

CHAPTER 50

AN ACT concerning the taxation of liquid nicotine and amending the title and body of, and supplementing, P.L.1990, c.39.

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

1. The title of P.L.1990, c.39 (C.54:40B-1 et seq.) is amended to read as follows:

Title amended.

AN ACT concerning the taxation of cigarettes and other tobacco and nicotine products, supplementing Title 54 of the Revised Statutes, amending P.L.1982, c.40, amending and supplementing P.L.1948, c.65 and repealing section 4 of P.L.1982, c.40.

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

C.54:40B-1 Short title.

1. Sections 1 through 14 of P.L.1990, c.39 (C.54:40B-1 et seq.) shall be known and may be cited as the "Tobacco and Nicotine Products Wholesale Sales and Use Tax Act."

3. 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 P.L.1990, c.39 (C.54:40B-1 et seq.):

"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 without receiving proof that the tax has been or will 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;

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

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

"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, made, or derived from any tobacco, nicotine, or other chemicals or substances for consumption by a person, including, but not limited to, cigars, little cigars, cigarillos, chewing tobacco, pipe tobacco, smoking tobacco and their substitutes, dry and moist snuff, and liquid nicotine, 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.

4. 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 certain tobacco products; exceptions.

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:

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

(2) liquid nicotine, the tax shall be imposed as provided in section 5 of P.L.2018, c.50 (C.54:40B-3.2).

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

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 or liquid nicotine, the tax shall be imposed as provided in section 3 of P.L.2006, c.37 (C.54:40B-3.1) or section 5 of P.L.2018, c.50 (C.54:40B-3.2), respectively, which shall be collected in the manner provided in subsection b. of section 5 of P.L.1990, c.39 (C.54:40B-5).

C.54:40B-3.2 Tax imposed on liquid nicotine.

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

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

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

6. a. Each distributor and wholesaler shall take a physical inventory of all liquid nicotine in that distributor's or wholesaler's possession in the State at the close of business on the first day of the first month next following the date of enactment of P.L.2018, c.50 (C.54:40B-3.2 et al.), 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 next following the date of enactment, showing the amount of liquid nicotine in that distributor's or wholesaler's possession in the State and shall at the time of filing that return pay to the director the tax imposed pursuant to section 5 of P.L.2018, c.50 (C.54:40B-3.2).

b. Each retail dealer shall take a physical inventory of all liquid nicotine in that dealer's possession in the State at the close of business on the first day of the first month next following the date of enactment of P.L.2018, c.50 (C.54:40B-3.2 et al.), 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 next following the date of

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enactment, showing the amount of liquid nicotine in that retail dealer's possession in the State and shall at the time of filing that return pay to the director the tax imposed pursuant to section 5 of P.L.2018, c.50 (C.54:40B-3.2).

7. This act shall take effect on the 90th day after the date of enactment.

Approved July 1, 2018.