

8255

I N S E N A T E

June 18, 2010

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the tax law and the administrative code of the city of New York, in relation to the destruction of seized and forfeited cigarettes and tobacco products

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

1 Section 1. Section 1846 of the tax law, as added by chapter 65 of the
2 laws of 1985, subdivision (a) as amended by section 2 of part E of chap-
3 ter 93 of the laws of 2002, subdivision (a-1) as added by section 3 of
4 part J of chapter 383 of the laws of 2001, subdivision (d) as added by
5 chapter 384 of the laws of 1999, is amended to read as follows:
6 S 1846. Seizure and forfeiture of cigarettes.--(a) Whenever a police
7 officer designated in section 1.20 of the criminal procedure law or a
8 peace officer designated in subdivision four of section 2.10 of such
9 law, acting pursuant to his or her special duties, shall discover any
10 cigarettes subject to tax provided by article twenty of this chapter or
11 by chapter thirteen of title eleven of the administrative code of the
12 city of New York, and upon which the tax has not been paid or the stamps
13 not affixed as required by such article or such chapter thirteen, they
14 are hereby authorized and empowered forthwith to seize and take
15 possession of such cigarettes, together with any vending machine or
16 receptacle in which they are held for sale. Such cigarettes, vending
17 machine or receptacle seized by a police officer or such peace officer
18 shall be turned over to the commissioner. Such seized cigarettes, vend-
19 ing machine or receptacle, not including money contained in such vending
20 machine or receptacle, shall be forfeited to the state. The commission-
21 er may, within a reasonable time thereafter, upon publication of a
22 notice to such effect for at least five successive days, before the day
23 of sale, in a newspaper published or circulated in the county where the
24 seizure was made, sell such forfeited [cigarettes and] vending machines
25 or receptacles at public sale and pay the proceeds into the state treas-
26 ury to the credit of the general fund. [Cigarettes so seized and sold
27 shall be sold only to an agent under article twenty of this chapter and

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

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1 the notice of sale shall contain a provision to this effect.] Notwith-
2 standing any other provision of this section, the commissioner may enter
3 into an agreement with any city of this state which is authorized to
4 impose a tax similar to that imposed by article twenty of this chapter
5 to provide for the disposition between the state and any such city of
6 the proceeds from any such sale. THE COMMISSIONER MUST, WITHIN A
7 REASONABLE TIME AFTER THE FORFEITURE OF SUCH CIGARETTES, UPON PUBLICA-
8 TION OF A NOTICE TO SUCH EFFECT FOR AT LEAST FIVE SUCCESSIVE DAYS,
9 BEFORE THE DAY OF DESTRUCTION, IN A NEWSPAPER PUBLISHED OR CIRCULATED IN
10 THE COUNTY WHERE THE SEIZURE WAS MADE, DESTROY SUCH FORFEITED CIGA-
11 RETTES. THE COMMISSIONER MAY, PRIOR TO ANY DESTRUCTION OF CIGARETTES,
12 PERMIT THE TRUE HOLDER OF THE TRADEMARK RIGHTS IN THE CIGARETTES TO
13 INSPECT SUCH FORFEITED CIGARETTES IN ORDER TO ASSIST IN ANY INVESTI-
14 GATION REGARDING SUCH CIGARETTES.

15 (a-1) Whenever a police officer designated in section 1.20 of the
16 criminal procedure law or a peace officer designated in subdivision four
17 of section 2.10 of such law, acting pursuant to his or her special
18 duties, shall discover any cigarettes which have been stamped in
19 violation of section four hundred eighty-b of this chapter, such officer
20 is hereby authorized and empowered forthwith to seize and take
21 possession of such cigarettes, and such cigarettes shall be subject to a
22 forfeiture action pursuant to the procedures provided for in article
23 thirteen-A of the civil practice law and rules, as if such article
24 specifically provided for forfeiture of cigarettes seized pursuant to
25 this section as a preconviction forfeiture crime. Subdivisions (b), (c)
26 and (d) of this section shall not apply to cigarettes seized pursuant to
27 this subdivision.

28 (b) In the alternative, the tax commission, on reasonable notice by
29 mail or otherwise, may permit the person from whom said cigarettes were
30 seized to redeem the said cigarettes, and any vending machine or recep-
31 tacle seized therewith, by the payment of the tax due, plus a penalty of
32 fifty per centum thereof, plus interest on the amount of tax due for
33 each month or fraction thereof after such tax became due (determined
34 without regard to any extension of time for filing or paying) at the
35 rate applicable under subparagraph (ii) of paragraph (a) of subdivision
36 one of section four hundred eighty-one of this chapter and the costs
37 incurred in such proceeding, which total payment shall not be less than
38 five dollars; provided, however, that such seizure and sale or redemp-
39 tion shall not be deemed to relieve any person from fine or imprisonment
40 provided for in this article for violation of any provision of article
41 twenty of this chapter.

