

1834

2009-2010 Regular Sessions

I N   S E N A T E

February 9, 2009

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Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to collecting the tax on cigarettes; and to repeal subdivision 5 of section 480-a of such law relating thereto

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

1     Section 1. Subdivisions 8, 9 and 11 of section 470 of the tax law,  
2     subdivision 8 as amended by section 1 of part K of chapter 61 of the  
3     laws of 2005, subdivisions 9 and 11 as amended by chapter 61 of the laws  
4     of 1989, are amended and five new subdivisions 20, 21, 22, 23 and 24 are  
5     added to read as follows:  
6     8. "Wholesale dealer." Any person WHETHER LOCATED WITHIN OR OUTSIDE OF  
7     THIS STATE, who (a) sells cigarettes or tobacco products to retail deal-  
8     ers or other persons for purposes of resale, or (b) owns, operates or  
9     maintains one or more cigarette or tobacco product vending machines in,  
10    at or upon premises owned or occupied by any other person, or (c) sells  
11    cigarettes or tobacco products to an Indian nation or tribe or to a  
12    reservation cigarette seller on a qualified reservation. SUCH TERM  
13    SHALL NOT INCLUDE ANY CIGARETTE MANUFACTURER, EXPORT WAREHOUSE PROPRIE-  
14    TOR, OR IMPORTER WITH A VALID PERMIT UNDER 26 U.S.C. S 5712, IF SUCH  
15    PERSON SELLS OR DISTRIBUTES CIGARETTES IN THIS STATE ONLY TO LICENSED  
16    AGENTS, OR TO AN EXPORT WAREHOUSE PROPRIETOR OR ANOTHER MANUFACTURER  
17    WITH A VALID PERMIT UNDER 26 U.S.C. S 5712.  
18    9. "Retail dealer." Any person WHETHER LOCATED WITHIN OR OUTSIDE OF  
19    THIS STATE, other than a wholesale dealer engaged in selling cigarettes  
20    or tobacco products.  
21    11. "Agent." Any [person] WHOLESale DEALER licensed by the commission-  
22    er of taxation and finance to purchase and affix adhesive or meter  
23    stamps on packages of cigarettes under this article.

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

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1 20. "INDIAN TRIBAL ENTITY" MEANS A FEDERALLY RECOGNIZED INDIAN TRIBE,  
2 TRIBAL ENTITY, OR ANY OTHER PERSON DOING BUSINESS AS A DEALER OF CIGA-  
3 RETTES ON THE INDIAN COUNTRY, AS DEFINED IN 18 U.S.C. S 1151, OF SUCH  
4 TRIBE WITHIN THIS STATE.

5 21. "MANUFACTURER" MEANS ANY PERSON WHO MANUFACTURES, FABRICATES,  
6 ASSEMBLES, PROCESSES, OR LABELS A FINISHED CIGARETTE.

7 22. "IMPORTER" MEANS ANY PERSON WHO IMPORTS INTO THE UNITED STATES,  
8 EITHER DIRECTLY OR INDIRECTLY, A FINISHED CIGARETTE FOR SALE OR DISTRIB-  
9 UTION.

10 23. "STAMP" OR "STAMPS" MEANS THE INDICIA, INCLUDING METER  
11 IMPRESSIONS, REQUIRED TO BE PLACED ON A CIGARETTE PACKAGE THAT EVIDENCE  
12 PAYMENT OF THE TAX ON CIGARETTES UNDER SECTION FOUR HUNDRED SEVENTY-ONE  
13 OF THIS ARTICLE, OR THE INDICIA, INCLUDING METER IMPRESSIONS, USED TO  
14 INDICATE THAT THE CIGARETTES ARE INTENDED FOR A SALE OR DISTRIBUTION IN  
15 THIS STATE THAT IS EXEMPT FROM STATE TAX UNDER PARAGRAPH (A) OF SUBDIVI-  
16 SION ONE OF SECTION FOUR HUNDRED SEVENTY-ONE-F OF THIS ARTICLE.

17 24. "LICENSED," WHEN USED WITH REFERENCE TO A MANUFACTURER, IMPORTER,  
18 AGENT, WHOLESALE DEALER OR RETAIL DEALER, MEANS ONLY THOSE PERSONS WHO  
19 HOLD A VALID AND CURRENT LICENSE ISSUED UNDER SECTION FOUR HUNDRED  
20 EIGHTY OF THIS ARTICLE FOR THE TYPE OF BUSINESS BEING ENGAGED IN. WHEN  
21 THE TERM "LICENSED" IS USED BEFORE A LIST OF ENTITIES, SUCH AS "LICENSED  
22 MANUFACTURER, IMPORTER, AGENT OR DEALER," SUCH TERM SHALL APPLY TO EACH  
23 ENTITY IN SUCH LIST.

24 S 2. Subdivisions 2 and 3 of section 471 of the tax law, as amended by  
25 chapter 6 of the laws of 1961, are amended to read as follows:

26 2. It is intended that the ultimate incidence of and liability for the  
27 tax shall be upon the consumer, and that any agent [or dealer] who shall  
28 pay the tax to the tax commission shall collect the tax from the  
29 purchaser or consumer. Except as [hereinafter] provided IN THIS SUBDIVI-  
30 SION, the tax shall be advanced and paid by the agent. The agent shall  
31 be liable for the collection and payment of the tax on cigarettes  
32 imposed by this article and shall pay the tax to the tax commission by  
33 purchasing, under such regulations as it shall prescribe, adhesive  
34 stamps of such designs and denominations as it shall prescribe. The tax  
35 on cigarettes may also be paid by or through the use of metering  
36 machines if the tax commission so prescribes. Agents, located within or  
37 without the state, shall purchase stamps and affix such stamps in the  
38 manner prescribed to packages of cigarettes to be sold within the  
39 state[, in which case any dealer subsequently receiving such stamped  
40 packages of cigarettes will not be required to purchase and affix stamps  
41 on such packages of cigarettes. Notwithstanding any other provision of  
42 this article, the tax commission may by regulation provide that the tax  
43 on cigarettes imposed by this article shall be collected without the use  
44 of stamps].

45 3. The amount of taxes advanced and paid by the agent as [hereinabove]  
46 provided IN THIS SECTION shall be added to and collected as part of the  
47 sales price of the cigarettes.

48 S 3. Section 471-a of the tax law, as amended by section 2 of part  
49 RR-1 of chapter 57 of the laws of 2008, is amended to read as follows:

50 S 471-a. Use tax on cigarettes. There is hereby imposed and shall be  
51 paid BY ANY CONSUMER a tax on all cigarettes used in the state by [any  
52 person] SUCH CONSUMER, except that no tax shall be imposed (1) if the  
53 tax provided in section four hundred seventy-one of this article is  
54 paid, (2) on the use of cigarettes which are exempt from the tax imposed  
55 by said section, or (3) on the use of four hundred or less cigarettes,  
56 brought into the state on, or in the possession of, any [person] CONSUM-

1 ER. Such tax on cigarettes shall be at the rate of two dollars and  
2 seventy-five cents for each twenty cigarettes or fraction thereof,  
3 provided, however, that if a package of cigarettes contains more than  
4 twenty cigarettes, the rate of tax on the cigarettes in such package in  
5 excess of twenty shall be sixty-eight and three-quarters cents for each  
6 five cigarettes or fraction thereof. Within twenty-four hours after  
7 liability for the tax accrues, each such [person] CONSUMER shall file  
8 with the commissioner a return in such form as the commissioner may  
9 prescribe together with a remittance of the tax shown to be due thereon.  
10 For purposes of this article, the word "use" means the exercise of any  
11 right or power actual or constructive and shall include but is not  
12 limited to the receipt, storage or any keeping or retention for any  
13 length of time, but shall not include possession for sale, AND THE WORD  
14 "CONSUMER" MEANS ANY PERSON WHO USES CIGARETTES IN THIS STATE. All  
15 other provisions of this article if not inconsistent shall apply to the  
16 administration and enforcement of the tax imposed by this section in the  
17 same manner as if the language of said provisions had been incorporated  
18 in full into this section. BY FILING SUCH RETURN AND PAYING SUCH TAX, A  
19 CONSUMER SHALL NOT BE RELIEVED OF ANY CRIMINAL OR CIVIL PENALTIES THAT  
20 MAY BE APPLICABLE UNDER THIS ARTICLE OR ARTICLE THIRTY-SEVEN OF THIS  
21 CHAPTER.

22 S 4. The tax law is amended by adding a new section 471-f to read as  
23 follows:

24 S 471-F. APPLICATION OF TAX ON TRIBAL LANDS. 1. EXEMPTION FROM TAX.  
25 (A) CIGARETTES SOLD TO OR RECEIVED BY MEMBERS OF A FEDERALLY RECOGNIZED  
26 INDIAN TRIBE ON SUCH TRIBE'S INDIAN COUNTRY SHALL NOT BE SUBJECT TO TAX  
27 UNDER THIS ARTICLE.

28 (B) CIGARETTES EXEMPT FROM TAX UNDER 26 U.S.C. S 5701 AND THAT ARE  
29 DISTRIBUTED IN ACCORDANCE WITH FEDERAL REGULATIONS SHALL NOT BE SUBJECT  
30 TO TAX UNDER THIS ARTICLE.

