

10373

I N A S S E M B L Y

March 22, 2010

Introduced by M. of A. BENJAMIN -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to amending the percentages used to determine the presumed cost of doing business for agents, and wholesale and retail dealers of cigarettes and to amend the tax law, in relation to requiring the use of encrypted counterfeit-resistant cigarette tax stamps or markers

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 and subparagraph (B) of  
2 paragraph 2 of subdivision (b) of section 483 of the tax law, subpara-  
3 graph (B) of paragraph 1 as amended by chapter 1 of the laws of 1999 and  
4 subparagraph (B) of paragraph 2 as amended by chapter 4 of the laws of  
5 1988, are amended to read as follows:  
6 (B) In the absence of the filing with the commissioner of satisfactory  
7 proof of a lesser cost of doing business of the agent making the sale,  
8 the cost of doing business by the agent shall be presumed to be [seven-  
9 eighths of one] TWO AND FIVE-EIGHTHS percent of the basic cost of ciga-  
10 rettes for sales to wholesale dealers plus one cent per package of ten  
11 cigarettes, two cents per package of twenty cigarettes and in the case  
12 of a package containing more than twenty cigarettes, two cents and one-  
13 half of a cent for each five cigarettes in excess of twenty cigarettes,  
14 [one] FOUR and one-half percent of the basic cost of cigarettes for  
15 sales to chain stores plus one cent per package of ten cigarettes, two  
16 cents per package of twenty cigarettes and in the case of a package  
17 containing more than twenty cigarettes, two cents and one-half of a cent  
18 for each five cigarettes in excess of twenty cigarettes and [three and  
19 seven-eighths] SIX AND ONE-HALF percent of the basic cost of cigarettes  
20 with respect to sales to retail dealers plus one cent per package of ten  
21 cigarettes, two cents per package of twenty cigarettes and in the case  
22 of a package containing more than twenty cigarettes, two cents and one-  
23 half of a cent for each five cigarettes in excess of twenty cigarettes  
24 and the foregoing cents per pack shall be included in the "cost of doing

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

1 business by the agent" referred to in paragraphs two and three of this  
2 subdivision.

3 (B) In the absence of the filing with the tax commission of satisfac-  
4 tory proof of a lesser cost of doing business of the wholesale dealer  
5 making the sale, the cost of doing business by the wholesale dealer with  
6 respect to sales to retail dealers shall be presumed to be three AND  
7 SEVEN-EIGHTHS per centum of the basic cost of cigarettes, and with  
8 respect to sales to chain stores, [five-eighths of] one AND  
9 SEVEN-EIGHTHS percent of the basic cost of cigarettes.

10 S 2. Subparagraph (B) of paragraph 3 of subdivision (b) of section 483  
11 of the tax law, as amended by chapter 744 of the laws of 1990, is  
12 amended to read as follows:

13 (B) In the absence of the filing with the commissioner of taxation and  
14 finance of satisfactory proof of a lesser cost of doing business by the  
15 retail dealer making the sale, the cost of doing business by the retail  
16 dealer shall be presumed to be [seven] ELEVEN per centum of the sum of  
17 the basic cost of cigarettes plus the cost of doing business by the  
18 agent with respect to cigarettes sold to retail dealers.

19 S 3. The tax law is amended by adding a new section 472-a to read as  
20 follows:

21 S 472-A. PROVISION FOR ENHANCED CIGARETTE AND TOBACCO TAX  
22 COLLECTIONS. 1. PURSUANT TO THE POWERS VESTED IN THE COMMISSIONER UNDER  
23 THIS ARTICLE TO COLLECT TAXES ON CIGARETTES AND TOBACCO PRODUCTS, THE  
24 COMMISSIONER SHALL INCORPORATE AN ENHANCED SYSTEM TO SECURE THE  
25 COLLECTION OF SUCH TAXES DUE TO THE STATE. SUCH AN ENHANCED SYSTEM  
26 SHALL USE AN ENCRYPTED COUNTERFEIT-RESISTANT TAX STAMP OR OTHER MARKING  
27 SYSTEM TO INDICATE THAT THE TAXES ON SUCH CIGARETTE AND TOBACCO PRODUCTS  
28 HAVE BEEN PAID. SUCH SYSTEM SHALL BE COMPRISED OF AT LEAST THE FOLLOWING  
29 ITEMS:

