S T A T E O F N E W Y O R K

10128--A

I N A S S E M B L Y

March 5, 2010

Introduced by M. of A. MAGEE -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to cigarette taxes imposed on qualified Indian reservations; and to direct the department of taxation and finance to fully implement such provisions

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

Section 1. Paragraph (d) of subdivision 3 of section 471-e of the tax law, as added by section 2 of part K of chapter 61 of the laws of 2005, is amended to read as follows:

(d) [A wholesale dealer] WHOLESALER DEALERS shall SELL ONLY TAX-STAMPED CIGARETTES TO INDIAN NATIONS AND TRIBES, QUALIFIED RESERVATION CIGARETTE SELLERS AND ALL OTHER PURCHASERS, BUT SHALL not collect the cigarette tax from any purchaser to the extent the purchaser gives such wholesale dealer Indian tax exemption coupons entitling the purchaser to purchase such quantities of cigarettes as allowed for on each such Indian tax exemption coupon without paying the cigarette tax.

S 2. Section 471-e of the tax law is amended by adding a new subdivision 6 to read as follows:

6. (A) THE FAILURE OF THE DEPARTMENT TO ESTABLISH, ISSUE AND PROVIDE INDIAN TAX EXEMPTION COUPONS, PURSUANT TO SUBDIVISIONS ONE AND TWO OF THIS SECTION, OR TO PROMULGATE ANY RULES, REGULATIONS OR DIRECTIVES NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION, SHALL NOT RELIEVE WHOLESALE DEALERS OF THE OBLIGATION TO SELL ONLY TAX-STAMPED CIGARETTES TO INDIAN NATIONS AND TRIBES, AND TO QUALIFIED RESERVATION CIGARETTE SELLERS.

(B) FOR ANY CIGARETTES SOLD TO QUALIFIED INDIANS UPON WHICH CIGARETTE TAXES WERE IMPOSED ON OR AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH AND PRIOR TO THE ISSUANCE OF INDIAN TAX EXEMPTION COUPONS BY THE DEPARTMENT, THE RECOGNIZED GOVERNING BODY OF THE INDIAN NATION OR TRIBE OF THE INDIANS WHO PURCHASED SUCH CIGARETTES SHALL BE ENTITLED TO FILE A CLAIM FOR REFUND FROM THE DEPARTMENT OF THE TAXES PAID UPON THE QUANTITY OF CIGARETTES SOLD TO QUALIFIED INDIANS OF SUCH TRIBE OR NATION FOR PURPOSES OF

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

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PERSONAL CONSUMPTION. EVERY SUCH REFUND SHALL BE PAID WITHIN THIRTY DAYS OF THE FILING OF THE CLAIM THEREFOR. ANY FAILURE OF THE DEPARTMENT TO ISSUE REFUNDS OR TAKE ANY OTHER ADMINISTRATIVE ACTION FOR THE PAYMENT OF REFUNDS SHALL NOT RELIEVE WHOLESALE DEALERS OF THE OBLIGATION TO COMPLY WITH THE PROVISIONS OF PARAGRAPH (A) OF THIS SUBDIVISION, BUT SHALL ENTITLE AN INDIAN NATION OR TRIBE WITH AN UNPAID CLAIM FOR A REFUND TO COMMENCE A CAUSE OF ACTION FOR INJUNCTIVE RELIEF DIRECTING THE DEPARTMENT TO ISSUE REFUNDS AS REQUIRED BY THIS PARAGRAPH.

S 3. Within 60 days after the effective date of this section, the department of taxation and finance shall promulgate any rules and regulations and take any other actions necessary to fully implement the provisions of section 471-e of the tax law, including, but not limited to, the establishment, issuance and provision of Indian tax exemption coupons, pursuant to subdivisions 1 and 2 of such section. Furthermore, within 90 days after the effective date of this section, the commissioner of taxation and finance shall submit a written report to the legislature explaining all actions taken by the department of taxation and finance to comply with the provisions of this section.

S 4. Any Indian nation or tribe, distributor as defined in subdivision 12 of section 470 of the tax law, dealer as defined in subdivision 7 of section 470 of the tax law, or interested party may commence a cause of action for injunctive relief ordering the department of taxation and finance to comply with the provisions of section three of this act.

S 5. This act shall take effect immediately, except that sections one and two of this act shall take effect on the sixtieth day after it shall have become a law.