

54:32C-1 to 54:32C-14

LEGISLATIVE HISTORY CHECKLIST

HJSA 54:32C-1 to 54:32C-14 ("Alcoholic Beverage Wholesale Sales Tax Act")

LAWS OF 1980 CHAPTER 62

Bill No. A1529

Sponsor(s) Cowan and Kern

Date Introduced April 17, 1980

Committee: Assembly Revenue, Finance & Appropriations

Senate -----

Amended during passage Yes ~~xx~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly June 23, 1980

Senate June 26, 1980

Date of approval July 7, 1980

Following statements are attached if available:

Sponsor statement Yes ~~xx~~

Committee Statement: Assembly Yes ~~xx~~

Senate ~~Yes~~ No

Fiscal Note ~~Yes~~ No

Veto message ~~Yes~~ No

Message on signing ~~Yes~~ No

Following were printed:

Reports ~~Yes~~ No

Hearings Yes ~~xx~~

Recommendations cited in sponsor's statement:

974.90 New Jersey. Alcoholic Beverage Control Study
L767 Commission.
1980 Public hearing on deregulation of the
alcoholic beverage industry, held 1-29-80.
Trenton, 1980.

9/1/78
LU

7-7-80

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 1529

STATE OF NEW JERSEY

INTRODUCED APRIL 17, 1980

By Assemblymen COWAN and KERN

Referred to Committee on Revenue, Finance and Appropriations

AN ACT establishing a tax on wholesale sales of alcoholic beverages.

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

1 1. This act shall be known and may be cited as the "Alcoholic
 2 Beverage Wholesale Sales Tax Act."

1 2. As used in this act:

2 *a.* "Alcoholic beverage" means liquors, beer, wines, sparkling
 3 wine or vermouth.

4 *b.* "Beer" means beer, lager beer, ale, stout, porter, and all
 5 similar fermented malt beverages having an alcoholic content of
 6 $\frac{1}{2}$ of 1% or more by volume.

7 *c.* "Director" means the Director of the Division of Taxation
 8 in the Department of the Treasury or his duly authorized agent.

9 *d.* "Liquors" means all distilled or rectified spirits, alcohol,
 10 brandy, whiskey, rum, gin and all similar distilled alcoholic bever-
 11 ages, including all dilutions and mixtures of one or more of the
 12 foregoing, such as liqueurs, cordials, and similar compounds, hav-
 13 ing an alcoholic content of $\frac{1}{2}$ of 1% or more by volume.

13A *e.* "Receipts" means the amount of the sales price of alcoholic
 14 beverages valued in money, whether received in money or other-
 15 wise, ***[excluding any amount for which credit is allowed,]*** with-
 16 out any deduction for expenses or early payment discounts, ***[and**
 17 **excluding any credit for any alcoholic beverages accepted in part**
 18 **payment,]*** and excluding the cost of transportation where such
 19 cost is separately stated on the invoice rendered to the retail
 19A licensee.

20 *f.* "Retail licensee" means any person holding a valid and unre-
 21 voked plenary retail consumption, plenary retail distribution,
 22 limited retail distribution, seasonal retail consumption or club
 22A license issued by a municipality or the Director of the Division of
 22B Alcoholic Beverage Control or special permit to sell at retail.

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
 is not enacted and is intended to be omitted in the law.**

23 *g.* “Sparkling wine” means ***[campaigned]*** *champagne* and
 24 other effervescent wine charged with carbon dioxide, whether arti-
 25 ficially or as the result of secondary fermentation of the wine
 25A within the container.

26 *h.* “Vermouth” means any compound made by the mixture of
 27 extracts from macerated aromatic flavoring materials with wines
 28 and manufactured in such manner that the product possesses
 29 the taste, aroma, and characteristics generally attributed to ver-
 30 mouth.

