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2009-2010 Regular Sessions

I N A S S E M B L Y

January 26, 2009

Introduced by M. of A. CAMARA, MAYERSOHN, EDDINGTON, FIELDS, JAFFEE, MILLMAN, JEFFRIES -- Multi-Sponsored by -- M. of A. CLARK, MILLER, P. RIVERA, ROBINSON -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to increasing the tax imposed upon the sale or use of cigarettes; and to amend the state finance law, in relation to the tobacco use prevention and control program fund

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

1 Section 1. Subdivision 1 of section 471 of the tax law, as amended by  
2 section 1 of part RR-1 of chapter 57 of the laws of 2008, is amended to  
3 read as follows:  
4 1. There is hereby imposed and shall be paid a tax on all cigarettes  
5 possessed in the state by any person for sale, except that no tax shall  
6 be imposed on cigarettes sold under such circumstances that this state  
7 is without power to impose such tax or sold to the United States or sold  
8 to or by a voluntary unincorporated organization of the armed forces of  
9 the United States operating a place for the sale of goods pursuant to  
10 regulations promulgated by the appropriate executive agency of the  
11 United States, to the extent provided in such regulations and policy  
12 statements of such an agency applicable to such sales. Such tax on ciga-  
13 rettes shall be at the rate of [two] THREE dollars and [seventy-five]  
14 FIFTY cents for each twenty cigarettes or fraction thereof, provided,  
15 however, that if a package of cigarettes contains more than twenty ciga-  
16 rettes, the rate of tax on the cigarettes in such package in excess of  
17 twenty shall be [sixty-eight] EIGHTY-SEVEN and [three-quarters] ONE-HALF  
18 cents for each five cigarettes or fraction thereof. Such tax is intended  
19 to be imposed upon only one sale of the same package of cigarettes. It  
20 shall be presumed that all cigarettes within the state are subject to  
21 tax until the contrary is established, and the burden of proof that any

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

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1 cigarettes are not taxable hereunder shall be upon the person in  
2 possession thereof.

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

5 S 471-a. Use tax on cigarettes. There is hereby imposed and shall be  
6 paid a tax on all cigarettes used in the state by any person, except  
7 that no tax shall be imposed (1) if the tax provided in section four  
8 hundred seventy-one of this article is paid, (2) on the use of ciga-  
9 rettes which are exempt from the tax imposed by said section, or (3) on  
10 the use of four hundred or less cigarettes, brought into the state on,  
11 or in the possession of, any person. Such tax on cigarettes shall be at  
12 the rate of [two] THREE dollars and [seventy-five] FIFTY cents for each  
13 twenty cigarettes or fraction thereof, provided, however, that if a  
14 package of cigarettes contains more than twenty cigarettes, the rate of  
15 tax on the cigarettes in such package in excess of twenty shall be  
16 [sixty-eight] EIGHTY-SEVEN and [three-quarters] ONE-HALF cents for each  
17 five cigarettes or fraction thereof. Within twenty-four hours after  
18 liability for the tax accrues, each such person shall file with the  
19 commissioner a return in such form as the commissioner may prescribe  
20 together with a remittance of the tax shown to be due thereon. For  
21 purposes of this article, the word "use" means the exercise of any right  
22 or power actual or constructive and shall include but is not limited to  
23 the receipt, storage or any keeping or retention for any length of time,  
24 but shall not include possession for sale. All other provisions of this  
25 article if not inconsistent shall apply to the administration and  
26 enforcement of the tax imposed by this section in the same manner as if  
27 the language of said provisions had been incorporated in full into this  
28 section.

29 S 3. Section 482 of the tax law, as amended by section 3 of part RR-1  
30 of chapter 57 of the laws of 2008, is amended to read as follows:

31 S 482. Deposit and disposition of revenue. All taxes, fees, interest  
32 and penalties collected or received by the commissioner under this arti-  
33 cle and article twenty-A of this chapter shall be deposited and disposed  
34 of pursuant to the provisions of section one hundred seventy-one-a of  
35 this chapter. From the taxes, interest and penalties collected or  
36 received by the commissioner under sections four hundred seventy-one and  
37 four hundred seventy-one-a of this article, effective on and after March  
38 first, two thousand, forty-nine and fifty-five hundredths, and effective  
39 on and after February first, two thousand two, forty-three and seventy  
40 hundredths; and effective on and after May first, two thousand two,  
41 sixty-four and fifty-five hundredths; and effective on and after April  
42 first, two thousand three, sixty-one and twenty-two hundredths percent;  
43 and effective on and after June [third] FIRST, two thousand [eight]  
44 NINE, [seventy] FIFTY-FIVE and [sixty-three hundredths] ONE-HALF percent  
45 collected or received under such sections shall be deposited to the  
46 credit of the tobacco control and insurance initiatives pool to be  
47 established and distributed by the commissioner of health in accordance  
48 with section twenty-eight hundred seven-v of the public health law.  
49 NOTWITHSTANDING THE PROVISIONS OF SECTION ONE HUNDRED SEVENTY-ONE-A OF  
50 THIS CHAPTER, TWENTY-ONE AND ONE-HALF PERCENT OF THE TAXES COLLECTED OR  
51 RECEIVED BY THE COMMISSIONER PURSUANT TO SECTIONS FOUR HUNDRED SEVENTY-  
52 ONE AND FOUR HUNDRED SEVENTY-ONE-A OF THIS ARTICLE SHALL BE CREDITED TO  
53 AND DEPOSITED IN THE TOBACCO USE PREVENTION AND CONTROL PROGRAM FUND  
54 ESTABLISHED PURSUANT TO SECTION EIGHTY-SIX OF THE STATE FINANCE LAW.

55 S 4. The state finance law is amended by adding a new section 86 to  
56 read as follows:

1 S 86. TOBACCO USE PREVENTION AND CONTROL PROGRAM FUND. 1. THERE IS  
2 HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE  
3 COMMISSIONER OF TAXATION AND FINANCE A SPECIAL FUND TO BE KNOWN AS THE  
4 "TOBACCO USE PREVENTION AND CONTROL PROGRAM FUND".

5 2. THE TOBACCO USE PREVENTION AND CONTROL PROGRAM FUND SHALL CONSIST  
6 OF MONEYS APPROPRIATED THERETO, AND FUNDS TRANSFERRED FROM ANY OTHER  
7 FUND OR SOURCES INCLUDING TAX REVENUE REQUIRED TO BE DEPOSITED THEREIN  
8 PURSUANT TO SECTION FOUR HUNDRED EIGHTY-TWO OF THE TAX LAW.

9 3. THE MONEYS RECEIVED BY SUCH FUND SHALL BE EXPENDED PURSUANT TO  
10 APPROPRIATION ONLY FOR THE PURPOSES OF IMPLEMENTING THE TOBACCO USE  
11 PREVENTION AND CONTROL PROGRAM PURSUANT TO SECTION THIRTEEN HUNDRED  
12 NINETY-NINE-II OF THE PUBLIC HEALTH LAW.

13 S 5. This act shall take effect on the first of January next succeed-  
14 ing the date on which it shall have become a law.