42 (c) In the alternative, [if the tax commission concludes that any
43 cigarettes seized pursuant to this section, when offered at public sale,
44 will bring a price less than the reasonably estimated price which the
45 department of correctional services would have to pay for the purchase
46 of such cigarettes for sale to or use by inmates in institutions under
47 the jurisdiction of such department,] the tax commission may dispose of
48 [such] ANY cigarettes SEIZED PURSUANT TO THIS SECTION by transferring
49 them to the department of correctional services for sale to or use by
50 inmates in such institutions.

51 (d) Cigarettes seized pursuant to a violation of section four hundred
52 seventy-three-b of this chapter shall be destroyed [or sold for export
53 at the discretion of the commissioner]. The department may also seize
54 and destroy any vending machine or receptacle in which cigarettes
55 stamped in violation of section four hundred seventy-three-b of this
56 chapter are held for sale.

1 S 2. Section 1846-a of the tax law, as added by chapter 61 of the laws
2 of 1989, subdivision (a-1) as added by chapter 552 of the laws of 2008,
3 is amended to read as follows:

4 S 1846-a. Forfeiture action with respect to tobacco products. (a)
5 Whenever a police officer designated in section 1.20 of the criminal
6 procedure law or a peace officer designated in subdivision four of
7 section 2.10 of such law, acting pursuant to his special duties, shall
8 discover any tobacco products in excess of five hundred cigars or ten
9 pounds of tobacco which are being imported for sale in the state where
10 the person importing or causing such tobacco products to be imported has
11 not been appointed as a distributor pursuant to section four hundred
12 seventy-two of this chapter, such police officer or peace officer is
13 hereby authorized and empowered forthwith to seize and take possession
14 of such tobacco products. Such tobacco products seized by a police offi-
15 cer or peace officer shall be turned over to the commissioner of taxa-
16 tion and finance. Such seized tobacco products shall be forfeited to the
17 state. The commissioner of taxation and finance [may] MUST, within a
18 reasonable time thereafter, upon publication of a notice to such effect
19 for at least five successive days, before the day of [sale] DESTRUCTION,
20 in a newspaper published or circulated in the county where the seizure
21 was made, [sell] DESTROY such forfeited tobacco products [at public sale
22 and pay the proceeds into the state treasury to the credit of the gener-
23 al fund. Tobacco products so seized and sold shall be sold only to a
24 distributor appointed under article twenty of this chapter and the
25 notice of sale shall contain a provision to this effect].

26 (a-1) Whenever a police officer designated in section 1.20 of the
27 criminal procedure law or a peace officer designated in subdivision four
28 of section 2.10 of the criminal procedure law, acting pursuant to his or
29 her special duties, discovers any roll-your-own tobacco that is in
30 violation of section four hundred eighty-c of this chapter, the officer
31 is authorized and empowered to seize and take possession of the roll-
32 your-own tobacco, and the roll-your-own tobacco is subject to a forfei-
33 ture action under the procedures provided for in article thirteen-A of
34 the civil practice law and rules, as if that article specifically
35 provided for forfeiture of roll-your-own tobacco seized under this
36 section as a preconviction forfeiture crime. Subdivisions (b) and (c) of
37 this section do not apply to roll-your-own tobacco seized pursuant to
38 this subdivision.

39 (b) In the alternative, the commissioner, on reasonable notice by mail
40 or otherwise, may permit the person from whom said tobacco products were
41 seized to redeem the said tobacco products by the payment of the tax
42 due, plus a penalty of fifty per centum thereof, plus interest on the
43 amount of tax due for each month or fraction thereof after such tax
44 became due (determined without regard to any extension of time for
45 filing or paying) at the rate applicable under subparagraph (ii) of
46 paragraph (a) of subdivision one of section four hundred eighty-one of
47 this chapter and the costs incurred in such proceeding, which total
48 payment shall not be less than five dollars; provided, however, that
49 such seizure and sale or redemption shall not be deemed to relieve any
50 person from fine or imprisonment provided for in this article for
51 violation of any provision of article twenty of this chapter.

52 (c) In the alternative, [if the commissioner concludes that any tobac-
53 co products seized pursuant to this section, when offered at public
54 sale, will bring a price less than the reasonably estimated price which
55 the department of correctional services would have to pay for the
56 purchase of such tobacco products for sale to or use by inmates in

1 institutions under the jurisdiction of such department,] the commission-
2 er may dispose of [such] ANY tobacco products SEIZED PURSUANT TO THIS
3 SECTION by transferring them to the department of correctional services
4 for sale to or use by inmates in such institutions.

5 S 3. Section 11-4021 of the administrative code of the city of New
6 York, as added by chapter 765 of the laws of 1985, is amended to read as
7 follows:

8 S 11-4021 Seizure and forfeiture of cigarettes. (a) Whenever a police
9 officer designated in section 1.20 of the criminal procedure law or a
10 peace officer designated in subdivision five of section 2.10 of such
11 law, acting pursuant to his special duties, shall discover any ciga-
12 rettes subject to any tax provided by chapter thirteen of this title,
13 and upon which the tax has not been paid or the stamps not affixed as
14 required by such chapter, they are hereby authorized and empowered
15 forthwith to seize and take possession of such cigarettes, together with
16 any vending machine or receptacle in which they are held for sale. Such
17 cigarettes, vending machine or receptacle seized by a police officer or
18 such peace officer shall be turned over to the commissioner of finance.

