

3649

2011-2012 Regular Sessions

I N   S E N A T E

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Introduced by Sen. GALLIVAN -- 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 and the administrative code of the city of New York, in relation to the destruction of seized and forfeited cigarettes and tobacco products

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

1     Section 1. Section 1846 of the tax law, as added by chapter 65 of the  
2 laws of 1985, subdivision (a) as amended by section 2 of part E of chap-  
3 ter 93 of the laws of 2002, subdivision (a-1) as added by section 3 of  
4 part J of chapter 383 of the laws of 2001, subdivision (d) as added by  
5 chapter 384 of the laws of 1999, is amended to read as follows:  
6     S 1846. Seizure and forfeiture of cigarettes.--(a) Whenever a police  
7 officer designated in section 1.20 of the criminal procedure law or a  
8 peace officer designated in subdivision four of section 2.10 of such  
9 law, acting pursuant to his or her special duties, shall discover any  
10 cigarettes subject to tax provided by article twenty of this chapter or  
11 by chapter thirteen of title eleven of the administrative code of the  
12 city of New York, and upon which the tax has not been paid or the stamps  
13 not affixed as required by such article or such chapter thirteen, they  
14 are hereby authorized and empowered forthwith to seize and take  
15 possession of such cigarettes, together with any vending machine or  
16 receptacle in which they are held for sale. Such cigarettes, vending  
17 machine or receptacle seized by a police officer or such peace officer  
18 shall be turned over to the commissioner. Such seized cigarettes, vend-  
19 ing machine or receptacle, not including money contained in such vending  
20 machine or receptacle, shall be forfeited to the state. The commission-  
21 er may, within a reasonable time thereafter, upon publication of a  
22 notice to such effect for at least five successive days, before the day  
23 of sale, in a newspaper published or circulated in the county where the

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

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1 seizure was made, sell such forfeited [cigarettes and] vending machines  
2 or receptacles at public sale and pay the proceeds into the state treas-  
3 ury to the credit of the general fund. [Cigarettes so seized and sold  
4 shall be sold only to an agent under article twenty of this chapter and  
5 the notice of sale shall contain a provision to this effect.] Notwith-  
6 standing any other provision of this section, the commissioner may enter  
7 into an agreement with any city of this state which is authorized to  
8 impose a tax similar to that imposed by article twenty of this chapter  
9 to provide for the disposition between the state and any such city of  
10 the proceeds from any such sale. ALL CIGARETTES FORFEITED TO THE STATE  
11 SHALL BE DESTROYED OR USED FOR LAW ENFORCEMENT PURPOSES, EXCEPT THAT  
12 CIGARETTES THAT VIOLATE, OR ARE SUSPECTED OF VIOLATING, FEDERAL TRADE-  
13 MARK LAWS OR IMPORT LAWS SHALL NOT BE USED FOR LAW ENFORCEMENT PURPOSES.  
14 IF THE COMMISSIONER DETERMINES THE CIGARETTES MAY NOT BE USED FOR LAW  
15 ENFORCEMENT PURPOSES, THE COMMISSIONER MUST, WITHIN A REASONABLE TIME  
16 AFTER THE FORFEITURE OF SUCH CIGARETTES, UPON PUBLICATION OF A NOTICE TO  
17 SUCH EFFECT FOR AT LEAST FIVE SUCCESSIVE DAYS BEFORE THE DAY OF  
18 DESTRUCTION, IN A NEWSPAPER PUBLISHED OR CIRCULATED IN THE COUNTY WHERE  
19 THE SEIZURE WAS MADE, DESTROY SUCH FORFEITED CIGARETTES. THE COMMISSION-  
20 ER MAY, PRIOR TO ANY DESTRUCTION OF CIGARETTES, PERMIT THE TRUE HOLDER  
21 OF THE TRADEMARK RIGHTS IN THE CIGARETTES TO INSPECT SUCH FORFEITED  
22 CIGARETTES IN ORDER TO ASSIST IN ANY INVESTIGATION REGARDING SUCH CIGA-  
23 RETTES.

24 (a-1) Whenever a police officer designated in section 1.20 of the  
25 criminal procedure law or a peace officer designated in subdivision four  
26 of section 2.10 of such law, acting pursuant to his or her special  
27 duties, shall discover any cigarettes which have been stamped in  
28 violation of section four hundred eighty-b of this chapter, such officer  
29 is hereby authorized and empowered forthwith to seize and take  
30 possession of such cigarettes, and such cigarettes shall be subject to a  
31 forfeiture action pursuant to the procedures provided for in article  
32 thirteen-A of the civil practice law and rules, as if such article  
33 specifically provided for forfeiture of cigarettes seized pursuant to  
34 this section as a preconviction forfeiture crime. Subdivisions (b), (c)  
35 and (d) of this section shall not apply to cigarettes seized pursuant to  
36 this subdivision.

