

ASSEMBLY, No. 2998

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED DECEMBER 7, 2000

Sponsored by:

Assemblyman GUY R. GREGG

District 24 (Sussex, Hunterdon and Morris)

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

SYNOPSIS

Adjusts the tobacco products wholesale sales and use tax rate.

CURRENT VERSION OF TEXT

As introduced.



A2998 GREGG, GREENWALD

2

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

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

7
8 1. Section 2 of P.L.1990, c.39 (C.54:40B-2) is amended to read as
9 follows:

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

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

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

16 "Distributor" means

17 a person [, wherever resident or located,] engaged in the business
18 of selling tobacco products in this State who brings, or causes to be
19 brought into this State from without the State a tobacco product
20 [purchased directly from the manufacturer thereof and receives,
21 stores, sells or otherwise disposes of the same after it reaches this
22 State] for sale.

23 a person who makes or manufactures tobacco products in this State
24 for sale in the State.

25 a person engaged in the business of selling tobacco products
26 without this State who ships or transports tobacco products to a
27 person in this State to be sold to a retail dealer, or

28 a person who receives tobacco products on which the tax has not
29 or will not be paid by another distributor;

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

35 "Person" means an individual, firm, corporation, copartnership,
36 joint venture, association, receiver, trustee, guardian, executor,
37 administrator, or any other person acting in a fiduciary capacity, or an
38 estate, trust or group or combination acting as a unit, the State
39 Government and any political subdivision thereof, and the plural as
40 well as the singular, unless the intention to give a more limited
41 meaning is disclosed by the context;

42 "Place of business" means a place where a tobacco product is sold
43 or where a tobacco product is brought or kept for the purpose of sale

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 or consumption, including so far as may be applicable a vessel, vehicle,
2 airplane, train or vending machine;

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

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

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

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

19 "Treasurer" means the State Treasurer;

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

22 "Wholesale price" means the established price for which a
23 manufacturer sells tobacco products to a distributor;

24 "Wholesaler" means a person, wherever resident or located, other
25 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 products
28 solely for the purpose of bona fide resale to retail dealers or to other
29 persons for the purposes of resale only; or

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

34 (cf: P.L.1990, c.39, s.2)

35

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

38 3. a. There is imposed a tax of [48% upon the receipts from
39 every] 30% upon the wholesale price upon the sale, use or distribution
40 of a tobacco product [by a distributor or a wholesaler to a retail dealer
41 or consumer] in this State. The tax is imposed upon a distributor at
42 the time the distributor

43 (1) brings or causes to be brought into the State from without the
44 State, a tobacco product for sale;

45 (2) makes or manufactures a tobacco product for sale in the State;

46 (3) ships or transports a tobacco product to a retail dealer in the

1 State to be sold by that retail dealer.

2 b. Unless a tobacco product has already been or will be subject to
3 the wholesale sales tax imposed in subsection a. of this section, if a
4 distributor or wholesaler uses a tobacco product within this State,
5 there is imposed upon the distributor or wholesaler a compensating
6 use tax of ~~[48%]~~ 30% measured by the sales price of a similar
7 tobacco product to a ~~[retail dealer]~~ distributor.

8 c. Unless a wholesale use tax is due pursuant to subsection b. of
9 this section, if a distributor or wholesaler has not ~~[collected]~~ paid the
10 wholesale sales tax imposed in subsection a. of this section upon a sale
11 that is subject to the wholesale sales tax imposed in that subsection a.,
12 there is imposed upon the retail dealer or consumer chargeable for the
13 sale a compensating use tax of ~~[48%]~~ 30% of the price paid or
14 charged for the tobacco product, which shall be collected in the
15 manner provided in subsection b. of section 5 of this act.

16 (cf: P.L.1997, c.264, s.3)

17

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

20 4. Every distributor or wholesaler ~~[required to collect]~~ shall be
21 liable to pay the tax ~~[shall collect the tax from the retail dealer or~~
22 ~~consumer when collecting the receipt to which it applies]~~ when paying
23 the applicable wholesale price. The retail dealer or consumer shall be
24 given an invoice, receipt or other statement or memorandum ~~[of the~~
25 ~~charge and the tax shall be stated, charged and shown separately on~~
26 ~~the document given to the retail dealer or consumer]~~ stating that the
27 tax has been paid or will be paid by the distributor or wholesaler. The
28 tax shall be paid ~~[to]~~ by the distributor or wholesaler ~~[required to~~
29 ~~collect it]~~ as trustee for and on account of the State.

30 The director may provide by regulation that the tax upon ~~[receipts]~~
31 the wholesale price paid in installments may be paid and the return
32 filed on the amount of each installment.

33 (cf: P.L.1990, c.39, s.4)

34

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

37 5. a. Every distributor or wholesaler required to ~~[collect]~~ to pay
38 the tax imposed by this act shall be personally liable for the tax
39 imposed ~~[, collected or required to be collected]~~ under this act. ~~[A~~
40 ~~distributor or wholesaler shall have the same right in respect to~~
41 ~~collecting the tax from the retail dealer or consumer or in respect to~~
42 ~~non-payment of the tax by the retail dealer or consumer as if the tax~~
43 ~~were a part of the sales price for the tobacco product and payable at~~
44 ~~the same time; except the director shall be joined as a party in any~~
45 ~~action or proceeding brought to collect the tax.]~~

1 b. If a [retail dealer or consumer] distributor or wholesaler fails
2 to pay the tax imposed by this act [to the distributor or wholesaler]
3 when required to [collect] pay the same, then in addition to all other
4 rights, obligations and remedies provided, the compensating use tax
5 imposed in subsection c. of section 3 shall be payable by the retail
6 dealer or consumer directly to the director, and it shall be the duty of
7 the retail dealer or consumer to file a return, on a form prescribed by
8 the director, with the director and to pay the tax to the director within
9 20 days of the date the tax was required to be paid or at other times
10 as specified by the director.

11 (cf: P.L.1990, c.39, s.5)

12

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

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

31 (cf: P.L.1990, c.39, s.6)

32

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

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

1 be kept longer.
2 (cf: P.L.1990, c.39, s.7)

3
4 7. Section 8 of P.L.1990, c.39 (C.54:40B-8) is amended to read as
5 follows:

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

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

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

27 (cf: P.L.1990, c.39, s.8)

28
29 8. Section 9 of P.L.1990, c.39 (C.54:40B-9) is amended to read as
30 follows:

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

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

17 (cf: P.L.1990, c.39, s.9)

18

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

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

36 (cf: P.L.1990, c.39, s.10)

37

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

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

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

43 b. Extend, for cause shown by general regulation or individual
44 authorization, the time of filing any return for a period not exceeding
45 three months on such terms and conditions as the director may require;
46 and for cause shown, remit penalties and interest as provided for in the

1 State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

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

8 d. Require any distributor or wholesaler required to **[collect] pay**
9 tax to keep detailed records of all **[receipts, charged or accrued]**
10 amounts of wholesales prices paid, and names and addresses of
11 wholesalers, distributors, retail dealers and consumers, and other facts
12 relevant in determining the amount of tax due and to furnish such
13 information upon request to the director.

