

54:40B-1

LEGISLATIVE HISTORY CHECKLIST
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NJSA: 54:40B-1 et seq.

(Cigarette tax--
increase surtax)

LAWS OF: 1990

CHAPTER: 39

Bill No: A3608

Sponsor(s): Zangari & Brown

Date Introduced: June 14, 1990

Committee: Assembly: Appropriations

Senate: -----

Amended during passage: No Assembly Committee Substitute enacted

Date of Passage: Assembly: June 19, 1990

Senate: June 20, 1990

Date of Approval: June 27, 1990

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: No

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

See newspaper clippings--attached:

KBG/SLJ

(over)

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"Smokers Fuming over new taxes on Tobacco"
Philadelphia Inquirer 6/21/1990

"Assembly Tax Vote Nears"
Trenton Times June 20, 1990

"Assembly Dems Labor to pass sales tax hike"
New Star Ledger June 20, 1990

"Tobacco, liquor tax hikes advance"
Record, June 20, 1990

"Assembly agrees to raise liquor, cigarette taxes"
Asbury Park Press June 20, 1990

1901204
1901204

Title 54.
Chapter 40B.(New)
Tobacco Products
Wholesale Tax.
§§1-14 -
C.54:40B-1 to
54:40B-14
§17-T & F and
Note to
54:40A-8
§19-Repealer
§20-Note to
all sections

P.L.1990, CHAPTER 39, approved June 27, 1990

Assembly Committee Substitute for
1990 Assembly Nos. 3608 and 3613

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

5
6 BE IT ENACTED by the Senate and General Assembly of the
7 State of New Jersey:

8 1. (New Section) Sections 1 through 14 of this act shall be
9 known and may be cited as the "Tobacco Products Wholesale
10 Sales and Use Tax Act."

11 2. (New Section) As used in sections 2 through 14 and section
12 20 of this act:

13 "Consumer" means a person except a distributor, manufacturer
14 or wholesaler who acquires a tobacco product for consumption,
15 storage or use in this State;

16 "Director" means the Director of the Division of Taxation in
17 the Department of the Treasury;

18 "Distributor" means a person, wherever resident or located,
19 who brings or causes to be brought into this State a tobacco
20 product purchased directly from the manufacturer thereof and
21 receives, stores, sells or otherwise disposes of the same after it
22 reaches this State;

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

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

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.

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

5 "Receipt" means the sale price of a tobacco product valued in
6 money, whether received in money or otherwise, including early
7 payment discounts, and without any deduction or exclusion for
8 expenses or costs whatsoever;

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

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

15 "Tobacco product" means any product containing any tobacco
16 for personal consumption including, but not limited to, cigars,
17 little cigars, cigarillos, chewing tobacco, pipe tobacco, smoking
18 tobacco and their substitutes, and snuff, but does not include
19 cigarette as defined in section 102 of the "Cigarette Tax Act,"
20 P.L.1948, c.65 (C.54:40A-1 et seq.);

21 "Treasurer" means the State Treasurer;

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

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

26 a. purchases tobacco products from any other person who
27 purchases from the manufacturer and who acquires tobacco
28 products solely for the purpose of bona fide resale to retail
29 dealers or to other persons for the purposes of resale only; or

30 b. services retail outlets by the maintenance of an established
31 place of business for the purchase of tobacco products including,
32 but not limited to, the maintenance of warehousing facilities for
33 the storage and distribution of tobacco products.

34 3. (New Section) a. There is imposed a tax of 24% upon the
35 receipts from every sale of a tobacco product by a distributor or
36 a wholesaler to a retail dealer or consumer.

37 b. Unless a tobacco product has already been or will be subject
38 to the wholesale sales tax imposed in subsection a. of this
39 section, if a distributor or wholesaler uses a tobacco product
40 within this State, there is imposed upon the distributor or
41 wholesaler a compensating use tax of 24% measured by the sales
42 price of a similar tobacco product to a retail dealer.

43 c. Unless a wholesale use tax is due pursuant to subsection b.
44 of this section, if a distributor or wholesaler has not collected the
45 wholesale sales tax imposed in subsection a. of this section upon a
46 sale that is subject to the wholesale sales tax imposed in that
47 subsection a., there is imposed upon the retail dealer or consumer
48 chargeable for the sale a compensating use tax of 24% of the
49 price paid or charged for the tobacco product, which shall be

1 collected in the manner provided in subsection b. of section 5 of
2 this act.

3 4. (New Section) Every distributor or wholesaler required to
4 collect the tax shall collect the tax from the retail dealer or
5 consumer when collecting the receipt to which it applies. The
6 retail dealer or consumer shall be given an invoice, receipt or
7 other statement or memorandum of the charge and the tax shall
8 be stated, charged and shown separately on the document given
9 to the retail dealer or consumer. The tax shall be paid to the
10 distributor or wholesaler required to collect it as trustee for and
11 on account of the State.

12 The director may provide by regulation that the tax upon
13 receipts paid in installments may be paid and the return filed on
14 the amount of each installment.

15 5. (New Section) a. Every distributor or wholesaler required
16 to collect the tax imposed by this act shall be personally liable
17 for the tax imposed, collected or required to be collected under
18 this act. A distributor or wholesaler shall have the same right in
19 respect to collecting the tax from the retail dealer or consumer
20 or in respect to non-payment of the tax by the retail dealer or
21 consumer as if the tax were a part of the sales price for the
22 tobacco product and payable at the same time; except the
23 director shall be joined as a party in any action or proceeding
24 brought to collect the tax.

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

35 6. (New Section) Within 15 days from the effective date of
36 this act, or in the case of distributors or wholesalers commencing
37 business or opening new places of business after that date, within
38 3 days after the commencement or opening, every distributor or
39 wholesaler required to collect the taxes imposed by this act shall
40 file with the director a certificate of registration in a form
41 prescribed by the director unless a certificate of authority has
42 been previously issued to any distributor or wholesaler. The
43 director shall issue, without charge, to each registrant a
44 certificate of authority empowering the registrant to collect the
45 tax and a duplicate thereof for each additional place of business
46 of the registrant. Each certificate or duplicate shall state the
47 place of business to which it is applicable. The certificate of
48 authority shall be prominently displayed in the place of business
49 of the registrant. Certificates shall be nonassignable and

1 nontransferable and shall be surrendered to the director
2 immediately upon the registrant's ceasing to do business at the
3 place named.

4 7. (New Section) Every distributor or wholesaler required to
5 collect any tax imposed by this act shall keep records of every
6 charge and of all amounts paid, charged or due thereon and of the
7 tax payable thereon, in such form as the director may require.
8 Records shall include a true copy of each invoice, receipt,
9 statement or memorandum upon which the provisions of section 4
10 of this act require that the tax be stated separately. Records
11 shall be available for inspection and examination at any time
12 upon demand by the director or duly authorized agent or
13 employee and shall be preserved for a period of three years,
14 except that the director may consent to their destruction within
15 that period or may require that they be kept longer.

16 8. (New Section) a. Every distributor or wholesaler required
17 to collect or pay tax under this act shall on or before August 20,
18 1990, and on or before the twentieth day of each month
19 thereafter, make and file a return for the preceding month with
20 the director. The return shall show the receipts of the distributor
21 or wholesaler and the amount of taxes required to be collected
22 with respect to such receipts. The return shall also reflect any
23 use tax due.

