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SYNOPSIS
Establishes procedure for destroying certain contraband tobacco products and cigarettes.

CURRENT VERSION OF TEXT
Substitute as adopted by the Senate.

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

1. (New section) a. All tobacco products subject to the tax imposed under P.L.1990, c.39 (C.54:40B-1 et seq.), on which the tax has not been paid as required by section 4 or section 5 of P.L.1990, c.39 (C.54:40B-4 and 54:40B-5), found in any place in this State are declared to be prima facie contraband goods and may be seized by the director, the director’s agents or employees, or by any peace officer of this State, when so ordered by the director, without a warrant.

   b. The director may order the return of any seized tobacco product when the director shall have reason to believe, upon the presentation of satisfactory proof, that the owner has not willfully or intentionally evaded any tax imposed by P.L.1990, c.39 (C.54:40B-1 et seq.). Any tobacco product seized under the provisions of this section shall be disposed of according to law.

   c. (1) Except as otherwise provided in this section, the director shall destroy any seized untaxed tobacco product not subject to other disposition pursuant to P.L.1990, c.39 (C.54:40B-1 et seq.).

   (2) As an alternative to destruction, the director may resell any untaxed tobacco product to the manufacturer of that tobacco product, but such tobacco product shall be resold only for export or destruction.

   (3) Notwithstanding the provisions of paragraph (1) of this subsection, the director may authorize the use for law enforcement purposes of any untaxed tobacco products forfeited in accordance with this section; provided, however, that this provision shall not apply to a tobacco product that the director determines violates federal trademark laws or has been damaged. All tobacco products used for law enforcement purposes in accordance with this section shall be destroyed after such use, unless such tobacco products are rendered unavailable for such disposition as a result of the use for law enforcement purposes.

   d. The seizure and sale of any untaxed tobacco product under the provisions of this section shall not relieve any person from a fine, imprisonment or other penalty for violation of any of the provisions of P.L.1990, c.39 (C.54:40B-1 et seq.). The director, the director’s agents or employees, and any peace officer of this State, when so ordered, shall not in any way be responsible in any

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.
court for the seizure or the confiscation of any untaxed tobacco product.

2. Section 607 of P.L.1948, c.65 (C.54:40A-30) is amended to read as follows:

607. Unstamped cigarettes subject to confiscation.
   a. All cigarettes, subject to the tax imposed by this act, to which stamps have not been affixed, as required by this act, and all cigarettes stamped in violation of subsection b. of section 405 of P.L.1948, c.65 (C.54:40A-15) found in any place in this State are declared to be prima facie contraband goods and may be seized by the director, the director's agents or employees, or by any peace officer of this State, when directed by the director so to do, without a warrant.
   b. The director may upon satisfactory proof direct the return of any unstamped confiscated cigarettes when the director shall have reason to believe that the owner thereof has not willfully or intentionally evaded any tax imposed by this act. Any unstamped cigarettes seized under the provisions of this act shall be disposed of according to law. Any purchaser of such cigarettes shall be required to affix stamps as required by this act.
   c. The director shall destroy any seized unstamped cigarettes or cigarettes that have been stamped in violation of subsection b. of section 405 of P.L.1948, c.65 (C.54:40A-15); provided however that as the director may, prior to the destruction of such cigarettes, permit the true holder of the trademark rights in the cigarette brand to inspect the cigarettes, in order to assist the director in any investigation regarding such cigarettes.
   (2) As an alternative to destruction, the director may resell such cigarettes to the manufacturer of those cigarettes, but such cigarettes shall be resold only for export or destruction.
   (3) Notwithstanding the provisions of paragraph (1) of this subsection, the director may authorize the use for law enforcement purposes of cigarettes forfeited in accordance with this section; provided, however, that this provision shall not apply to cigarettes which the director determines violate federal trademark laws or have been damaged. All cigarettes used for law enforcement purposes in accordance with this section shall be destroyed after such use, unless such cigarettes are rendered unavailable for such disposition as a result of the use for law enforcement purposes.
   d. The seizure and sale of any unstamped or illegally stamped cigarettes or any other contraband cigarettes under the provisions of this section shall not relieve any person from a fine, imprisonment or other penalty for violation of any of the provisions of this act. The director, the director's agents, employees, and any peace officer of this State, when directed so to do, shall not in any way be
responsible in any court for the seizure or the confiscation of any
unstamped or illegally stamped packages of cigarettes or any other
contraband cigarettes.
(cf: P.L.1999, c.328, s.6)