37 (b) In the alternative, the tax commission, on reasonable notice by  
38 mail or otherwise, may permit the person from whom said cigarettes were  
39 seized to redeem the said cigarettes, and any vending machine or recep-  
40 tacle seized therewith, by the payment of the tax due, plus a penalty of  
41 fifty per centum thereof, plus interest on the amount of tax due for  
42 each month or fraction thereof after such tax became due (determined  
43 without regard to any extension of time for filing or paying) at the  
44 rate applicable under subparagraph (ii) of paragraph (a) of subdivision  
45 one of section four hundred eighty-one of this chapter and the costs  
46 incurred in such proceeding, which total payment shall not be less than  
47 five dollars; provided, however, that such seizure and sale or redemp-  
48 tion shall not be deemed to relieve any person from fine or imprisonment  
49 provided for in this article for violation of any provision of article  
50 twenty of this chapter.

51 (c) In the alternative, [if the tax commission concludes that any  
52 cigarettes seized pursuant to this section, when offered at public sale,  
53 will bring a price less than the reasonably estimated price which the  
54 department of correctional services would have to pay for the purchase  
55 of such cigarettes for sale to or use by inmates in institutions under  
56 the jurisdiction of such department,] the tax commission may dispose of

[such] ANY cigarettes SEIZED PURSUANT TO THIS SECTION, EXCEPT THOSE THAT VIOLATE, OR ARE SUSPECTED OF VIOLATING, FEDERAL TRADEMARK LAWS OR IMPORT LAWS, by transferring them to the department of correctional services for sale to or use by inmates in such institutions.

(d) Cigarettes seized pursuant to a violation of section four hundred seventy-three-b of this chapter shall be destroyed [or sold for export at the discretion of the commissioner]. The department may also seize and destroy any vending machine or receptacle in which cigarettes stamped in violation of section four hundred seventy-three-b of this chapter are held for sale.

S 2. Section 1846-a of the tax law, as added by chapter 61 of the laws of 1989, subdivision (a-1) as added by chapter 552 of the laws of 2008, is amended to read as follows:

S 1846-a. Forfeiture action with respect to tobacco products. (a) Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer designated in subdivision four of section 2.10 of such law, acting pursuant to his special duties, shall discover any tobacco products in excess of five hundred cigars or ten pounds of tobacco which are being imported for sale in the state where the person importing or causing such tobacco products to be imported has not been appointed as a distributor pursuant to section four hundred seventy-two of this chapter, such police officer or peace officer is hereby authorized and empowered forthwith to seize and take possession of such tobacco products. Such tobacco products seized by a police officer or peace officer shall be turned over to the commissioner [of taxation and finance]. Such seized tobacco products shall be forfeited to the state. [The] ALL TOBACCO PRODUCTS FORFEITED TO THE STATE SHALL BE DESTROYED OR USED FOR LAW ENFORCEMENT PURPOSES, EXCEPT THAT TOBACCO PRODUCTS THAT VIOLATE, OR ARE SUSPECTED OF VIOLATING, FEDERAL TRADEMARK LAWS OR IMPORT LAWS SHALL NOT BE USED FOR LAW ENFORCEMENT PURPOSES. IF THE COMMISSIONER DETERMINES THE TOBACCO PRODUCTS MAY NOT BE USED FOR LAW ENFORCEMENT PURPOSES, THE commissioner [of taxation and finance may] MUST, within a reasonable time thereafter, upon publication of a notice to such effect for at least five successive days, before the day of [sale] DESTRUCTION, in a newspaper published or circulated in the county where the seizure was made, [sell] DESTROY such forfeited tobacco products [at public sale and pay the proceeds into the state treasury to the credit of the general fund. Tobacco products so seized and sold shall be sold only to a distributor appointed under article twenty of this chapter and the notice of sale shall contain a provision to this effect]. THE COMMISSIONER MAY, PRIOR TO ANY DESTRUCTION OF TOBACCO PRODUCTS, PERMIT THE TRUE HOLDER OF THE TRADEMARK RIGHTS IN THE TOBACCO PRODUCTS TO INSPECT SUCH FORFEITED PRODUCTS IN ORDER TO ASSIST IN ANY INVESTIGATION REGARDING SUCH TOBACCO PRODUCTS.

