

3896--A

2009-2010 Regular Sessions

I N S E N A T E

April 3, 2009

Introduced by Sens. STACHOWSKI, C. JOHNSON, KLEIN, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to requiring the exclusive use of encrypted counterfeit-resistant cigarette tax stamps to provide a commission to agents for the purpose of leasing or the purchase of machinery and a sell-through provision for retailers

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

1 Section 1. The tax law is amended by adding a new section 472-a to
2 read as follows:
3 S 472-A. TOBACCO TAX SECURITY. 1. PURSUANT TO THE POWERS VESTED IN THE
4 COMMISSIONER UNDER SECTION FOUR HUNDRED SEVENTY-TWO OF THIS ARTICLE, THE
5 COMMISSIONER SHALL INCORPORATE A SYSTEM FOR SECURING TOBACCO TAXES DUE
6 TO THE STATE. SUCH A SYSTEM SHALL BE COMPRISED, AT A MINIMUM, OF THE
7 FOLLOWING:
8 (A) THE USE OF ENCRYPTED TAX STAMPS BY STAMPING AGENTS LICENSED PURSU-
9 ANT TO SECTION FOUR HUNDRED SEVENTY-TWO OF THIS ARTICLE. SUCH STAMPS
10 SHALL BE ENCRYPTED TO IDENTIFY, AT A MINIMUM:
11 (I) THE NAME AND ADDRESS OF THE LICENSED STAMPING AGENT AFFIXING THE
12 STAMP;
13 (II) THE DATE THE STAMP WAS AFFIXED TO THE PRODUCT; AND
14 (III) THE DENOMINATED VALUE OF THE STAMP OR METER IMPRESSION.
15 (B) THE SECURE MANAGEMENT OF ANY DATA REQUIRED UNDER PARAGRAPH (A) OF
16 THIS SUBDIVISION AND OTHER DATA AS MAY BE REQUIRED BY THE COMMISSIONER;

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

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

4 2. SUCH ENCRYPTED TAX STAMPS SHALL:

5 (A) BE PRODUCED IN A PROVEN SECURE FACILITY CERTIFIED IN ACCORDANCE
6 WITH THE SECURITY ASSISTANCE STANDARDS ESTABLISHED IN TWO THOUSAND FIVE
7 BY THE AMERICAN NATIONAL STANDARDS INSTITUTE AND THE NORTH AMERICAN
8 SECURITY PRODUCTS ORGANIZATION;

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

11 (C) BE APPLIED BY MACHINES WHEREUPON THE ENCRYPTED DATA SHALL BE
12 INSTANTANEOUSLY CAPTURED AND STORED BY AND FOR THE DEPARTMENT;

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

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

18 S 2. The department of taxation and finance shall issue a request for
19 proposal for the purpose of providing the system described in section
20 472-a of the tax law, as added by section one of this act, within 90
21 days of the effective date of this act. Bids from qualified vendors
22 shall be received by the department of taxation and finance no later
23 than 60 days following the issuance of the request for proposal. Any
24 contract issued pursuant to this section shall be issued within 90 days
25 following receipt of bids and installation of such system completed by
26 the successful bidder within 180 days of the issuance of such contract.

27 S 3. Subdivision 1 of section 472 of the tax law, as amended by chap-
28 ter 629 of the laws of 1996, is amended to read as follows:

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

1 vision and had expressly referred to the applicant for, or the holder
2 of, an agent's license. Whenever the commissioner shall sell and deliver
3 to any such agent any such stamps, such agent shall be entitled to
4 receive as compensation for his services and expenses as such agent in
5 selling or affixing such stamps, and to retain out of the moneys to be
6 paid by him for such stamps, a commission on the par value thereof. The
7 commissioner is hereby authorized to prescribe a schedule of commis-
8 sions, not exceeding five per centum, allowable to such agent for buying
9 and affixing such stamps. Such schedule shall be uniform with respect to
10 the different types of stamps used, and may be on a graduated scale with
11 respect to the number of stamps purchased, PROVIDED HOWEVER, SUCH AGENTS
12 SHALL BE ENTITLED TO AN ADDED COMMISSION IN EXCESS OF THE FIVE PER
13 CENTUM TO BE DETERMINED BY THE COMMISSIONER TO MITIGATE THE COSTS TO
14 SUCH AGENTS IN RELATION TO THE LEASE OR PURCHASE OF THE MACHINERY AND/OR
15 EQUIPMENT NECESSARY TO APPLY OR AFFIX SUCH STAMPS AS REQUIRED IN SECTION
16 FOUR HUNDRED SEVENTY-TWO-A OF THIS ARTICLE. The commissioner may, in his
17 discretion, permit an agent to pay for such stamps within thirty days
18 after the date of purchase and may require any such agent to file with
19 the department [of taxation and finance] a bond issued by a surety
20 company approved by the superintendent of insurance as to solvency and
21 responsibility and authorized to transact business in the state or other
22 security acceptable to the commissioner, in such amount as the commis-
23 sioner may fix, to secure the payment of any sums due from such agent
24 pursuant to this article. If securities are deposited as security under
25 this subdivision, such securities shall be kept in the custody of the
26 commissioner and may be sold by the commissioner if it becomes necessary
27 so to do in order to recover any sums due from such agent pursuant to
28 this article, but no such sale shall be had until after such agent shall
29 have had opportunity to litigate the validity of any tax if it elects so
30 to do. Upon any such sale, the surplus, if any, above the sums due under
31 this article shall be returned to such agent.

32 S 4. The department of taxation and finance shall, following the
33 implementation period and annually thereafter, report to the legislature
34 and to the governor on the effectiveness of the provisions of this act.

35 S 5. This act shall take effect immediately, provided, however, that
36 section two of this act shall take effect on the one hundred eightieth
37 day following the awarding of such contract pursuant to this act;
38 provided further that any product in the possession of a cigarette
39 retail dealer on the effective date of this act and stamped to the
40 commissioner of taxation and finance's satisfaction may continue to be
41 offered for sale and sold to cigarette purchasers.