3. N.J.S. 2C:64-1 is amended to read as follows:
2C:64-1. Property Subject to Forfeiture.
a. Any interest in the following shall be subject to forfeiture
and no property right shall exist in them:
(1) Controlled dangerous substances, firearms which are
unlawfully possessed, carried, acquired or used, illegally possessed
gambling devices, untaxed or otherwise contraband cigarettes or
tobacco products, untaxed special fuel, unlawful sound recordings
and audiovisual works and items bearing a counterfeit mark. These
shall be designated prima facie contraband.
(2) All property which has been, or is intended to be, utilized in
furtherance of an unlawful activity, including, but not limited to,
conveyances intended to facilitate the perpetration of illegal acts, or
buildings or premises maintained for the purpose of committing
offenses against the State.
(3) Property which has become or is intended to become an
integral part of illegal activity, including, but not limited to, money
which is earmarked for use as financing for an illegal gambling
enterprise.
(4) Proceeds of illegal activities, including, but not limited to,
property or money obtained as a result of the sale of prima facie
contraband as defined by subsection a. (1), proceeds of illegal
gambling, prostitution, bribery and extortion.
b. Any article subject to forfeiture under this chapter may be
seized by the State or any law enforcement officer as evidence
pending a criminal prosecution pursuant to section 2C:64-4 or,
when no criminal proceeding is instituted, upon process issued by
any court of competent jurisdiction over the property, except that
seizure without such process may be made when not inconsistent
with the Constitution of this State or the United States, and when
(1) The article is prima facie contraband; or
(2) The property subject to seizure poses an immediate threat to
the public health, safety or welfare.
c. For the purposes of this section:
"Items bearing a counterfeit mark" means items bearing a
counterfeit mark as defined in N.J.S. 2C:21-32.
"Unlawful sound recordings and audiovisual works" means
sound recordings and audiovisual works as those terms are defined
in N.J.S.2C:21-21 which were produced in violation of
"Unlawed special fuel" means diesel fuel, No. 2 fuel oil and
kerosene on which the motor fuel tax imposed pursuant to
R.S.54:39-1 et seq. is not paid that is delivered, possessed, sold or
transferred in this State in a manner not authorized pursuant to
R.S.54:39-1 et seq. or P.L.1938, c.163 (C.56:6-1 et seq.).
(cf: P.L.2004, c.150, s.3)

4. This act shall take effect immediately.

STATEMENT

This Senate Substitute supplements the “Tobacco Products
seq.), to provide that all untaxed tobacco products found in any
place in this State are declared to be prima facie contraband goods
that may be seized by the State. Under the provisions of the
substitute, if the owner thereof has not willfully or intentionally
evaded any tax imposed, the seized product may be returned.
Otherwise, the seized tobacco product will be disposed of according
to law. Disposal includes destruction, resale to the manufacturer of
that tobacco product for export or destruction only, or authorized
use for law enforcement purposes. A tobacco product which is
damaged or determined to be in violation of federal trademark laws
may not be used for law enforcement purposes. The substitute
provides that such seizure and sale of any untaxed tobacco product
under its provisions does not relieve any person from a fine,
imprisonment or other penalty for a violation of any of the
provisions of the “Tobacco Products Wholesale Sales and Use Tax
Act.”

In addition, the substitute amends part of the “Cigarette Tax
Act,” P.L.1948, c.65 (C.54:40A-1 et seq.), with regard to
unstamped cigarettes to mirror the new supplemental provisions of
the substitute, as well as to provide that, prior to destruction, the
trademark holder may be permitted to inspect the cigarettes in order
to assist in any investigation. Finally, untaxed or otherwise
contraband tobacco products are added to the list of items that are
considered to be prima facie contraband under the criminal code
(Title 2C) and, as such, are subject to forfeiture and for which no
property rights exist.