31 *i.* “Wines” means all wines whether known as “dry wines,”
 32 “sweet wines,” “still wines,” or “fortified wines” and any artifi-
 33 cial or imitation wine or compound sold as wine, and any fruit
 34 juice containing $\frac{1}{2}$ of 1% or more of alcohol by volume, and any
 35 other beverage containing alcohol produced by the fermentation
 36 of the natural sugar content of fruits or other agricultural prod-
 37 ucts containing sugar, which beverage contains $\frac{1}{2}$ of 1% or more
 38 of alcohol by volume, but shall not mean or include vermouth, or
 39 cider containing less than 3 $\frac{2}{10}$ % of alcohol by volume.

40 *j.* “Wholesaler” means any person who sells alcoholic bever-
 41 ages to retail licensees.

1 3. There is imposed a tax of ***[6.25%]*** *6.5%* upon the re-
 2 cepts from every sale of alcoholic beverages, except draught beer
 3 sold by the barrel, by any wholesaler to any retail licensee.

1 4. Every wholesaler required to collect the tax shall collect the
 2 tax from the retail licensee when collecting the receipts to which
 3 it applies. ***[If the]*** *The* retail licensee ***[is]*** *shall be* given
 4 an invoice, receipt or other statement or memorandum of the ser-
 5 vice charge***[,]*** *and* the tax shall be stated, charged and shown
 6 separately on the document first given to the retail licensee. The
 7 tax shall be paid to the wholesaler required to collect it as trustee
 7A for and on account of the State.

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

1 5. a. Every wholesaler required to collect the tax imposed by
 2 this act shall be personally liable for the tax imposed, collected or
 3 required to be collected under this act. A wholesaler shall have the
 4 same right in respect to collecting the tax from the retail licensee
 5 or in respect to non-payment of the tax by the retail licensee or in
 6 respect to non-payment of the tax by the retail licensee as if the
 7 tax were a part of the sales price for the alcoholic beverages and
 8 payable at the same time; except the director shall be joined as a
 9 party in any action or proceeding brought to collect the tax.

10 b. Where any retail licensee has failed to pay a tax imposed by
 11 this act to the wholesaler required to collect the same, then in
 11A addition to all other rights, obligations and remedies provided, the
 12 tax shall be payable by the retail licensee directly to the director,
 13 and it shall be the duty of the retail licensee to file a return with the
 14 director and to pay the tax to him within 20 days of the date the
 15 tax was required to be paid.

16 c. The director may, whenever he deems it necessary for the
 17 proper enforcement of this act, provide by regulation that retail
 18 licensees shall file returns and pay directly to the director any tax
 19 herein imposed, at such times as returns are required to be filed
 20 and payment over made by wholesalers required to collect the tax.

21 ***[d. As compensation for acting as trustee for the State, every**
 22 **wholesaler shall, prior to paying the taxes imposed by this act to**
 23 **the State, deduct and retain an amount equal to 1/2% of the amount**
 24 **of taxes collected from retail licensees.]***

1 6. ***[On or before June 20, 1980]*** **Within 15 days from the*
 2 *effective date of this act**, or in the case of wholesalers commencing
 3 business or opening new places of business after such date, within 3
 4 days after such commencement or opening, every wholesaler re-
 5 quired to collect any tax imposed by this act shall file with the
 6 director a certificate of registration in a form prescribed by him
 7 **unless a certificate of authority has been previously issued to any*
 8 *wholesaler**. The director shall within 5 days after registration
 9 issue, without charge, to each registrant a certificate of authority
 9A empowering him to collect the tax and a duplicate thereof for each
 9B additional place of business of the registrant. Each certificate or
 10 duplicate shall state the place of business to which it is applicable.
 11 The certificate of authority shall be prominently displayed in the
 12 place of business of the registrant. Certificates shall be nonassign-
 13 able and nontransferable and shall be surrendered to the director
 14 immediately upon the registrant's ceasing to do business at the
 15 place named.