30 (A) THE USE OF ENCRYPTED TAX STAMPS OR OTHER MARKINGS BY STAMPING  
31 AGENTS LICENSED PURSUANT TO SECTION FOUR HUNDRED SEVENTY-TWO OF THIS  
32 ARTICLE AND OTHER TAX COLLECTION SYSTEMS OR MARKERS USED BY THE COMMIS-  
33 SIONER TO COLLECT CIGARETTE AND TOBACCO PRODUCT TAXES. SUCH STAMPS OR  
34 MARKERS SHALL BE ENCRYPTED TO IDENTIFY, AT A MINIMUM:

35 (I) THE NAME AND ADDRESS OF THE LICENSED STAMPING AGENT AFFIXING THE  
36 STAMP OR OTHER MARKER;

37 (II) THE DATE SUCH STAMP OR OTHER MARKER WAS AFFIXED TO THE PRODUCT;  
38 AND

39 (III) THE DENOMINATED VALUE OF THE STAMP OR METER IMPRESSION.

40 (B) THE SECURE MANAGEMENT OF ANY DATA REQUIRED UNDER PARAGRAPH (A) OF  
41 THIS SUBDIVISION AND OTHER DATA AS MAY BE REQUIRED BY THE COMMISSIONER;

42 (C) THE ENFORCEMENT OF SECTION FOUR HUNDRED SEVENTY-TWO OF THIS ARTI-  
43 CLE, INCLUDING SUCH DEVICES AS MAY BE USED BY THE DEPARTMENT AND OTHER  
44 STATE EMPLOYEES AUTHORIZED BY THE COMMISSIONER.

45 2. SUCH ENCRYPTED TAX STAMPS OR OTHER MARKERS SHALL:

46 (A) BE PRODUCED IN A PROVEN SECURE FACILITY AS CERTIFIED BY THE  
47 COMMISSIONER;

48 (B) INCORPORATE A MINIMUM OF FOUR LAYERS OF OVERT, SEMI-COVERT AND  
49 COVERT DATA;

50 (C) BE APPLIED BY MACHINES OR OTHER MEANS WHEREUPON THE ENCRYPTED DATA  
51 SHALL BE INSTANTANEOUSLY CAPTURED AND STORED BY AND FOR THE COMMISSION-  
52 ER;

53 (D) BE READABLE AND TRACEABLE FROM THE POINT OF STAMP PRODUCTION TO  
54 SUCH POINT AS DEEMED APPROPRIATE BY THE COMMISSIONER; AND

1 (E) BE CAPABLE OF BEING READ BY A SCANNING OR SIMILAR DEVICE THAT CAN  
2 BE UTILIZED BY ENFORCEMENT AGENTS OF THE STATE AND OTHERS DEEMED APPRO-  
3 PRIATE BY THE COMMISSIONER.

4 3. SUCH SYSTEM SHALL BE PERIODICALLY UPDATED TO FURTHER MINIMIZE THE  
5 EVASION OF THE COLLECTION OF CIGARETTE AND TOBACCO TAXES DUE TO THE  
6 STATE.

7 4. EVERY WHOLESALE DEALER THAT IS A LICENSED AGENT TO BUY AND AFFIX  
8 STAMPS TO BE USED IN PAYING THE TAX IMPOSED UNDER THIS ARTICLE SHALL BE  
9 REQUIRED TO BEAR THE INITIAL COST AND MAINTENANCE NECESSARY FOR THE  
10 DEPARTMENT TO IMPLEMENT SUCH ENHANCED TAX COLLECTION SYSTEM.

11 S 4. The department of taxation and finance shall issue a request for  
12 proposals for the purpose of providing the system described in section  
13 472-a of the tax law, as added by section three of this act. Bids from  
14 qualified vendors shall be received by the department of taxation and  
15 finance no later than 60 days following the issuance of the request for  
16 proposal. Any contract issued pursuant to this section shall be issued  
17 within 90 days following receipt of bids and installation of such system  
18 completed by the successful bidder within 180 days of the issuance of  
19 such contract.