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

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

38 9. (New Section) Every distributor or wholesaler required to
39 file a return under this act shall, at the time of filing the return,
40 pay to the director the taxes imposed by this act. Taxes for the
41 period for which a return is required to be filed or for a lesser
42 interval as shall have been designated by the director, shall be
43 due and payable to the director on the date limited for the filing
44 of the return for the period, or on the date limited for such lesser
45 interval as the director has designated, without regard to whether
46 a return is filed or whether the return which is filed correctly
47 shows the amount of receipts or the taxes due thereon. If the
48 director deems it necessary to protect the revenues to be
49 obtained under this act, the director may require a distributor or

1 wholesaler required to collect the tax imposed by this act to file
2 with the director a bond, issued by a surety company authorized
3 to transact business in this State as to solvency and
4 responsibility, in an amount as the director may fix, to secure the
5 payment of any tax or penalties or interest due or which may
6 become due from the distributor or wholesaler under this act. If
7 the director determines that a distributor or wholesaler is to file
8 a bond, the director shall give notice to the distributor or
9 wholesaler to that effect specifying the amount of the bond
10 required. The distributor or wholesaler shall file the bond within
11 five days after the giving of notice unless within the five days the
12 distributor or wholesaler requests in writing a hearing before the
13 director at which the necessity, propriety and amount of the bond
14 shall be determined by the director. The determination shall be
15 final and shall be complied with within 15 days after the giving of
16 notice thereof. In lieu of bond, securities approved by the
17 director or cash in an amount as the director may prescribe, may
18 be deposited, which shall be kept in the custody of the director
19 who may at any time without notice to the depositor apply them
20 to any tax or interest or penalties due, and for that purpose the
21 securities may be sold by the director at public or private sale
22 without notice to the depositor thereof.

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

40 11. (New Section) The taxes imposed by this act shall be
41 governed in all respects by the provisions of the State Tax
42 Uniform Procedure Law, R.S.54:48-1 et seq., except only to the
43 extent that a specific provision of this act may be in conflict
44 therewith.

45 12. (New Section) In addition to the powers granted in this
46 act, the director may:

- 47 a. Make, adopt and amend rules and regulations appropriate to
48 the carrying out of this act.
- 49 b. Extend, for cause shown by general regulation or individual

1 authorization, the time of filing any return for a period not
2 exceeding three months on such terms and conditions as the
3 director may require; and for cause shown, remit penalties and
4 interest as provided for in the State Tax Uniform Procedure Law,
5 R.S.54:48-1 et seq.

6 c. Delegate functions and powers to any officer or employee
7 of the division, and such of the director's powers as the director
8 may deem necessary to carry out efficiently the provisions of this
9 act, and the person or persons to whom such power has been
10 delegated shall possess and may exercise all of the power and
11 perform all of the duties as delegated.

12 d. Require any distributor or wholesaler required to collect tax
13 to keep detailed records of all receipts, charged or accrued, and
14 names and addresses of wholesalers, distributors, retail dealers
15 and consumers, and other facts relevant in determining the
16 amount of tax due and to furnish such information upon request
17 to the director.

18 e. Assess, determine, revise and readjust the taxes imposed by
19 this act.

20 f. Enter into agreements with other states and the District of
21 Columbia, providing for the reciprocal enforcement of similar tax
22 laws imposed by the states entering into such an agreement. The
23 agreement may empower the duly authorized officer of any
24 contracting state, which extends like authority to officers or
25 employees of this State, to sue for the collection of that state's
26 taxes in the courts of this State.

27 13. (New Section) Any person failing to file a return or to pay
28 or pay over any tax to the director within the time required by
29 this act shall be subject to such penalties and interest as are
30 provided in the State Tax Uniform Procedure Law, R.S.54:48-1 et
31 seq. Unpaid penalties and interest may be determined, assessed,
32 collected and enforced in the same manner as the tax imposed by
33 this act.

34 14. (New Section) a. Any aggrieved taxpayer may, within 90
35 days after any decision, order, finding, assessment or action of
36 the director made pursuant to the provisions of this act, appeal
37 therefrom to the tax court in accordance with the provisions of
38 the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

39 b. The appeal provided by this section shall be the exclusive
40 remedy available to any taxpayer for review of a decision of the
41 director in respect of the determination of the liability of the
42 taxpayer for the taxes imposed by this act.

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

45 301. Tax imposed; rate. A tax is hereby imposed on the sale,
46 use or possession for sale or use within this State of all cigarettes
47 at the rate of [\$0.09 1/2] \$0.02 for each [10 cigarettes or
48 fraction thereof] cigarette [and a surtax equal to a percent of the
49 average wholesale price, which percent shall be the same as the

1 rate of tax imposed on retail sales pursuant to the "Sales and Use
2 Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), rounded to the
3 next highest cent but not less than \$0.02 1/2 for each 10
4 cigarettes or fraction thereof. For packs containing 25
5 cigarettes the total tax and surtax shall be 125% of the tax and
6 surtax on packs containing 20 cigarettes].

7 (cf: P.L.1985, c.341, s.1)

8 16. Section 401 of P.L.1948, c.65 (C.54:40A-11) is amended to
9 read as follows:

10 401. Director to provide revenue stamps. The taxes imposed
11 and levied by this act shall be paid through the use of stamps,
12 except as provided in section 205 (Consumers) of this act. The
13 director shall secure stamps of such designs and denominations as
14 he shall prescribe, suitable to be affixed to packages, and provide
15 for the sale thereof to licensed distributors. Only licensed
16 distributors shall affix and cancel stamps and no distributor shall
17 affix or cancel any stamp except at the tax rate in effect on the
18 date of such affixing or cancellation; except that on the effective
19 date of a tax rate increase [or of a surtax or of an increase in a
20 surtax.] imposed under this act, licensed distributors and
21 wholesale dealers must take a physical inventory of cigarettes on
22 hand at the close of business prior to the date of the tax increase
23 [or surtax or surtax increase] imposed under this act and must pay
24 any additional tax for all cigarettes bearing stamps at the rate in
25 effect prior to the tax increase. The director shall prescribe the
26 method of collecting the additional tax. The director shall not
27 authorize any person to sell revenue stamps except his duly
28 constituted agents and assistants. On sales of revenue stamps the
29 director shall allow, as compensation for the services and
30 expenses of the distributor in affixing and handling of such
31 stamps, a discount of 1.80% of the face amount of any sale of
32 1,000 stamps or more; provided, that the distributor has complied
33 with all the provisions of this act [, and provided, however, that
34 the director shall be empowered to adjust such discount whenever
35 an increase in the surtax is required under section 4 of P.L.1982,
36 c.40 (C.54:40A-8.2)]; and, provided, further, however, that the
37 director shall be empowered to adjust such discount to provide
38 equivalent compensation with respect to the face value of each
39 1,000 stamps or more [required for packages of cigarettes which
40 contain 25 cigarettes]. No discount shall be allowed on any sale of
41 less than 1,000 stamps and stamps shall not be sold in blocks of
42 less than 100 stamps.

43 (cf: P.L.1987, c.37, s.2)

44 17. (New section) Each retail licensee under P.L.1948, c.65
45 (C.54:40A-1 et seq.) shall, on or before the 1st day of the 2nd
46 month after the effective date of P.L. c. (C.) (now
47 pending before the Legislature as this bill), file a return under
48 oath or certified under the penalties of perjury, with the director
49 on forms furnished by the director, showing the amount of

1 cigarettes in the retail licensee's possession in the State at 12:01
2 a.m. on the effective date of P.L., c. (C.) (now pending
3 before the Legislature as this bill), and shall at the time of filing
4 that return pay the tax to the director. Failure to obtain such
5 forms shall not be an excuse for the failure to make a return
6 containing the information required by the director.

