

1958--C

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to increasing the presumed "cost of the agent" relating to cigarette marketing standards; and to amend the state finance law, in relation to establishing the cigarette tax enforcement account; and making an appropriation therefor

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

1 Section 1. Subparagraph (B) of paragraph 1 of subdivision (b) of
2 section 483 of the tax law, as amended by chapter 1 of the laws of 1999,
3 is amended to read as follows:
4 (B) In the absence of the filing with the commissioner of satisfactory
5 proof of a lesser cost of doing business of the agent making the sale,
6 the cost of doing business by the agent shall be presumed to be seven-
7 eighths of one percent of the basic cost of cigarettes for sales to
8 wholesale dealers plus [one cent] NINE CENTS per package of [ten] ciga-
9 rettes, [two cents per package of twenty cigarettes and in the case of a
10 package containing more than twenty cigarettes, two cents and one-half
11 of a cent for each five cigarettes in excess of twenty cigarettes]
12 REGARDLESS OF THE NUMBER OF CIGARETTES CONTAINED IN SUCH PACKAGE, one
13 and one-half percent of the basic cost of cigarettes for sales to chain
14 stores plus [one cent] NINE CENTS per package of [ten] cigarettes, [two
15 cents per package of twenty cigarettes and in the case of a package
16 containing more than twenty cigarettes, two cents and one-half of a cent
17 for each five cigarettes in excess of twenty cigarettes] REGARDLESS OF

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

LBD02219-07-3

1 THE NUMBER OF CIGARETTES CONTAINED IN SUCH PACKAGE, and three and
2 seven-eighths percent of the basic cost of cigarettes with respect to
3 sales to retail dealers plus [one cent] NINE CENTS per package of [ten]
4 cigarettes, [two cents per package of twenty cigarettes and in the case
5 of a package containing more than twenty cigarettes, two cents and one-
6 half of a cent for each five cigarettes in excess of twenty cigarettes]
7 REGARDLESS OF THE NUMBER OF CIGARETTES IN SUCH PACKAGE and the foregoing
8 cents per pack shall be included in the "cost of doing business by the
9 agent" referred to in paragraphs two and three of this subdivision.

10 S 2. Subdivision 1 of section 472 of the tax law, as amended by chap-
11 ter 629 of the laws of 1996 and as further amended by section 104 of
12 part A of chapter 62 of the laws of 2011, is amended to read as follows:

13 1. The commissioner shall prescribe, prepare and furnish stamps of
14 such denominations and quantities as may be necessary for the payment of
15 the tax on cigarettes imposed by this article PLUS THE PAYMENT BY THE
16 AGENT OF A CONCURRENT EXPENSE ALLOWANCE FOR THE CIGARETTE TAX ENFORCE-
17 MENT ACCOUNT ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-NNNN OF THE
18 STATE FINANCE LAW OF FOUR CENTS PER STAMP WHICH SHALL BE DEPOSITED
19 PURSUANT TO SUBDIVISION (C) OF SECTION FOUR HUNDRED EIGHTY-TWO OF THIS
20 ARTICLE, and may from time to time and as often as he deems advisable
21 provide for the issuance and exclusive use of stamps of a new design and
22 forbid the use of stamps of any other design, in the manner and with the
23 effect provided in section two hundred seventy-four of this chapter. The
24 commissioner shall make provisions for the sale of such stamps at such
25 places and at such times as he may deem necessary and may license agents
26 for such purpose. The commissioner may license dealers in cigarettes,
27 who maintain separate warehousing facilities for the purpose of receiv-
28 ing and distributing cigarettes and conducting their business, who have
29 received commitments from at least two cigarette manufacturers whose
30 aggregate market share is at least forty percent of the New York state
31 cigarette market, and importers, exporters and manufacturers of ciga-
32 rettes, and other persons within or without the state as agents to buy
33 or affix stamps to be used in paying the tax herein imposed, but an
34 agent shall at all times have the right to appoint the person in his
35 employ who is to affix the stamps to any cigarettes under the agent's
36 control. The fee for filing such application for an agent's license
37 shall be one thousand five hundred dollars, unless such fee has been
38 paid during the preceding twelve months, in which case, the fee for a
39 new license shall be one thousand dollars. All of the provisions of
40 section four hundred eighty OF THIS ARTICLE relating to wholesale deal-
41 ers' licenses, including the procedure for suspension, revocation,
42 refusal to license and for hearings, except for paragraphs (c) and (g)
43 of subdivision one of such section, shall be applicable to agents'
44 licenses applied for or granted pursuant to this section, as if such
45 provisions had been set forth in full in this subdivision and had
46 expressly referred to the applicant for, or the holder of, an agent's
47 license. Whenever the commissioner shall sell and deliver to any such
48 agent any such stamps, such agent shall be entitled to receive as
49 compensation for his services and expenses as such agent in selling or
50 affixing such stamps, and to retain out of the moneys to be paid by him
51 for such stamps, a commission on the par value thereof. The commissioner
52 is hereby authorized to prescribe a schedule of commissions, not exceed-
53 ing five per centum, allowable to such agent for buying and affixing
54 such stamps. Such schedule shall be uniform with respect to the differ-
55 ent types of stamps used, and may be on a graduated scale with respect
56 to the number of stamps purchased. The commissioner may, in his

