwithstanding the provisions of paragraph (1) of this subsection, the director may authorize the use for law enforcement purposes of any untaxed tobacco products forfeited in accordance with this section.

d. The seizure and sale of any untaxed tobacco product under the provisions of this section shall not relieve any person from a fine, imprisonment or other penalty for violation of any of the provisions of P.L.1990, c.39 (C.54:40B-1 et seq.). The director, the director's agents or employees, and any peace officer of this State, when so ordered, shall not in any way be responsible in any court for the seizure or the confiscation of any untaxed tobacco product.

2. Section 607 of P.L.1948, c.65 (C.54:40A-30) is amended to read as follows:

C.54:40A-30 Unstamped cigarettes subject to confiscation.

607. Unstamped cigarettes subject to confiscation.

a. All cigarettes, subject to the tax imposed by this act, to which stamps have not been affixed, as required by this act, and all cigarettes stamped in violation of subsection b. of section 405 of P.L.1948, c.65 (C.54:40A-15) found in any place in this State are declared to be prima facie contraband goods and may be seized by the director, the director's agents or employees, or by any peace officer of this State, when directed by the director so to do, without a warrant.

b. The director may upon satisfactory proof direct the return of any unstamped confiscated cigarettes when the director shall have reason to believe that the owner thereof has not willfully or intentionally evaded any tax imposed by this act. Any purchaser of such cigarettes shall be required to affix stamps as required by this act.

c. (1) Except as otherwise provided in this section, the director shall destroy any seized unstamped cigarettes or cigarettes that have been stamped in violation of subsection b. of section 405 of P.L.1948, c.65 (C.54:40A-15). The director may, prior to the destruction of such cigarettes, permit the true holder of the trademark rights in the cigarette brand to inspect the cigarettes, in order to assist the director in any investigation regarding such cigarettes.

(2) As an alternative to destruction, the director may resell such cigarettes to the manufacturer of those cigarettes, but such cigarettes shall be resold only for export or destruction.

(3) Notwithstanding the provisions of paragraph (1) of this subsection, the director may authorize the use for law enforcement purposes of cigarettes forfeited in accordance with this section.

d. The seizure and sale of any unstamped or illegally stamped cigarettes or any other contraband cigarettes under the provisions of this section shall not relieve any person from a fine, imprisonment or other penalty for violation of any of the provisions of this act. The director, the director's agents, employees, and any peace officer of this State, when directed so to do, shall not in any way be responsible in any court for the seizure or the confiscation of any unstamped or illegally stamped packages of cigarettes or any other contraband cigarettes.

3. Section 602 of P.L.1948, c.65 (C.54:40A-25) is amended to read as follows:

C.54:40A-25 Possessing cigarettes not bearing required revenue stamps.

602. Possessing cigarettes not bearing required revenue stamps.

Any wholesale dealer or retail dealer who violates the provisions of section four hundred six of this act, and any consumer who fails to report and remit the tax due as provided by section two hundred five of this act, shall be liable to a penalty of not more than two-hundred and fifty dollars (\$250) for each individual carton of unstamped or illegally stamped cigarettes in the dealer's possession, which penalty shall be sued for and recovered in the same manner as provided for the penalties imposed by section six hundred one of this act.

4. N.J.S.2C:64-1 is amended to read as follows:

Property subject to forfeiture.

2C:64-1. Property Subject to Forfeiture.

a. Any interest in the following shall be subject to forfeiture and no property right shall exist in them:

(1) Controlled dangerous substances, firearms which are unlawfully possessed, carried, acquired or used, illegally possessed gambling devices, untaxed or otherwise contraband cigarettes or tobacco products, untaxed special fuel, unlawful sound recordings and audiovisual works and items bearing a counterfeit mark. These shall be designated prima facie contraband.

(2) All property which has been, or is intended to be, utilized in furtherance of an unlawful activity, including, but not limited to, conveyances intended to facilitate the perpetration of illegal acts, or buildings or premises maintained for the purpose of committing offenses against the State.

(3) Property which has become or is intended to become an integral part of illegal activity, including, but not limited to, money which is earmarked for use as financing for an illegal gambling enterprise.

(4) Proceeds of illegal activities, including, but not limited to, property or money obtained as a result of the sale of prima facie contraband as defined by subsection a. (1), proceeds of illegal gambling, prostitution, bribery and extortion.

b. Any article subject to forfeiture under this chapter may be seized by the State or any law enforcement officer as evidence pending a criminal prosecution pursuant to section 2C:64-4 or, when no criminal proceeding is instituted, upon process issued by any court of competent jurisdiction over the property, except that seizure without such process may be made when not inconsistent with the Constitution of this State or the United States, and when

(1) The article is prima facie contraband; or

(2) The property subject to seizure poses an immediate threat to the public health, safety or welfare.

c. For the purposes of this section:

"Items bearing a counterfeit mark" means items bearing a counterfeit mark as defined in N.J.S.2C:21-32.

"Unlawful sound recordings and audiovisual works" means sound recordings and audiovisual works as those terms are defined in N.J.S.2C:21-21 which were produced in violation of N.J.S.2C:21-21.

"Untaxed special fuel" means diesel fuel, No. 2 fuel oil and kerosene on which the motor fuel tax imposed pursuant to R.S.54:39-1 et seq. is not paid that is delivered, possessed, sold or transferred in this State in a manner not authorized pursuant to R.S.54:39-1 et seq. or P.L.1938, c.163 (C.56:6-1 et seq.).

5. This act shall take effect immediately.

Approved June 29, 2011.