7 18. Section 5 of P.L.1982, c.40 (C.54:40A-37.1) is amended to
8 read as follows:

9 5. The sum of \$1,000,000.00 of the [surtax collected under the
10 provisions of this 1982 amendatory and supplementary act] the
11 tax collected pursuant to section 301 of P.L.1948, c.65
12 (C.54:40A-8), shall be deposited by the State Treasurer in a
13 special account to be known as the Cancer Research Fund, except
14 that for Fiscal Year 1983 only \$500,000.00 shall be deposited in
15 that account. Moneys in the Cancer Research Fund shall be
16 annually appropriated toward the funding of the New Jersey State
17 Commission on Cancer Research [(to be) established pursuant to
18 [Assembly Bill No. 531 or Senate Bill No. 390 of 1982]] P.L.1983,
19 c.6 (C.52:9U-1 et seq.), or to projects authorized and approved by
20 the commission.

21 (cf: P.L.1982, c.40, s.5)

22 19. Section 4 of P.L.1982, c.40 (C.54:40A-8.2) is repealed.

23 20. Sections 1 through 14 and section 20 of this act shall take
24 effect immediately and shall apply to tobacco products delivered
25 to retail dealers or consumers on and after July 1, 1990, even if
26 rendered under a contract entered into prior to that date and
27 sections 15 through 19 shall take effect at 12:01 a.m. on July 1,
28 1990.

31 STATE TAXATION

32
33 Establishes a wholesale sales and use tax of 24% upon certain
34 tobacco products, levies the cigarette excise tax on a per
35 cigarette basis at a rate equal to \$0.40 per pack of 20 cigarettes
36 and repeals the cigarette surtax.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 3608 and 3613

STATE OF NEW JERSEY

DATED: JUNE 14, 1990

The Assembly Appropriations Committee reports favorably the Assembly Committee Substitute for Assembly Bill Nos. 3608 and 3613.

The Assembly Committee Substitute for Assembly Bill Nos. 3608 and 3613 changes the taxation of cigarettes and other tobacco products.

The committee substitute imposes a 24% wholesale sales tax upon the receipts from the sale of tobacco products by a distributor or a wholesaler to a retail dealer or consumer. Tobacco products are defined to include, but not be limited to, cigars, chewing tobacco, pipe tobacco, smoking tobacco and snuff. The definition specifically excludes cigarettes taxed under the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.). Each wholesaler or distributor will be required to file a return and pay the tax on a monthly basis. The bill provides for the payment of a compensating use tax at the same rate as the wholesale sales tax if a taxable sale of the product, as defined by the bill, does not take place. The tax will apply to wholesale transactions made on and after July 1, 1990.

Tobacco products are currently subject to the retail sales and use tax but not to wholesale sales or excise taxes.

Cigarettes are currently taxed in two ways under the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.). An excise tax is imposed at the rate of \$0.095 per each ten cigarettes (\$0.19 per 20-pack). There is also a 6% surtax on the average wholesale price of cigarettes, rounded to the next highest cent. The Director of the Division of Taxation may adjust the surtax every six months, based on changes in average wholesale prices. Taken together, the current excise tax and surtax on a pack of 20 cigarettes is \$0.27. There is currently no retail sales tax imposed on cigarettes.

This committee substitute repeals the cigarette wholesale surtax and increases the excise tax to the equivalent of \$0.40 per pack, effective July 1, 1990. It also amends the law to levy the excise tax on a per-cigarette basis, rather than per each 10 cigarettes. This allows for a simplified tax calculation when cigarettes are sold in quantities other than packs of 20. Certain technical adjustments are made concerning cigarette revenue stamp discounts for distributors, and collection and payment transitional provisions are included to ensure payment of the higher tax rate by licensed distributors, wholesale dealers and retail licensees upon the effective date of the bill.

COMMITTEE SUBSTITUTE

As referred to the committee, Assembly Bill No. 3608 increased the surtax on the wholesale price of cigarettes from 6% to 16.4%, effective July 1, 1990. The committee substitute increases the per-unit excise tax instead, but in an amount that is nearly equivalent to the proposed surtax increase. Assembly Bill No. 3613 imposed a 24% wholesale sales tax on other tobacco products. That bill's provisions have been incorporated into this committee substitute.

FISCAL IMPACT

A fiscal note has not been completed on this committee substitute. However, the committee estimates that the increase in the cigarette excise tax will raise approximately \$90 million in fiscal year 1991 and the imposition of a wholesale sales tax on other tobacco products will raise approximately \$10 million, for a total of \$100 million in additional revenues to the General Fund. In fiscal year 1990, it is estimated that approximately \$195 million will be collected from the cigarette excise tax and surtax.

STATE OF NEW JERSEY

ADOPTED JUNE 14, 1990

Sponsored by Assemblymen ZANGARI and BROWN

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

5
6 BE IT ENACTED by the Senate and General Assembly of the
7 State of New Jersey:

8 1. (New Section) Sections 1 through 14 of this act shall be
9 known and may be cited as the "Tobacco Products Wholesale
10 Sales and Use Tax Act."

11 2. (New Section) As used in sections 2 through 14 and section
12 20 of this act:

13 "Consumer" means a person except a distributor, manufacturer
14 or wholesaler who acquires a tobacco product for consumption,
15 storage or use in this State;

16 "Director" means the Director of the Division of Taxation in
17 the Department of the Treasury;

18 "Distributor" means a person, wherever resident or located,
19 who brings or causes to be brought into this State a tobacco
20 product purchased directly from the manufacturer thereof and
21 receives, stores, sells or otherwise disposes of the same after it
22 reaches this State;

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

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

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

39 "Receipt" means the sale price of a tobacco product valued in

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.

1 money, whether received in money or otherwise, including early
2 payment discounts, and without any deduction or exclusion for
3 expenses or costs whatsoever;

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

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

10 "Tobacco product" means any product containing any tobacco
11 for personal consumption including, but not limited to, cigars,
12 little cigars, cigarillos, chewing tobacco, pipe tobacco, smoking
13 tobacco and their substitutes, and snuff, but does not include
14 cigarette as defined in section 102 of the "Cigarette Tax Act,"
15 P.L.1948, c.65 (C.54:40A-1 et seq.);

16 "Treasurer" means the State Treasurer;

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

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

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

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

29 3. (New Section) a. There is imposed a tax of 24% upon the
30 receipts from every sale of a tobacco product by a distributor or
31 a wholesaler to a retail dealer or consumer.

32 b. Unless a tobacco product has already been or will be subject
33 to the wholesale sales tax imposed in subsection a. of this
34 section, if a distributor or wholesaler uses a tobacco product
35 within this State, there is imposed upon the distributor or
36 wholesaler a compensating use tax of 24% measured by the sales
37 price of a similar tobacco product to a retail dealer.

38 c. Unless a wholesale use tax is due pursuant to subsection b.
39 of this section, if a distributor or wholesaler has not collected the
40 wholesale sales tax imposed in subsection a. of this section upon a
41 sale that is subject to the wholesale sales tax imposed in that
42 subsection a., there is imposed upon the retail dealer or consumer
43 chargeable for the sale a compensating use tax of 24% of the
44 price paid or charged for the tobacco product, which shall be
45 collected in the manner provided in subsection b. of section 5 of
46 this act.

47 4. (New Section) Every distributor or wholesaler required to
48 collect the tax shall collect the tax from the retail dealer or

1 consumer when collecting the receipt to which it applies. The
2 retail dealer or consumer shall be given an invoice, receipt or
3 other statement or memorandum of the charge and the tax shall
4 be stated, charged and shown separately on the document given
5 to the retail dealer or consumer. The tax shall be paid to the
6 distributor or wholesaler required to collect it as trustee for and
7 on account of the State.

