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

1027--A

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. HOOPER, MAYERSOHN -- 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 authorizing the counties of Nassau, Orange, Putnam, Rockland, Suffolk, Westchester, Dutchess and Rensselaer to adopt and amend local laws, imposing certain specified types of taxes on cigarettes which the legislature has or would have power and authority to impose, to provide for the review of such taxes, to limit the application of such local laws; and to amend the tax law, in relation to the imposition of such tax by such counties

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

Section 1. Notwithstanding any other provision of law to the contrary, the counties of Nassau, Orange, Putnam, Rockland, Suffolk, Westchester, Dutchess and Rensselaer, each acting through its local legislative body, are hereby authorized and empowered to adopt and amend local laws imposing in such counties taxes on cigarettes, cigars or smoking tobacco such as the legislature has or would have power and authority to impose. Such taxes may be collected and administered by the fiscal officers of such counties by such means and in such manner as may be provided by such local laws. The taxes may be imposed on the use, sale, exchange, transfer, storage, withdrawal, possession or retention of cigarettes, cigars or smoking tobacco, provided, however, that nothing in this act shall authorize the imposition of a tax on the use, possession or retention (otherwise than for sale) of two hundred cigarettes or less, of fifty cigars or less or of two pounds of smoking tobacco or less brought into the county on, or in possession of, any person.

a. The rate of such tax on cigarettes shall be two dollars for each ten cigarettes or fraction thereof, provided, however, that if a package of cigarettes contains more than twenty cigarettes, the rate of tax on

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

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the cigarettes in such package in excess of twenty shall be one dollar for each five cigarettes or fraction thereof. Such tax is intended to be imposed only once on the same package of cigarettes.

b. The rate of such tax on cigars shall be two cents on each cigar sold at a price of not less than fourteen cents and not more than thirty cents; two cents on each cigar sold at a price of not less than thirty-two cents and not more than fifty-eight cents; and six cents on each cigar sold at a price of sixty cents or more. Where more than one cigar is sold, whether or not in a package, box or container, such tax shall be applied to each cigar on the basis of the price applicable to each cigar. The tax shall not be applicable to cigars sold at a price less than fourteen cents a cigar.

c. The rate of such tax on smoking tobacco shall be two cents for each forty cents or fraction thereof of the price at which such smoking tobacco is sold.

S 2. As used in this act, the term "cigarette" shall mean and include any roll for smoking made wholly or in part of tobacco or of any other substance, irrespective of size or shape and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

S 3. A tax imposed pursuant to this act shall have application only within the territorial limits of any such counties and shall be in addition to any and all other taxes. The method of collecting any tax imposed pursuant to this act, either with or without adhesive or meter stamps, shall be subject to the approval of the state department of taxation and finance.

S 4. Any tax imposed pursuant to this act shall be refunded whenever any cigarettes upon which the tax has been paid have been sold and shipped into another state for sale or use there.

S 5. No tax imposed pursuant to this act shall apply to the sale of cigarettes under such circumstances that this state is without power to impose such tax or to cigarettes sold to the United States or to cigarettes sold to or by a voluntary unincorporated organization of the armed forces of the United States operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States.

S 6. Any final determination of the amount of any tax payable pursuant to this act shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article 78 of the civil practice law and rules if application therefore is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article 78 of the civil practice law and rules shall not be instituted by a person liable for the tax unless the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation, shall be first deposited and an undertaking filed, in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed such person will pay all costs and charges which may accrue in the prosecution of such proceeding.

S 7. Where any tax imposed pursuant to this act shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers or, in the case of a county which has established a tax appeals tribunal, such tax appeals tribunal, shall

have made a determination denying such refund, such determination shall be reviewable by a proceeding under article 78 of the civil practice law and rules, provided, however, that such proceeding is instituted within four months after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the person liable for the tax will pay all costs and charges which may accrue in the prosecution of such proceeding.

S 8. Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made with respect to taxes imposed pursuant to this act after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

S 9. Revenues resulting from the imposition of taxes authorized by this act shall be paid to the department of taxation and finance and thereafter, the commissioner of taxation and finance shall certify the local share to the state comptroller for distribution to the counties, fifty-four percent of such revenues (including taxes, interest and penalties) collected or received shall be distributed by the state comptroller to such counties. The state comptroller is hereby authorized and directed to transfer all such amounts so paid to the credit of the tobacco control and insurance initiatives pool to be distributed by the commissioner of health in accordance with section 2807-v of the public health law.