(a-1) Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer designated in subdivision four of section 2.10 of the criminal procedure law, acting pursuant to his or her special duties, discovers any roll-your-own tobacco that is in violation of section four hundred eighty-c of this chapter, the officer is authorized and empowered to seize and take possession of the roll-your-own tobacco, and the roll-your-own tobacco is subject to a forfeiture action under the procedures provided for in article thirteen-A of the civil practice law and rules, as if that article specifically provided for forfeiture of roll-your-own tobacco seized under this section as a preconviction forfeiture crime. Subdivisions (b) and (c) of

1 this section do not apply to roll-your-own tobacco seized pursuant to  
2 this subdivision.

3 (b) In the alternative, the commissioner, on reasonable notice by mail  
4 or otherwise, may permit the person from whom said tobacco products were  
5 seized to redeem the said tobacco products by the payment of the tax  
6 due, plus a penalty of fifty per centum thereof, plus interest on the  
7 amount of tax due for each month or fraction thereof after such tax  
8 became due (determined without regard to any extension of time for  
9 filing or paying) at the rate applicable under subparagraph (ii) of  
10 paragraph (a) of subdivision one of section four hundred eighty-one of  
11 this chapter and the costs incurred in such proceeding, which total  
12 payment shall not be less than five dollars; provided, however, that  
13 such seizure and sale or redemption shall not be deemed to relieve any  
14 person from fine or imprisonment provided for in this article for  
15 violation of any provision of article twenty of this chapter.

16 (c) In the alternative, [if the commissioner concludes that any tobac-  
17 co products seized pursuant to this section, when offered at public  
18 sale, will bring a price less than the reasonably estimated price which  
19 the department of correctional services would have to pay for the  
20 purchase of such tobacco products for sale to or use by inmates in  
21 institutions under the jurisdiction of such department,] the commission-  
22 er may dispose of [such] ANY tobacco products SEIZED PURSUANT TO THIS  
23 SECTION, EXCEPT THOSE THAT VIOLATE, OR ARE SUSPECTED OF VIOLATING,  
24 FEDERAL TRADEMARK LAWS OR IMPORT LAWS, by transferring them to the  
25 department of correctional services for sale to or use by inmates in  
26 such institutions.

27 S 3. Section 11-4021 of the administrative code of the city of New  
28 York, as added by chapter 765 of the laws of 1985, is amended to read as  
29 follows:

30 S 11-4021 Seizure and forfeiture of cigarettes. (a) Whenever a police  
31 officer designated in section 1.20 of the criminal procedure law or a  
32 peace officer designated in subdivision five of section 2.10 of such  
33 law, acting pursuant to his special duties, shall discover any ciga-  
34 rettes subject to any tax provided by chapter thirteen of this title,  
35 and upon which the tax has not been paid or the stamps not affixed as  
36 required by such chapter, they are hereby authorized and empowered  
37 forthwith to seize and take possession of such cigarettes, together with  
38 any vending machine or receptacle in which they are held for sale. Such  
39 cigarettes, vending machine or receptacle seized by a police officer or  
40 such peace officer shall be turned over to the commissioner of finance.

41 (b) The seized cigarettes and any vending machine or receptacle seized  
42 therewith, but not the money contained in such vending machine or recep-  
43 tacle shall thereupon be forfeited to the city, unless the person from  
44 whom the seizure is made, or the owner of such seized cigarettes, vend-  
45 ing machine or receptacle, or any other person having an interest in  
46 such property, shall within ten days of such seizure, apply to the  
47 commissioner of finance for a hearing to determine the propriety of the  
48 seizure, or unless the commissioner of finance shall on his own motion  
49 release the seized cigarettes, vending machine or receptacle. After such  
50 hearing the commissioner of finance shall give notice of his decision to  
51 the petitioner. The decision of the commissioner shall be reviewable for  
52 error, illegality, unconstitutionality or any other reason whatsoever by  
53 a proceeding under article seventy-eight of the civil practice law and  
54 rules if application therefor is made to the supreme court within thirty  
55 days after the giving of the notice of such decision. Such proceeding  
56 shall not be instituted unless there shall first be filed with the

1 commissioner of finance an undertaking, issued by a surety company  
2 authorized to transact business in New York state and approved by the  
3 superintendent of insurance of New York state as to solvency and respon-  
4 sibility, in such amount as a justice of the supreme court shall  
5 approve, to the effect that if such proceeding be dismissed, or the  
6 seizure confirmed, the petitioner will pay all costs and charges which  
7 may accrue in the prosecution of the proceeding.