19 (b) The seized cigarettes and any vending machine or receptacle seized
20 therewith, but not the money contained in such vending machine or recep-
21 tacle shall thereupon be forfeited to the city, unless the person from
22 whom the seizure is made, or the owner of such seized cigarettes, vend-
23 ing machine or receptacle, or any other person having an interest in
24 such property, shall within ten days of such seizure, apply to the
25 commissioner of finance for a hearing to determine the propriety of the
26 seizure, or unless the commissioner of finance shall on his own motion
27 release the seized cigarettes, vending machine or receptacle. After such
28 hearing the commissioner of finance shall give notice of his decision to
29 the petitioner. The decision of the commissioner shall be reviewable for
30 error, illegality, unconstitutionality or any other reason whatsoever by
31 a proceeding under article seventy-eight of the civil practice law and
32 rules if application therefor is made to the supreme court within thirty
33 days after the giving of the notice of such decision. Such proceeding
34 shall not be instituted unless there shall first be filed with the
35 commissioner of finance an undertaking, issued by a surety company
36 authorized to transact business in New York state and approved by the
37 superintendent of insurance of New York state as to solvency and respon-
38 sibility, in such amount as a justice of the supreme court shall
39 approve, to the effect that if such proceeding be dismissed, or the
40 seizure confirmed, the petitioner will pay all costs and charges which
41 may accrue in the prosecution of the proceeding.

42 (c) The commissioner of finance may, within a reasonable time after
43 the forfeiture to the city of such [cigarettes,] vending machines or
44 receptacles, upon publication of a notice to such effect for at least
45 five successive days, in a newspaper published or circulated in the
46 city, sell such forfeited [cigarettes and] vending machines or recepta-
47 cles at public sale and pay the proceeds into the treasury of the city
48 to the credit of the general fund. [Cigarettes so seized and sold shall
49 be sold only to an agent under chapter thirteen of this title and the
50 notice of sale shall contain a provision to this effect.] Such seized
51 [cigarettes,] vending machines or receptacles may be sold prior to
52 forfeiture if the owner of the seized property consents to the sale.
53 Notwithstanding any other provision of this section, the commissioner of
54 finance may enter into an agreement with the state tax commission to
55 provide for the disposition between the city and state of the proceeds
56 from any such sale. THE COMMISSIONER OF FINANCE MUST, WITHIN A REASON-

1 ABLE TIME AFTER THE FORFEITURE TO THE CITY OF SUCH CIGARETTES, UPON
2 PUBLICATION OF A NOTICE TO SUCH EFFECT FOR AT LEAST FIVE SUCCESSIVE
3 DAYS, PRIOR TO DESTRUCTION, IN A NEWSPAPER PUBLISHED OR CIRCULATED IN
4 THE CITY, DESTROY SUCH FORFEITED CIGARETTES. THE COMMISSIONER MAY, PRIOR
5 TO ANY DESTRUCTION OF CIGARETTES, PERMIT THE TRUE HOLDER OF THE TRADE-
6 MARK RIGHTS IN THE CIGARETTES TO INSPECT SUCH FORFEITED CIGARETTES IN
7 ORDER TO ASSIST IN ANY INVESTIGATION REGARDING SUCH CIGARETTES.

8 (d) In the alternative, the commissioner of finance, on reasonable
9 notice by mail or otherwise, may permit the person from whom said ciga-
10 rettes were seized to redeem the said cigarettes, and any vending
11 machine or receptacle seized therewith, or may permit the owner of any
12 such cigarettes, vending machine or receptacle to redeem the same, by
13 the payment of the tax due, plus a penalty of fifty percent thereof,
14 plus interest on the amount of tax due for each month or fraction there-
15 of after such tax became due (determined without regard to any extension
16 of time for filing or paying) at the rate applicable under subdivision
17 (d) of section 11-1317 of this title and the costs incurred in such
18 proceeding, which total payment shall not be less than five dollars;
19 provided, however, that such seizure and sale or redemption shall not be
20 deemed to relieve any person from fine or imprisonment provided for in
21 this chapter for violation of any provisions of this chapter or chapter
22 thirteen of this title.

23 (e) In the alternative, [if the commissioner of finance concludes that
24 any cigarettes seized pursuant to this section, when offered at public
25 sale, will bring a price less than the reasonably estimated price which
26 the department of correction would have to pay for the purchase of such
27 cigarettes for sale to or use by inmates in institutions under the
28 jurisdiction of such department,] the commissioner of finance may
29 dispose of [such] ANY cigarettes SEIZED PURSUANT TO THIS SECTION by
30 transferring them to the department of correction for sale to or use by
31 inmates in such institutions.

32 S 4. This act shall take effect immediately.