31 2. TAX RATE ON SALES TO NON-TRIBAL MEMBERS ON INDIAN COUNTRY. THE TAX  
32 RATE APPLICABLE TO CIGARETTES SOLD TO OR RECEIVED BY NON-TRIBAL MEMBERS  
33 ON INDIAN LANDS SHALL BE EQUAL TO THE STATE TAX RATE PROVIDED IN SECTION  
34 FOUR HUNDRED SEVENTY-ONE OF THIS ARTICLE MINUS ANY TRIBAL TAX RATE, IF  
35 THE RESULTING RATE IS A POSITIVE NUMBER AND SUCH RATE SHALL BE ZERO IF  
36 THE RESULTING RATE WOULD BE A NEGATIVE NUMBER. CIGARETTES TAXED PURSUANT  
37 TO THIS SUBDIVISION SHALL BEAR A TAX STAMP AS REQUIRED BY SECTION FOUR  
38 HUNDRED SEVENTY-TWO OF THIS ARTICLE IN AN AMOUNT EQUAL TO THE TAX  
39 IMPOSED BY SECTION FOUR HUNDRED SEVENTY-ONE OF THIS ARTICLE; PROVIDED,  
40 THAT THE COMMISSION SHALL PERIODICALLY REBATE TO ANY INDIAN TRIBAL ENTI-  
41 TY THAT IS IN COMPLIANCE WITH THIS ARTICLE AN AMOUNT EQUAL TO THE TRIBAL  
42 TAX IMPOSED ON SALES UNDER THIS SUBDIVISION OR THE FACE VALUE OF THE TAX  
43 STAMPS AFFIXED TO CIGARETTES UNDER THIS SUBDIVISION, WHICHEVER AMOUNT IS  
44 LESS.

45 S 5. Subdivision 1 of section 472 of the tax law, as amended by chap-  
46 ter 629 of the laws of 1996, is amended, subdivisions 2 and 3 are renum-  
47 bered subdivisions 3 and 4 and a new subdivision 2 is added to read as  
48 follows:

49 1. The commissioner shall prescribe, prepare and furnish stamps of  
50 such denominations and quantities as may be necessary for the payment of  
51 the tax on cigarettes imposed by this article, OR FOR INDICATION THAT  
52 THE CIGARETTES ARE TAX-EXEMPT UNDER SECTION FOUR HUNDRED SEVENTY-ONE-F  
53 OF THIS ARTICLE, and may from time to time and as often as he deems  
54 advisable provide for the issuance and exclusive use of stamps of a new  
55 design and forbid the use of stamps of any other design, in the manner  
56 and with the effect provided in section two hundred seventy-four of this

chapter. The commissioner shall make provisions for the sale of such stamps at such places and at such times as he may deem necessary and may license agents for such purpose. The commissioner may license WHOLESALE dealers in cigarettes, who maintain separate warehousing facilities for the purpose of receiving and distributing cigarettes and conducting their business, AND who have received commitments from at least two cigarette manufacturers whose aggregate market share is at least forty percent of the New York state cigarette market, [and importers, exporters and manufacturers of cigarettes, and other persons within or without the state as] OR ARE THEMSELVES ALSO LICENSED AS MANUFACTURERS, IMPORTERS OR agents to buy [or] AND affix stamps to be used in paying the tax [herein] imposed BY THIS ARTICLE. NO PERSON OTHER THAN A LICENSED AGENT MAY PURCHASE OR AFFIX STAMPS AND AGENTS SHALL NOT SELL OR PROVIDE SUCH STAMPS TO ANY OTHER AGENT OR PERSON, but an agent shall at all times have the right to appoint the person in his employ who is to affix the stamps to any cigarettes under the agent's control. The fee for filing such application for an agent's license shall be one thousand five hundred dollars, unless such fee has been paid during the preceding twelve months, in which case, the fee for a new license shall be one thousand dollars. All of the provisions of section four hundred eighty OF THIS ARTICLE relating to wholesale dealers' licenses, including the procedure for suspension, revocation, refusal to license and for hearings, except for paragraphs (c) and [(g)] (F) of subdivision one of such section, shall be applicable to agents' licenses applied for or granted pursuant to this section, as if such provisions had been set forth in full in this subdivision and had expressly referred to the applicant for, or the holder of, an agent's license. Whenever the commissioner shall sell and deliver to any such agent any such stamps, such agent shall be entitled to receive as compensation for his services and expenses as such agent in [selling or] affixing such stamps, and to retain out of the moneys to be paid by him for such stamps, a commission on the par value thereof. The commissioner is hereby authorized to prescribe a schedule of commissions, not exceeding five per centum, allowable to such agent for buying and affixing such stamps. Such schedule shall be uniform with respect to the different types of stamps used, and may be on a graduated scale with respect to the number of stamps purchased. The commissioner may, in his discretion, permit an agent to pay for such stamps within thirty days after the date of purchase and may require any such agent to file with the department [of taxation and finance] a bond issued by a surety company approved by the superintendent of insurance as to solvency and responsibility and authorized to transact business in the state or other security acceptable to the commissioner, in such amount as the commissioner may fix, to secure the payment of any sums due from such agent pursuant to this article. If securities are deposited as security under this subdivision, such securities shall be kept in the custody of the commissioner and may be sold by the commissioner if it becomes necessary so to do in order to recover any sums due from such agent pursuant to this article, but no such sale shall be had until after such agent shall have had opportunity to litigate the validity of any tax if it elects so to do. Upon any such sale, the surplus, if any, above the sums due under this article shall be returned to such agent.

2. STAMPS SHALL BE APPLIED BY A LICENSED AGENT TO EACH PACKAGE OF CIGARETTES SOLD OR DISTRIBUTED WITHIN THIS STATE AS FOLLOWS: (A) A TAX STAMP SHALL BE APPLIED TO ALL CIGARETTE PACKAGES CONTAINING CIGARETTES SUBJECT TO STATE TAX UNDER THIS ARTICLE, INCLUDING TO CIGARETTES SUBJECT

1 TO REDUCED STATE TAX UNDER SUBDIVISION TWO OF SECTION FOUR HUNDRED  
2 SEVENTY-ONE-F OF THIS ARTICLE.

3 (B) EXCEPT AS PROVIDED IN PARAGRAPH (C) OF THIS SUBDIVISION, A TAX-EX-  
4 EMPT STAMP SHALL BE APPLIED TO ALL CIGARETTE PACKAGES INTENDED FOR SALE  
5 OR DISTRIBUTION TO CONSUMERS NOT SUBJECT TO STATE TAX UNDER PARAGRAPH  
6 (A) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED SEVENTY-ONE-F OF THIS  
7 ARTICLE.

8 (C) NO STAMP SHALL BE APPLIED TO ANY CIGARETTE PACKAGE EXEMPT FROM TAX  
9 UNDER PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED SEVENTY-  
10 ONE-F OF THIS ARTICLE.

11 S 6. Section 473 of the tax law, as amended by chapter 489 of the laws  
12 of 1940, is amended to read as follows:

13 S 473. Affixation and cancellation of stamps; presumption. Each agent  
14 [shall affix] within [the time hereinafter prescribed] TEN CALENDAR DAYS  
15 OF RECEIPT OF ANY CIGARETTES, SHALL AFFIX to each package of SUCH ciga-  
16 rettes, stamps evidencing the payment of the tax imposed by this article  
17 OR STAMPS EVIDENCING THE EXEMPTION FROM PAYMENT OF THE TAX IMPOSED BY  
18 THIS ARTICLE and shall cancel such stamps, WITH A NUMBER UNIQUE TO SUCH  
19 AGENT THAT IS LEGIBLE AT THE POINT OF SALE, before such cigarettes are  
20 offered for sale or before they are otherwise disposed of, unless stamps  
21 have been affixed to such packages of cigarettes and cancelled before  
22 such agent received them. Each dealer, other than an agent, shall imme-  
23 diately upon the receipt of any cigarettes at his place of business mark  
24 in ink on each unopened box, carton or other container of such ciga-  
25 rettes the word "received" and the year, month, day and hour of such  
26 receipt, and shall affix his signature thereto, or in any other manner  
27 prescribed.

28 Each retail dealer shall open such box, carton or other container  
29 within twenty-four hours after such receipt and prior to exposing for  
30 sale or selling such cigarettes and examine the packages contained ther-  
31 ein for the purpose of ascertaining whether or not the said packages  
32 have affixed thereto the proper tax stamp; if unstamped or improperly  
33 stamped packages of cigarettes are discovered, the retail dealer shall  
34 immediately notify the WHOLESALER dealer from whom said cigarettes were  
35 purchased. Upon such notification, the WHOLESALER dealer from whom said  
36 cigarettes were purchased will replace such unstamped or improperly  
37 stamped packages of cigarettes with those upon which stamps have been  
38 properly affixed.

39 Whenever any cigarettes are found in the place of business of such  
40 dealer, other than an agent, without the stamps affixed and cancelled,  
41 or not marked as having been received within the preceding twenty-four  
42 hours, the presumption shall be that such cigarettes are kept therein in  
43 violation of the provisions of this article. Stamps shall be affixed to  
44 each package of cigarettes of an aggregate denomination not less than  
45 the amount of the tax upon the contents therein, and shall be affixed in  
46 such manner as to be visible to the purchaser.

47 S 7. The tax law is amended by adding a new section 473-c to read as  
48 follows:

49 S 473-C. DUTIES OF MANUFACTURERS, IMPORTERS, AGENTS, AND DEALERS. 1.  
50 AGENTS MAY APPLY STAMPS ONLY TO CIGARETTE PACKAGES THAT THEY HAVE  
51 RECEIVED DIRECTLY FROM A LICENSED MANUFACTURER OR IMPORTER OF CIGA-  
52 RETTES.

