

ASSEMBLY BILL NO. 389—ASSEMBLYMAN ELLISON

MARCH 24, 2021

Referred to Committee on Revenue

SUMMARY—Revises provisions governing the taxation of certain tobacco products. (BDR 32-194)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to tobacco products; revising provisions governing the imposition and payment of the tax on certain tobacco products; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Department of Taxation to regulate and collect a tax on cigarettes and other tobacco products. (Chapter 370 of NRS) Existing law imposes a tax upon the receipt, purchase or sale of other tobacco products at a rate of 30 percent of the wholesale price of these products. Under existing law, the tax is required to be imposed: (1) at the time the other tobacco products are first possessed or received by a wholesale dealer who maintains a place of business in this State for sale or disposition in this State; (2) at the time the other tobacco products are sold by a wholesale dealer who does not maintain a place of business in this State to a retail dealer or ultimate consumer in this State; or (3) for other tobacco products manufactured, produced, fabricated, assembled, processed, labeled or finished in this State, at the time the other tobacco products are sold in this State to a wholesale dealer of other tobacco products, a retail dealer or an ultimate consumer. (NRS 370.450) **Section 2** of this bill revises provisions governing the collection and payment of the tax to: (1) remove the requirement that the tax be imposed at the time the other tobacco products are first possessed or received by a wholesale dealer of other tobacco products who maintains a place of business in this State; and (2) require the tax to be imposed at the time the other tobacco products are sold or otherwise disposed of by a wholesale dealer of other tobacco products to a retail dealer or ultimate consumer in this State, regardless of whether the wholesale dealer maintains a place of business in this State. **Section 2** also provides that the tax on other tobacco products does not apply to products which are shipped out of the State for sale and use outside the State. **Section 1** of this bill makes a conforming change by revising the definition of a “wholesale dealer of other tobacco products” to remove the distinction between wholesale



25 dealers of tobacco products who maintain a place of business in this State and those
26 who do not.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 370.440 is hereby amended to read as follows:

2 370.440 As used in NRS 370.440 to 370.503, inclusive, unless
3 the context otherwise requires:

4 1. "Alternative nicotine product" has the meaning ascribed to it
5 in NRS 370.008.

6 2. "Other tobacco product" has the meaning ascribed to it in
7 NRS 370.0318.

8 3. "Retail dealer" means any person who is engaged in selling
9 other tobacco products to ultimate consumers.

10 4. "Sale" means any transfer, exchange, barter, gift, offer for
11 sale, or distribution for consideration of other tobacco products.

12 5. "Ultimate consumer" means a person who purchases one or
13 more other tobacco products for his or her household or personal use
14 and not for resale.

15 6. "Wholesale dealer of other tobacco products" means any
16 person who ~~is~~:

17 ~~—(a) Maintains a place of business in this State, purchases other~~
18 ~~tobacco products from the manufacturer or a wholesale dealer and~~
19 ~~possesses,] receives, sells or otherwise disposes of [such other~~
20 ~~tobacco products to wholesale dealers or retail dealers within this~~
21 ~~State;~~

22 ~~—(b) Does not maintain a place of business in this State and sells~~
23 ~~or otherwise disposes of other tobacco products by any means,~~
24 ~~including, without limitation, through an Internet website, to~~
25 ~~wholesale dealers, retail dealers or ultimate consumers within this~~
26 ~~State; or~~

27 ~~—(c) Manufactures, produces, fabricates, assembles, processes,~~
28 ~~labels or finishes] other tobacco products within this State.~~

29 7. "Wholesale price" means:

30 (a) Except as otherwise provided in paragraph (b), the price for
31 which other tobacco products are sold to a wholesale dealer of other
32 tobacco products, valued in money, whether paid in money or
33 otherwise, without any discount or other reduction on account of
34 any of the following:

35 (1) Trade discounts, cash discounts, special discounts or
36 deals, cash rebates or any other reduction from the regular sales
37 price;

38 (2) The cost of materials used, labor or service cost, interest
39 charged, losses or any other expenses;



(3) The cost of transportation of the other tobacco products before its purchase by the wholesale dealer of other tobacco products;

(4) Any services that are a part of the sale, including, without limitation, shipping, freight, warehousing, customer service, advertising or any other service related to the sale; or

(5) The amount of any tax, not including any excise tax, imposed by the United States upon or with respect to the other tobacco product.

(b) For other tobacco products sold to a retail dealer or an ultimate consumer by a wholesale dealer of other tobacco products described in paragraph (c) of subsection 6, the established price for which the other tobacco product is sold to the retail dealer or ultimate consumer before any discount or other reduction is made.

Sec. 2. NRS 370.450 is hereby amended to read as follows:

370.450 1. Except as otherwise provided in this section, there is hereby imposed upon the receipt, purchase or sale of other tobacco products in this State a tax of 30 percent of the wholesale price of those products.

2. The provisions of subsection 1 do not apply to those products which are:

(a) *Shipped out of the State for sale and use outside the State;*

(b) Displayed or exhibited at a trade show, convention or other exhibition in this State by a manufacturer or wholesale dealer of other tobacco products who is not licensed in this State; or

~~[(b)]~~ (c) Distributed free of charge at a trade show, convention or other exhibition or public event in this State, if the distributor has obtained a license to distribute other tobacco products free of charge for the trade show, convention or other exhibition or public event.

3. This tax:

(a) Is imposed:

(1) ~~At the time the other tobacco products are first possessed or received by a wholesale dealer of other tobacco products who maintains a place of business in this State for sale or disposition in this State;~~

~~—(2)]~~ At the time the other tobacco products are sold *or otherwise disposed of* by a wholesale dealer of other tobacco products ~~[who does not maintain a place of business in this State]~~ to a retail dealer or ultimate consumer ~~[(2)]~~ *in this State;* or

~~[(3)]~~ (2) For other tobacco products manufactured, produced, fabricated, assembled, processed, labeled or finished in this State, at the time the other tobacco products are sold in this State to a wholesale dealer of other tobacco products, retail dealer or ultimate consumer.



(b) Must be paid by the wholesale dealer of other tobacco products to the Department, in accordance with the provisions of NRS 370.465. The wholesale dealer of other tobacco products is entitled to retain 0.25 percent of the taxes due to cover the costs of collecting and administering the taxes if the taxes are paid in accordance with the provisions of NRS 370.465.

4. Any wholesale dealer of other tobacco products who sells or distributes other tobacco products without paying the tax provided for by this section is guilty of a misdemeanor.

Sec. 3. This act becomes effective on July 1, 2021.