8 (c) The commissioner of finance may, within a reasonable time after  
9 the forfeiture to the city of such [cigarettes,] vending machines or  
10 receptacles, upon publication of a notice to such effect for at least  
11 five successive days, in a newspaper published or circulated in the  
12 city, sell such forfeited [cigarettes and] vending machines or recepta-  
13 cles at public sale and pay the proceeds into the treasury of the city  
14 to the credit of the general fund. [Cigarettes so seized and sold shall  
15 be sold only to an agent under chapter thirteen of this title and the  
16 notice of sale shall contain a provision to this effect.] Such seized  
17 [cigarettes,] vending machines or receptacles may be sold prior to  
18 forfeiture if the owner of the seized property consents to the sale.  
19 Notwithstanding any other provision of this section, the commissioner of  
20 finance may enter into an agreement with the state tax commission to  
21 provide for the disposition between the city and state of the proceeds  
22 from any such sale. ALL CIGARETTES FORFEITED TO THE STATE SHALL BE  
23 DESTROYED OR USED FOR LAW ENFORCEMENT PURPOSES, EXCEPT THAT CIGARETTES  
24 THAT VIOLATE, OR ARE SUSPECTED OF VIOLATING, FEDERAL TRADEMARK LAWS OR  
25 IMPORT LAWS SHALL NOT BE USED FOR LAW ENFORCEMENT PURPOSES. IF THE  
26 COMMISSIONER DETERMINES THE CIGARETTES MAY NOT BE USED FOR LAW ENFORCE-  
27 MENT PURPOSES, THE COMMISSIONER OF FINANCE MUST, WITHIN A REASONABLE  
28 TIME AFTER THE FORFEITURE TO THE CITY OF SUCH CIGARETTES, UPON PUBLICA-  
29 TION OF A NOTICE TO SUCH EFFECT FOR AT LEAST FIVE SUCCESSIVE DAYS, PRIOR  
30 TO DESTRUCTION, IN A NEWSPAPER PUBLISHED OR CIRCULATED IN THE CITY,  
31 DESTROY SUCH FORFEITED CIGARETTES. SUCH COMMISSIONER MAY, PRIOR TO ANY  
32 DESTRUCTION OF CIGARETTES, PERMIT THE TRUE HOLDER OF THE TRADEMARK  
33 RIGHTS IN THE CIGARETTES TO INSPECT SUCH FORFEITED CIGARETTES IN ORDER  
34 TO ASSIST IN ANY INVESTIGATION REGARDING SUCH CIGARETTES.

35 (d) In the alternative, the commissioner of finance, on reasonable  
36 notice by mail or otherwise, may permit the person from whom said ciga-  
37 rettes were seized to redeem the said cigarettes, and any vending  
38 machine or receptacle seized therewith, or may permit the owner of any  
39 such cigarettes, vending machine or receptacle to redeem the same, by  
40 the payment of the tax due, plus a penalty of fifty percent thereof,  
41 plus interest on the amount of tax due for each month or fraction there-  
42 of after such tax became due (determined without regard to any extension  
43 of time for filing or paying) at the rate applicable under subdivision  
44 [(d)] D of section 11-1317 of this title and the costs incurred in such  
45 proceeding, which total payment shall not be less than five dollars;  
46 provided, however, that such seizure and sale or redemption shall not be  
47 deemed to relieve any person from fine or imprisonment provided for in  
48 this chapter for violation of any provisions of this chapter or chapter  
49 thirteen of this title.

50 (e) In the alternative, [if the commissioner of finance concludes that  
51 any cigarettes seized pursuant to this section, when offered at public  
52 sale, will bring a price less than the reasonably estimated price which  
53 the department of correction would have to pay for the purchase of such  
54 cigarettes for sale to or use by inmates in institutions under the  
55 jurisdiction of such department,] the commissioner of finance may  
56 dispose of [such] ANY cigarettes SEIZED PURSUANT TO THIS SECTION, EXCEPT

1 THOSE THAT VIOLATE, OR ARE SUSPECTED OF VIOLATING, FEDERAL TRADEMARK  
2 LAWS OR IMPORT LAWS, by transferring them to the department of  
3 correction for sale to or use by inmates in such institutions.  
4 S 4. This act shall take effect immediately.