53 2. AGENTS SHALL BE PERMITTED TO SET ASIDE, WITHOUT APPLICATION OF  
54 STAMPS, ONLY SUCH PART OF THE AGENT'S STOCK THAT IS IDENTIFIED FOR SALE  
55 OR DISTRIBUTION OUTSIDE OF THIS STATE; PROVIDED, THAT ANY SUCH UNSTAMPED  
56 CIGARETTES SHALL BE STORED SEPARATELY FROM STAMPED CIGARETTE PACKAGES.

1 NO AGENT SHALL TRANSFER UNSTAMPED CIGARETTE PACKAGES TO ANOTHER FACILITY  
2 OF THE AGENT WITHIN THIS STATE OR TO ANOTHER PERSON WITHIN THIS STATE.

3 3. A MANUFACTURER OR IMPORTER MAY SELL OR DISTRIBUTE CIGARETTES TO A  
4 PERSON LOCATED OR DOING BUSINESS WITHIN THIS STATE (INCLUDING ON ANY  
5 TRIBAL LANDS LOCATED WITHIN THIS STATE) ONLY IF SUCH PERSON IS A  
6 LICENSED IMPORTER OR AGENT. AN IMPORTER MAY OBTAIN CIGARETTES ONLY FROM  
7 A LICENSED MANUFACTURER. AN AGENT MAY OBTAIN CIGARETTES ONLY FROM A  
8 LICENSED MANUFACTURER, IMPORTER OR AGENT. AN AGENT MAY SELL OR DISTRIB-  
9 UTE CIGARETTES TO A PERSON LOCATED OR DOING BUSINESS WITHIN THIS STATE  
10 (INCLUDING ON ANY TRIBAL LANDS LOCATED WITHIN THIS STATE) ONLY IF SUCH  
11 PERSON IS A LICENSED AGENT, WHOLESALE DEALER OR RETAIL DEALER. A RETAIL  
12 DEALER MAY OBTAIN CIGARETTES ONLY FROM A LICENSED AGENT OR WHOLESALE  
13 DEALER.

14 4. ANY PERSON WHO IS DOING BUSINESS BOTH AS AN AGENT AND A WHOLESALE  
15 DEALER OR A RETAIL DEALER, SHALL MAINTAIN SEPARATE AREAS FOR STAMPED AND  
16 UNSTAMPED PRODUCT.

17 5. (A) A RETAIL DEALER SHALL REPORT TO THE COMMISSION EACH SALE OR  
18 DISTRIBUTION OF MORE THAN ONE THOUSAND CIGARETTES TO ANY CONSUMER IN ANY  
19 SINGLE TRANSACTION. SUCH REPORT SHALL INCLUDE:

20 (I) THE NAME, ADDRESS, DESTINATION (INCLUDING STREET ADDRESS), VEHICLE  
21 LICENSE NUMBER, DRIVER'S LICENSE NUMBER, SIGNATURE OF THE PERSON RECEIV-  
22 ING SUCH CIGARETTES, AND THE NAME OF THE PURCHASER;

23 (II) A DECLARATION OF THE SPECIFIC PURPOSE OF THE RECEIPT (PERSONAL  
24 USE, RESALE, OR DELIVERY TO ANOTHER); AND

25 (III) A DECLARATION OF THE NAME AND ADDRESS OF THE RECIPIENT'S PRINCI-  
26 PAL IN ALL CASES WHEN THE RECIPIENT IS ACTING AS AN AGENT.

27 (B) A RETAIL DEALER SHALL NOT KNOWINGLY SELL MORE THAN ONE THOUSAND  
28 CIGARETTES TO ANY PERSON IN ANY SERIES OF TRANSACTIONS IN ANY TWO-DAY  
29 PERIOD WITHOUT FILING A REPORT AS REQUIRED BY PARAGRAPH (A) OF THIS  
30 SUBDIVISION.

31 S 8. Subdivisions 1 and 4 of section 474 of the tax law, as amended by  
32 chapter 61 of the laws of 1989, are amended to read as follows:

33 1. (A) Every person who shall possess or transport any unstamped ciga-  
34 rettes upon the public highways, roads or streets of the state, shall be  
35 required to have in his actual possession invoices or delivery tickets  
36 for such cigarettes. Such invoices or delivery tickets shall show the  
37 name and address of the consignor or seller, the name and address of the  
38 consignee or purchaser, the quantity [and brands] BY BRAND STYLE of the  
39 cigarettes transported, and the name and address of the person who has  
40 or shall assume the payment of the tax. The absence of such invoices or  
41 delivery tickets shall be prima facie evidence that such person is a  
42 dealer in cigarettes in this state and subject to the provisions of this  
43 article.

44 (B) ANY PERSON WHO SHIPS UNSTAMPED CIGARETTE PACKAGES INTO THIS STATE  
45 OTHER THAN TO A LICENSED MANUFACTURER, IMPORTER OR AGENT SHALL FIRST  
46 FILE WITH THE COMMISSIONER NOTICE OF SUCH SHIPMENT. THIS PARAGRAPH SHALL  
47 NOT APPLY TO ANY COMMON OR CONTRACT CARRIER THAT IS TRANSPORTING CIGA-  
48 RETTES THROUGH THIS STATE TO ANOTHER LOCATION UNDER A PROPER BILL OF  
49 LADING OR FREIGHT BILL, WHICH STATES THE QUANTITY BY BRAND STYLE,  
50 SOURCE, AND DESTINATION OF SUCH CIGARETTES.

51 4. At the time of delivering cigarettes to any person each MANUFACTUR-  
52 ER, IMPORTER, agent or wholesale dealer, and at the time of delivering  
53 tobacco products to any person each distributor or wholesale dealer of  
54 tobacco products, shall make a true duplicate invoice showing the date  
55 of delivery, the number of packages BY BRAND STYLE and number of ciga-  
56 rettes contained therein, in each shipment of cigarettes delivered, and

1 the items and quantity and wholesale price of each item in each shipment  
2 of tobacco products delivered, and the name of the purchaser to whom  
3 delivery is made, and shall retain the same for a period of [three] FIVE  
4 years subject to the use and inspection of the commissioner of taxation  
5 and finance. Each dealer shall procure and retain invoices showing the  
6 number of packages BY BRAND STYLE and number of cigarettes contained  
7 therein, in each shipment of cigarettes received by him OR HER, and the  
8 items and quantity and wholesale price of each item in each shipment of  
9 tobacco products received by him OR HER, the date thereof, and the name  
10 of the shipper, and shall retain the same for a period of [three] FIVE  
11 years subject to the use and inspection of the commissioner [of taxation  
12 and finance]. The commissioner [of taxation and finance] by regulation  
13 may provide that whenever cigarettes or tobacco products are shipped  
14 into the state, the railroad company, express company, trucking company  
15 or other public carrier transporting any shipment thereof shall file  
16 with the commissioner of taxation and finance a copy of the freight bill  
17 within ten days after the delivery in the state of each shipment. All  
18 dealers shall maintain and keep for a period of [three] FIVE years such  
19 other records of cigarettes or tobacco products received, sold or deliv-  
20 ered within the state as may be required by the commissioner [of taxa-  
21 tion and finance]. The commissioner [of taxation and finance] is hereby  
22 authorized to examine the books, papers, invoices and other records of  
23 any person WHO HOLDS A LICENSE OR REGISTRATION UNDER THIS ARTICLE OR WHO  
24 IS in possession, control or occupancy of any premises where cigarettes  
25 or tobacco products are placed, stored, sold or offered for sale, and  
26 the equipment of any such person pertaining to the stamping of ciga-  
27 rettes or the sale and delivery of cigarettes or tobacco products taxa-  
28 ble under this article, as well as the stock of cigarettes or tobacco  
29 products in any such premises or vehicle. To verify the accuracy of the  
30 tax imposed and assessed by this article, each such person is hereby  
31 directed and required to give to the commissioner [of taxation and  
32 finance] or his OR HER duly authorized representatives, the means,  
33 facilities and opportunity for such examinations as are [herein]  
34 provided for IN THIS SECTION and required. ALL INVOICES REQUIRED TO BE  
35 RETAINED BY THIS SECTION SHALL SHOW THE NAME AND ADDRESS OF THE SELLER  
36 AND THE QUANTITY BY BRAND STYLE OF THE CIGARETTES INVOLVED IN THE TRANS-  
37 ACTION AND SHALL BE ITEMIZED FOR EACH FACILITY OF THE MANUFACTURER,  
38 IMPORTER, AGENT OR WHOLESALE DEALER. RECORDS REQUIRED UNDER THIS ARTI-  
39 CLE SHALL BE PRESERVED ON THE PREMISES DESCRIBED IN THE RELEVANT LICENSE  
40 OR REGISTRATION IN SUCH A MANNER AS TO ENSURE PERMANENCY AND ACCESSIBIL-  
41 ITY FOR INSPECTION AT REASONABLE HOURS BY AUTHORIZED PERSONNEL OF THE  
42 TAX COMMISSION. WITH THE PERMISSION OF THE COMMISSIONER, PERSONS WITH  
43 MULTIPLE PLACES OF BUSINESS MAY RETAIN CENTRALIZED RECORDS, BUT SHALL  
44 TRANSMIT DUPLICATES OF THE INVOICES OR THE EQUIVALENT DOCUMENTATION TO  
45 EACH PLACE OF BUSINESS WITHIN TWENTY-FOUR HOURS UPON THE REQUEST OF THE  
46 COMMISSIONER.