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

1 8. a. Every wholesaler required to collect or pay tax under this
2 act shall on or before ***[August 28]*** *September 20*, 1980, and on
3 or before the ***[twenty-eighth]*** *twentieth* day of each month
4 thereafter, make and file a return for the preceding month with the
5 director. The return shall show his receipts and the amount of
6 taxes required to be collected with respect to such receipts.

7 b. The director may permit or require returns to be made cover-
8 ing other periods and upon such dates as he may specify. In addi-
9 tion, the director may require payments of tax liability at such
10 intervals and based upon such classifications as he may designate.
11 In prescribing other periods to be covered by the return or intervals
12 or classifications for payment of tax liability, the director may take
13 into account the dollar volume of tax involved as well as the
14 need for insuring the prompt and orderly collection of the taxes
15 imposed.

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

1 9. Every wholesaler required to file a return under this act shall,
2 at the time of filing the return, pay to the director the taxes im-
3 posed by this act. Taxes for the period for which a return is
4 required to be filed or for a lesser interval as shall have been
5 designated by the director, shall be due and payable to the director
6 on the date limited for the filing of the return for the period, or
7 on the date limited for such lesser interval as the director has
8 designated, without regard to whether a return is filed or whether
9 the return which is filed correctly shows the amount of receipts or
10 the taxes due thereon. Where the director deems it necessary to
11 protect the revenues to be obtained under this act, he may require
12 a wholesaler required to collect the tax imposed by this act to file
13 with him a bond, issued by a surety company authorized to transact
14 business in this State and approved by the Commissioner of Insur-
15 ance of this State as to solvency and responsibility, in an amount
16 as the director may fix, to secure the payment of any tax or penalties
17 or interest due or which may become due from the wholesaler under
18 this act. In the event that the director determines that a wholesaler
19 is to file a bond, he shall give notice to him to that effect, specifying
20 the amount of the bond required. The wholesaler shall file the bond
21 within 5 days after the giving of notice unless within the 5 days
22 he shall request in writing a hearing before the director at which

23 the necessity, propriety and amount of the bond shall be determined
24 by the director. The determination shall be final and shall be com-
25 plied with within 15 days after the giving of notice thereof. In lieu
26 of bond, securities approved by the director or cash in an amount
27 as he may prescribe, may be deposited, which shall be kept in the
28 custody of the director who may at any time without notice to the
29 depositor apply them to any tax or interest or penalties due, and
30 for that purpose the securities may be sold by him at public or
31 private sale without notice to the depositor thereof.

1 10. If a return required by this act is not filed, or if a return
2 when filed is incorrect or insufficient, the amount of tax due shall
3 be determined by the director from such information as may be
4 available. If necessary, the tax may be estimated on the basis of
5 external indices, such as purchases, location, scale of charges,
6 comparable charges, number of employees or other factors. Notice
7 of the determination shall be given to the wholesaler or retail
8 licensee liable for the collection or payment of the tax. The deter-
9 mination shall finally and irrevocably fix the tax unless the whole-
10 saler or retail licensee against whom it is assessed, within 30 days
11 after giving of notice of the determination, shall apply to the
12 director for a hearing, or unless the director on his own motion
13 shall redetermine the same. After the hearing the director shall
14 give notice of his determination to the wholesaler or retail licensee
15 against whom the tax is assessed.

1 11. The taxes imposed by this act shall be governed in all respects
2 by the provisions of the State Tax Uniform Procedure Law
3 (subtitle 9 of Title 54 of the Revised Statutes) except only to the
4 extent that a specific provision of this act may be in conflict
5 therewith.