8 The director may provide by regulation that the tax upon
9 receipts paid in installments may be paid and the return filed on
10 the amount of each installment.

11 5. (New Section) a. Every distributor or wholesaler required
12 to collect the tax imposed by this act shall be personally liable
13 for the tax imposed, collected or required to be collected under
14 this act. A distributor or wholesaler shall have the same right in
15 respect to collecting the tax from the retail dealer or consumer
16 or in respect to non-payment of the tax by the retail dealer or
17 consumer as if the tax were a part of the sales price for the
18 tobacco product and payable at the same time; except the
19 director shall be joined as a party in any action or proceeding
20 brought to collect the tax.

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

31 6. (New Section) Within 15 days from the effective date of
32 this act, or in the case of distributors or wholesalers commencing
33 business or opening new places of business after that date, within
34 3 days after the commencement or opening, every distributor or
35 wholesaler required to collect the taxes imposed by this act shall
36 file with the director a certificate of registration in a form
37 prescribed by the director unless a certificate of authority has
38 been previously issued to any distributor or wholesaler. The
39 director shall issue, without charge, to each registrant a
40 certificate of authority empowering the registrant to collect the
41 tax and a duplicate thereof for each additional place of business
42 of the registrant. Each certificate or duplicate shall state the
43 place of business to which it is applicable. The certificate of
44 authority shall be prominently displayed in the place of business
45 of the registrant. Certificates shall be nonassignable and
46 nontransferable and shall be surrendered to the director
47 immediately upon the registrant's ceasing to do business at the
48 place named.

1 7. (New Section) Every distributor or wholesaler required to
2 collect any tax imposed by this act shall keep records of every
3 charge and of all amounts paid, charged or due thereon and of the
4 tax payable thereon, in such form as the director may require.
5 Records shall include a true copy of each invoice, receipt,
6 statement or memorandum upon which the provisions of section 4
7 of this act require that the tax be stated separately. Records
8 shall be available for inspection and examination at any time
9 upon demand by the director or duly authorized agent or
10 employee and shall be preserved for a period of three years,
11 except that the director may consent to their destruction within
12 that period or may require that they be kept longer.

13 8. (New Section) a. Every distributor or wholesaler required
14 to collect or pay tax under this act shall on or before August 20,
15 1990, and on or before the twentieth day of each month
16 thereafter, make and file a return for the preceding month with
17 the director. The return shall show the receipts of the distributor
18 or wholesaler and the amount of taxes required to be collected
19 with respect to such receipts. The return shall also reflect any
20 use tax due.

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

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

35 9. (New Section) Every distributor or wholesaler required to
36 file a return under this act shall, at the time of filing the return,
37 pay to the director the taxes imposed by this act. Taxes for the
38 period for which a return is required to be filed or for a lesser
39 interval as shall have been designated by the director, shall be
40 due and payable to the director on the date limited for the filing
41 of the return for the period, or on the date limited for such lesser
42 interval as the director has designated, without regard to whether
43 a return is filed or whether the return which is filed correctly
44 shows the amount of receipts or the taxes due thereon. If the
45 director deems it necessary to protect the revenues to be
46 obtained under this act, the director may require a distributor or
47 wholesaler required to collect the tax imposed by this act to file
48 with the director a bond, issued by a surety company authorized

1 to transact business in this State as to solvency and
2 responsibility, in an amount as the director may fix, to secure the
3 payment of any tax or penalties or interest due or which may
4 become due from the distributor or wholesaler under this act. If
5 the director determines that a distributor or wholesaler is to file
6 a bond, the director shall give notice to the distributor or
7 wholesaler to that effect specifying the amount of the bond
8 required. The distributor or wholesaler shall file the bond within
9 five days after the giving of notice unless within the five days the
10 distributor or wholesaler requests in writing a hearing before the
11 director at which the necessity, propriety and amount of the bond
12 shall be determined by the director. The determination shall be
13 final and shall be complied with within 15 days after the giving of
14 notice thereof. In lieu of bond, securities approved by the
15 director or cash in an amount as the director may prescribe, may
16 be deposited, which shall be kept in the custody of the director
17 who may at any time without notice to the depositor apply them
18 to any tax or interest or penalties due, and for that purpose the
19 securities may be sold by the director at public or private sale
20 without notice to the depositor thereof.

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

38 11. (New Section) The taxes imposed by this act shall be
39 governed in all respects by the provisions of the State Tax
40 Uniform Procedure Law, R.S.54:48-1 et seq., except only to the
41 extent that a specific provision of this act may be in conflict
42 therewith.

43 12. (New Section) In addition to the powers granted in this
44 act, the director may:

45 a. Make, adopt and amend rules and regulations appropriate to
46 the carrying out of this act.

47 b. Extend, for cause shown by general regulation or individual
48 authorization, the time of filing any return for a period not

1 exceeding three months on such terms and conditions as the
2 director may require; and for cause shown, remit penalties and
3 interest as provided for in the State Tax Uniform Procedure Law,
4 R.S.54:48-1 et seq.

5 c. Delegate functions and powers to any officer or employee
6 of the division, and such of the director's powers as the director
7 may deem necessary to carry out efficiently the provisions of this
8 act, and the person or persons to whom such power has been
9 delegated shall possess and may exercise all of the power and
10 perform all of the duties as delegated.

11 d. Require any distributor or wholesaler required to collect tax
12 to keep detailed records of all receipts, charged or accrued, and
13 names and addresses of wholesalers, distributors, retail dealers
14 and consumers, and other facts relevant in determining the
15 amount of tax due and to furnish such information upon request
16 to the director.

17 e. Assess, determine, revise and readjust the taxes imposed by
18 this act.

19 f. Enter into agreements with other states and the District of
20 Columbia, providing for the reciprocal enforcement of similar tax
21 laws imposed by the states entering into such an agreement. The
22 agreement may empower the duly authorized officer of any
23 contracting state, which extends like authority to officers or
24 employees of this State, to sue for the collection of that state's
25 taxes in the courts of this State.

26 13. (New Section) Any person failing to file a return or to pay
27 or pay over any tax to the director within the time required by
28 this act shall be subject to such penalties and interest as are
29 provided in the State Tax Uniform Procedure Law, R.S.54:48-1 et
30 seq. Unpaid penalties and interest may be determined, assessed,
31 collected and enforced in the same manner as the tax imposed by
32 this act.

33 14. (New Section) a. Any aggrieved taxpayer may, within 90
34 days after any decision, order, finding, assessment or action of
35 the director made pursuant to the provisions of this act, appeal
36 therefrom to the tax court in accordance with the provisions of
37 the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

38 b. The appeal provided by this section shall be the exclusive
39 remedy available to any taxpayer for review of a decision of the
40 director in respect of the determination of the liability of the
41 taxpayer for the taxes imposed by this act.

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

44 301. Tax imposed; rate. A tax is hereby imposed on the sale,
45 use or possession for sale or use within this State of all cigarettes
46 at the rate of [\$0.09 1/2] \$0.02 for each [10 cigarettes or
47 fraction thereof] cigarette [and a surtax equal to a percent of the
48 average wholesale price, which percent shall be the same as the

1 rate of tax imposed on retail sales pursuant to the "Sales and Use
2 Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), rounded to the
3 next highest cent but not less than \$0.02 1/2 for each 10
4 cigarettes or fraction thereof. For packs containing 25
5 cigarettes the total tax and surtax shall be 125% of the tax and
6 surtax on packs containing 20 cigarettes].