20 S 5. Subdivision 1 of section 472 of the tax law, as amended by chap-  
21 ter 629 of the laws of 1996, is amended to read as follows:

22 1. The commissioner shall prescribe, prepare and furnish stamps of  
23 such denominations and quantities as may be necessary for the payment of  
24 the tax on cigarettes AND, AT THE DISCRETION OF THE COMMISSIONER, ON  
25 OTHER TOBACCO PRODUCTS imposed by this article, and may from time to  
26 time and as often as he deems advisable provide for the issuance and  
27 exclusive use of stamps of a new design and forbid the use of stamps of  
28 any other design, in the manner and with the effect provided in section  
29 two hundred seventy-four of this chapter. The commissioner shall make  
30 provisions for the sale of such stamps at such places and at such times  
31 as he may deem necessary and may license agents for such purpose. The  
32 commissioner may license dealers in cigarettes, who maintain separate  
33 warehousing facilities for the purpose of receiving and distributing  
34 cigarettes and conducting their business, who have received commitments  
35 from at least two [cigarette] manufacturers whose aggregate market share  
36 is at least forty percent of the New York state [cigarette] market, and  
37 importers, exporters and manufacturers of cigarettes, and other persons  
38 within or without the state as agents to buy or affix stamps to be used  
39 in paying the tax herein imposed, but an agent shall at all times have  
40 the right to appoint the person in his employ who is to affix the stamps  
41 to any cigarettes under the agent's control. The fee for filing such  
42 application for an agent's license shall be one thousand five hundred  
43 dollars, unless such fee has been paid during the preceding twelve  
44 months, in which case, the fee for a new license shall be one thousand  
45 dollars. All of the provisions of section four hundred eighty OF THIS  
46 ARTICLE relating to wholesale dealers' licenses, including the procedure  
47 for suspension, revocation, refusal to license and for hearings, except  
48 for paragraphs (c) and (g) of subdivision one of such section, shall be  
49 applicable to agents' licenses applied for or granted pursuant to this  
50 section, as if such provisions had been set forth in full in this subdi-  
51 vision and had expressly referred to the applicant for, or the holder  
52 of, an agent's license. Whenever the commissioner shall sell and deliver  
53 to any such agent any such stamps, such agent shall be entitled to  
54 receive as compensation for his services and expenses as such agent in  
55 selling or affixing such stamps, and to retain out of the moneys to be  
56 paid by him for such stamps, a commission on the par value thereof. The

1 commissioner is hereby authorized to prescribe a schedule of commis-  
2 sions, not exceeding five per centum, allowable to such agent for buying  
3 and affixing such stamps. Such schedule shall be uniform with respect to  
4 the different types of stamps used, and may be on a graduated scale with  
5 respect to the number of stamps purchased. The commissioner may, in his  
6 discretion, permit an agent to pay for such stamps within thirty days  
7 after the date of purchase and may require any such agent to file with  
8 the department [of taxation and finance] a bond issued by a surety  
9 company approved by the superintendent of insurance as to solvency and  
10 responsibility and authorized to transact business in the state or other  
11 security acceptable to the commissioner, in such amount as the commis-  
12 sioner may fix, to secure the payment of any sums due from such agent  
13 pursuant to this article. If securities are deposited as security under  
14 this subdivision, such securities shall be kept in the custody of the  
15 commissioner and may be sold by the commissioner if it becomes necessary  
16 so to do in order to recover any sums due from such agent pursuant to  
17 this article, but no such sale shall be had until after such agent shall  
18 have had opportunity to litigate the validity of any tax if it elects so  
19 to do. Upon any such sale, the surplus, if any, above the sums due under  
20 this article shall be returned to such agent.

21 S 6. Subdivision 1 of section 480 of the tax law is amended by adding  
22 a new paragraph (g-1) to read as follows:

23 (G-1) IN ADDITION TO THE LICENSE FEE REQUIRED PURSUANT TO THIS SECTION  
24 TO OBTAIN A WHOLESALE DEALER'S LICENSE SUCH APPLICANT SHALL ALSO PAY AN  
25 ADDITIONAL FEE OR SURCHARGE PURSUANT TO SUBDIVISION FOUR OF SECTION FOUR  
26 HUNDRED SEVENTY-TWO-A OF THIS ARTICLE.

27 S 7. This act shall take effect immediately, provided, however, that  
28 sections one and two of this act shall take effect on the fourteenth day  
29 after it shall have become a law; provided further that section four of  
30 this act shall take effect on the one hundred eightieth day after it  
31 shall have become a law; provided further that any product in the  
32 possession of a cigarette retail dealer on the effective date of this  
33 act and stamped to the commissioner of taxation and finance's satisfac-  
34 tion may continue to be offered for sale and sold to cigarette purchas-  
35 ers.