

3896

2009-2010 Regular Sessions

I N S E N A T E

April 3, 2009

Introduced by Sens. STACHOWSKI, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to requiring the exclusive use of encrypted counterfeit-resistant cigarette tax stamps to provide a commission to agents for the purpose of leasing or the purchase of machinery and a sell-through provision for retailers

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

1 Section 1. The tax law is amended by adding a new section 472-a to
2 read as follows:
3 S 472-A. TOBACCO TAX SECURITY. 1. PURSUANT TO THE POWERS VESTED IN THE
4 COMMISSIONER UNDER SECTION FOUR HUNDRED SEVENTY-TWO OF THIS ARTICLE, THE
5 COMMISSIONER SHALL INCORPORATE A SYSTEM FOR SECURING TOBACCO TAXES DUE
6 TO THE STATE. SUCH A SYSTEM SHALL BE COMPRISED, AT A MINIMUM, OF THE
7 FOLLOWING:
8 (A) THE USE OF ENCRYPTED TAX STAMPS BY STAMPING AGENTS LICENSED PURSU-
9 ANT TO SECTION FOUR HUNDRED SEVENTY-TWO OF THIS ARTICLE. SUCH STAMPS
10 SHALL BE ENCRYPTED TO IDENTIFY, AT A MINIMUM:
11 (I) THE NAME AND ADDRESS OF THE LICENSED STAMPING AGENT AFFIXING THE
12 STAMP;
13 (II) THE DATE THE STAMP WAS AFFIXED TO THE PRODUCT; AND
14 (III) THE DENOMINATED VALUE OF THE STAMP OR METER IMPRESSION.
15 (B) THE SECURE MANAGEMENT OF ANY DATA REQUIRED UNDER PARAGRAPH (A) OF
16 THIS SUBDIVISION AND OTHER DATA AS MAY BE REQUIRED BY THE COMMISSIONER;
17 (C) THE ENFORCEMENT OF SECTION FOUR HUNDRED SEVENTY-TWO OF THIS ARTI-
18 CLE, INCLUDING SUCH DEVICES AS MAY BE USED BY THE DEPARTMENT AND OTHER
19 STATE EMPLOYEES AUTHORIZED BY THE COMMISSIONER.
20 2. SUCH ENCRYPTED TAX STAMPS SHALL:
21 (A) BE PRODUCED IN A PROVEN SECURE FACILITY CERTIFIED IN ACCORDANCE
22 WITH THE SECURITY ASSISTANCE STANDARDS ESTABLISHED IN TWO THOUSAND FIVE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD10719-03-9

1 BY THE AMERICAN NATIONAL STANDARDS INSTITUTE AND THE NORTH AMERICAN
2 SECURITY PRODUCTS ORGANIZATION;

3 (B) INCORPORATE A MINIMUM OF FOUR LAYERS OF OVERT, SEMI-COVERT AND
4 COVERT DATA;

5 (C) BE APPLIED BY MACHINES WHEREUPON THE ENCRYPTED DATA SHALL BE
6 INSTANTANEOUSLY CAPTURED AND STORED BY AND FOR THE DEPARTMENT;

7 (D) BE READABLE AND TRACEABLE FROM THE POINT OF STAMP PRODUCTION TO
8 SUCH POINT AS DEEMED APPROPRIATE BY THE COMMISSIONER; AND

9 (E) BE CAPABLE OF BEING READ BY A SCANNING OR SIMILAR DEVICE THAT CAN
10 BE UTILIZED BY ENFORCEMENT AGENTS OF THE STATE AND OTHERS DEEMED APPRO-
11 PRIATE BY THE COMMISSIONER.

12 S 2. The department of taxation and finance shall issue a request for
13 proposal for the purpose of providing the system described in section
14 472-a of the tax law, as added by section one of this act, within 90
15 days of the effective date of this act. Bids from qualified vendors
16 shall be received by the department of taxation and finance no later
17 than 60 days following the issuance of the request for proposal. Any
18 contract issued pursuant to this section shall be issued within 90 days
19 following receipt of bids and installation of such system completed by
20 the successful bidder within 180 days of the issuance of such contract.

