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I N S E N A T E

January 9, 2014

Introduced by Sen. CARLUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to including electronic cigarettes within the definition of smoking; and to amend the tax law, in relation to exempting electronic cigarettes from taxation

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

1 Section 1. Subdivision 8 of section 1399-n of the public health law,
2 as amended by chapter 13 of the laws of 2003, is amended to read as
3 follows:
4 8. "Smoking" means the burning of a lighted cigar, cigarette, ELEC-
5 TRONIC CIGARETTE, pipe or any other matter or substance which contains
6 tobacco.
7 S 2. Section 471 of the tax law is amended by adding a new subdivision
8 1-a to read as follows:
9 1-A. ELECTRONIC CIGARETTES SHALL BE EXEMPT FROM THE PROVISIONS OF THIS
10 SECTION.
11 S 3. Section 471-a of the tax law, as amended by section 5 of part D
12 of chapter 134 of the laws of 2010, is amended to read as follows:
13 S 471-a. Use tax on cigarettes. There is hereby imposed and shall be
14 paid a tax on all cigarettes used in the state by any person, except
15 that no tax shall be imposed (1) if the tax provided in section four
16 hundred seventy-one of this article is paid, (2) on the use of ciga-
17 rettes which are exempt from the tax imposed by said section, [or] (3)
18 on the use of four hundred or less cigarettes, brought into the state
19 on, or in the possession of, any person, OR (4) ON THE USE OF ELECTRONIC
20 CIGARETTES. Such tax on cigarettes shall be at the rate of four dollars
21 and thirty-five cents for each twenty cigarettes or fraction thereof,
22 provided, however, that if a package of cigarettes contains more than
23 twenty cigarettes, the rate of tax on the cigarettes in such package in
24 excess of twenty shall be one dollar and eight and three-quarters cents
25 for each five cigarettes or fraction thereof. Within twenty-four hours
26 after liability for the tax accrues, each such person shall file with
27 the commissioner a return in such form as the commissioner may prescribe

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

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1 together with a remittance of the tax shown to be due thereon. For
2 purposes of this article, the word "use" means the exercise of any right
3 or power actual or constructive and shall include but is not limited to
4 the receipt, storage or any keeping or retention for any length of time,
5 but shall not include possession for sale. All other provisions of this
6 article if not inconsistent shall apply to the administration and
7 enforcement of the tax imposed by this section in the same manner as if
8 the language of said provisions had been incorporated in full into this
9 section.

10 S 4. Subdivision 1 of section 471-b of the tax law is amended by
11 adding a new paragraph (d) to read as follows:

12 (D) SUCH TAX SHALL NOT BE IMPOSED UPON ELECTRONIC CIGARETTES.

13 S 5. The opening paragraph of subdivision (a) of section 471-c of the
14 tax law, as amended by section 2 of part I-1 of chapter 57 of the laws
15 of 2009, is amended to read as follows:

16 There is hereby imposed and shall be paid a tax on all tobacco
17 products used in the state by any person, except that no such tax shall
18 be imposed (1) if the tax provided in section four hundred seventy-one-b
19 of this article is paid, or (2) on the use of tobacco products which are
20 exempt from the tax imposed by said section, or (3) on the use of two
21 hundred fifty cigars or less, or five pounds or less of tobacco other
22 than roll-your-own tobacco, or thirty-six ounces or less of roll-your-
23 own tobacco brought into the state on, or in the possession of, any
24 person, OR (4) ON THE USE OF ELECTRONIC CIGARETTES.

25 S 6. This act shall take effect immediately.