47 THE COMMISSIONER AND HIS OR HER DESIGNEES AND THE UNITED STATES SECRE-  
48 TARY OF THE TREASURY OR HIS OR HER DESIGNEE, UPON REQUEST, SHALL HAVE  
49 ACCESS TO RECORDS REQUIRED UNDER THIS SECTION AND REPORTS REQUIRED UNDER  
50 SECTION FOUR HUNDRED SEVENTY-FOUR-A OF THIS ARTICLE. SUCH COMMISSIONER  
51 AT HIS OR HER SOLE DISCRETION MAY SHARE THE RECORDS AND REPORTS REQUIRED  
52 BY THIS ARTICLE WITH OTHER LAW ENFORCEMENT OFFICIALS OF THE FEDERAL  
53 GOVERNMENT OR OTHER STATES. PUBLIC ACCESS TO REPORTS SUBMITTED BY LICEN-  
54 SEES SHALL BE PROVIDED UNDER THE PROCEDURES ESTABLISHED BY THE NEW YORK  
55 FREEDOM OF INFORMATION LAW. IN NO CASE, HOWEVER, SHALL INFORMATION ABOUT  
56 QUANTITIES OF CIGARETTES BY BRAND STYLE BE RELEASED TO ANYONE OTHER THAN

1 THE COMMISSIONER, THE UNITED STATES SECRETARY OF THE TREASURY, OR OTHER  
2 STATE AND FEDERAL LAW ENFORCEMENT OFFICIALS WITH WHOM SUCH COMMISSIONER  
3 HAS ELECTED TO SHARE REPORTS AND RECORDS REQUIRED BY THIS ARTICLE.

4 S 9. The tax law is amended by adding a new section 474-a to read as  
5 follows:

6 S 474-A. REPORTS. 1. AGENTS AND DEALERS SHALL SUBMIT TO THE COMMIS-  
7 SIONER MONTHLY REPORTS SETTING FORTH THE FOLLOWING INFORMATION, ITEMIZED  
8 OR SUBMITTED SEPARATELY FOR EACH OF THEIR PLACES OF BUSINESS: (A) THE  
9 QUANTITIES OF CIGARETTES, BY BRAND STYLE, ON HAND BOTH AT THE BEGINNING  
10 AND ENDING OF THE REPORTING PERIOD;

11 (B) THE QUANTITIES OF CIGARETTES, BY BRAND STYLE AND TRANSACTION, THAT  
12 WERE RECEIVED DURING THE REPORTING PERIOD AND THE NAME AND ADDRESS OF  
13 EACH PERSON FROM WHOM THOSE PRODUCTS WERE RECEIVED;

14 (C) THE QUANTITIES OF CIGARETTES, BY BRAND STYLE AND TRANSACTION,  
15 DISTRIBUTED OR SHIPPED INTO THIS STATE OR BETWEEN LOCATIONS IN THIS  
16 STATE DURING THE REPORTING PERIOD (OTHER THAN SALES DIRECTLY TO CONSUM-  
17 ERS) AND THE NAME AND ADDRESS OF EACH PERSON TO WHOM THOSE PRODUCTS WERE  
18 DISTRIBUTED OR SHIPPED;

19 (D) THE QUANTITIES OF CIGARETTES, BY BRAND STYLE AND TRANSACTION,  
20 DISTRIBUTED OR SHIPPED TO ANY DESTINATION WHEREVER LOCATED, INCLUDING  
21 THE QUANTITIES REPORTED UNDER PARAGRAPH (C) OF THIS SUBDIVISION, DURING  
22 THE REPORTING PERIOD (OTHER THAN SALES DIRECTLY TO CONSUMERS) AND THE  
23 NAME AND ADDRESS OF EACH PERSON TO WHOM THOSE PRODUCTS WERE DISTRIBUTED  
24 OR SHIPPED; AND

25 (E) THE QUANTITIES OF CIGARETTES, BY BRAND STYLE, SOLD TO CONSUMERS,  
26 ITEMIZED TO SHOW SALES TO CONSUMERS IN THIS STATE AND SALES TO CONSUMERS  
27 OUTSIDE OF THIS STATE.

28 2. MANUFACTURERS AND IMPORTERS SHIPPING CIGARETTES INTO OR WITHIN THIS  
29 STATE SHALL FILE A MONTHLY REPORT WITH THE COMMISSIONER CONTAINING THE  
30 INFORMATION REGARDING SUCH CIGARETTES SET FORTH IN PARAGRAPH (C) OF  
31 SUBDIVISION ONE OF THIS SECTION.

32 3. INDIAN TRIBAL ENTITIES ENGAGED IN THE RETAIL SALE OR DISTRIBUTION  
33 OF CIGARETTES SHALL INCLUDE IN SUCH ENTITIES' REPORTS SUBMITTED PURSUANT  
34 TO SUBDIVISION ONE OF THIS SECTION THE NAMES AND ADDRESSES OF EVERY  
35 TRIBAL MEMBER THAT PURCHASED CIGARETTES DURING THE REPORTING PERIOD AND  
36 THE QUANTITY OF CIGARETTES, BY BRAND STYLE, PURCHASED BY EACH SUCH  
37 TRIBAL MEMBER.

38 4. THE REPORTS SUBMITTED PURSUANT TO SUBDIVISION ONE OF THIS SECTION  
39 SHALL BE FURTHER ITEMIZED TO DISCLOSE THE QUANTITY OF REPORTED CIGA-  
40 RETTES BEARING TAX STAMPS OF THIS STATE, TAX EXEMPT STAMPS OF THIS  
41 STATE, STAMPS OF ANOTHER STATE, AND UNSTAMPED CIGARETTES. AGENT REPORTS  
42 SHALL INCLUDE, IF APPLICABLE, THE QUANTITY OF NEW YORK TAX AND TAX  
43 EXEMPT STAMPS THAT WERE NOT AFFIXED TO CIGARETTES AND THAT WERE ON HAND  
44 AT THE BEGINNING AND ENDING OF THE REPORTING PERIOD, THE QUANTITY OF  
45 EACH TYPE OF NEW YORK STAMP RECEIVED DURING THE REPORTING PERIOD, AND  
46 THE QUANTITY OF EACH TYPE OF NEW YORK STAMP APPLIED DURING THE REPORTING  
47 PERIOD.

48 5. THE COMMISSIONER MAY ISSUE REGULATIONS REQUIRING SUCH ADDITIONAL  
49 INFORMATION IN THE MONTHLY REPORTS AS HE OR SHE MAY DETERMINE IS NECES-  
50 SARY OR APPROPRIATE FOR PURPOSES OF ENFORCING THE PROVISIONS OF THIS  
51 ARTICLE.

52 S 10. Section 475 of the tax law is amended by adding a new closing  
53 paragraph to read as follows:

54 IN ANY CASE WHERE THE COMMISSIONER OR HIS OR HER DULY AUTHORIZED  
55 AGENT, OR ANY POLICE OR PEACE OFFICER OF NEW YORK STATE, HAS KNOWLEDGE  
56 OR REASONABLE GROUNDS TO BELIEVE THAT ANY VEHICLE IS TRANSPORTING CIGA-

1 RETTES IN VIOLATION OF THIS ARTICLE, SUCH COMMISSIONER, SUCH AGENT, OR  
2 SUCH POLICE OR PEACE OFFICER, IS AUTHORIZED TO STOP SUCH VEHICLE AND TO  
3 INSPECT THE SAME FOR CONTRABAND CIGARETTES.

4 S 11. Section 476 of the tax law, as amended by chapter 61 of the laws  
5 of 1989, is amended to read as follows:

6 S 476. Refunds; sales of stamps. Whenever any cigarettes upon which  
7 stamps have been placed or tobacco products upon which the tax has been  
8 paid have been sold and shipped into another state for sale or use there  
9 or have become unfit for use and consumption or unsalable, or have been  
10 destroyed (EXCEPT FOR CIGARETTES DESTROYED PURSUANT TO SECTION EIGHTEEN  
11 HUNDRED FORTY-SIX OF THIS CHAPTER), or whenever the commissioner of  
12 taxation and finance shall have determined that any tax imposed by this  
13 article shall have been paid in error, the agent, dealer or tobacco  
14 products distributor, as the case may be, shall be entitled to a refund  
15 of the actual amount of tax so paid, provided application therefor is  
16 filed with the commissioner of taxation and finance within two years  
17 after the stamps were affixed to such cigarettes or the tax was paid  
18 upon such tobacco products, except if an agreement under the provisions  
19 of section four hundred seventy-eight (extending the period for determi-  
20 nation of tax imposed by this article) is made within the two-year peri-  
21 od for the filing of an application for refund provided for in this  
22 section, the period for filing an application for refund shall not  
23 expire prior to six months after the expiration of the period within  
24 which a determination may be made pursuant to the agreement or any  
25 extension thereof. If the commissioner [of taxation and finance] is  
26 satisfied that any AGENT OR dealer is entitled to a refund he OR SHE  
27 shall issue to such [dealer] AGENT stamps of sufficient value to cover  
28 the refund of the tax on cigarettes or may, subject to audit by the  
29 comptroller, make a refund of the tax on cigarettes or on tobacco  
30 products TO SUCH AGENT. No person shall sell or offer for sale any stamp  
31 or stamps issued under this article except by written permission of the  
32 commissioner [of taxation and finance]. The commissioner [of taxation  
33 and finance] may redeem unused stamps lawfully in possession of any  
34 [person] AGENT. The commissioner [of taxation and finance] may prescribe  
35 necessary rules and regulations concerning refunds, sales of stamps, and  
36 redemptions under the provisions of this article.