S 10. Subdivision 13 of section 470 of the tax law, as added by chapter 629 of the laws of 1996, is amended to read as follows:

13. "Unstamped or unlawfully stamped packages of cigarettes." A package of cigarettes which bears no tax stamp, or which bears a tax stamp of another state or taxing jurisdiction is considered to be an unstamped package of cigarettes. A package of cigarettes bearing a counterfeit New York state or a counterfeit joint state and [New York city] MUNICIPAL tax stamp is an unlawfully stamped package of cigarettes.

S 11. Subdivision (h) of section 1111 of the tax law, as amended by section 1 of part Q3 of chapter 62 of the laws of 2003, is amended to read as follows:

(h) Receipts subject to tax under subdivision (a) of section eleven hundred five on retail sales of cigarettes and tobacco products and consideration given or contracted to be given for cigarettes and tobacco products the uses of which are subject to tax under section eleven hundred ten shall be deemed to include any tax imposed on cigarettes and tobacco products by article twenty of this chapter and any tax imposed on cigarettes by chapter thirteen of title eleven of the administrative code of the city of New York OR ANY LOCAL LAW ENACTED BY A LEGISLATURE OF THE COUNTIES OF NASSAU, ORANGE, PUTNAM, ROCKLAND, SUFFOLK, WESTCHESTER, DUTCHESS OR RENSSELAER.

S 12. Subdivision (a) of section 1846 of the tax law, as amended by section 2 of part E of chapter 93 of the laws of 2002, is amended to read as follows:

(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 or her special duties, shall discover any cigarettes subject to tax provided by article twenty of this chapter or by chapter thirteen of title eleven of the adminis-

trative code of the city of New York OR ANY LOCAL LAW ENACTED BY A LEGISLATURE OF THE COUNTIES OF NASSAU, ORANGE, PUTNAM, ROCKLAND, SUFFOLK, WESTCHESTER, DUTCHESS OR RENSSELAER, and upon which the tax has not been paid or the stamps not affixed as required by such article [or], such chapter thirteen, OR SUCH LOCAL LAW, they are hereby authorized and empowered forthwith to seize and take possession of such cigarettes, together with any vending machine or receptacle in which they are held for sale. Such cigarettes, vending machine or receptacle seized by a police officer or such peace officer shall be turned over to the commissioner. Such seized cigarettes, vending machine or receptacle, not including money contained in such vending machine or receptacle, shall be forfeited to the state. The commissioner may, within a reasonable time thereafter, upon publication of a notice to such effect for at least five successive days, before the day of sale, in a newspaper published or circulated in the county where the seizure was made, sell such forfeited cigarettes and vending machines or receptacles at public sale and pay the proceeds into the state treasury to the credit of the general fund. Cigarettes so seized and sold shall be sold only to an agent under article twenty of this chapter and the notice of sale shall contain a provision to this effect. Notwithstanding any other provision of this section, the commissioner may enter into an agreement with any city of this state which is authorized to impose a tax similar to that imposed by article twenty of this chapter to provide for the disposition between the state and any such city of the proceeds from any such sale.

S 13. Subdivision (a) of section 1847 of the tax law, as amended by section 3 of part E of chapter 93 of the laws of 2002, is amended to read as follows:

(a) Any peace officer designated in subdivision four or five of section 2.10 of the criminal procedure law, acting pursuant to his or her special duties, or any police officer designated in section 1.20 of the criminal procedure law may seize any vehicle or other means of transportation used to transport or for the deposit or concealment of more than one hundred unstamped or unlawfully stamped packages of cigarettes subject to tax under article twenty of this chapter or by chapter thirteen of title eleven of the administrative code of the city of New York OR ANY LOCAL LAW ENACTED BY A LEGISLATURE OF THE COUNTIES OF NASSAU, ORANGE, PUTNAM, ROCKLAND, SUFFOLK, WESTCHESTER, DUTCHESS OR RENSSELAER, other than a vehicle or other means of transportation used by any person as a common carrier in transaction of business as such common carrier, and such vehicle or other means of transportation shall be subject to forfeiture as hereinafter in this section provided.

S 14. This act shall take effect immediately.