

§4401. Definitions**(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1985, c. 783, §16 (NEW).]

1. Business. "Business" means any trade, occupation, activity or enterprise engaged in for the purpose of selling or distributing tobacco products in this State. [PL 1985, c. 783, §16 (NEW).]

1-A. (TEXT EFFECTIVE UNTIL 1/01/24) Delivery sale. "Delivery sale" means a sale of tobacco products to a consumer in this State when:

A. The purchaser submits the order for the sale by means of telephonic or other electronic method of voice transmission, the Internet or a delivery service; or [PL 2011, c. 285, §11 (NEW).]

B. The tobacco products are delivered by use of a delivery service. [PL 2011, c. 285, §11 (NEW).]

[PL 2011, c. 285, §11 (NEW).]

1-A. (TEXT EFFECTIVE 1/01/24) Delivery sale. "Delivery sale" means a sale of tobacco products, other than premium cigars, to a consumer in this State when:

A. The purchaser submits the order for the sale by means of telephonic or other electronic method of voice transmission, the United States mail, the Internet or a delivery service; or [PL 2023, c. 441, Pt. E, §1 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

B. The tobacco products are delivered by use of a delivery service. [PL 2011, c. 285, §11 (NEW).]

[PL 2023, c. 441, Pt. E, §1 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

1-B. (TEXT EFFECTIVE 1/01/24) Consumer. "Consumer" means an individual who purchases, receives or possesses tobacco products for personal consumption and not for resale.

[PL 2023, c. 441, Pt. E, §2 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

1-C. (TEXT EFFECTIVE 1/01/24) Cost price. "Cost price" means:

A. In the case of a manufacturer, the price set for tobacco products or, if a price has not been set, the wholesale value of those products; [PL 2023, c. 441, Pt. E, §3 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

B. In the case of a distributor or consumer, the price at which the distributor or consumer purchases tobacco products before the allowance of any discount, trade allowance, rebate or other reduction; or [PL 2023, c. 441, Pt. E, §3 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

C. In the case of a remote retail seller:

(1) The actual price paid for an item identified using a stock keeping unit that identifies the item using a unique code or identifier; or

(2) If the actual price paid for an item is not available, the average of the actual price paid for the item over the 12 calendar months before January 1st of the year in which the remote sale occurs. [PL 2023, c. 441, Pt. E, §3 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

[PL 2023, c. 441, Pt. E, §3 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

2. (TEXT EFFECTIVE UNTIL 1/01/24) Distributor. "Distributor" means a person engaged in the business of producing or manufacturing tobacco products in this State for sale in this State, a person engaged in the business of selling tobacco products in this State who brings, or causes to be brought, into this State any tobacco products for sale to a retailer, a person engaged in the business of selling tobacco products who ships or transports tobacco products to retailers for sale in this State, a retailer

who imports, receives or acquires, from a person other than a licensed distributor, tobacco products for sale within the State or a person who makes delivery sales.

[PL 2011, c. 285, §12 (AMD).]

2. (TEXT EFFECTIVE 1/01/24) Distributor. "Distributor" means:

A. A person engaged in the business of producing or manufacturing tobacco products in this State for sale in this State; [PL 2023, c. 441, Pt. E, §4 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

B. A person engaged in the business of selling tobacco products in this State who brings, or causes to be brought, into this State tobacco products for sale to a retailer; [PL 2023, c. 441, Pt. E, §4 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

C. A person with a place of business in this State engaged in the business of selling tobacco products in this State who brings, or causes to be brought, into this State tobacco products for sale to a person other than a retailer; [PL 2023, c. 441, Pt. E, §4 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

D. A person engaged in the business of selling tobacco products who ships or transports tobacco products to retailers for sale in this State; [PL 2023, c. 441, Pt. E, §4 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

E. A retailer who imports, receives or acquires, from a person other than a licensed distributor, tobacco products for sale within the State; or [PL 2023, c. 441, Pt. E, §4 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

F. A person who makes delivery sales. [PL 2023, c. 441, Pt. E, §4 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

A distributor may be located within or without the State.

[PL 2023, c. 441, Pt. E, §4 (RPR); PL 2023, c. 441, Pt. E, §28 (AFF).]

2-A. Electronic smoking device. "Electronic smoking device" means a device used to deliver nicotine or any other substance intended for human consumption that may be used by a person to simulate smoking through inhalation of vapor or aerosol from the device, including, without limitation, a device manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar, electronic pipe, electronic hookah or so-called vape pen.

[PL 2019, c. 530, Pt. A, §1 (NEW); PL 2019, c. 530, Pt. A, §7 (AFF).]

2-B. Hookah. "Hookah" means a device used for smoking tobacco that consists of a tube connected to a container where the smoke is cooled by passing through water.

[PL 2019, c. 530, Pt. A, §1 (NEW); PL 2019, c. 530, Pt. A, §7 (AFF).]

3. Manufacturer. "Manufacturer" means a person who manufactures and sells tobacco products. [PL 1985, c. 783, §16 (NEW).]

4. Place of business. "Place of business" means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train or vending machines.

[PL 1985, c. 783, §16 (NEW).]

4-A. (TEXT EFFECTIVE 1/01/24) Premium cigar. "Premium cigar" has the same meaning as in Title 22, section 1551, subsection 5.