37 S 12. Subdivisions 1, 5 and paragraph (a) of subdivision 6 of section  
38 480 of the tax law, subdivision 1 as amended by chapter 629 of the laws  
39 of 1996, paragraph (k) of subdivision 1 as amended by chapter 262 of the  
40 laws of 2000, subdivision 5 as added by chapter 860 of the laws of 1987  
41 and paragraph (a) of subdivision 6 as amended by chapter 576 of the laws  
42 of 1994, are amended, subdivision 3 is amended by adding a new paragraph  
43 (c), and a new subdivision 7 is added to read as follows:

44 1. General. (a) [On and after July first, nineteen hundred thirty-nine  
45 no] NO person shall be a MANUFACTURER, IMPORTER, AGENT, OR wholesale  
46 dealer unless he OR SHE has been granted and publicly displays in his OR  
47 HER place of business a license from the department FOR EACH SUCH ACTIV-  
48 ITY ENGAGED IN. EACH PLACE OF BUSINESS IN THIS STATE SHALL BE SEPARATELY  
49 LICENSED. IF THE APPLICANT DOES NOT HAVE A PLACE OF BUSINESS IN THIS  
50 STATE, THE LICENSE SHALL BE ISSUED FOR SUCH APPLICANT'S PRINCIPAL PLACE  
51 OF BUSINESS, WHEREVER LOCATED. Applications for licenses shall be made  
52 on forms prescribed by the commissioner. EACH APPLICATION SHALL STATE  
53 THE NAME AND ADDRESS OF THE APPLICANT; THE ADDRESS OF THE APPLICANT'S  
54 PRINCIPAL PLACE OF BUSINESS; EACH PLACE OF BUSINESS WHERE THE APPLI-  
55 CANT'S BUSINESS WILL BE CONDUCTED WITHIN THIS STATE; AND ANY OTHER  
56 INFORMATION SUCH COMMISSIONER MAY REQUIRE. IF THE APPLICANT IS A FIRM,

PARTNERSHIP, OR ASSOCIATION, THE APPLICATION SHALL STATE THE NAME AND ADDRESS OF EACH OF ITS MEMBERS. IF THE APPLICANT IS A CORPORATION, THE APPLICATION SHALL STATE THE NAME AND ADDRESS OF EACH OF ITS MEMBERS. IF THE APPLICANT IS A CORPORATION, THE APPLICATION SHALL STATE THE NAME AND ADDRESS OF EACH OF ITS OFFICERS AND THE NAME OF ANY PERSON WHO OWNS, DIRECTLY OR INDIRECTLY, IN THE AGGREGATE, MORE THAN TEN PERCENT OF THE OWNERSHIP INTERESTS IN THE CORPORATION.

(b) Applications shall be accompanied by proof of the applicant's financial responsibility, including, but not limited to, satisfactory proof of a minimum net worth of twenty-five thousand dollars if the applicant is an individual, or net worth in the capitalization of the business if the applicant is not an individual equal to a minimum of twenty-five thousand dollars.

(c) Each applicant shall file with the department a bond issued by a surety company approved by the superintendent of insurance as to solvency and responsibility and authorized to transact business in the state, in the face amount of ten thousand dollars, to secure payment of any sums due for any violation of article twenty or article twenty-A of this chapter, or the regulations of [the] SUCH commissioner thereunder.

(d) [Each applicant shall file satisfactory proof that it will maintain a secure separate warehousing facility for the purpose of receiving and distributing cigarettes or tobacco products and conducting its wholesale business. Such proof shall consist of a copy of a deed, or a copy of an executed lease for a minimum period of two years, to a separate, secure warehouse. If the applicant carries on another business in conjunction with the warehouse facility, the other business shall also be identified.

(e)] Each applicant shall file satisfactory proof that it will provide disability and workers' compensation insurance for its employees.

[(f)] (E) Each applicant shall submit proof of United States citizenship or eligibility to obtain employment within the United States if not a citizen. If the applicant is not an individual, such proof shall be submitted with respect to each controlling person of the applicant.

[(g)] (F) The fee for the filing of an application for a license shall be fifteen hundred dollars, unless such fee has been paid during the preceding twelve months, in which case, the fee for a new license shall be one thousand dollars. Each application shall be accompanied by a certified check for the required application fee.

[(h)] (G) Except as provided in subdivision four of this section, a license shall continue in effect [until revoked or suspended for cause or surrendered] FOR SUCH LENGTH OF TIME AS DETERMINED BY REGULATIONS OF THE TAX COMMISSION; IN NO CASE, HOWEVER, SHALL A LICENSE ISSUED UNDER THIS SECTION REMAIN IN EFFECT FOR A PERIOD LONGER THAN THREE YEARS.

[(i)] (H) A license shall not be assignable but an applicant who is purchasing the business of a licensee shall file a copy of the contract of sale and any related documents with its application.

[(j)] (I) The commissioner may for cause refuse to issue, or may suspend or revoke [a wholesaler's] ANY license UNDER THIS SECTION, or may forbid a retail dealer to continue selling cigarettes or tobacco products or may forbid a person required to be appointed as a distributor of tobacco products who has not been so appointed from selling cigarettes or tobacco products, after an opportunity for hearing has been afforded. A violation of any provision of this article or of any regulation issued under it shall be cause to SUSPEND OR REVOKE A LICENSE ISSUED UNDER THIS SECTION OR TO forbid a retail dealer to continue selling cigarettes or tobacco products.

1    ~~[(k)]~~ (J) No agent shall sell cigarettes and no distributor shall sell  
2 tobacco products to an unlicensed wholesale dealer, or to a wholesale  
3 dealer whose license has been suspended or revoked, or to a retail deal-  
4 er who is not registered under section four hundred eighty-a of this  
5 article, or whose registration has been suspended or revoked, and no  
6 wholesale dealer shall sell cigarettes or tobacco products to a retail  
7 dealer who is not registered under section four hundred eighty-a of this  
8 article, or whose registration has been suspended or revoked, and no  
9 retail dealer shall sell cigarettes or tobacco products unless such  
10 dealer is registered under section four hundred eighty-a of this arti-  
11 cle.

12    ~~[(l)]~~ (K) Paragraphs (b), (c) and ~~[(g)]~~ (F) of this subdivision shall  
13 not apply to the filing of an application for a license as a wholesale  
14 dealer that is based solely upon the ownership, operation or maintenance  
15 of one or more cigarette or tobacco products vending machines in, at or  
16 upon premises owned or occupied by another person, or that is based  
17 solely upon the sale of tobacco products for resale, or that is based  
18 upon both the ownership, operation or maintenance of one or more ciga-  
19 rette or tobacco products vending machines in, at or upon premises owned  
20 or occupied by another person and the sale of tobacco products for  
21 resale.

22    (C) LICENSE AVAILABILITY. NOTWITHSTANDING OTHER SUBDIVISIONS OF THIS  
23 SECTION, NO LICENSE SHALL BE GRANTED, MAINTAINED OR RENEWED IF THE  
24 APPLICANT OR ANY CONTROLLING PERSON:

25    (I) OWES FIVE HUNDRED DOLLARS OR MORE IN DELINQUENT CIGARETTE TAXES;

26    (II) HAD A LICENSE UNDER THIS SECTION OR REGISTRATION UNDER SECTION  
27 FOUR HUNDRED EIGHTY-A OF THIS ARTICLE REVOKED BY THE COMMISSIONER WITHIN  
28 THE PAST TWO YEARS;

29    (III) HAS BEEN CONVICTED OF A CRIME RELATING TO STOLEN OR COUNTERFEIT  
30 CIGARETTES;

31    (IV) IS A CIGARETTE MANUFACTURER OR IMPORTER THAT IS NEITHER (A) A  
32 PARTICIPATING MANUFACTURER (AS SUCH TERM IS DEFINED IN SECTION II(JJ) OF  
33 THE MASTER SETTLEMENT AGREEMENT) AS REQUIRED IN SUBDIVISION ONE OF  
34 SECTION THIRTEEN HUNDRED NINETY-NINE-PP OF THE PUBLIC HEALTH LAW; NOR  
35 (B) IN FULL COMPLIANCE WITH SECTION FOUR HUNDRED EIGHTY-B OF THIS ARTI-  
36 CLE AND SUBDIVISION TWO OF SECTION THIRTEEN HUNDRED NINETY-NINE-PP OF  
37 THE PUBLIC HEALTH LAW;

38    (V) HAS IMPORTED, OR CAUSED TO BE IMPORTED, INTO THE UNITED STATES ANY  
39 CIGARETTE IN VIOLATION OF 19 U.S.C. 1681A; OR

40    (VI) HAS IMPORTED, OR CAUSED TO BE IMPORTED INTO THE UNITED STATES, OR  
41 MANUFACTURED FOR SALE OR DISTRIBUTION IN THE UNITED STATES ANY CIGARETTE  
42 THAT DOES NOT FULLY COMPLY WITH THE FEDERAL CIGARETTE LABELING AND  
43 ADVERTISING ACT (15 U.S.C. 1331, ET SEQ.).