14 e. Assess, determine, revise and readjust the taxes imposed by this
15 act.

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

22 (P.L.1990, c.39, s.12)

23

24 11. This act shall take effect on the first day of the second month
25 beginning after enactment and shall apply to tobacco products
26 delivered on and after that date.

27

28

29

STATEMENT

30

31 This bill adjusts the State excise tax on tobacco products other than
32 cigarettes and makes a technical change to bring New Jersey's tax
33 more in line with how surrounding states tax these products.

34 Under P.L.1997, c.264, New Jersey doubled the tax rate for
35 cigarettes and tobacco products effective January 1, 1998. Cigarette
36 taxes were increased from \$.02 per cigarette \$.04 per cigarette. The
37 tobacco products tax was increased from 24% to 48% of the
38 wholesale sales price.

39 The new revenue was dedicated to the health care subsidy fund and
40 to school construction needs. Of the nearly \$200 million in projected
41 additional revenue, only about \$5 million was anticipated from the
42 increased wholesale tax on other tobacco products.

43 The legislative history of P.L.1997, c.264 shows that the
44 Legislature anticipated that additional revenue from the higher tobacco
45 products tax - unlike the new revenue from the cigarette tax - would
46 remain relatively stable. However, this has not been the case. In fact

1 those revenues have been declining and, in recognition of this, the
2 State Treasurer has reduced his estimate of total revenue from the tax
3 for fiscal year 2001.

4 The reduced revenues from the wholesale tax on tobacco products
5 are proof that the 100% tax increase enacted in 1997 has begun to
6 effect consumers and small business in New Jersey. In the case of
7 cigars, a major component of the wholesale tax, sales into the State
8 are down dramatically since 1997. Indeed, many New Jersey cigar
9 retailers - all small businesses - have been forced to close their doors.
10 The New Jersey cigar consumer is essentially forced to purchase from
11 out of State where tax rates are so much less.

12 As compared to the State's 48% tax on tobacco products other than
13 cigarettes, there is no such tax in neighboring Pennsylvania. In
14 Connecticut and New York the tax rate is 20% and in Massachusetts,
15 Maryland and Delaware, the rate is 15%.

16 New Jersey's comparative tax rate is even higher than 48% because
17 surrounding states levy the tax on the manufacturer's selling price
18 while in New Jersey it is levied on the higher wholesaler's selling price.
19 This bill seeks to bring New Jersey's tax base in line with those in
20 surrounding states.

21 The sponsor believes that this bill will bring New Jersey's tax in line
22 with the rates in surrounding states - although New Jersey's tax will
23 still be higher. By changing the tax base, it will also bring the State in
24 line with how surrounding states tax tobacco products. In achieving
25 these ends, the bill will help increase the State's competitiveness and
26 help stem the current decline in revenue from that tax.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2998

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 20, 2001

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2998 with committee amendments.

Assembly Bill No. 2998, as amended, adjusts the tobacco products wholesale sales and use tax (the State excise tax on tobacco products other than cigarettes) and makes a technical change to bring New Jersey's tax more in line with the taxation of these products in contiguous states.

Under P.L.1997, c.264, New Jersey doubled the tax rate for cigarettes and tobacco products effective January 1, 1998. Cigarette taxes were increased from \$.02 per cigarette \$.04 per cigarette. The tobacco products tax was increased from 24% to 48% of the wholesale sales price.

This bill:

(1) Converts the tobacco products tax from one imposed on the price that a distributor *receives from the sale* of tobacco products to a vendor or consumer to one imposed upon the (lower) price that the distributor *pays to buy* the products from the manufacturer; and

(2) Lowers the rate at which the tax is imposed on this new price base from 48% to 30%.

The sponsor's statement indicates the sponsor's belief that this bill will make the price base and tax rate of New Jersey's tobacco products tax more closely comparable to the base and rate prevailing in surrounding states.

FISCAL IMPACT

The Department of the Treasury estimates that the loss of revenue to the General Fund resulting from the implementation of this legislation would be between \$7.5 and \$10.5 million annually.

This estimate is based on (1) the bill's reduction of the tax rate of the tobacco products tax by 37.5%, and (2) its replacement of the current price base with one that (because it would not include the distributor's markup) could be from 25% to 50% lower. Taking these changes together, the expected loss would be somewhere between 53% and 69% of the revenue currently collected. The budget estimate of that revenue for FY2002 is \$15 million, unchanged from the

estimate for FY2001. Thus the range of potential loss of revenue would be from \$7.5 to \$10.5 million. The department assumes that collections under the tax will be level for the foreseeable future at any given rate and base. The Office of Legislative Services has noted that this range of revenue losses should be considered as a maximum, as the retail price decrease resulting from the tax reduction may increase sales volume in New Jersey, partially offsetting the revenue losses.

The bill will take effect on the first day of the second month following enactment. It is assumed that this act will take effect February 1, 2002. Thus, the bill will be in effect for five months of the current fiscal year and the loss in this fiscal year will be 5/12 of the expected annual fiscal year loss or between \$3.1 million and \$4.4 million.

The tobacco products wholesale sales and use tax is one of the revenue sources dedicated to the health care subsidy fund, so the loss of revenue may affect the health care subsidy fund.

COMMITTEE AMENDMENTS:

The amendments clarify that the tax is based on the actual price paid for the products and not on an industry established price, clarify the liability for installments of tax for products sold to installment payers, clarify reporting and record keeping responsibilities of taxpayers by making explicit certain implicit limits on reporting and record keeping, changes the taxable event on which liability accrues from the wholesaler's purchase or importation of tobacco products to the wholesaler's resale of tobacco products, and make a technical correction to a legal reference.

FISCAL NOTE
ASSEMBLY, No. 2998
STATE OF NEW JERSEY
209th LEGISLATURE

DATED: JANUARY 10, 2002

SUMMARY

Synopsis: Adjusts the tobacco products wholesale sales and use tax rate.
Type of Impact: Continuing annual reduction in General Fund revenue.
Agencies Affected: Department of the Treasury.

Executive Estimate

Fiscal Impact	FY 2002	FY 2003	FY 2004
State Revenue	(\$3,000,000) to (\$4,500,000)	(\$7,500,000) to (\$10,500,000)	(\$7,500,000) to (\$10,500,000)

- ! The Office of Legislative Services (OLS) **generally concurs** with the Executive estimate of the potential State revenue loss from this bill, although the range of revenue losses should be considered a **maximum**.
- ! While there may be a slight increase in taxable sales of non-cigarette tobacco products in New Jersey as a result of this bill, it will not offset the revenue loss resulting from the change in the tax rate and tax base.