1 12. In addition to the powers granted to the director in this act,
2 he is authorized to:

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

5 b. Extend, for cause shown by general regulation or individual
6 authorization, the time of filing any return for a period not exceed-
7 ing 3 months on such terms and conditions as he may require; and
8 for cause shown, to remit penalties but not interest computed at
9 the rate of ***[6%]*** *9%* per annum;

10 c. Delegate his functions hereunder to any officer or employee of
11 his division and such of his powers as he may deem necessary to
12 carry out efficiently the provisions of this act, and the person or
13 persons to whom such power has been delegated shall possess and

14 may exercise all of the power and perform all of the duties herein
15 conferred and imposed upon the director;

16 d. Require any wholesaler required to collect tax to keep detailed
17 records of all receipts, charged or accrued, and names and addresses
18 of retail licensees, and other facts relevant in determining the
19 amount of tax due and to furnish such information upon request
20 to the director;

21 e. Assess, determine, revise and readjust the taxes imposed by
22 this act;

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

1 *13. a. *Any person failing to file a return or to pay or pay over
2 any tax to the director within the time required by this act shall
3 be subject to such penalties and interest as provided in the State
4 Tax Uniform Procedure Law, subtitle 9 of Title 54 of the Revised
5 Statutes. Unpaid penalties and interest may be determined, as-
6 sessed, collected and enforced in the same manner as the tax im-
7 posed by this act.*

8 b. *Any person failing to file a return or failing to pay or pay
9 over any tax required by this act, or filing or causing to be filed, or
10 making or causing to be made, or giving or causing to be given any
11 return, certificate, affidavit, representation, information, testimony
12 or statement required or authorized by this act, which is willfully
13 false, or willfully failing to file a bond required by this act, or fail-
14 ing to file a registration certificate and such data in connection
15 therewith as the director by regulation or otherwise may require,
16 or to display or surrender a certificate of authority as required by
17 this act, or assigning or transferring such certificate of authority,
18 or willfully failing to charge separately the tax herein imposed or
19 to state such tax separately on any bill, statement, memorandum
20 or receipt issued or employed by him upon which the tax is re-
21 quired to be stated separately as provided in section 4, or willfully
22 failing to collect the tax from a customer, or referring or causing
23 reference to be made to this tax in a form or manner other than
24 that required by this act, or failing to keep any records required
25 by this act, shall, in addition to any other penalties herein or else-
26 where prescribed, be a disorderly person.*

27 *c. The certificate of the director to the effect that a tax has not*
 28 *been paid, that a return, bond or registration certificate has not*
 29 *been filed, or that information has not been supplied pursuant to*
 30 *the provisions of this act shall be presumptive evidence thereof.*

1 *14. a. Any aggrieved taxpayer may, within 90 days after any*
 2 *decision, order, finding, assessment or action of the director made*
 3 *pursuant to the provisions of this act, appeal therefrom to the Tax*
 4 *Court, by filing a complaint with the Tax Court in the manner and*
 5 *form prescribed by the Tax Court and on giving security, approved*
 6 *by the director, conditioned to pay the tax heretofore levied, if the*
 7 *same remains unpaid, with interest and costs, as set forth in sub-*
 8 *section c. hereof.*

9 *b. The appeal provided by this section shall be the exclusive*
 10 *remedy available to any taxpayer for review of a decision of the*
 11 *director in respect of the determination of the liability of the tax-*
 12 *payer for the taxes imposed by this act.*

13 *c. Irrespective of any restrictions on the assessment and collec-*
 14 *tion of deficiencies, the director may assess a deficiency after the*
 15 *expiration of the period specified in subsection a., notwithstanding*
 16 *that a complaint in respect of the deficiency has been duly made by*
 17 *the taxpayer, unless the taxpayer, at or before the time his com-*
 18 *plaint is made, has paid the deficiency, has deposited with the di-*
 19 *rector the amount of the deficiency, or has filed with the director*
 20 *a bond, which may be a jeopardy bond, in the amount of that por-*
 21 *tion of the deficiency, including interest and other amounts, in re-*
 22 *spect of which the complaint is made and all costs and charges*
 23 *which may accrue against him in the prosecution of the proceeding,*
 24 *including costs of all appeals, and with surety approved by the Tax*
 25 *Court, conditioned upon the payment of the deficiency, including*
 26 *interest and other amounts, as finally determined and such costs*
 27 *and charges. If as a result of a waiver of the restrictions on the*
 28 *assessment and collection of a deficiency any part of the amount*
 29 *determined by the director is paid after the filing of the appeal*
 30 *bond, the bond shall, at the request of the taxpayer, be proportion-*
 31 *ately reduced.**