7 (cf: P.L.1985, c.341, s.1)

8 16. Section 401 of P.L.1948, c.65 (C.54:40A-11) is amended to
9 read as follows:

10 401. Director to provide revenue stamps. The taxes imposed
11 and levied by this act shall be paid through the use of stamps.
12 except as provided in section 205 (Consumers) of this act. The
13 director shall secure stamps of such designs and denominations as
14 he shall prescribe, suitable to be affixed to packages, and provide
15 for the sale thereof to licensed distributors. Only licensed
16 distributors shall affix and cancel stamps and no distributor shall
17 affix or cancel any stamp except at the tax rate in effect on the
18 date of such affixing or cancellation; except that on the effective
19 date of a tax rate increase [or of a surtax or of an increase in a
20 surtax,] imposed under this act, licensed distributors and
21 wholesale dealers must take a physical inventory of cigarettes on
22 hand at the close of business prior to the date of the tax increase
23 [or surtax or surtax increase] imposed under this act and must pay
24 any additional tax for all cigarettes bearing stamps at the rate in
25 effect prior to the tax increase. The director shall prescribe the
26 method of collecting the additional tax. The director shall not
27 authorize any person to sell revenue stamps except his duly
28 constituted agents and assistants. On sales of revenue stamps the
29 director shall allow, as compensation for the services and
30 expenses of the distributor in affixing and handling of such
31 stamps, a discount of 1.80% of the face amount of any sale of
32 1,000 stamps or more; provided, that the distributor has complied
33 with all the provisions of this act [, and provided, however, that
34 the director shall be empowered to adjust such discount whenever
35 an increase in the surtax is required under section 4 of P.L.1982,
36 c.40 (C.54:40A-8.2)]; and, provided, further, however, that the
37 director shall be empowered to adjust such discount to provide
38 equivalent compensation with respect to the face value of each
39 1,000 stamps or more [required for packages of cigarettes which
40 contain 25 cigarettes]. No discount shall be allowed on any sale of
41 less than 1,000 stamps and stamps shall not be sold in blocks of
42 less than 100 stamps.

43 (cf: P.L.1987, c.37, s.2)

44 17. (New section) Each retail licensee under P.L.1948, c.65
45 (C.54:40A-1 et seq.) shall, on or before the 1st day of the 2nd
46 month after the effective date of P.L. c. (C.) (now
47 pending before the Legislature as this bill), file a return under
48 oath or certified under the penalties of perjury, with the director

1 on forms furnished by the director, showing the amount of
2 cigarettes in the retail licensee's possession in the State at 12:01
3 a.m. on the effective date of P.L., c. (C.) (now pending
4 before the Legislature as this bill), and shall at the time of filing
5 that return pay the tax to the director. Failure to obtain such
6 forms shall not be an excuse for the failure to make a return
7 containing the information required by the director.

8 18. Section 5 of P.L.1982, c.40 (C.54:40A-37.1) is amended to
9 read as follows:

10 5. The sum of \$1,000,000.00 of the [surtax collected under the
11 provisions of this 1982 amendatory and supplementary act] the
12 tax collected pursuant to section 301 of P.L.1948, c.65
13 (C.54:40A-8), shall be deposited by the State Treasurer in a
14 special account to be known as the Cancer Research Fund, except
15 that for Fiscal Year 1983 only \$500,000.00 shall be deposited in
16 that account. Moneys in the Cancer Research Fund shall be
17 annually appropriated toward the funding of the New Jersey State
18 Commission on Cancer Research [(to be) established pursuant to
19 [Assembly Bill No. 531 or Senate Bill No. 390 of 1982]] P.L.1983,
20 c.6 (C.52:9U-1 et seq.), or to projects authorized and approved by
21 the commission.

22 (cf: P.L.1982, c.40, s.5)

23 19. Section 4 of P.L.1982, c.40 (C.54:40A-8.2) is repealed.

24 20. Sections 1 through 14 and section 20 of this act shall take
25 effect immediately and shall apply to tobacco products delivered
26 to retail dealers or consumers on and after July 1, 1990, even if
27 rendered under a contract entered into prior to that date and
28 sections 15 through 19 shall take effect at 12:01 a.m. on July 1,
29 1990.

30 STATE TAXATION

31
32
33
34 Establishes a wholesale sales and use tax of 24% upon certain
35 tobacco products, levies the cigarette excise tax on a per
36 cigarette basis at a rate equal to \$0.40 per pack of 20 cigarettes
37 and repeals the cigarette surtax.

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ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 3608 and 3613

STATE OF NEW JERSEY

ADOPTED

JUN 14 1990

By Assemblymen ZANGARI AND W. BROWN

AN ACT concerning the taxation of cigarettes and other tobacco 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 .

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

1. (New Section) Sections 1 through 14 of this act shall be known and may be cited as the "Tobacco Products Wholesale Sales and Use Tax Act."

2. (New Section) 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, wherever resident or located, who brings or causes to be brought into this State a tobacco product ~~purchased directly from the manufacturer thereof and receives, stores, sells or otherwise disposes of the same after it reaches this State;~~

"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;

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.

"Receipt" means the sale price of a tobacco product valued in money, whether received in money or otherwise, including early payment discounts, and without any deduction or exclusion for expenses or costs whatsoever;

"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

"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.

3. (New Section) a. There is imposed a tax of 24% upon the receipts from every sale of a tobacco product by a distributor or a wholesaler to a retail dealer or consumer.

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 24% measured by the sales price of a similar tobacco product to a retail dealer.

c. Unless a wholesale-use tax is due pursuant to subsection b. of this section, if a distributor or wholesaler has not collected 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 24% 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.

4. (New Section) Every distributor or wholesaler required to collect the tax shall collect the tax from the retail dealer or consumer when collecting the receipt to which it applies. The retail dealer or consumer shall be given an invoice, receipt or other statement or memorandum of the charge and the tax shall be stated, charged and shown separately on the document given to the retail dealer or consumer. The tax shall be paid to the distributor or wholesaler required to collect it as trustee for and on account of the State.

The director may provide by regulation that the tax upon receipts paid in installments may be paid and the return filed on the amount of each installment.

5. (New Section) a. Every distributor or wholesaler required to collect the tax imposed by this act shall be personally liable for the tax imposed, collected or required to be collected under this act. A distributor or wholesaler shall have the same right in respect to collecting the tax from the retail dealer or consumer or in respect to non-payment of the tax by the retail dealer or consumer as if the tax were a part of the sales price for the tobacco product and payable at the same time; except the director shall be joined as a party in any action or proceeding brought to collect the tax.

b. If a retail dealer or consumer fails to pay the tax imposed by this act to the distributor or wholesaler required to collect 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.

6. (New Section) 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 3 days after the commencement or opening, every distributor or wholesaler required to collect 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 empowering the registrant to collect 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.

7. (New Section) Every distributor or wholesaler required to collect any tax imposed by this act shall keep records of every charge and of all amounts paid, charged 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 be stated separately. 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.

8. (New Section) a. Every distributor or wholesaler required to collect or pay tax under this act shall on or before August 20, 1990, and on or before the twentieth day of each month thereafter, make and file a return for the preceding month with the director. The return shall show the receipts of the distributor or wholesaler and the amount of taxes required to be collected with respect to such receipts. 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.

9. (New Section) 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 amount of receipts 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 collect 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.

10. (New Section) 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 collection or 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.