BILL DESCRIPTION

Assembly Bill No. 2998 of 2000 reduces the State excise tax on tobacco products other than cigarettes and makes changes to the tax base. The bill converts the tobacco products tax from one imposed on the price that a distributor *receives from the sale* of tobacco products to a vendor or consumer to one imposed upon the (lower) price that the distributor *pays to buy* the products from the manufacturer. The bill also lowers the rate at which the tax is imposed on this new price base from 48 percent to 30 percent. Under current law (P.L.1997, c.264), New Jersey doubled the tax rate for cigarettes and tobacco products effective January 1, 1998. Cigarette taxes were increased from \$.02 per cigarette \$.04 per cigarette. The tobacco products tax was increased from 24 percent to 48 percent of the wholesale sales price.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Office of Management and Budget (OMB) and the Department of the Treasury estimate that the loss of revenue to the General Fund resulting from the implementation of this legislation would be between \$7.5 and \$10.5 million annually.

This estimate is based on (1) the bill's reduction of the tax rate of the tobacco products tax by 37.5 percent, and (2) its replacement of the current price base with one that (because it would not include the distributor's markup) could be from 25 percent to 50 percent lower. Taking these changes together, the expected loss would be somewhere between 50 percent and 70 percent of the revenue currently collected. The budget estimate of that revenue for FY 2002 is \$15 million. Thus the range of potential loss of revenue would be from \$7.5 to \$10.5 million. The Department assumes that collections under the tax will be level for the foreseeable future at any given rate and base.

This proposal is to take effect on the first day of the second month following enactment. It is assumed that this act will be effective February 1, 2002. Thus, the bill will be in effect for five months of the current fiscal year and the loss in this fiscal year will be 5/12 of the expected annual fiscal year loss or between \$3.0 million and \$4.5 million.

According to the department of the Treasury the loss of revenue may affect the health care subsidy fund and school construction needs.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) generally concurs with the Executive estimate of the potential range of State revenue losses from this bill, although the range of revenue losses should be considered a maximum. Losses at the lower end of the range are more likely. The OLS anticipates that a tobacco price decrease resulting from the tax reduction in this bill may increase sales in New Jersey, partially offsetting the revenue losses.

The OMB and Treasury do not address the possible *movement* of tobacco sales from one state to another. Undoubtedly, many New Jersey residents currently buy other tobacco products in neighboring states with lower tax rates, such as New York and Delaware. Pennsylvania has *no tax* on other tobacco products. Under most circumstances, out-of-state purchases will continue. The incentive to take advantage of Pennsylvania's tax-free status will remain even if New Jersey's tax rate is reduced. Also, recent historical experience suggests that consumer spending for tobacco products is relatively price inelastic -- price changes have a limited impact on spending behavior. Total tobacco products sales reached about \$32.1 million during FY 1997, the fiscal year *prior* to the FY 1998 New Jersey tax increase. Sales then fell to about \$28.8 million in FY 1999, the fiscal year *after* the tax increase. The 100 percent tax increase was accompanied by a 9.0 percent decline in sales. Since then sales have climbed back up to levels approaching prior levels. While some change in tobacco sales due to the tax reduction in this bill is possible, the OLS anticipates a limited impact.

Section: *Revenue, Finance and Appropriations*

Analyst: *Martin Poethke*
Senior Fiscal Analyst

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This fiscal note has been prepared pursuant to P.L.1980, c.67.

[First Reprint]

ASSEMBLY, No. 2998

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED DECEMBER 7, 2000

Sponsored by:

Assemblyman GUY R. GREGG

District 24 (Sussex, Hunterdon and Morris)

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

Co-Sponsored by:

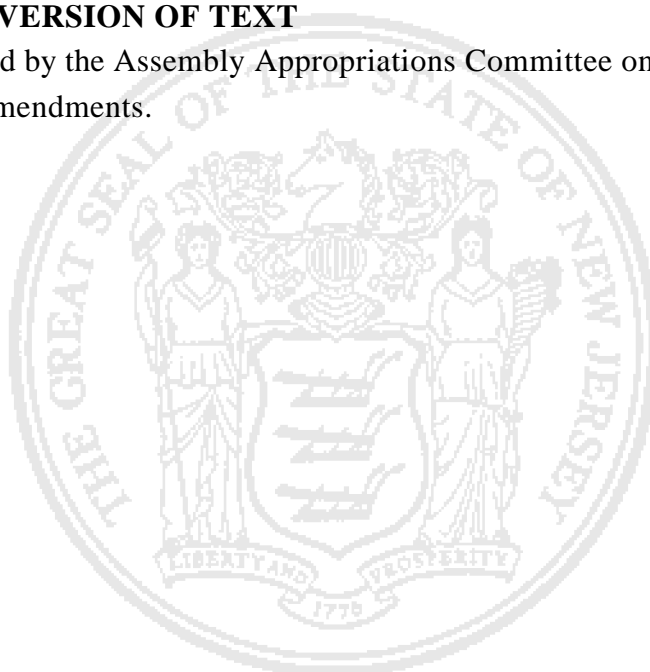
Assemblyman Corodemus, Senators Bennett and Bryant

SYNOPSIS

Adjusts the tobacco products wholesale sales and use tax rate.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on December 20, 2001, with amendments.



(Sponsorship Updated As Of: 1/8/2002)

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3 upon which the tax is determined, amending P.L.1990, c.39.

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12 wholesaler who acquires a tobacco product for consumption, storage
13 or use in this State;

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

16 "Distributor" means

17 a person **[, wherever resident or located,]** engaged in the business
18 of selling tobacco products in this State who brings, or causes to be
19 brought into this State from without the State a tobacco product
20 **[purchased directly from the manufacturer thereof and receives,**
21 **stores, sells or otherwise disposes of the same after it reaches this**
22 **State]** for sale ¹within this State¹,

23 a person who makes or manufactures tobacco products in this State
24 for sale in the State,

25 a person engaged in the business of selling tobacco products
26 without this State who ships or transports tobacco products to a
27 person in this State to be sold to a retail dealer, or

28 a person who receives tobacco products on which the tax has not
29 or will not be paid by another distributor;

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

35 "Person" means an individual, firm, corporation, copartnership,
36 joint venture, association, receiver, trustee, guardian, executor,
37 administrator, or any other person acting in a fiduciary capacity, or an
38 estate, trust or group or combination acting as a unit, the State
39 Government and any political subdivision thereof, and the plural as
40 well as the singular, unless the intention to give a more limited
41 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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAP committee amendments adopted December 20, 2001.

1 "Place of business" means a place where a tobacco product is sold
2 or where a tobacco product is brought or kept for the purpose of sale
3 or consumption, including so far as may be applicable a vessel, vehicle,
4 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 the
10 business of selling any tobacco product at retail. A person placing a
11 tobacco product vending machine at, or on any premises shall be
12 deemed to be a retail dealer for each vending machine;

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

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

21 "Treasurer" means the State Treasurer;

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

24 "Wholesale price" means the ¹[established] actual¹ price for which
25 a manufacturer sells tobacco products to a distributor;

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

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

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

36 (cf: P.L.1990, c.39, s.2)

37

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

40 3. a. There is imposed a tax of [48% upon the receipts from
41 every] 30% upon the wholesale price upon the sale, use or distribution
42 of a tobacco product [by a distributor or a wholesaler to a retail dealer
43 or consumer] ¹[in] within¹ this State. ¹[The tax is imposed upon a
44 distributor at the time the distributor

45 (1) brings or causes to be brought into the State from without the
46 State, a tobacco product for sale;

1 (2) makes or manufactures a tobacco product for sale in the State;
2 (3) ships or transports a tobacco product to a retail dealer in the
3 State to be sold by that retail dealer.]¹

4 b. Unless a tobacco product has already been or will be subject to
5 the wholesale sales tax imposed in subsection a. of this section, if a
6 distributor or wholesaler uses a tobacco product within this State,
7 there is imposed upon the distributor or wholesaler a compensating
8 use tax of ~~[48%]~~ 30% measured by the sales price of a similar
9 tobacco product to a ~~[retail dealer]~~ distributor.

