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I N S E N A T E

January 14, 2011

Introduced by Sens. GRIFFO, LARKIN -- 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 taxes on cigarettes sold on
an Indian reservation to non-members of the Indian nation or tribe

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

1 Section 1. Subdivision 1 of section 471 of the tax law, as amended by
2 section 1 of part D of chapter 134 of the laws of 2010, is amended to
3 read as follows:
4 1. There is hereby imposed and shall be paid a tax on all cigarettes
5 possessed in the state by any person for sale, except that no tax shall
6 be imposed on cigarettes sold under such circumstances that this state
7 is without power to impose such tax, including sales to qualified Indi-
8 ans for their own use and consumption on their nations' or tribes' qual-
9 ified reservation, or sold to the United States or sold to or by a
10 voluntary unincorporated organization of the armed forces of the United
11 States operating a place for the sale of goods pursuant to regulations
12 promulgated by the appropriate executive agency of the United States, to
13 the extent provided in such regulations and policy statements of such an
14 agency applicable to such sales. The tax imposed by this section is
15 imposed on all cigarettes sold on an Indian reservation to non-members
16 of the Indian nation or tribe and to non-Indians and evidence of such
17 tax shall be by means of an affixed cigarette tax stamp. Indian nations
18 or tribes may elect to participate in the Indian tax exemption coupon
19 system established in section four hundred seventy-one-e of this article
20 which provides a mechanism for the collection of the tax imposed by this
21 section on cigarette sales on qualified reservations to such non-members
22 and non-Indians and for the delivery of quantities of tax-exempt ciga-
23 rettes to Indian nations or tribes for the personal use and consumption
24 of qualified members of the Indian nation or tribe. If an Indian nation

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

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1 or tribe does not elect to participate in the Indian tax exemption
2 coupon system, the prior approval system shall be the mechanism for the
3 delivery of quantities of tax-exempt cigarettes to Indian nations or
4 tribes for the personal use and consumption of qualified members of the
5 Indian nation or tribe as provided for in paragraph (b) of subdivision
6 five of this section. Such tax on cigarettes shall be at the rate of
7 four dollars and thirty-five cents for each twenty cigarettes or frac-
8 tion thereof, provided, however, that if a package of cigarettes
9 contains more than twenty cigarettes, the rate of tax on the cigarettes
10 in such package in excess of twenty shall be one dollar and eight and
11 three-quarters cents for each five cigarettes or fraction thereof.
12 PROVIDED FURTHER THAT IF THE STATE FAILS TO COLLECT TAXES ON CIGARETTES
13 SOLD ON AN INDIAN RESERVATION TO NON-MEMBERS OF THE INDIAN NATION OR
14 TRIBE BY SEPTEMBER FIRST, TWO THOUSAND ELEVEN, THAT SUCH CIGARETTE TAX
15 RATE WOULD REVERT TO THE RATE OF TWO DOLLARS AND SEVENTY-FIVE CENTS AS
16 PREVIOUSLY STATED IN LAW BEFORE THE PASSAGE OF CHAPTER ONE HUNDRED THIR-
17 TY-FOUR OF THE LAWS OF TWO THOUSAND TEN. ONCE THE STATE BEGINS COLLECT-
18 ING TAXES ON CIGARETTES SOLD ON AN INDIAN RESERVATION TO NON-MEMBERS OF
19 THE INDIAN NATION OR TRIBE, THE CIGARETTE TAX RATE WOULD BE IMPOSED AT
20 FOUR DOLLARS AND THIRTY-FIVE CENTS AS SPECIFIED IN CHAPTER ONE HUNDRED
21 THIRTY-FOUR OF THE LAWS OF TWO THOUSAND TEN. Such tax is intended to be
22 imposed upon only one sale of the same package of cigarettes. It shall
23 be presumed that all cigarettes within the state are subject to tax
24 until the contrary is established, and the burden of proof that any
25 cigarettes are not taxable hereunder shall be upon the person in
26 possession thereof.

27 S 2. This act shall take effect immediately.