11. (New Section) The taxes imposed by this act shall be governed in all respects by the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., except only to the extent that a specific provision of this act may be in conflict therewith.

12. (New Section) 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 Tax Uniform 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 collect tax to keep detailed records of all receipts, charged or accrued, 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.

13. (New Section) Any person failing to file a return or to pay or pay over any tax to the director within the time required by this act shall be subject to such penalties and interest as are provided in the State Tax Uniform Procedure Law, R.S. 54:48-1 et seq. Unpaid penalties and interest may be determined, assessed, collected and enforced in the same manner as the tax imposed by this act.

14. (New Section) a. Any aggrieved taxpayer may, within 90 days after any decision, order, finding, assessment or action of the director made pursuant to the provisions of this act, appeal therefrom to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S. 54:48-1 et seq.

b. The appeal provided by this section shall be the exclusive remedy available to any taxpayer for review of a decision of the director in respect of the determination of the liability of the taxpayer for the taxes imposed by this act.

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

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 [\$0.09 1/2] \$0.02 for each [10 cigarettes or fraction thereof] cigarette [and a surtax equal to a percent of the average wholesale price, which percent shall be the same as the rate of tax imposed on retail sales pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), rounded to the next highest cent but not less than \$0.02 1/2 for each 10 cigarettes or fraction thereof. For packs containing 25 cigarettes the total tax and surtax shall be 125% of the tax and surtax on packs containing 20 cigarettes].

(cf: P.L.1985, c.341, s.1)

16. Section 401 of P.L.1948, c.65 (C.54:40A-11) is amended to read as follows:

401. Director to provide revenue stamps. The taxes imposed and levied by this act shall be paid through the use of stamps, except as provided in section 205 (Consumers) of this act. The director shall secure stamps of such designs and denominations as he shall prescribe, suitable to be affixed to packages, and provide for the sale thereof to licensed distributors. Only licensed distributors shall affix and cancel stamps and no distributor shall affix or cancel any stamp except at the tax rate in effect on the date of such affixing or cancellation; except that on the effective date of a tax rate increase [or of a surtax or of an increase in a surtax,] imposed under this act, licensed distributors and wholesale dealers must take a physical inventory of cigarettes on hand at the close of business prior to the date of the tax increase [or surtax or surtax increase] imposed under this act and must pay any additional tax for all cigarettes bearing stamps at the rate in effect prior to the tax increase. The director shall prescribe the method of collecting the additional tax. The director shall not authorize any person to sell revenue stamps except his duly constituted agents and assistants. On sales of revenue stamps the director shall allow, as compensation for the services and expenses of the distributor in affixing and handling of such stamps, a discount of 1.80% of the face amount of any sale of 1,000 stamps or more; provided, that the distributor has complied with all the provisions of this act [, and provided, however, that the director shall be empowered to adjust such discount whenever an increase in the surtax is required under section 4 of P.L.1982, c.40 (C.54:40A-8.2)]; and, provided, further, however, that the director shall be empowered to adjust such discount to provide equivalent compensation with respect to the face value of each 1,000 stamps or more [required for packages of cigarettes which contain 25 cigarettes]. No

discount shall be allowed on any sale of less than 1,000 stamps and stamps shall not be sold in blocks of less than 100 stamps.

(cf: P.L.1987, c.37, s.2)

17. (New section) Each retail licensee under P.L.1948, c.65 (C.54:40A-1 et seq.) shall, on or before the 1st day of the 2nd month after the effective date of P.L., c. (C.) (now pending before the Legislature as this bill), 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., c. (C.) (now pending before the Legislature as this bill), 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.

18. Section 5 of P.L.1982, c.40 (C.54:40A-37.1) is amended to read as follows:

5. The sum of \$1,000,000.00 of the [surtax collected under the provisions of this 1982 amendatory and supplementary act] the tax collected pursuant to section 301 of P.L. 1948, c.65 (C.54:40A-8) shall be deposited by the State Treasurer in a special account to be known as the Cancer Research Fund, except that for Fiscal Year 1983 only \$500,000.00 shall be deposited in that account. Moneys in the Cancer Research Fund shall be annually appropriated toward the funding of the New Jersey State Commission on Cancer Research [(to be) established pursuant to [Assembly Bill No. 531 or Senate Bill No. 390 of 1982]] P.L.1983, c.6 (C.52:9U-1 et seq.) or to projects authorized and approved by the commission.

(cf: P.L.1982, c.40, s.5)

19. Section 4 of P.L. 1982, c.40 (C.54:40A-8.2) is repealed.

20. Sections 1 through 14 and section 20 of this act shall take effect immediately and shall apply to tobacco products delivered to retail dealers or consumers on and after July 1, 1990, even if rendered under a contract entered into prior to that date and sections 15 through 19 shall take effect at 12:01 a.m. on July 1, 1990.

STATE TAXATION

Establishes a wholesale sales and use tax of 24% upon certain tobacco products, levies the cigarette excise tax on a per cigarette basis at a rate equal to \$0.40 per pack of 20 cigarettes and repeals the cigarette surtax.

ASSEMBLY, No. 3608
STATE OF NEW JERSEY

INTRODUCED MAY 24, 1990

By Assemblyman ZANGARI

1 AN ACT concerning the taxation of cigarettes and amending
2 P.L.1982, c.40 and amending and supplementing P.L.1948, c.65.

3
4 BE IT ENACTED by the Senate and General Assembly of the
5 State of New Jersey:

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

8 301. Tax imposed; rate. A tax is hereby imposed on the sale,
9 use or possession for sale or use within this State of all cigarettes
10 at the rate of ~~[\$0.09 1/2]~~ \$0.009 1/2 for each [10 cigarettes or
11 fraction thereof] cigarette and a surtax equal to a percent of the
12 average wholesale price, which percent shall be [the same as the
13 rate of tax imposed on retail sales pursuant to the "Sales and Use
14 Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.)] 16.4%, rounded to
15 the next highest tenth of a cent but not less than [\$0.02 1/2]
16 \$0.01 for each [10 cigarettes or fraction thereof] cigarette. [For
17 packs containing 25 cigarettes the total tax and surtax shall be
18 125% of the tax and surtax on packs containing 20 cigarettes.]
19 (cf: P.L. 1985, c. 341, s. 1)

20 2. Section 4 of P.L.1982, c.40 (C.54:40A-8.2) is amended to
21 read as follows:

22 4. For the purpose of computing the surtax pursuant to section
23 301 of P.L.1948, c.65 (C.54:40A-8), the Director of the Division
24 of Taxation shall determine and cause to be published every six
25 months commencing January 1, 1983, the average wholesale price
26 of cigarettes in the State based upon the best available current
27 data. Using the price so determined as the base price, the
28 director shall determine, and notify all persons required to report
29 under this act, and cause to be published in the New Jersey
30 Register, the cigarette surtax due pursuant to section 301 of
31 P.L.1948, c.65 (C.54:40A-8) on each [10 cigarettes or fraction
32 thereof] cigarette, expressed in cents, rounded up to the [nearest]
33 next highest tenth of a cent, during the succeeding six months.
34 (cf: P.L.1985, c.341, s.2)

35 3. Section 401 of P.L.1948, c.65 (C.54:40A-11) is amended to
36 read as follows:

37 401. Director to provide revenue stamps. The taxes imposed
38 and levied by this act shall be paid through the use of

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.

