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

10373

I N A S S E M B L Y

March 22, 2010

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

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

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

Section 1. Subparagraph (B) of paragraph 1 and subparagraph (B) of paragraph 2 of subdivision (b) of section 483 of the tax law, subparagraph (B) of paragraph 1 as amended by chapter 1 of the laws of 1999 and subparagraph (B) of paragraph 2 as amended by chapter 4 of the laws of 1988, are amended to read as follows:

(B) In the absence of the filing with the commissioner of satisfactory proof of a lesser cost of doing business of the agent making the sale, the cost of doing business by the agent shall be presumed to be [seven-eighths of one] TWO AND FIVE-EIGHTHS percent of the basic cost of cigarettes for sales to wholesale dealers plus one cent per package of ten cigarettes, two cents per package of twenty cigarettes and in the case of a package containing more than twenty cigarettes, two cents and one-half of a cent for each five cigarettes in excess of twenty cigarettes, [one] FOUR and one-half percent of the basic cost of cigarettes for sales to chain stores plus one cent per package of ten cigarettes, two cents per package of twenty cigarettes and in the case of a package containing more than twenty cigarettes, two cents and one-half of a cent for each five cigarettes in excess of twenty cigarettes and [three and seven-eighths] SIX AND ONE-HALF percent of the basic cost of cigarettes with respect to sales to retail dealers plus one cent per package of ten cigarettes, two cents per package of twenty cigarettes and in the case of a package containing more than twenty cigarettes, two cents and one-half of a cent for each five cigarettes in excess of twenty cigarettes and the foregoing cents per pack shall be included in the "cost of doing

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

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

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

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

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

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

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

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

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

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

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

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

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

2. SUCH ENCRYPTED TAX STAMPS OR OTHER MARKERS SHALL:

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

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

(C) BE APPLIED BY MACHINES OR OTHER MEANS WHEREUPON THE ENCRYPTED DATA SHALL BE INSTANTANEOUSLY CAPTURED AND STORED BY AND FOR THE COMMISSIONER;

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

(E) BE CAPABLE OF BEING READ BY A SCANNING OR SIMILAR DEVICE THAT CAN BE UTILIZED BY ENFORCEMENT AGENTS OF THE STATE AND OTHERS DEEMED APPROPRIATE BY THE COMMISSIONER.

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

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

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

S 5. Subdivision 1 of section 472 of the tax law, as amended by chapter 629 of the laws of 1996, is amended to read as follows:

1. The commissioner shall prescribe, prepare and furnish stamps of such denominations and quantities as may be necessary for the payment of the tax on cigarettes AND, AT THE DISCRETION OF THE COMMISSIONER, ON OTHER TOBACCO PRODUCTS imposed by this article, and may from time to time and as often as he deems advisable provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design, in the manner 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 dealers in cigarettes, who maintain separate warehousing facilities for the purpose of receiving and distributing cigarettes and conducting their business, 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 agents to buy or affix stamps to be used in paying the tax herein imposed, 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) 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.

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

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

S 7. This act shall take effect immediately, provided, however, that sections one and two of this act shall take effect on the fourteenth day after it shall have become a law; provided further that section four of this act shall take effect on the one hundred eightieth day after it shall have become a law; provided further that any product in the possession of a cigarette retail dealer on the effective date of this act and stamped to the commissioner of taxation and finance's satisfaction may continue to be offered for sale and sold to cigarette purchasers.