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

9113

2009-2010 Regular Sessions

I N A S S E M B L Y

September 4, 2009

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

AN ACT authorizing the county of Nassau to adopt and amend local laws to impose an excise tax on cigarettes, to provide for the review of this tax, and to limit the application of these local laws; and to amend the tax law, in relation to the imposition of this tax by such county

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 county of Nassau, acting through its local legislative body, is authorized and empowered to adopt and amend local laws imposing taxes in Nassau county on cigarettes as the legislature has or would have power and authority to impose. These taxes may be collected and administered by the fiscal officers of Nassau county by the means and manner as may be provided by the local laws. The taxes may be imposed on the use, sale, exchange, transfer, storage, withdrawal, possession or retention of cigarettes, provided, however, that nothing in this act may authorize the imposition of a tax on the use, possession or retention (otherwise than for sale) of two hundred cigarettes or less by any person.

The rate of tax on cigarettes authorized by this act will be one dollar and fifty cents per twenty cigarettes. If a package of cigarettes contains more than twenty cigarettes, the rate of tax on the cigarettes in a package in excess of twenty will be thirty-seven and one-half cents for each five cigarettes or fraction thereof. This tax is intended to be imposed only once on the same package of cigarettes.

S 2. As used in this act, the term "cigarette" means and includes (a) any roll for smoking made wholly or in part of tobacco or of any other substance wrapped in paper or in any other substance not containing tobacco, and (b) any roll for smoking made wholly or in part of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and

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

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labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subdivision (a) of this section. However, a roll will not be considered to be a cigarette for purposes of subdivision (b) of this section if it is not treated as a cigarette for federal excise tax purposes under the applicable federal statute in effect on April 1, 2008.

S 3. A tax imposed under this act may have application only within the territorial limits of Nassau county and is in addition to any and all other taxes. The method of collecting any tax imposed under this act, either with or without adhesive or meter stamps, will be subject to the approval of the commissioner of taxation and finance.

S 4. Any tax imposed under this act will 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 under this act may apply to the sale of cigarettes under circumstances that this state is without power to impose the 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 under this act is 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 is made to the supreme court within four months after the giving of the notice of the final determination, provided, however, that any proceeding under article 78 of the civil practice law and rules may not be instituted by a person liable for the tax unless the amount of any tax sought to be reviewed, with interest and penalties thereon as may be provided for by local law or regulation, is first deposited and an undertaking filed, in the amount and with sureties as a justice of the supreme court approves to the effect that if the proceeding be dismissed or the tax confirmed the person will pay all costs and charges which may accrue in the prosecution of the proceeding.

S 7. Where any tax imposed pursuant to this act has been erroneously, illegally or unconstitutionally collected and application for the refund has been duly made to the proper fiscal officer or officers, and the officer or officers or, if Nassau county has established a tax appeals tribunal, the tax appeals tribunal, will have made a determination denying the refund, the determination may be reviewable by a proceeding under article 78 of the civil practice law and rules, provided, however, that the proceeding is instituted within four months after giving of the notice of the 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 the amount and with the sureties as a justice of the supreme court approves to the effect that if the 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 the 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 may 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 must be paid into the treasury of Nassau county and will be credited to and deposited in the general fund of Nassau county, except that, after the payment of refunds with respect to these taxes, sixty-seven and three-tenths percent of those revenues (including taxes, interest and penalties) collected or received will be paid to the state comptroller. The state comptroller is authorized and directed to transfer these amounts so paid as set forth in section 482 of the tax 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 OR A COUNTERFEIT JOINT STATE AND NASSAU COUNTY tax stamp is an unlawfully stamped package of cigarettes.

S 11. Section 475 of the tax law, as amended by chapter 227 of the laws of 1956, is amended to read as follows:

S 475. General powers of the [tax commission] COMMISSIONER. The powers conferred upon the [tax commission] COMMISSIONER by sections one hundred seventy-one and one hundred seventy-one-b of this chapter shall, so far as applicable, be exercisable with respect to the provisions of this article. [Such commission] THE COMMISSIONER may require returns to be filed with [it] HIM OR HER at such times and containing such information as [it] HE OR SHE may prescribe and in such event the fact that a person's name is signed to the return shall be prima facie evidence for all purposes that the return was actually signed by such person. Notwithstanding any other provision of this article, the [tax commission] COMMISSIONER may enter into an agreement with any city of this state OR NASSAU COUNTY which is authorized to impose a tax similar to that imposed by this article to provide for the joint administration, in whole or in part, of such taxes.

S 12. 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 OF THIS PART 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 OF THIS PART 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 THE LEGISLATIVE BODY OF THE COUNTY OF NASSAU.

S 13. 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 administrative code of the city of New York OR ANY LOCAL LAW ENACTED BY THE LEGISLATIVE BODY OF THE COUNTY OF NASSAU, and upon which the tax has not been paid or the stamps not affixed as required by such article [or], such chapter thirteen, OR 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 OR NASSAU COUNTY 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 OR THE STATE AND NASSAU COUNTY of the proceeds from [any such] A sale.

S 14. 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 THE LEGISLATIVE BODY OF THE COUNTY OF NASSAU, other than a vehicle or other means of transportation used by any person as a common carrier in transaction of business as [such] A common carrier, and such vehicle or other means of transportation [shall] be subject to forfeiture as hereinafter in this section provided.

S 15. This act shall take effect immediately.