10 c. Unless a wholesale use tax is due pursuant to subsection b. of
11 this section, if a distributor or wholesaler has not ~~[collected]~~ paid the
12 wholesale sales tax imposed in subsection a. of this section upon a sale
13 that is subject to the wholesale sales tax imposed in that subsection a.,
14 there is imposed upon the retail dealer or consumer chargeable for the
15 sale a compensating use tax of ~~[48%]~~ 30% of the price paid or
16 charged for the tobacco product, which shall be collected in the
17 manner provided in subsection b. of section 5 of this act.

18 (cf: P.L.1997, c.264, s.3)

19

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

22 4. Every distributor or wholesaler ~~[required to collect]~~ shall be
23 liable to pay the tax ~~[shall collect the tax from the retail dealer or~~
24 ~~consumer when collecting the receipt to which it applies]~~ when
25 ¹[paying the applicable wholesale price] it has sold or otherwise
26 disposed of the tobacco product to the retail dealer or consumer¹.
27 The retail dealer or consumer shall be given an invoice, receipt or
28 other statement or memorandum ~~[of the charge and the tax shall be~~
29 ~~stated, charged and shown separately on the document given to the~~
30 ~~retail dealer or consumer]~~ stating that the tax has been paid or will be
31 paid by the distributor or wholesaler. ¹~~[The tax shall be paid [to] by~~
32 ~~the distributor or wholesaler [required to collect it] as trustee for and~~
33 ~~on account of the State.]~~¹

34 The director may provide by regulation that the tax upon ~~[receipts]~~
35 ¹[the wholesale price paid] tobacco products, sold to a retail dealer
36 or consumer who pays the distributor or wholesaler¹ in installments ¹,¹
37 may be paid and the return filed on the amount of each installment.

38 (cf: P.L.1990, c.39, s.4)

39

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

42 5. a. Every distributor or wholesaler required to ~~[collect]~~ to pay
43 the tax imposed by this act shall be personally liable for the tax
44 imposed ~~[, collected or required to be collected]~~ under this act. ~~[A~~
45 ~~distributor or wholesaler shall have the same right in respect to~~

1 collecting the tax from the retail dealer or consumer or in respect to
2 non-payment of the tax by the retail dealer or consumer as if the tax
3 were a part of the sales price for the tobacco product and payable at
4 the same time; except the director shall be joined as a party in any
5 action or proceeding brought to collect the tax.]

6 b. If a [retail dealer or consumer] distributor or wholesaler fails
7 to pay the tax imposed by this act [to the distributor or wholesaler]
8 when required to [collect] pay the same, then in addition to all other
9 rights, obligations and remedies provided, the compensating use tax
10 imposed in subsection c. of section 3 shall be payable by the retail
11 dealer or consumer directly to the director, and it shall be the duty of
12 the retail dealer or consumer to file a return, on a form prescribed by
13 the director, with the director and to pay the tax to the director within
14 20 days of the date the tax was required to be paid or at other times
15 as specified by the director.

16 (cf: P.L.1990, c.39, s.5)

17

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

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

36 (cf: P.L.1990, c.39, s.6)

37

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

40 7. Every distributor or wholesaler required to [collect] pay any
41 tax imposed by this act shall keep records of every charge for and of
42 all amounts of wholesale price paid [, charged] or due thereon and of
43 the tax payable thereon, in such form as the director may require.
44 Records shall include a true copy of each invoice, receipt, statement
45 or memorandum upon which the provisions of section 4 of this act

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

7 (cf: P.L.1990, c.39, s.7)

8

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

11 8. a. Every distributor or wholesaler required to [collect or] pay
12 tax under this act shall on or before August 20, 1990, and on or before
13 the 20th day of each month thereafter, make and file a return for the
14 preceding month with the director. The return shall show the
15 [receipts of] total amount of wholesale price paid for sales to the
16 distributor or wholesaler¹ for tobacco products that are payable during
17 the period¹ and the amount of taxes required to be [collected] paid
18 with respect to such [receipts] amount. The return shall also reflect
19 any use tax due.

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

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

33 (cf: P.L.1990, c.39, s.8)

34

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

37 9. Every distributor or wholesaler required to file a return under
38 this act shall, at the time of filing the return, pay to the director the
39 taxes imposed by this act. Taxes for the period for which a return is
40 required to be filed or for a lesser interval as shall have been
41 designated by the director, shall be due and payable to the director on
42 the date limited for the filing of the return for the period, or on the
43 date limited for such lesser interval as the director has designated,
44 without regard to whether a return is filed or whether the return which
45 is filed correctly shows the total amount of [receipts] the wholesale
46 price paid for sales to the distributor or wholesaler¹ for tobacco

1 products that are taxable during the period¹ or the taxes due thereon.
2 If the director deems it necessary to protect the revenues to be
3 obtained under this act, the director may require a distributor or
4 wholesaler required to [collect] pay the tax imposed by this act to file
5 with the director a bond, issued by a surety company authorized to
6 transact business in this State as to solvency and responsibility, in an
7 amount as the director may fix, to secure the payment of any tax or
8 penalties or interest due or which may become due from the distributor
9 or wholesaler under this act. If the director determines that a
10 distributor or wholesaler is to file a bond, the director shall give notice
11 to the distributor or wholesaler to that effect specifying the amount of
12 the bond required. The distributor or wholesaler shall file the bond
13 within five days after the giving of notice unless within the five days
14 the distributor or wholesaler requests in writing a hearing before the
15 director at which the necessity, propriety and amount of the bond shall
16 be determined by the director. The determination shall be final and
17 shall be complied with within 15 days after the giving of notice
18 thereof. In lieu of bond, securities approved by the director or cash in
19 an amount as the director may prescribe, may be deposited, which shall
20 be kept in the custody of the director who may at any time without
21 notice to the depositor apply them to any tax or interest or penalties
22 due, and for that purpose the securities may be sold by the director at
23 public or private sale without notice to the depositor thereof.

24 (cf: P.L.1990, c.39, s.9)

25

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

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

43 (cf: P.L.1990, c.39, s.10)

44

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

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

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

4 b. Extend, for cause shown by general regulation or individual
5 authorization, the time of filing any return for a period not exceeding
6 three months on such terms and conditions as the director may require;
7 and for cause shown, remit penalties and interest as provided for in the
8 State ¹[Tax Uniform] Uniform Tax¹ Procedure Law, R.S.54:48-1 et
9 seq.