21 S 3. Subdivision 1 of section 472 of the tax law, as amended by chap-
22 ter 629 of the laws of 1996, is amended to read as follows:

23 1. The commissioner shall prescribe, prepare and furnish stamps of
24 such denominations and quantities as may be necessary for the payment of
25 the tax on cigarettes AND, AT THE DISCRETION OF THE COMMISSIONER, ON
26 OTHER TOBACCO PRODUCTS imposed by this article, and may from time to
27 time and as often as he deems advisable provide for the issuance and
28 exclusive use of stamps of a new design and forbid the use of stamps of
29 any other design, in the manner and with the effect provided in section
30 two hundred seventy-four of this chapter. The commissioner shall make
31 provisions for the sale of such stamps at such places and at such times
32 as he may deem necessary and may license agents for such purpose. The
33 commissioner may license dealers in cigarettes, who maintain separate
34 warehousing facilities for the purpose of receiving and distributing
35 cigarettes and conducting their business, who have received commitments
36 from at least two [cigarette] manufacturers whose aggregate market share
37 is at least forty percent of the New York state [cigarette] market, and
38 importers, exporters and manufacturers of cigarettes, and other persons
39 within or without the state as agents to buy or affix stamps to be used
40 in paying the tax herein imposed, but an agent shall at all times have
41 the right to appoint the person in his employ who is to affix the stamps
42 to any cigarettes under the agent's control. The fee for filing such
43 application for an agent's license shall be one thousand five hundred
44 dollars, unless such fee has been paid during the preceding twelve
45 months, in which case, the fee for a new license shall be one thousand
46 dollars. All of the provisions of section four hundred eighty OF THIS
47 ARTICLE relating to wholesale dealers' licenses, including the procedure
48 for suspension, revocation, refusal to license and for hearings, except
49 for paragraphs (c) and (g) of subdivision one of such section, shall be
50 applicable to agents' licenses applied for or granted pursuant to this
51 section, as if such provisions had been set forth in full in this subdi-
52 vision and had expressly referred to the applicant for, or the holder
53 of, an agent's license. Whenever the commissioner shall sell and deliver
54 to any such agent any such stamps, such agent shall be entitled to
55 receive as compensation for his services and expenses as such agent in
56 selling or affixing such stamps, and to retain out of the moneys to be

1 paid by him for such stamps, a commission on the par value thereof. The
2 commissioner is hereby authorized to prescribe a schedule of commis-
3 sions, not exceeding five per centum, allowable to such agent for buying
4 and affixing such stamps. Such schedule shall be uniform with respect to
5 the different types of stamps used, and may be on a graduated scale with
6 respect to the number of stamps purchased, PROVIDED HOWEVER, SUCH AGENTS
7 SHALL BE ENTITLED TO AN ADDED COMMISSION IN EXCESS OF THE FIVE PER
8 CENTUM TO BE DETERMINED BY THE COMMISSIONER TO MITIGATE THE COSTS TO
9 SUCH AGENTS IN RELATION TO THE LEASE OR PURCHASE OF THE MACHINERY AND/OR
10 EQUIPMENT NECESSARY TO APPLY OR AFFIX SUCH STAMPS AS REQUIRED IN SECTION
11 FOUR HUNDRED SEVENTY-TWO-A OF THIS ARTICLE. The commissioner may, in his
12 discretion, permit an agent to pay for such stamps within thirty days
13 after the date of purchase and may require any such agent to file with
14 the department [of taxation and finance] a bond issued by a surety
15 company approved by the superintendent of insurance as to solvency and
16 responsibility and authorized to transact business in the state or other
17 security acceptable to the commissioner, in such amount as the commis-
18 sioner may fix, to secure the payment of any sums due from such agent
19 pursuant to this article. If securities are deposited as security under
20 this subdivision, such securities shall be kept in the custody of the
21 commissioner and may be sold by the commissioner if it becomes necessary
22 so to do in order to recover any sums due from such agent pursuant to
23 this article, but no such sale shall be had until after such agent shall
24 have had opportunity to litigate the validity of any tax if it elects so
25 to do. Upon any such sale, the surplus, if any, above the sums due under
26 this article shall be returned to such agent.

27 S 4. The department of taxation and finance shall, following the
28 implementation period and annually thereafter, report to the legislature
29 and to the governor on the effectiveness of the provisions of this act.

30 S 5. This act shall take effect immediately, provided, however, that
31 section two of this act shall take effect on the one hundred eightieth
32 day following the awarding of such contract pursuant to this act;
33 provided further that any product in the possession of a cigarette
34 retail dealer on the effective date of this act and stamped to the
35 commissioner of taxation and finance's satisfaction may continue to be
36 offered for sale and sold to cigarette purchasers.