1 stamps, except as provided in section 205 (Consumers) of this
2 act. The director shall secure stamps of such designs and
3 denominations as he shall prescribe, suitable to be affixed to
4 packages, and provide for the sale thereof to licensed
5 distributors. Only licensed distributors shall affix and cancel
6 stamps and no distributor shall affix or cancel any stamp except
7 at the tax rate in effect on the date of such affixing or
8 cancellation; except that on the effective date of a tax rate
9 increase or of a surtax [or of], an increase in a surtax or a surtax
10 rate increase, imposed under this act, licensed distributors and
11 wholesale dealers must take a physical inventory of cigarettes on
12 hand at the close of business prior to the date of the tax increase
13 [or], surtax [or], surtax increase or surtax rate increase imposed
14 under this act and must pay any additional tax for all cigarettes
15 bearing stamps at the rate in effect prior to the tax increase.
16 The director shall prescribe the method of collecting the
17 additional tax. The director shall not authorize any person to sell
18 revenue stamps except his duly constituted agents and assistants.
19 On sales of revenue stamps the director shall allow, as
20 compensation for the services and expenses of the distributor in
21 affixing and handling of such stamps, a discount of 1.80% of the
22 face amount of any sale of 1,000 stamps or more; provided, that
23 the distributor has complied with all the provisions of this act,
24 and provided, however, that the director shall be empowered to
25 adjust such discount whenever an increase in the surtax
26 computation is required under section 4 of P.L.1982, c.40
27 (C.54:40A-8.2); and, provided, further, however, that the director
28 shall be empowered to adjust such discount to provide equivalent
29 compensation with respect to the face value of each 1,000 stamps
30 or more [required for packages of cigarettes which contain 25
31 cigarettes] whenever an increase in the rate of surtax is enacted.
32 No discount shall be allowed on any sale of less than 1,000 stamps
33 and stamps shall not be sold in blocks of less than 100 stamps.
34 (cf: P.L.1987, c.37, s.2)

35 4. (New section) Each retail licensee under P.L.1948, c.65
36 (C.54:40A-1 et seq.) shall, on or before the 1st day of the 2nd
37 month after the effective date of P.L., c. (C.) (now
38 pending before the Legislature as this bill), file a return under
39 oath or certified under the penalties of perjury, with the director
40 on forms furnished by the director, showing the amount of
41 cigarettes in the retail licensee's possession in the State at 12:01
42 a.m. on the effective date of P.L., c. (C.) (now pending
43 before the Legislature as this bill), and shall at the time of filing
44 that return pay the tax to the director. Failure to obtain such
45 forms shall not be an excuse for the failure to make a return
46 containing the information required by the director.

47 5. This act shall take effect at 12:01 a.m. on July 1, 1990.

STATEMENT

This bill increases the surtax on the wholesale price of cigarettes from 6% to 16.4% effective July 1, 1990. It also makes a technical adjustment to the law in order to levy taxes per cigarette rather than per quantities of ten. This will allow for ease of calculation if cigarettes ever are sold in quantities other than packs of 20. The bill also makes certain technical adjustments to the law concerning cigarette revenue stamp discounts for distributors and provides collection and payment transitional provisions to ensure payment of the higher rate by licensed distributors, wholesale dealers and retail licensees upon the effective date of the bill.

STATE TAXATION

Increases cigarette surtax rate from 6% to 16.4% and levies tax and surtax per cigarette.

ASSEMBLY, No. 3613

STATE OF NEW JERSEY

INTRODUCED MAY 24, 1990

By Assemblyman BROWN

1 AN ACT establishing a wholesale sales and use tax on certain
2 tobacco products and supplementing Title 54 of the Revised
3 Statutes.

4
5 BE IT ENACTED by the Senate and General Assembly of the
6 State of New Jersey:

7 1. This act shall be known and may be cited as the "Tobacco
8 Products Wholesale Sales and Use Tax Act."

9 2. As used in this act:

10 "Consumer" means a person except a distributor, manufacturer
11 or wholesaler who acquires a tobacco product for consumption,
12 storage or use in this State;

13 "Director" means the Director of the Division of Taxation in
14 the Department of the Treasury;

15 "Distributor" means a person, wherever resident or located,
16 who brings or causes to be brought into this State a tobacco
17 product purchased directly from the manufacturer thereof and
18 receives, stores, sells or otherwise disposes of the same after it
19 reaches this State;

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

25 "Person" means an individual, firm, corporation, copartnership,
26 joint venture, association, receiver, trustee, guardian, executor,
27 administrator, or any other person acting in a fiduciary capacity,
28 or an estate, trust or group or combination acting as a unit, the
29 State Government and any political subdivision thereof, and the
30 plural as well as the singular, unless the intention to give a more
31 limited meaning is disclosed by the context;

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

36 "Receipt" means the sale price of a tobacco product valued in
37 money, whether received in money or otherwise, including early
38 payment discounts, and without any deduction or exclusion for
39 expenses or costs whatsoever;

40 "Retail dealer" means a person who is engaged in this State in
41 the business of selling any tobacco product at retail. A person

1 placing a tobacco product vending machine at, or on any premises
2 shall be deemed to be a retail dealer for each vending machine;

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

5 "Tobacco product" means any product containing any tobacco
6 for personal consumption including, but not limited to, cigars,
7 little cigars, cigarillos, chewing tobacco, pipe tobacco, smoking
8 tobacco and their substitutes, and snuff, but does not include
9 cigarette as defined in section 102 of the "Cigarette Tax Act,"
10 P.L. 1948, c. 65 (C.54:40A-1 et seq.);

11 "Treasurer" means the State Treasurer;

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

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

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

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

24 3. a. There is imposed a tax of 24% upon the receipts from
25 every sale of a tobacco product by a distributor or a wholesaler
26 to a retail dealer or consumer.

27 b. Unless a tobacco product has already been or will be subject
28 to the wholesale sales tax imposed in subsection a. of this
29 section, if a distributor or wholesaler uses a tobacco product
30 within this State, there is imposed upon the distributor or
31 wholesaler a compensating use tax of 24% measured by the sales
32 price of a similar tobacco product to a retail dealer.

33 c. Unless a wholesale use tax is due pursuant to subsection b.
34 of this section, if a distributor or wholesaler has not collected the
35 wholesale sales tax imposed in subsection a. of this section upon a
36 sale that is subject to the wholesale sales tax imposed in that
37 subsection a., there is imposed upon the retail dealer or consumer
38 chargeable for the sale a compensating use tax of 24% of the
39 price paid or charged for the tobacco product, which shall be
40 collected in the manner provided in subsection b. of section 5 of
41 this act.

42 4. Every distributor or wholesaler required to collect the tax
43 shall collect the tax from the retail dealer or consumer when
44 collecting the receipt to which it applies. The retail dealer or
45 consumer shall be given an invoice, receipt or other statement or
46 memorandum of the charge and the tax shall be stated, charged
47 and shown separately on the document given to the retail dealer
48 or consumer. The tax shall be paid to the distributor or

1 wholesaler required to collect it as trustee for and on account of
2 the State.

3 The director may provide by regulation that the tax upon
4 receipts paid in installments may be paid and the return filed on
5 the amount of each installment.

6 5. a. Every distributor or wholesaler required to collect the
7 tax imposed by this act shall be personally liable for the tax
8 imposed, collected or required to be collected under this act. A
9 distributor or wholesaler shall have the same right in respect to
10 collecting the tax from the retail dealer or consumer or in
11 respect to non-payment of the tax by the retail dealer or
12 consumer as if the tax were a part of the sales price for the
13 tobacco product and payable at the same time; except the
14 director shall be joined as a party in any action or proceeding
15 brought to collect the tax.