44    5. Hearing procedure. (a) General. A notice of proposed cancellation  
45 or suspension of a license or refusal to issue a license shall be given  
46 to [the wholesale dealer] ANY PERSON licensed pursuant to this article  
47 or to an applicant applying for such license in the manner prescribed  
48 for a notice of deficiency of tax and all the provisions applicable to a  
49 notice of deficiency under article twenty-seven of this chapter, includ-  
50 ing, but not limited to, those provisions authorizing the tax commission  
51 to abate on its own motion, shall apply to a notice issued pursuant to  
52 this subdivision, insofar as such provisions can be made applicable to a  
53 notice authorized by this subdivision, with such modifications as may be  
54 necessary in order to adapt the language of such provisions to the  
55 notice authorized by this subdivision. Such notice of proposed cancella-  
56 tion or suspension or of proposed refusal to license must be given to

1 such person within five years from the date of the act or omission  
2 referred to in subdivision two or three of this section, except that in  
3 the case of acts involving falsity or fraud, such notice may be issued  
4 at any time. All of such notices shall contain a statement advising the  
5 person to whom it is issued that the cancellation, suspension or refusal  
6 to license may be challenged through a hearing process and that the  
7 petition for such challenge must be filed with the tax commission within  
8 ninety days after the giving of such notice. Where a license is  
9 cancelled or suspended prior to a hearing, the cancellation or suspen-  
10 sion may be challenged through the hearing process provided the petition  
11 for such challenge is filed within ninety days after the giving of  
12 notice of such cancellation or suspension.

13 (b) Refusal to license. In the case of a person applying to be  
14 licensed [as a wholesale dealer] UNDER THIS ARTICLE, a notice of  
15 proposed refusal to license shall be issued promptly after application  
16 for license is received by the [tax commission] COMMISSIONER. Upon time-  
17 ly application therefor, a hearing shall be scheduled, and within three  
18 months from such application for hearing (determined with regard to any  
19 postponements of any scheduled hearing or conference or other delay made  
20 at the request of the applicant) the [tax commission] COMMISSIONER shall  
21 issue a notice of refusal to license or shall license the applicant. If  
22 the [tax commission] COMMISSIONER fails to issue a notice of refusal to  
23 license within such three month period (or such period as extended  
24 pursuant to this paragraph), the [tax commission] COMMISSIONER shall  
25 license the applicant immediately upon the conclusion of such period so  
26 long as the applicant has filed a bond or other security as required by  
27 the [tax commission] COMMISSIONER.

28 (a) An officer, director or partner or, in the case of a limited  
29 liability company, a member or a person having with respect to such  
30 limited liability company authority analogous to that of an officer or  
31 director with respect to a corporation of an applicant for a [wholesale  
32 dealer's] license UNDER THIS ARTICLE or of a licensee under this arti-  
33 cle, or

34 7. MAINTENANCE OF LIST OF LICENSEES. THE TAX COMMISSION SHALL CREATE  
35 AND MAINTAIN A WEB SITE SETTING FORTH THE IDENTITY OF PERSONS HOLDING  
36 VALID AND CURRENT LICENSES UNDER THIS SECTION, ITEMIZED BY TYPE OF  
37 LICENSE POSSESSED, AND THE IDENTITY OF PERSONS HOLDING VALID AND CURRENT  
38 REGISTRATIONS UNDER SECTION FOUR HUNDRED EIGHTY-A OF THIS ARTICLE, AND  
39 SHALL UPDATE THE SITE NO LESS FREQUENTLY THAN ONCE PER MONTH.

40 S 13. Paragraph (d) of subdivision 1, subdivision 3 and paragraph (a)  
41 of subdivision 4 of section 480-a of the tax law, paragraph (d) of  
42 subdivision 1 as added by chapter 799 of the laws of 1992, subdivision 3  
43 as amended by chapter 262 of the laws of 2000 and paragraph (a) of  
44 subdivision 4 as added by chapter 629 of the laws of 1996, are amended  
45 to read as follows:

46 (d) (i) The commissioner shall not register retail dealers OR VENDING  
47 MACHINES or such registration may be cancelled or suspended by the  
48 commissioner upon notification that the applicant or retail dealer, OR  
49 ANY COMBINATION OF PERSONS OWNING DIRECTLY OR INDIRECTLY, IN THE AGGRE-  
50 GATE, MORE THAN TEN PERCENT OF THE OWNERSHIP INTERESTS IN THE APPLICANT  
51 OR RETAIL DEALER has been convicted in a criminal proceeding of a  
52 violation of subdivision [five] THREE of section [260.20] 260.21 of the  
53 penal law or as directed by an enforcement officer pursuant to article  
54 thirteen-F of the public health law. The clerk of the court shall  
55 promptly report all criminal convictions under subdivision [five] THREE  
56 of section [260.20] 260.21 of the penal law to the commissioner, togeth-

1 er with a direction to the commissioner to cancel such registration or  
2 to suspend it for a specified period of time.

3 (II) THE COMMISSIONER SHALL NOT REGISTER RETAIL DEALERS OR VENDING  
4 MACHINES OR SUCH REGISTRATION SHALL BE CANCELLED OR SUSPENDED BY THE  
5 COMMISSIONER UPON NOTIFICATION THAT THE APPLICANT OR RETAIL DEALER, OR  
6 ANY COMBINATION OF PERSONS OWNING DIRECTLY OR INDIRECTLY, IN THE AGGRE-  
7 GATE, MORE THAN TEN PERCENT OF THE OWNERSHIP INTERESTS IN THE APPLICANT  
8 OR RETAIL DEALER:

9 (A) OWES FIVE HUNDRED DOLLARS OR MORE IN DELINQUENT CIGARETTE TAXES;

10 (B) HAD A REGISTRATION ISSUED UNDER THIS SECTION OR A LICENSE ISSUED  
11 UNDER SECTION FOUR HUNDRED EIGHTY OF THIS ARTICLE REVOKED BY THE COMMIS-  
12 SIONER WITHIN THE PAST TWO YEARS; OR

13 (C) HAS BEEN CONVICTED OF A CRIME RELATING TO COUNTERFEIT CIGARETTES.

14 Anything to the contrary in any law notwithstanding, retail dealers  
15 shall have no right to a hearing under this chapter and shall have no  
16 right to commence a court action or proceeding or to any other legal  
17 recourse against the commissioner with respect to any action taken by  
18 the commissioner under this paragraph, provided nothing herein shall be  
19 construed to deny retail dealers a hearing under article thirteen-F of  
20 the public health law or to prohibit retail dealers from commencing a  
21 court action or proceeding against an enforcement officer as defined in  
22 section thirteen hundred ninety-nine-aa of the public health law.

23 [(ii)] (III) Anything to the contrary in any law notwithstanding, the  
24 commissioner shall provide upon request to an enforcement officer as  
25 defined in section thirteen hundred ninety-nine-aa of the public health  
26 law such registration information as is relevant and necessary for the  
27 implementation of article thirteen-F of the public health law.

28 3. In addition to any other penalty imposed by this chapter: (a) Any  
29 retail dealer who violates the provisions of this section shall, after  
30 due notice and an opportunity for a hearing, for a first violation be  
31 liable for a civil fine [not less than] OF five [hundred dollars but not  
32 to exceed two] thousand dollars and for a second or subsequent violation  
33 within three years following a prior finding of violation be liable for  
34 a civil fine [not less than one] OF TEN thousand dollars [but not to  
35 exceed three thousand five hundred dollars]; or

36 (b) Any person who owns or, if the owner is not the operator, then any  
37 person who operates one or more vending machines through which ciga-  
38 rettes or tobacco products are sold in this state and who violates the  
39 provisions of this section shall, after due notice and an opportunity  
40 for a hearing, for a first violation be liable for a civil fine [not  
41 less than seventy-five dollars but not to exceed two hundred] OF FIVE  
42 THOUSAND dollars and for a second or subsequent violation within three  
43 years following a prior finding of violation be liable for a civil fine  
44 [not less than two hundred dollars but not to exceed six hundred] OF TEN  
45 THOUSAND dollars.

46 (a) If a retail dealer possesses or sells unstamped or unlawfully  
47 stamped packages of cigarettes, [or if a retail dealer is also licensed  
48 as an agent pursuant to section four hundred seventy-two and it  
49 possesses unlawfully stamped packages of cigarettes or sells unstamped  
50 or unlawfully stamped packages of cigarettes at retail,] (i) its regis-  
51 tration shall be suspended for a period of not more than six months, or  
52 (ii) for a second such possession or sale within a period of five years,  
53 its registration shall be suspended for a period of up to thirty-six  
54 months, or (iii) for a third such possession or sale within a period of  
55 five years, its registration may be revoked for a period of up to five  
56 years. A retail dealer registration shall be suspended or revoked pursu-

1 ant to this subdivision immediately upon such dealer's receipt of writ-  
2 ten notice of suspension or revocation from the commissioner. [If a  
3 retail dealer sells cigarettes through more than one place of business  
4 in this state, the retail dealer registration shall not be suspended or  
5 revoked pursuant to this subdivision, but the certificate of registra-  
6 tion issued to the place of business, cart, stand, truck or other  
7 merchandising device where unstamped or unlawfully stamped cigarettes  
8 were found shall be suspended or cancelled for possession or sale of  
9 unstamped or unlawfully stamped packages of cigarettes, as if such  
10 certificate of registration were a retail dealer registration. A suspen-  
11 sion or cancellation of a certificate of registration shall be treated  
12 as if it were a suspension or revocation of a registration. If unstamped  
13 or unlawfully stamped cigarettes are found in a retail dealer's ware-  
14 house, the] THE suspension or revocation of the retail dealer's regis-  
15 tration pursuant to this subdivision shall be applicable to each retail  
16 place of business in this state through which such retail dealer sells  
17 cigarettes. IF A RETAIL DEALER COMMITS ANY VIOLATION OTHER THAN THOSE  
18 DESCRIBED IN THIS SUBDIVISION OR SUBDIVISION ONE OF THIS SECTION, THE  
19 COMMISSIONER MAY SUSPEND OR REVOKE THE RETAIL DEALER'S REGISTRATION.