1 **[13.]* *15.* This act shall take effect immediately, but shall*
 2 *apply to alcoholic beverages delivered to retail licensees after*
 3 **[June 30]* *July 31*, 1980 even though rendered under a con-*
 4 *tract entered into prior to that date.*

14 may exercise all of the power and perform all of the duties herein
15 conferred and imposed upon the director;

16 d. Require any wholesaler required to collect tax to keep detailed
17 records of all receipts, charged or accrued, and names and addresses
18 of retail licensees, and other facts relevant in determining the
19 amount of tax due and to furnish such information upon request
20 to the director;

21 e. Assess, determine, revise and readjust the taxes imposed by
22 this act;

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

1 13. This act shall take effect immediately, but shall apply to
2 alcoholic beverages delivered to retail licensees after June 30, 1980
3 even though rendered under a contract entered into prior to that
4 date.

STATEMENT

This bill is one of a package of three measures recommended by the Alcoholic Beverage Control Study Commission to revise the structure of taxation of alcoholic beverages. When the New Jersey Supreme Court upheld the power of the Director of the Division of Alcoholic Beverage Control to deregulate prices it also ruled that he had gone "beyond the limits" of his regulatory authority in establishing an interim method for the continued collection of the sales tax on alcoholic beverages. The Court ordered that this interim method could continue only until August 11, during which time the Legislature could enact appropriate measures to maintain these tax revenues.

Alcoholic beverages are currently subject to two taxes: an excise tax on gallonage and the sales tax. Each of these taxes raises approximately \$55 million annually, for a total of \$110 million. The three bills recommended in this package would 1) increase excise taxes on beer and wine, 2) impose a sales tax at the wholesale level and 3) exempt alcoholic beverages from the present retail sales tax. The net impact of these changes would provide for tax revenues equal to or slightly more than the current yield of \$110 million. All three bills would be effective for sales occurring after June 30, 1980.

A1529(1980)

This bill imposes a tax of 6.25% on sales of alcoholic beverages from the wholesale to the retail level. It is designed to replace the current sales tax levy of 5% on the retail price and to bring in the same revenue—about \$55 million annually. Because the present sales tax is actually collected at the wholesale level, this new wholesale tax simply continues the current method for collection of the tax on sales of alcoholic beverages. The bill also continues the exemption from the sales tax for sales of draught beer by the barrel.

The bill provides that wholesalers retain 1/2% of tax revenues collected from retailers as compensation for acting as trustee for the State in collecting the tax.

ASSEMBLY REVENUE, FINANCE AND APPROPRIATIONS
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1529

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 16, 1980

Assembly Bill No. 1529 imposes a 6.5% sales tax on alcoholic beverages at the wholesale level at the wholesale price. The sales tax on alcoholic beverages currently is collected at the wholesale level under the provisions of the "Sales and Use Tax Act" (P. L. 1966, c. 30 as amended), but at the minimum consumer *retail* price. As New Jersey no longer has a minimum retail price level for alcoholic beverages, this bill is essentially a substitute for those provisions of the "Sales and Use Tax Act" that are to be repealed by a companion measure, A-1526. This bill will continue to produce an estimated \$55 million, the same amount as produced by the tax that this measure supersedes.

COMMITTEE AMENDMENTS

The substantive amendments adopted by the Committee

- Increase the tax rate $\frac{1}{4}$ of 1% from 6.25% to 6.5% ;
- Delete the provision that would allow the wholesalers to retain $\frac{1}{2}$ % of the taxes collected as compensation for acting as trustee for the State ;
- Insert two new sections that provide for penalties and interest as per the State Tax Uniform Procedure Act and a taxpayer appeal process to the Tax Court.
- Change the effective date from June 30, 1980 to July 31, 1980.