1 discretion, permit an agent to pay for such stamps within thirty days
2 after the date of purchase and may require any such agent to file with
3 the department [of taxation and finance] a bond issued by a surety
4 company approved by the superintendent of financial services as to
5 solvency and responsibility and authorized to transact business in the
6 state or other security acceptable to the commissioner, in such amount
7 as the commissioner may fix, to secure the payment of any sums due from
8 such agent pursuant to this article. If securities are deposited as
9 security under this subdivision, such securities shall be kept in the
10 custody of the commissioner and may be sold by the commissioner if it
11 becomes necessary so to do in order to recover any sums due from such
12 agent pursuant to this article, but no such sale shall be had until
13 after such agent shall have had opportunity to litigate the validity of
14 any tax if it elects so to do. Upon any such sale, the surplus, if any,
15 above the sums due under this article shall be returned to such agent.

16 S 3. Section 482 of the tax law, as amended by section 2 of part T of
17 chapter 61 of the laws of 2011, is amended to read as follows:

18 S 482. Deposit and disposition of revenue. (a) All taxes, fees, inter-
19 est and penalties collected or received by the commissioner under this
20 article and article twenty-A of this chapter shall be deposited and
21 disposed of pursuant to the provisions of section one hundred seventy-
22 one-a of this chapter. (b) From the taxes, interest and penalties
23 collected or received by the commissioner under sections four hundred
24 seventy-one and four hundred seventy-one-a of this article, effective on
25 and after March first, two thousand, forty-nine and fifty-five
26 hundredths, and effective on and after February first, two thousand two,
27 forty-three and seventy hundredths; and effective on and after May
28 first, two thousand two, sixty-four and fifty-five hundredths; and
29 effective on and after April first, two thousand three, sixty-one and
30 twenty-two hundredths percent; and effective on and after June third,
31 two thousand eight, seventy and sixty-three hundredths percent; and
32 effective on and after July first, two thousand ten, seventy-six percent
33 collected or received under those sections must be deposited to the
34 credit of the tobacco control and insurance initiatives pool to be
35 established and distributed by the commissioner of health in accordance
36 with section twenty-eight hundred seven-v of the public health law. (C)
37 FROM THE AMOUNTS RECEIVED PURSUANT TO SUBDIVISION ONE OF SECTION FOUR
38 HUNDRED SEVENTY-TWO OF THIS ARTICLE, THE COMMISSIONER SHALL DEPOSIT IN
39 THE CIGARETTE TAX ENFORCEMENT ACCOUNT ESTABLISHED PURSUANT TO SECTION
40 NINETY-SEVEN-NNNN OF THE STATE FINANCE LAW THE CONCURRENT EXPENSE ALLOW-
41 ANCE FOR THE CIGARETTE TAX ENFORCEMENT FUND OF FOUR CENTS PER STAMP.

42 S 4. The state finance law is amended by adding a new section 97-nnnn
43 to read as follows:

44 S 97-NNNN. CIGARETTE TAX ENFORCEMENT ACCOUNT. 1. THERE IS HEREBY
45 CREATED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMIS-
46 SIONER OF TAXATION AND FINANCE AN ACCOUNT OF THE MISCELLANEOUS SPECIAL
47 REVENUE FUND TO BE KNOWN AS THE "CIGARETTE TAX ENFORCEMENT ACCOUNT".

48 2. NOTWITHSTANDING ANY OTHER LAW, RULE OR REGULATION TO THE CONTRARY,
49 THE STATE COMPTROLLER IS HEREBY AUTHORIZED AND DIRECTED TO RECEIVE FOR
50 DEPOSIT TO THE CREDIT OF THE CIGARETTE TAX ENFORCEMENT ACCOUNT MONIES
51 RECEIVED FROM THE COMMISSIONER OF TAXATION AND FINANCE FROM THE CONCUR-
52 RENT EXPENSE ALLOWANCE PAID PURSUANT TO SUBDIVISION ONE OF SECTION FOUR
53 HUNDRED SEVENTY-TWO OF THE TAX LAW, AND OTHER MONIES APPROPRIATED, CRED-
54 ITED OR TRANSFERRED THERETO FROM ANY OTHER FUND OR SOURCE.

1 3. THE PROCEEDS OF THE CIGARETTE TAX ENFORCEMENT ACCOUNT SHALL BE USED
2 SOLELY TO ENFORCE THE COLLECTION OF THE CIGARETTE TAX, AS PROVIDED FOR
3 IN ARTICLE TWENTY OF THE TAX LAW.

4 S 5. There is hereby appropriated to the division of state police the
5 amount of six million dollars (\$6,000,000) from the cigarette tax
6 enforcement account to support cigarette tax enforcement activities.
7 This appropriation may be apportioned to either the patrol activities or
8 criminal investigation activities program of the division of state
9 police, may be transferred or suballocated to any other state agency or
10 public authority for their costs associated with the enforcement of the
11 cigarette tax, and may be used to contract with local enforcement agen-
12 cies for cigarette tax enforcement activities. No monies shall be avail-
13 able from this appropriation absent a certificate of allocation from the
14 director of the budget.

15 S 6. This act shall take effect September 1, 2013 and shall apply in
16 accordance with the applicable transitional provisions of sections 1106
17 and 1217 of the tax law.