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

16 d. Require any distributor or wholesaler required to [collect] pay
17 tax to keep detailed records of all [receipts, charged or accrued]
18 amounts of wholesales prices paid ¹for the tobacco products on which
19 taxes are payable¹, and names and addresses of wholesalers,
20 distributors, retail dealers and consumers, and other facts relevant in
21 determining the amount of tax due and to furnish such information
22 upon request to the director.

23 e. Assess, determine, revise and readjust the taxes imposed by this
24 act.

25 f. Enter into agreements with other states and the District of
26 Columbia, providing for the reciprocal enforcement of similar tax laws
27 imposed by the states entering into such an agreement. The agreement
28 may empower the duly authorized officer of any contracting state,
29 which extends like authority to officers or employees of this State, to
30 sue for the collection of that state's taxes in the courts of this State.
31 (cf: P.L.1990, c.39, s.12)

32

33 11. This act shall take effect on the first day of the second month
34 beginning after enactment and shall apply to tobacco products
35 ¹[delivered] sold or otherwise disposed of¹ on and after that date ¹,
36 except for those tobacco products for which the tax was paid prior to
37 the effective date¹.

SENATE, No. 2712

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED NOVEMBER 8, 2001

Sponsored by:

Senator JOHN O. BENNETT

District 12 (Monmouth)

Senator WAYNE R. BRYANT

District 5 (Camden and Gloucester)

SYNOPSIS

Adjusts the tobacco products wholesale sales and use tax rate.

CURRENT VERSION OF TEXT

As introduced.



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

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

7
8 1. Section 2 of P.L.1990, c.39 (C.54:40B-2) is amended to read as
9 follows:

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

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

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

16 "Distributor" means

17 a person [, wherever resident or located,] engaged in the business
18 of selling tobacco products in this State who brings, or causes to be
19 brought into this State from without the State a tobacco product
20 [purchased directly from the manufacturer thereof and receives,
21 stores, sells or otherwise disposes of the same after it reaches this
22 State] for sale within this State,

23 a person who makes or manufactures tobacco products in this State
24 for sale in the State,

25 a person engaged in the business of selling tobacco products
26 without this State who ships or transports tobacco products to a
27 person in this State to be sold to a retail dealer, or

28 a person who receives tobacco products on which the tax has not
29 or will not be paid by another distributor;

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

35 "Person" means an individual, firm, corporation, copartnership,
36 joint venture, association, receiver, trustee, guardian, executor,
37 administrator, or any other person acting in a fiduciary capacity, or an
38 estate, trust or group or combination acting as a unit, the State
39 Government and any political subdivision thereof, and the plural as
40 well as the singular, unless the intention to give a more limited
41 meaning is disclosed by the context;

42 "Place of business" means a place where a tobacco product is sold
43 or where a tobacco product is brought or kept for the purpose of sale

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 or consumption, including so far as may be applicable a vessel, vehicle,
2 airplane, train or vending machine;

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

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

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

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

19 "Treasurer" means the State Treasurer;

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

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

24 "Wholesaler" means a person, wherever resident or located, other
25 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 products
28 solely for the purpose of bona fide resale to retail dealers or to other
29 persons for the purposes of resale only; or

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

34 (cf: P.L.1990, c.39, s.2)

35

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

38 3. a. There is imposed a tax of [48% upon the receipts from
39 every] 30% upon the wholesale price upon the sale, use or distribution
40 of a tobacco product [by a distributor or a wholesaler to a retail dealer
41 or consumer] within this State.

42 b. Unless a tobacco product has already been or will be subject to
43 the wholesale sales tax imposed in subsection a. of this section, if a
44 distributor or wholesaler uses a tobacco product within this State,
45 there is imposed upon the distributor or wholesaler a compensating
46 use tax of [48%] 30% measured by the sales price of a similar

1 tobacco product to a [retail dealer] distributor.

2 c. Unless a wholesale use tax is due pursuant to subsection b. of
3 this section, if a distributor or wholesaler has not [collected] paid the
4 wholesale sales tax imposed in subsection a. of this section upon a sale
5 that is subject to the wholesale sales tax imposed in that subsection a.,
6 there is imposed upon the retail dealer or consumer chargeable for the
7 sale a compensating use tax of [48%] 30% of the price paid or
8 charged for the tobacco product, which shall be collected in the
9 manner provided in subsection b. of section 5 of this act.

10 (cf: P.L.1997, c.264, s.3)

11

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

14 4. Every distributor or wholesaler [required to collect] shall be
15 liable to pay the tax [shall collect the tax from the retail dealer or
16 consumer when collecting the receipt to which it applies] when it has
17 sold or otherwise disposed of the tobacco product to the retail dealer
18 or consumer. The retail dealer or consumer shall be given an invoice,
19 receipt or other statement or memorandum [of the charge and the tax
20 shall be stated, charged and shown separately on the document given
21 to the retail dealer or consumer] stating that the tax has been paid or
22 will be paid by the distributor or wholesaler. [The tax shall be paid to
23 the distributor or wholesaler required to collect it as trustee for and on
24 account of the State.]

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

29 (cf: P.L.1990, c.39, s.4)

30

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

33 5. a. Every distributor or wholesaler required to [collect] to pay
34 the tax imposed by this act shall be personally liable for the tax
35 imposed [, collected or required to be collected] under this act. [A
36 distributor or wholesaler shall have the same right in respect to
37 collecting the tax from the retail dealer or consumer or in respect to
38 non-payment of the tax by the retail dealer or consumer as if the tax
39 were a part of the sales price for the tobacco product and payable at
40 the same time; except the director shall be joined as a party in any
41 action or proceeding brought to collect the tax.]

42 b. If a [retail dealer or consumer] distributor or wholesaler fails
43 to pay the tax imposed by this act [to the distributor or wholesaler]
44 when required to [collect] pay the same, then in addition to all other
45 rights, obligations and remedies provided, the compensating use tax

1 imposed in subsection c. of section 3 shall be payable by the retail
2 dealer or consumer directly to the director, and it shall be the duty of
3 the retail dealer or consumer to file a return, on a form prescribed by
4 the director, with the director and to pay the tax to the director within
5 20 days of the date the tax was required to be paid or at other times
6 as specified by the director.

7 (cf: P.L.1990, c.39, s.5)

8

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

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

27 (cf: P.L.1990, c.39, s.6)

28

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

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

43 (cf: P.L.1990, c.39, s.7)

44

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

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

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

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

23 (cf: P.L.1990, c.39, s.8)

24

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

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

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

14 (cf: P.L.1990, c.39, s.9)

15

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

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

33 (cf: P.L.1990, c.39, s.10)

34

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

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

38 a. Make, adopt and amend rules and regulations appropriate to the
39 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 exceeding
42 three months on such terms and conditions as the director may require;
43 and for cause shown, remit penalties and interest as provided for in the
44 State [Tax Uniform] Uniform Tax Procedure Law, R.S.54:48-1 et
45 seq.