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

26 6. Within 15 days from the effective date of this act, or in the
27 case of distributors or wholesalers commencing business or
28 opening new places of business after that date, within 3 days
29 after the commencement or opening, every distributor or
30 wholesaler required to collect the taxes imposed by this act shall
31 file with the director a certificate of registration in a form
32 prescribed by the director unless a certificate of authority has
33 been previously issued to any distributor or wholesaler. The
34 director shall issue, without charge, to each registrant a
35 certificate of authority empowering the registrant to collect the
36 tax and a duplicate thereof for each additional place of business
37 of the registrant. Each certificate or duplicate shall state the
38 place of business to which it is applicable. The certificate of
39 authority shall be prominently displayed in the place of business
40 of the registrant. Certificates shall be nonassignable and
41 nontransferable and shall be surrendered to the director
42 immediately upon the registrant's ceasing to do business at the
43 place named.

44 7. Every distributor or wholesaler required to collect any tax
45 imposed by this act shall keep records of every charge and of all
46 amounts paid, charged or due thereon and of the tax payable
47 thereon, in such form as the director may require. Records shall
48 include a true copy of each invoice, receipt, statement or

1 memorandum upon which the provisions of section 4 of this act
2 require that the tax be stated separately. Records shall be
3 available for inspection and examination at any time upon
4 demand by the director or duly authorized agent or employee and
5 shall be preserved for a period of three years, except that the
6 director may consent to their destruction within that period or
7 may require that they be kept longer.

8 8. a. Every distributor or wholesaler required to collect or pay
9 tax under this act shall on or before August 20, 1990, and on or
10 before the twentieth day of each month thereafter, make and file
11 a return for the preceding month with the director. The return
12 shall show the receipts of the distributor or wholesaler and the
13 amount of taxes required to be collected with respect to such
14 receipts. The return shall also reflect any use tax due.

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

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

29 9. Every distributor or wholesaler required to file a return
30 under this act shall, at the time of filing the return, pay to the
31 director the taxes imposed by this act. Taxes for the period for
32 which a return is required to be filed or for a lesser interval as
33 shall have been designated by the director, shall be due and
34 payable to the director on the date limited for the filing of the
35 return for the period, or on the date limited for such lesser
36 interval as the director has designated, without regard to whether
37 a return is filed or whether the return which is filed correctly
38 shows the amount of receipts or the taxes due thereon. If the
39 director deems it necessary to protect the revenues to be
40 obtained under this act, the director may require a distributor or
41 wholesaler required to collect the tax imposed by this act to file
42 with the director a bond, issued by a surety company authorized
43 to transact business in this State as to solvency and
44 responsibility, in an amount as the director may fix, to secure the
45 payment of any tax or penalties or interest due or which may
46 become due from the distributor or wholesaler under this act. If
47 the director determines that a distributor or wholesaler is to file
48 a bond, the director shall give notice to the distributor or

1 wholesaler to that effect specifying the amount of the bond
2 required. The distributor or wholesaler shall file the bond within
3 five days after the giving of notice unless within the five days the
4 distributor or wholesaler requests in writing a hearing before the
5 director at which the necessity, propriety and amount of the bond
6 shall be determined by the director. The determination shall be
7 final and shall be complied with within 15 days after the giving of
8 notice thereof. In lieu of bond, securities approved by the
9 director or cash in an amount as the director may prescribe, may
10 be deposited, which shall be kept in the custody of the director
11 who may at any time without notice to the depositor apply them
12 to any tax or interest or penalties due, and for that purpose the
13 securities may be sold by the director at public or private sale
14 without notice to the depositor thereof.

15 10. If a return required by this act is not filed, or if a return
16 when filed is incorrect or insufficient, the amount of tax due
17 shall be determined by the director from such information as may
18 be available. If necessary, the tax may be estimated on the basis
19 of external indices, such as purchases, location, scale of charges,
20 comparable charges, number of employees or other factors.

21 ~~Notice of the determination shall be given to the distributor,~~
22 wholesaler, retail dealer or consumer liable for the collection or
23 ~~payment of the tax.~~ The determination shall finally and
24 irrevocably fix the tax unless the wholesaler, distributor, retail
25 dealer or consumer against whom it is assessed, within 30 days
26 after the notice date of the determination, shall apply to the
27 director for a hearing, or unless the director on the director's
28 motion shall redetermine the same. After the hearing the
29 director shall give notice of the determination to the wholesaler,
30 distributor, retail dealer or consumer against whom the tax is
31 assessed.

32 11. The taxes imposed by this act shall be governed in all
33 respects by the provisions of the State Tax Uniform Procedure
34 Law, R.S.54:48-1 et seq., except only to the extent that a
35 specific provision of this act may be in conflict therewith.

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

38 a. Make, adopt and amend rules and regulations appropriate to
39 the carrying out of this act.

40 b. Extend, for cause shown by general regulation or individual
41 authorization, the time of filing any return for a period not
42 exceeding three months on such terms and conditions as the
43 director may require; and for cause shown, remit penalties and
44 interest as provided for in the State Tax Uniform Procedure Law,
45 R.S. 54:48-1 et seq.

46 c. Delegate functions and powers to any officer or employee
47 of the division, and such of the director's powers as the director
48 may deem necessary to carry out efficiently the provisions of this

1 act, and the person or persons to whom such power has been
2 delegated shall possess and may exercise all of the power and
3 perform all of the duties as delegated.

4 d. Require any distributor or wholesaler required to collect tax
5 to keep detailed records of all receipts, charged or accrued, and
6 names and addresses of wholesalers, distributors, retail dealers
7 and consumers, and other facts relevant in determining the
8 amount of tax due and to furnish such information upon request
9 to the director.

10 e. Assess, determine, revise and readjust the taxes imposed by
11 this act.

12 f. Enter into agreements with other states and the District of
13 Columbia, providing for the reciprocal enforcement of similar tax
14 laws imposed by the states entering into such an agreement. The
15 agreement may empower the duly authorized officer of any
16 contracting state, which extends like authority to officers or
17 employees of this State, to sue for the collection of that state's
18 taxes in the courts of this State.

19 13. Any person failing to file a return or to pay or pay over
20 any tax to the director within the time required by this act shall
21 be subject to such penalties and interest as are provided in the
22 State Tax Uniform Procedure Law, R.S. 54:48-1 et seq. Unpaid
23 penalties and interest may be determined, assessed, collected and
24 enforced in the same manner as the tax imposed by this act.

25 14. a. Any aggrieved taxpayer may, within 90 days after any
26 decision, order, finding, assessment or action of the director
27 made pursuant to the provisions of this act, appeal therefrom to
28 the tax court in accordance with the provisions of the State Tax
29 Uniform Procedure Law, R.S. 54:48-1 et seq.

30 b. The appeal provided by this section shall be the exclusive
31 remedy available to any taxpayer for review of a decision of the
32 director in respect of the determination of the liability of the
33 taxpayer for the taxes imposed by this act.

34 15. This act shall take effect immediately and shall apply to
35 tobacco products delivered to retail dealers or consumers on and
36 after July 1, 1990 even if rendered under a contract entered into
37 prior to that date.

38
39

40 STATEMENT

41

42 This bill imposes a 24% wholesale sales tax on certain tobacco
43 products including cigars, chewing tobacco, pipe tobacco,
44 smoking tobacco and snuff effective July 1, 1990. This charge,
45 combined with the retail sales tax levied on tobacco products,
46 will make the taxes levied on tobacco products roughly equal to
47 the taxes levied on cigarettes.

A3613

7

STATE TAXATION

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Establishes a wholesale sales and use tax of 24% upon certain tobacco products.