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

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2009-2010 Regular Sessions

I N A S S E M B L Y

April 6, 2009

Introduced by M. of A. GABRYSZAK, SPANO, FIELDS, CYMBROWITZ, BENEDETTO, JOHN, CASTRO -- Multi-Sponsored by -- M. of A. AUBRY, CROUCH, DelMONTE, DESTITO, ERRIGO, KOON, MAGEE, McDONOUGH, McKEVITT, PEOPLES-STOKES, SCARBOROUGH, TOWNSEND -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- 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:

Section 1. The tax law is amended by adding a new section 472-a to read as follows:

S 472-A. TOBACCO TAX SECURITY. 1. PURSUANT TO THE POWERS VESTED IN THE COMMISSIONER UNDER SECTION FOUR HUNDRED SEVENTY-TWO OF THIS ARTICLE, THE COMMISSIONER SHALL INCORPORATE A SYSTEM FOR SECURING TOBACCO TAXES DUE TO THE STATE. SUCH A SYSTEM SHALL BE COMPRISED, AT A MINIMUM, OF THE FOLLOWING:

(A) THE USE OF ENCRYPTED TAX STAMPS BY STAMPING AGENTS LICENSED PURSUANT TO SECTION FOUR HUNDRED SEVENTY-TWO OF THIS ARTICLE. SUCH STAMPS SHALL BE ENCRYPTED TO IDENTIFY, AT A MINIMUM:

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

(II) THE DATE THE STAMP 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;

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

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(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 SHALL:

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

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

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

(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.

S 2. The department of taxation and finance shall issue a request for proposal for the purpose of providing the system described in section 472-a of the tax law, as added by section one of this act, within 90 days of the effective date 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 3. 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 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 subdi-

vision 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, PROVIDED HOWEVER, SUCH AGENTS SHALL BE ENTITLED TO AN ADDED COMMISSION IN EXCESS OF THE FIVE PER CENTUM TO BE DETERMINED BY THE COMMISSIONER TO MITIGATE THE COSTS TO SUCH AGENTS IN RELATION TO THE LEASE OR PURCHASE OF THE MACHINERY AND/OR EQUIPMENT NECESSARY TO APPLY OR AFFIX SUCH STAMPS AS REQUIRED IN SECTION FOUR HUNDRED SEVENTY-TWO-A OF THIS ARTICLE. 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 4. The department of taxation and finance shall, following the implementation period and annually thereafter, report to the legislature and to the governor on the effectiveness of the provisions of this act.

S 5. This act shall take effect immediately, provided, however, that section two of this act shall take effect on the one hundred eightieth day following the awarding of such contract pursuant to this act; 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.