[PL 2023, c. 441, Pt. E, §5 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

4-B. (TEXT EFFECTIVE 1/01/24) Remote retail sale. "Remote retail sale" means any sale into this State of premium cigars to a consumer when:

A. The consumer submits the order for the sale by means of a telephone or other method of voice transmission, United States mail or the Internet or other online service or the remote retail seller is

otherwise not in the physical presence of the buyer when the request for purchase or order is made; or [PL 2023, c. 441, Pt. E, §6 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

B. The premium cigars are delivered to the buyer by common carrier, private delivery service or other method of remote delivery or the remote retail seller is not in the physical presence of the buyer when the buyer obtains possession of the cigars. [PL 2023, c. 441, Pt. E, §6 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]
[PL 2023, c. 441, Pt. E, §6 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

4-C. (TEXT EFFECTIVE 1/01/24) Remote retail seller. "Remote retail seller" means a person who makes a remote retail sale when:

A. The person's gross sales from sales of tangible personal property or taxable services, as those terms are defined in Part 3, into this State in the previous calendar year or current calendar year exceeds \$100,000; or [PL 2023, c. 441, Pt. E, §7 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

B. The person made sales of tangible personal property or taxable services, as those terms are defined in Part 3, for delivery into this State in at least 200 separate transactions in the previous calendar year or current calendar year. [PL 2023, c. 441, Pt. E, §7 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]
[PL 2023, c. 441, Pt. E, §7 (NEW); PL 2023, c. 441, Pt. E, §7 (AFF).]

5. Retailer. "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers.
[PL 1985, c. 783, §16 (NEW).]

6. (TEXT EFFECTIVE UNTIL 1/01/24) Retail outlet. "Retail outlet" means a place of business from which tobacco products are sold to consumers. Vending machines shall be considered a retail outlet.
[PL 1985, c. 783, §16 (NEW).]

6. (TEXT REPEALED 1/01/24) Retail outlet.
[PL 2023, c. 441, Pt. E, §8 (RP); PL 2023, c. 441, Pt. E, §28 (AFF).]

7. Sale. "Sale" means any transfer, exchange, barter or gift in any manner or by any means whatsoever, for a consideration. "Sale" includes a gift for advertising by a person engaged in the business of selling tobacco products.
[PL 2005, c. 627, §2 (AMD).]

7-A. Smoking. "Smoking" includes carrying or having in one's possession a lighted or heated cigarette, cigar or pipe or a lighted or heated tobacco or plant product intended for human consumption through inhalation whether natural or synthetic in any manner or in any form. "Smoking" includes the use of an electronic smoking device.
[PL 2019, c. 530, Pt. A, §1 (NEW); PL 2019, c. 530, Pt. A, §7 (AFF).]

8. Subjobber.
[PL 2005, c. 627, §3 (RP).]

9. (TEXT EFFECTIVE UNTIL 1/01/24) Tobacco products. "Tobacco products" means cigars; cheroots; stogies; electronic smoking devices and liquids used in electronic smoking devices whether or not they contain nicotine; periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff; snuff flour; snus; cavendish; plug and twist tobacco; finecut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means. "Tobacco products" does not include:

A. Products that are subject to the tax provided by chapter 703; [PL 2019, c. 530, Pt. A, §2 (NEW); PL 2019, c. 530, Pt. A, §7 (AFF).]

B. Drugs, devices or combination products authorized for sale by the United States Department of Health and Human Services, Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act; [PL 2019, c. 530, Pt. A, §2 (NEW); PL 2019, c. 530, Pt. A, §7 (AFF).]

C. Any product that contains adult use cannabis subject to tax under chapter 723; or [PL 2019, c. 607, Pt. B, §7 (AMD); PL 2021, c. 669, §5 (REV).]

D. Any product that contains cannabis or cannabis products subject to control under Title 22, chapter 558-C. [PL 2019, c. 530, Pt. A, §2 (NEW); PL 2019, c. 530, Pt. A, §7 (AFF); PL 2021, c. 669, §5 (REV).]

[PL 2019, c. 607, Pt. B, §7 (AMD); PL 2021, c. 669, §5 (REV).]

9. (TEXT EFFECTIVE 1/01/24) Tobacco products. "Tobacco products" means cigars, including premium cigars; cheroots; stogies; electronic smoking devices and liquids used in electronic smoking devices whether or not they contain nicotine; periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff; snuff flour; snus; cavendish; plug and twist tobacco; finecut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be intended for human consumption or as is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means.

A. [PL 2023, c. 441, Pt. E, §9 (RP); PL 2023, c. 441, Pt. E, §28 (AFF).]

B. [PL 2023, c. 441, Pt. E, §9 (RP); PL 2023, c. 441, Pt. E, §28 (AFF).]

C. [PL 2023, c. 441, Pt. E, §9 (RP); PL 2023, c. 441, Pt. E, §28 (AFF).]

D. [PL 2023, c. 441, Pt. E, §9 (RP); PL 2023, c. 441, Pt. E, §28 (AFF).]

[PL 2023, c. 441, Pt. E, §9 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

10. Unclassified importer.

[PL 2005, c. 627, §5 (RP).]

11. Wholesale sales price. "Wholesale sales price" means the price for which a manufacturer sells tobacco products to a distributor, exclusive of any discount or other reduction.

[PL 2005, c. 627, §6 (AMD).]

SECTION HISTORY

PL 1985, c. 783, §16 (NEW). PL 2005, c. 627, §§1-6 (AMD). PL 2011, c. 285, §§11, 12 (AMD). PL 2019, c. 530, Pt. A, §§1, 2 (AMD). PL 2019, c. 530, Pt. A, §7 (AFF). PL 2019, c. 607, Pt. B, §7 (AMD). PL 2021, c. 669, §5 (REV). PL 2023, c. 441, Pt. E, §§1-9 (AMD). PL 2023, c. 441, Pt. E, §28 (AFF).

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