20 S 14. Subdivision 5 of section 480-a of the tax law is REPEALED.

21 S 15. Subparagraph (v) of paragraph (a) of subdivision 1 and paragraph  
22 (b) of subdivision 2 of section 481 of the tax law, subparagraph (v) of  
23 paragraph (a) of subdivision 1 as amended by chapter 65 of the laws of  
24 1985 and paragraph (b) of subdivision 2 as amended by chapter 61 of the  
25 laws of 1989, are amended and five new subdivisions 5, 6, 7, 8 and 9 are  
26 added to read as follows:

27 (v) The penalties and interest provided for in this paragraph, IN  
28 ADDITION TO ANY OTHER PENALTY IMPOSED BY THIS ARTICLE, shall be deter-  
29 mined, assessed, collected and paid in the same manner as the taxes  
30 imposed by this article and shall be disposed of as [hereinafter]  
31 provided IN THIS SUBDIVISION with respect to moneys derived from the  
32 tax. Interest under this paragraph shall be compounded daily.

33 (b) Nothing in this section shall apply to common or contract carriers  
34 or warehousemen while engaged in lawfully transporting [or storing]  
35 tobacco products or unstamped packages of cigarettes as merchandise  
36 THROUGH THIS STATE TO ANOTHER LOCATION UNDER A PROPER BILL OF LADING OR  
37 FREIGHT BILL, OR STORING TOBACCO PRODUCTS OR UNSTAMPED CIGARETTES ON  
38 BEHALF OF A LICENSED AGENT, nor to any employee of such carrier or ware-  
39 houseman acting within the scope of his employment, nor to public offi-  
40 cers or employees in the performance of their official duties requiring  
41 possession or control of tobacco products or unstamped or unlawfully  
42 stamped packages of cigarettes, nor to temporary incidental possession  
43 by employees or agents of persons lawfully entitled to possession, nor  
44 to persons whose possession is for the purpose of aiding police officers  
45 in performing their duties.

46 5. WHOEVER OMITTS, NEGLECTS, OR REFUSES TO COMPLY WITH ANY DUTY IMPOSED  
47 UPON HIM OR HER BY THIS ARTICLE, OR TO DO, OR CAUSE TO BE DONE, ANY OF  
48 THE THINGS REQUIRED BY THIS ARTICLE, OR DOES ANYTHING PROHIBITED BY THIS  
49 ARTICLE, SHALL, IN ADDITION TO ANY OTHER PENALTY PROVIDED IN THIS ARTI-  
50 CLE OR ARTICLE THIRTY-SEVEN OF THIS CHAPTER, BE LIABLE TO A PENALTY OF  
51 FIVE THOUSAND DOLLARS OR FIVE TIMES THE RETAIL VALUE OF THE CIGARETTES  
52 INVOLVED, WHICHEVER IS GREATER, TO BE RECOVERED, WITH COSTS OF SUIT, IN  
53 A CIVIL ACTION.

54 6. WHOEVER FAILS TO PAY ANY TAX IMPOSED BY THIS ARTICLE AT THE TIME  
55 PRESCRIBED BY LAW OR REGULATIONS, SHALL, IN ADDITION TO ANY OTHER PENAL-

TY PROVIDED IN THIS ARTICLE, BE LIABLE TO A PENALTY OF FIVE TIMES THE TAX DUE BUT UNPAID.

7. ALL CIGARETTES WHICH ARE HELD FOR SALE, DISTRIBUTION OR USE WITHIN THE BORDERS OF THIS STATE IN VIOLATION OF THE REQUIREMENTS OF THIS ARTICLE SHALL BE FORFEITED TO THE STATE.

8. (A) WHOEVER, WITH INTENT TO DEFRAUD THIS STATE, FAILS TO COMPLY WITH ANY REQUIREMENT OF THIS ARTICLE OR REGULATIONS PRESCRIBED PURSUANT TO THIS ARTICLE SHALL, FOR EACH SUCH OFFENSE, IN ADDITION TO ANY OTHER PENALTY PROVIDED IN THIS ARTICLE OR ARTICLE THIRTY-SEVEN OF THIS CHAPTER, BE FINED TEN THOUSAND DOLLARS OR BE IMPRISONED FOR NOT MORE THAN FIVE YEARS, OR BOTH.

(B) WHOEVER KNOWINGLY VIOLATES ANY PROVISION OF THIS ARTICLE OR OF REGULATIONS PRESCRIBED PURSUANT TO THIS ARTICLE SHALL, FOR EACH SUCH OFFENSE, IN ADDITION TO ANY OTHER PENALTY PROVIDED IN THIS ARTICLE, BE FINED NOT MORE THAN FIVE THOUSAND DOLLARS OR FIVE TIMES THE RETAIL VALUE OF THE CIGARETTES INVOLVED, WHICHEVER IS GREATER, OR IMPRISONED NOT MORE THAN ONE YEAR, OR BOTH.

9. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE SALE OR POSSESSION FOR SALE OF COUNTERFEIT CIGARETTES BY A MANUFACTURER, IMPORTER, AGENT, OR DEALER SHALL RESULT IN THE SEIZURE OF THE PRODUCT AND RELATED MACHINERY BY THE COMMISSIONER OR ANY LAW ENFORCEMENT AGENCY AND SHALL BE PUNISHABLE AS FOLLOWS: (A) A FIRST VIOLATION WITH A TOTAL QUANTITY OF LESS THAN TWO CARTONS OF CIGARETTES SHALL BE PUNISHABLE BY A FINE OF ONE THOUSAND DOLLARS OR FIVE TIMES THE RETAIL VALUE OF THE CIGARETTES INVOLVED, WHICHEVER IS GREATER, OR IMPRISONMENT NOT TO EXCEED FIVE YEARS, OR BOTH.

(B) A SUBSEQUENT VIOLATION WITH A TOTAL QUANTITY OF LESS THAN TWO CARTONS OF CIGARETTES SHALL BE PUNISHABLE BY A FINE OF FIVE THOUSAND DOLLARS OR FIVE TIMES THE RETAIL VALUE OF THE CIGARETTES INVOLVED, WHICHEVER IS GREATER, OR IMPRISONMENT NOT TO EXCEED FIVE YEARS, OR BOTH, AND SHALL ALSO RESULT IN THE REVOCATION BY SUCH COMMISSIONER OF THE MANUFACTURER, IMPORTER, AGENT, OR DEALER LICENSE.

(C) A FIRST VIOLATION WITH A TOTAL QUANTITY OF TWO CARTONS OF CIGARETTES OR MORE SHALL BE PUNISHABLE BY A FINE OF TWO THOUSAND DOLLARS OR FIVE TIMES THE RETAIL VALUE OF THE CIGARETTES INVOLVED, WHICHEVER IS GREATER, OR IMPRISONMENT NOT TO EXCEED FIVE YEARS, OR BOTH.

(D) A SUBSEQUENT VIOLATION WITH A QUANTITY OF TWO CARTONS OF CIGARETTES OR MORE SHALL BE PUNISHABLE BY A FINE OF FIFTY THOUSAND DOLLARS OR FIVE TIMES THE RETAIL VALUE OF THE CIGARETTES INVOLVED, WHICHEVER IS GREATER, OR IMPRISONMENT NOT TO EXCEED FIVE YEARS, OR BOTH, AND SHALL ALSO RESULT IN THE REVOCATION BY SUCH COMMISSIONER OF THE MANUFACTURER, IMPORTER, AGENT, OR DEALER LICENSE.

FOR PURPOSES OF THIS SUBDIVISION, COUNTERFEIT CIGARETTES INCLUDE CIGARETTES THAT HAVE FALSE MANUFACTURING LABELS OR PACKAGES OF CIGARETTES BEARING COUNTERFEIT TAX STAMPS. ANY COUNTERFEIT CIGARETTES SEIZED BY THE COMMISSIONER SHALL BE DESTROYED.

S 16. Subdivision (a) of section 1846 of the tax law, as added 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, and upon which the tax has not been paid or the stamps not affixed as required by such article or such

chapter thirteen, OR ANY CIGARETTES OTHERWISE BEING POSSESSED OR HELD IN VIOLATION OF ARTICLE TWENTY OF THIS CHAPTER, 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 17. Section 1814 of the tax law, as added by chapter 65 of the laws of 1985, the section heading, subdivisions (c), (g) and (h) as amended and subdivision (j) as added by chapter 61 of the laws of 1989, paragraph 2 of subdivision (a) and paragraph 1 of subdivision (e) as amended by chapter 508 of the laws of 2004, subdivisions (d) and (e) as amended by chapter 262 of the laws of 2000 and subdivision (k) as added by chapter 190 of the laws of 1990, is amended to read as follows:

S 1814. Cigarette and tobacco products tax.--(a) Attempt to evade or defeat tax.--(1) Any person who willfully attempts in any manner to evade or defeat any tax imposed by article twenty of this chapter or the payment thereof shall, in addition to other penalties provided by law, be guilty of a [misdemeanor] CLASS E FELONY.

(2) Any person who willfully attempts in any manner to evade or defeat the taxes imposed by article twenty of this chapter or payment thereof on (i) ten thousand cigarettes or more (ii) twenty-two thousand cigars or more, or (iii) four hundred forty pounds of tobacco or more or has previously been convicted two or more times of a violation of paragraph one of this subdivision shall be guilty of a class [E] D felony.

(b) Willful failure to file a return or report, or pay tax.--Any person required under article twenty of this chapter to pay or make a return or report, who willfully fails to pay such tax or make such return or report, at the time or times so required, shall be guilty of a [misdemeanor] CLASS E FELONY.