46 c. Delegate functions and powers to any officer or employee of the

1 division, and such of the director's powers as the director may deem
2 necessary to carry out efficiently the provisions of this act, and the
3 person or persons to whom such power has been delegated shall
4 possess and may exercise all of the power and perform all of the duties
5 as delegated.

6 d. Require any distributor or wholesaler required to [collect] pay
7 tax to keep detailed records of all [receipts, charged or accrued]
8 amounts of wholesales prices paid for the tobacco products on which
9 taxes are payable, and names and addresses of wholesalers,
10 distributors, retail dealers and consumers, and other facts relevant in
11 determining the amount of tax due and to furnish such information
12 upon request to the director.

13 e. Assess, determine, revise and readjust the taxes imposed by this
14 act.

15 f. Enter into agreements with other states and the District of
16 Columbia, providing for the reciprocal enforcement of similar tax laws
17 imposed by the states entering into such an agreement. The agreement
18 may empower the duly authorized officer of any contracting state,
19 which extends like authority to officers or employees of this State, to
20 sue for the collection of that state's taxes in the courts of this State.
21 (cf: P.L.1990, c.39, s.12)

22
23 11. This act shall take effect on the first day of the second month
24 beginning after enactment and shall apply to tobacco products sold or
25 otherwise disposed of on and after that date, except for those tobacco
26 products for which the tax was paid prior to the effective date.

27
28

29 STATEMENT

30

31 This bill adjusts the State excise tax on tobacco products other than
32 cigarettes and makes a technical change to bring New Jersey's tax
33 more in line with how surrounding states tax these products.

34 Under P.L.1997, c.264, New Jersey doubled the tax rate for
35 cigarettes and tobacco products effective January 1, 1998. Cigarette
36 taxes were increased from \$.02 per cigarette \$.04 per cigarette. The
37 tobacco products tax was increased from 24% to 48% of the
38 wholesale sales price.

39 The new revenue was dedicated to the health care subsidy fund and
40 to school construction needs. Of the nearly \$200 million in projected
41 additional revenue, only about \$5 million was anticipated from the
42 increased wholesale tax on other tobacco products.

43 The legislative history of P.L.1997, c.264 shows that the
44 Legislature anticipated that additional revenue from the higher tobacco
45 products tax - unlike the new revenue from the cigarette tax - would
46 remain relatively stable. However, this has not been the case. In fact

1 those revenues have been declining and, in recognition of this, the
2 State Treasurer reduced his estimate of total revenue from the tax for
3 fiscal year 2001.

4 The reduced revenues from the wholesale tax on tobacco products
5 are proof that the 100% tax increase enacted in 1997 has begun to
6 affect consumers and small business in New Jersey. In the case of
7 cigars, a major component of the wholesale tax, sales into the State
8 are down dramatically since 1997. Indeed, many New Jersey cigar
9 retailers - all small businesses - have been forced to close their doors.
10 The New Jersey cigar consumer is essentially forced to purchase from
11 out of State where tax rates are so much less.

12 As compared to the State's 48% tax on tobacco products other than
13 cigarettes, there is no such tax in neighboring Pennsylvania. In
14 Connecticut and New York the tax rate is 20% and in Massachusetts,
15 Maryland and Delaware, the rate is 15%.

16 New Jersey's comparative tax rate is even higher than 48% because
17 surrounding states levy the tax on the manufacturer's selling price
18 while in New Jersey it is levied on the higher wholesaler's selling price.
19 This bill seeks to bring New Jersey's tax base in line with those in
20 surrounding states.

21 The sponsor believes that this bill will bring New Jersey's tax in line
22 with the rates in surrounding states - although New Jersey's tax will
23 still be higher. By changing the tax base, it will also bring the State in
24 line with how surrounding states tax tobacco products. In achieving
25 these ends, the bill will help increase the State's competitiveness and
26 help stem the current decline in revenue from that tax.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2712

STATE OF NEW JERSEY

DATED: NOVEMBER 29, 2001

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2712.

This bill adjusts the State excise tax on tobacco products other than cigarettes and makes a technical change to bring New Jersey's tax more in line with the taxation of these products in contiguous states.

Under P.L.1997, c.264, New Jersey doubled the tax rate for cigarettes and tobacco products effective January 1, 1998. Cigarette taxes were increased from \$.02 per cigarette \$.04 per cigarette. The tobacco products tax was increased from 24% to 48% of the wholesale sales price.

This bill:

(1) Converts the tobacco products tax from one imposed on the price that a distributor *receives from the sale* of tobacco products to a vendor or consumer to one imposed upon the (lower) price that the distributor *pays to buy* the products from the manufacturer; and

(2) Lowers the rate at which the tax is imposed on this new price base from 48% to 30%.

The sponsor's statement indicates the sponsor's belief that this bill will make the price base and tax rate of New Jersey's tobacco products tax more closely comparable to the base and rate prevailing in surrounding states.

FISCAL IMPACT

The Department of the Treasury estimates that the loss of revenue to the General Fund resulting from the implementation of this legislation would be between \$7.5 and \$10.5 million annually.

This estimate is based on (1) the bill's reduction of the tax rate of the tobacco products tax by 37.5%, and (2) its replacement of the current price base with one that (because it would not include the distributor's markup) could be from 25% to 50% lower. Taking these changes together, the expected loss would be somewhere between 50% and 70% of the revenue currently collected. The budget estimate of that revenue for FY2002 is \$15 million, unchanged from the estimate for FY2001. Thus the range of potential loss of revenue would be from \$7.5 to \$10.5 million. The department assumes that collections under the tax will be level for the foreseeable future at any given rate and base.

This proposal is to take effect on the first day of the second month following enactment. It is assumed that this act will be effective February 1, 2002. Thus, the bill will be in effect for five months of the current fiscal year and the loss in this fiscal year will be 5/12 of the expected annual fiscal year loss or between \$3.1 million and \$4.4 million.

The loss of revenue may affect the health care subsidy fund and the school construction needs.

FISCAL NOTE
SENATE, No. 2712
STATE OF NEW JERSEY
209th LEGISLATURE

DATED: JANUARY 22, 2002

SUMMARY

Synopsis: Adjusts the tobacco products wholesale sales and use tax rate.
Type of Impact: Continuing annual reduction in General Fund revenue.
Agencies Affected: Department of the Treasury.

Executive Estimate

Fiscal Impact	FY 2002	FY 2003	FY 2004
State Revenue	(\$3,000,000) to (\$4,500,000)	(\$7,500,000) to (\$10,500,000)	(\$7,500,000) to (\$10,500,000)

- ! The Office of Legislative Services **generally concurs** with the Executive estimate of the potential State revenue loss from this bill, although the range of revenue losses should be considered a **maximum**.
- ! While there may be a slight increase in taxable sales of non-cigarette tobacco products in New Jersey as a result of this bill, it will not offset the revenue loss resulting from the change in the tax rate and tax base.

BILL DESCRIPTION

Senate Bill No. 2712 of 2001 reduces the State excise tax on tobacco products other than cigarettes and makes changes to the tax base. The bill converts the tobacco products tax from one imposed on the price that a distributor *receives from the sale* of tobacco products to a vendor or consumer to one imposed upon the (lower) price that the distributor *pays to buy* the products from the manufacturer. The bill also lowers the rate at which the tax is imposed on this new price base from 48 percent to 30 percent. Under current law (P.L.1997, c.264), New Jersey doubled the tax rate for cigarettes and tobacco products effective January 1, 1998. Cigarette taxes were increased from \$.02 per cigarette \$.04 per cigarette. The tobacco products tax was increased from 24 percent to 48 percent of the wholesale sales price.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Office of Management and Budget and the Department of the Treasury estimate that the loss of revenue to the General Fund resulting from the implementation of this legislation would be between \$7.5 and \$10.5 million annually.

This estimate is based on (1) the bill's reduction of the tax rate of the tobacco products tax by 37.5 percent, and (2) its replacement of the current price base with one that (because it would not include the distributor's markup) could be from 25 percent to 50 percent lower. Taking these changes together, the expected loss would be somewhere between 50 percent and 70 percent of the revenue currently collected. The budget estimate of that revenue for FY 2002 is \$15 million. Thus the range of potential loss of revenue would be from \$7.5 to \$10.5 million. The Department assumes that collections under the tax will be level for the foreseeable future at any given rate and base.

This proposal is to take effect on the first day of the second month following enactment. It is assumed that this act will be effective February 1, 2002. Thus, the bill will be in effect for five months of the current fiscal year and the loss in this fiscal year will be 5/12 of the expected annual fiscal year loss or between \$3.0 million and \$4.5 million.

According to the department of the Treasury the loss of revenue may affect the health care subsidy fund and school construction needs.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) generally concurs with the Executive estimate of the potential range of State revenue losses from this bill, although the range of revenue losses should be considered a maximum. Losses at the lower end of the range are more likely. The OLS anticipates that a tobacco price decrease resulting from the tax reduction in this bill may increase sales in New Jersey, partially offsetting the revenue losses.

The OMB and Treasury do not address the possible *movement* of tobacco sales from one state to another. Undoubtedly, many New Jersey residents currently buy other tobacco products in neighboring states with lower tax rates, such as New York and Delaware. Pennsylvania has *no tax* on other tobacco products. Under most circumstances, out-of-state purchases will continue. The incentive to take advantage of Pennsylvania's tax-free status will remain even if New Jersey's tax rate is reduced. Also, recent historical experience suggests that consumer spending for tobacco products is relatively price inelastic -- price changes have a limited impact on spending behavior. Total tobacco products sales reached about \$32.1 million during FY 1997, the fiscal year *prior* to the FY 1998 New Jersey tax increase. Sales then fell to about \$28.8 million in FY 1999, the fiscal year *after* the tax increase. The 100 percent tax increase was accompanied by a 9.0 percent decline in sales. Since then sales have climbed back up to levels approaching prior levels. While some change in tobacco sales due to the tax reduction in this bill is possible, the OLS anticipates a limited impact.

S2712

3

Section: *Revenue, Finance and Appropriations*

Analyst: *Martin Poethke*
Senior Fiscal Analyst

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This fiscal note has been prepared pursuant to P.L.1980, c.67.

P.L. 2001, CHAPTER 448, *approved January 11, 2002*
Assembly, No. 2998 (*First Reprint*)

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

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

7
8 1. Section 2 of P.L.1990, c.39 (C.54:40B-2) is amended to read as
9 follows:

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

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

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

16 "Distributor" means

17 a person [, wherever resident or located,] engaged in the business
18 of selling tobacco products in this State who brings, or causes to be
19 brought into this State from without the State a tobacco product
20 [purchased directly from the manufacturer thereof and receives,
21 stores, sells or otherwise disposes of the same after it reaches this
22 State] for sale ¹within this State¹.

23 a person who makes or manufactures tobacco products in this State
24 for sale in the State,

25 a person engaged in the business of selling tobacco products
26 without this State who ships or transports tobacco products to a
27 person in this State to be sold to a retail dealer, or

28 a person who receives tobacco products on which the tax has not
29 or will not be paid by another distributor;

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

35 "Person" means an individual, firm, corporation, copartnership,
36 joint venture, association, receiver, trustee, guardian, executor,
37 administrator, or any other person acting in a fiduciary capacity, or an
38 estate, trust or group or combination acting as a unit, the State
39 Government and any political subdivision thereof, and the plural as
40 well as the singular, unless the intention to give a more limited

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAP committee amendments adopted December 20, 2001.

1 meaning is disclosed by the context;

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

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

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

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

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

22 "Treasurer" means the State Treasurer;

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

25 "Wholesale price" means the ¹[established] actual¹ price for which
26 a manufacturer sells tobacco products to a distributor;

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

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

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

37 (cf: P.L.1990, c.39, s.2)

38

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

41 3. a. There is imposed a tax of [48% upon the receipts from
42 every] 30% upon the wholesale price upon the sale, use or distribution
43 of a tobacco product [by a distributor or a wholesaler to a retail dealer
44 or consumer] ¹[in] within¹ this State. ¹[The tax is imposed upon a
45 distributor at the time the distributor

46 (1) brings or causes to be brought into the State from without the

1 State, a tobacco product for sale;

2 (2) makes or manufactures a tobacco product for sale in the State;

3 (3) ships or transports a tobacco product to a retail dealer in the
4 State to be sold by that retail dealer.]¹

5 b. Unless a tobacco product has already been or will be subject to
6 the wholesale sales tax imposed in subsection a. of this section, if a
7 distributor or wholesaler uses a tobacco product within this State,
8 there is imposed upon the distributor or wholesaler a compensating
9 use tax of ~~[48%]~~ 30% measured by the sales price of a similar
10 tobacco product to a ~~[retail dealer]~~ distributor.

11 c. Unless a wholesale use tax is due pursuant to subsection b. of
12 this section, if a distributor or wholesaler has not ~~[collected]~~ paid the
13 wholesale sales tax imposed in subsection a. of this section upon a sale
14 that is subject to the wholesale sales tax imposed in that subsection a.,
15 there is imposed upon the retail dealer or consumer chargeable for the
16 sale a compensating use tax of ~~[48%]~~ 30% of the price paid or
17 charged for the tobacco product, which shall be collected in the
18 manner provided in subsection b. of section 5 of this act.

19 (cf: P.L.1997, c.264, s.3)

20

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

23 4. Every distributor or wholesaler ~~[required to collect]~~ shall be
24 liable to pay the tax ~~[shall collect the tax from the retail dealer or~~
25 ~~consumer when collecting the receipt to which it applies]~~ when
26 ¹[paying the applicable wholesale price] it has sold or otherwise
27 disposed of the tobacco product to the retail dealer or consumer¹.
28 The retail dealer or consumer shall be given an invoice, receipt or
29 other statement or memorandum ~~[of the charge and the tax shall be~~
30 ~~stated, charged and shown separately on the document given to the~~
31 ~~retail dealer or consumer]~~ stating that the tax has been paid or will be
32 paid by the distributor or wholesaler. ¹[The tax shall be paid [to] by
33 the distributor or wholesaler [required to collect it] as trustee for and
34 on account of the State.]¹

35 The director may provide by regulation that the tax upon ~~[receipts]~~
36 ¹[the wholesale price paid] tobacco products, sold to a retail dealer
37 or consumer who pays the distributor or wholesaler¹ in installments ¹,¹
38 may be paid and the return filed on the amount of each installment.