(c) Fraudulent returns, reports, statements or other documents.--(1) Any person who willfully makes and subscribes any return, report, statement or other document which is required to be filed with or furnished to the commissioner of taxation and finance or to any person, pursuant to article twenty of this chapter, which he does not believe to be true and correct as to every material matter shall be guilty of a [misdemeanor] CLASS D FELONY.

(2) Any person who willfully delivers or discloses to the commissioner [of taxation and finance] or to any person, pursuant to article twenty of this chapter, any list, return, report, account, statement or other document known by him to be fraudulent or to be false as to any material matter shall be guilty of a [misdemeanor] CLASS D FELONY.

1 (3) For purposes of this section, the omission by any person of any  
2 material matter with intent to deceive shall constitute the delivery or  
3 disclosure of a document known by him to be fraudulent or to be false as  
4 to any material matter.

5 (d) Any person, other than an agent licensed by the commissioner, who  
6 possesses or transports for the purpose of sale any unstamped or unlaw-  
7 fully stamped packages of cigarettes subject to tax imposed by section  
8 four hundred seventy-one of this chapter, or who sells or offers for  
9 sale unstamped or unlawfully stamped packages of cigarettes in violation  
10 of the provisions of article twenty of this chapter shall be guilty of a  
11 [misdemeanor] CLASS E FELONY. Any person who violates the provisions of  
12 this subdivision after having previously been convicted of a violation  
13 of this subdivision within the preceding five years shall be guilty of a  
14 class [E] D felony.

15 (e) (1) Any person, other than an agent licensed by the commissioner,  
16 who willfully possesses or transports for the purpose of sale ten thou-  
17 sand or more cigarettes subject to the tax imposed by section four  
18 hundred seventy-one of this chapter in any unstamped or unlawfully  
19 stamped packages or who willfully sells or offers for sale ten thousand  
20 or more cigarettes in any unstamped or unlawfully stamped packages in  
21 violation of article twenty of this chapter shall be guilty of a class  
22 [E] D felony.

23 (2) Any person, other than an agent licensed by the commissioner, who  
24 willfully possesses or transports for the purpose of sale thirty thou-  
25 sand or more cigarettes subject to the tax imposed by section four  
26 hundred seventy-one of this chapter in any unstamped or unlawfully  
27 stamped packages or who willfully sells or offers for sale thirty thou-  
28 sand or more cigarettes in any unstamped or unlawfully stamped packages  
29 in violation of article twenty of this chapter shall be guilty of a  
30 class [D] C felony.

31 (f) For the purposes of this section, the possession or transportation  
32 within this state by any person, other than an agent, at any one time of  
33 five thousand or more cigarettes in unstamped or unlawfully stamped  
34 packages shall be presumptive evidence that such cigarettes are  
35 possessed or transported for the purpose of sale and are subject to the  
36 tax imposed by section four hundred seventy-one of this chapter. With  
37 respect to such possession or transportation any provisions of article  
38 twenty of this chapter providing for a time period during which a use  
39 tax imposed by such article may be paid on unstamped cigarettes or  
40 unlawfully or improperly stamped cigarettes or during which such ciga-  
41 rettes may be returned to an agent shall not apply. The possession with-  
42 in this state of more than four hundred cigarettes in unstamped or  
43 unlawfully stamped packages by any person other than an agent at any one  
44 time shall be presumptive evidence that such cigarettes are subject to  
45 tax as provided by article twenty of this chapter.

46 (g) Nothing in this section shall apply to common or contract carriers  
47 or warehousemen while engaged in lawfully transporting [or storing]  
48 TOBACCO PRODUCTS OR unstamped packages of cigarettes as merchandise  
49 THROUGH THIS STATE TO ANOTHER LOCATION UNDER A PROPER BILL OF LADING OR  
50 FREIGHT BILL, or [lawfully transporting or] storing tobacco products OR  
51 UNSTAMPED CIGARETTES ON BEHALF OF A LICENSED AGENT, nor to any employee  
52 of such carrier or warehouseman acting within the scope of his employ-  
53 ment, nor to public officers or employees in the performance of their  
54 official duties requiring possession or control of unstamped or unlaw-  
55 fully stamped packages of cigarettes or possession or control of tobacco  
56 products, nor to temporary incidental possession by employees or agents

1 of persons lawfully entitled to possession, nor to persons whose  
2 possession is for the purpose of aiding police officers in performing  
3 their duties.

4 (h) Any willful act or omission, other than those described in subdi-  
5 vision (a), (b), (c), (d), (e), (f), (g), (i) or (j) of this section, by  
6 any person which constitutes a violation of any provision of article  
7 twenty of this chapter shall constitute a [misdemeanor] CLASS E FELONY.

8 (i) Any person who falsely or fraudulently makes, alters or counter-  
9 feits any stamp prescribed by the [tax commission] COMMISSIONER under  
10 the provisions of article twenty of this chapter, or causes or procures  
11 to be falsely or fraudulently made, altered or counterfeited any such  
12 stamp, or knowingly and willfully utters, purchases, passes or tenders  
13 as true any such false, altered or counterfeited stamp, or knowingly and  
14 willfully possesses any cigarettes in packages bearing any such false,  
15 altered or counterfeited stamp, and any person who knowingly and will-  
16 fully makes, causes to be made, purchases or receives any device for  
17 forging or counterfeiting any stamp, prescribed by the [tax commission]  
18 COMMISSIONER under the provisions of article twenty of this chapter, or  
19 who knowingly and willfully possesses any such device, shall be guilty  
20 of a class [E] D felony. For the purposes of this subdivision, the words  
21 "stamp prescribed by the [tax commission] COMMISSIONER" shall include a  
22 stamp, impression or imprint made by a metering machine, the design of  
23 which has been approved by such [commission] COMMISSIONER.

24 (j) (1) Any dealer, other than a distributor appointed by the commis-  
25 sioner [of taxation and finance] under article twenty of this chapter,  
26 who shall knowingly transport or have in his custody, possession or  
27 under his control more than ten pounds of tobacco or more than five  
28 hundred cigars upon which the taxes imposed by article twenty of this  
29 chapter have not been assumed or paid by a distributor appointed by the  
30 commissioner [of taxation and finance] under article twenty of this  
31 chapter, or other person treated as a distributor pursuant to section  
32 four hundred seventy-one-d of this chapter, shall be guilty of a misde-  
33 meanor punishable by a fine of not more than five thousand dollars or by  
34 a term of imprisonment not to exceed thirty days.

35 (2) Any person, other than a dealer or a distributor appointed by the  
36 commissioner [of taxation and finance] under article twenty of this  
37 chapter, who shall knowingly transport or have in his custody,  
38 possession or under his control more than fifteen pounds of tobacco or  
39 more than seven hundred fifty cigars upon which the taxes imposed by  
40 article twenty of this chapter have not been assumed or paid by a  
41 distributor appointed by the commissioner [of taxation and finance]  
42 under article twenty of this chapter, or other person treated as a  
43 distributor pursuant to section four hundred seventy-one-d of this chap-  
44 ter shall be guilty of a misdemeanor punishable by a fine of not more  
45 than five thousand dollars or by a term of imprisonment not to exceed  
46 thirty days.

47 (3) Any person, other than a distributor appointed by the commissioner  
48 [of taxation and finance] under article twenty of this chapter, who  
49 shall knowingly transport or have in his custody, possession or under  
50 his control twenty-five hundred or more cigars or fifty or more pounds  
51 of tobacco upon which the taxes imposed by article twenty of this chap-  
52 ter have not been assumed or paid by a distributor appointed by the  
53 commissioner [of taxation and finance] under article twenty of this  
54 chapter, or other person treated as a distributor pursuant to section  
55 four hundred seventy-one-d of this chapter shall be guilty of a misde-  
56 meanor. Provided further, that any person who has twice been convicted

1 under this subdivision shall be guilty of a class E felony for any  
2 subsequent violation of this section, regardless of the amount of tobac-  
3 co products involved in such violation.

4 (4) For purposes of this subdivision, such person shall knowingly  
5 transport or have in his custody, possession or under his control tobac-  
6 co or cigars on which such taxes have not been assumed or paid by a  
7 distributor appointed by the commissioner [of taxation and finance]  
8 where such person has knowledge of the requirement of the tax on tobacco  
9 products and, where to his knowledge, such taxes have not been assumed  
10 or paid on such tobacco products by a distributor appointed by the  
11 commissioner [of taxation and finance].

12 (k) Any person who falsely or fraudulently makes, alters or counter-  
13 feits a registration certificate or sticker required under the  
14 provisions of section four hundred eighty-a of this chapter, or causes  
15 or procures to be falsely or fraudulently made, altered or counterfeited  
16 any such registration certificate or sticker, or knowingly and willfully  
17 utters, purchases, passes or tenders as true any such false, altered or  
18 counterfeited registration certificate or sticker, and any person who  
19 knowingly and willfully makes, causes to be made, purchases or receives  
20 any device for forging or counterfeiting any registration certificate or  
21 sticker required under the provisions of such section, or who knowingly  
22 and willfully possesses any such device, shall be guilty of a class [B  
23 misdemeanor] E FELONY.

24 S 18. Severability. If any provision of this act or the application of  
25 any provision of this act to any person or circumstance is held to be  
26 invalid, the remainder of this act and the application of the provisions  
27 of this act to any other person or circumstance shall not be affected  
28 thereby and shall continue to be enforced to the fullest extent possi-  
29 ble.

30 S 19. This act shall take effect on the ninetieth day after it shall  
31 have become a law.