39 (cf: P.L.1990, c.39, s.4)

40

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

43 5. a. Every distributor or wholesaler required to ~~[collect]~~ to pay
44 the tax imposed by this act shall be personally liable for the tax
45 imposed ~~[, collected or required to be collected]~~ under this act. ~~[A~~

1 distributor or wholesaler shall have the same right in respect to
2 collecting the tax from the retail dealer or consumer or in respect to
3 non-payment of the tax by the retail dealer or consumer as if the tax
4 were a part of the sales price for the tobacco product and payable at
5 the same time; except the director shall be joined as a party in any
6 action or proceeding brought to collect the tax.]

7 b. If a [retail dealer or consumer] distributor or wholesaler fails
8 to pay the tax imposed by this act [to the distributor or wholesaler]
9 when required to [collect] pay the same, then in addition to all other
10 rights, obligations and remedies provided, the compensating use tax
11 imposed in subsection c. of section 3 shall be payable by the retail
12 dealer or consumer directly to the director, and it shall be the duty of
13 the retail dealer or consumer to file a return, on a form prescribed by
14 the director, with the director and to pay the tax to the director within
15 20 days of the date the tax was required to be paid or at other times
16 as specified by the director.

17 (cf: P.L.1990, c.39, s.5)

18

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

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

37 (cf: P.L.1990, c.39, s.6)

38

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

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

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

8 (cf: P.L.1990, c.39, s.7)

9

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

12 8. a. Every distributor or wholesaler required to [collect or] pay
13 tax under this act shall on or before August 20, 1990, and on or before
14 the 20th day of each month thereafter, make and file a return for the
15 preceding month with the director. The return shall show the
16 [receipts of] total amount of wholesale price paid for sales to the
17 distributor or wholesaler¹ for tobacco products that are payable during
18 the period¹ and the amount of taxes required to be [collected] paid
19 with respect to such [receipts] amount. The return shall also reflect
20 any use tax due.

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

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

34 (cf: P.L.1990, c.39, s.8)

35

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

38 9. Every distributor or wholesaler required to file a return under
39 this act shall, at the time of filing the return, pay to the director the
40 taxes imposed by this act. Taxes for the period for which a return is
41 required to be filed or for a lesser interval as shall have been
42 designated by the director, shall be due and payable to the director on
43 the date limited for the filing of the return for the period, or on the
44 date limited for such lesser interval as the director has designated,
45 without regard to whether a return is filed or whether the return which
46 is filed correctly shows the total amount of [receipts] the wholesale

1 price paid for sales to the distributor or wholesaler ¹for tobacco
2 products that are taxable during the period¹ or the taxes due thereon.
3 If the director deems it necessary to protect the revenues to be
4 obtained under this act, the director may require a distributor or
5 wholesaler required to [collect] pay the tax imposed by this act to file
6 with the director a bond, issued by a surety company authorized to
7 transact business in this State as to solvency and responsibility, in an
8 amount as the director may fix, to secure the payment of any tax or
9 penalties or interest due or which may become due from the distributor
10 or wholesaler under this act. If the director determines that a
11 distributor or wholesaler is to file a bond, the director shall give notice
12 to the distributor or wholesaler to that effect specifying the amount of
13 the bond required. The distributor or wholesaler shall file the bond
14 within five days after the giving of notice unless within the five days
15 the distributor or wholesaler requests in writing a hearing before the
16 director at which the necessity, propriety and amount of the bond shall
17 be determined by the director. The determination shall be final and
18 shall be complied with within 15 days after the giving of notice
19 thereof. In lieu of bond, securities approved by the director or cash in
20 an amount as the director may prescribe, may be deposited, which shall
21 be kept in the custody of the director who may at any time without
22 notice to the depositor apply them to any tax or interest or penalties
23 due, and for that purpose the securities may be sold by the director at
24 public or private sale without notice to the depositor thereof.
25 (cf: P.L.1990, c.39, s.9)

26

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

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

44 (cf: P.L.1990, c.39, s.10)

45

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

1 read as follows:

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

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

5 b. Extend, for cause shown by general regulation or individual
6 authorization, the time of filing any return for a period not exceeding
7 three months on such terms and conditions as the director may require;
8 and for cause shown, remit penalties and interest as provided for in the
9 State ¹[Tax Uniform] Uniform Tax¹ Procedure Law, R.S.54:48-1 et
10 seq.

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

17 d. Require any distributor or wholesaler required to [collect] pay
18 tax to keep detailed records of all [receipts, charged or accrued]
19 amounts of wholesales prices paid¹for the tobacco products on which
20 taxes are payable¹, and names and addresses of wholesalers,
21 distributors, retail dealers and consumers, and other facts relevant in
22 determining the amount of tax due and to furnish such information
23 upon request to the director.

24 e. Assess, determine, revise and readjust the taxes imposed by this
25 act.

26 f. Enter into agreements with other states and the District of
27 Columbia, providing for the reciprocal enforcement of similar tax laws
28 imposed by the states entering into such an agreement. The agreement
29 may empower the duly authorized officer of any contracting state,
30 which extends like authority to officers or employees of this State, to
31 sue for the collection of that state's taxes in the courts of this State.
32 (cf: P.L.1990, c.39, s.12)

33
34 11. This act shall take effect on the first day of the second month
35 beginning after enactment and shall apply to tobacco products
36 ¹[delivered] sold or otherwise disposed of¹ on and after that date ¹,
37 except for those tobacco products for which the tax was paid prior to
38 the effective date¹.

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43 Adjusts the tobacco products wholesale sales and use tax rate.

CHAPTER 448

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

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

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

C.54:40B-2 Definitions.

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

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

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

"Distributor" means

a person engaged in the business of selling tobacco products in this State who brings, or causes to be brought into this State from without the State a tobacco product for sale within this State,

a person who makes or manufactures tobacco products in this State for sale in the State,

a person engaged in the business of selling tobacco products without this State who ships or transports tobacco products to a person in this State to be sold to a retail dealer, or

a person who receives tobacco products on which the tax has not or will not be paid by another distributor;

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

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

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

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

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

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

"Treasurer" means the State Treasurer;

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

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

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

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

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

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

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

3. a. There is imposed a tax of 30% upon the wholesale price upon the sale, use or distribution of a tobacco product within this State.

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

c. Unless a wholesale use tax is due pursuant to subsection b. of this section, if a distributor or wholesaler has not paid the wholesale sales tax imposed in subsection a. of this section upon a sale that is subject to the wholesale sales tax imposed in that subsection a., there is imposed upon the retail dealer or consumer chargeable for the sale a compensating use tax of 30% of the price paid or charged for the tobacco product, which shall be collected in the manner provided in subsection b. of section 5 of this act.

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

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

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

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

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

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

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

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

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

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

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

place named.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved January 11, 2002.