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

1834

2009-2010 Regular Sessions

I N S E N A T E

February 9, 2009

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to collecting the tax on cigarettes; and to repeal subdivision 5 of section 480-a of such law relating thereto

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

Section 1. Subdivisions 8, 9 and 11 of section 470 of the tax law, subdivision 8 as amended by section 1 of part K of chapter 61 of the laws of 2005, subdivisions 9 and 11 as amended by chapter 61 of the laws of 1989, are amended and five new subdivisions 20, 21, 22, 23 and 24 are added to read as follows:

8. "Wholesale dealer." Any person WHETHER LOCATED WITHIN OR OUTSIDE OF THIS STATE, who (a) sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, or (b) owns, operates or maintains one or more cigarette or tobacco product vending machines in, at or upon premises owned or occupied by any other person, or (c) sells cigarettes or tobacco products to an Indian nation or tribe or to a reservation cigarette seller on a qualified reservation. SUCH TERM SHALL NOT INCLUDE ANY CIGARETTE MANUFACTURER, EXPORT WAREHOUSE PROPRIETOR, OR IMPORTER WITH A VALID PERMIT UNDER 26 U.S.C. S 5712, IF SUCH PERSON SELLS OR DISTRIBUTES CIGARETTES IN THIS STATE ONLY TO LICENSED AGENTS, OR TO AN EXPORT WAREHOUSE PROPRIETOR OR ANOTHER MANUFACTURER WITH A VALID PERMIT UNDER 26 U.S.C. S 5712.

9. "Retail dealer." Any person WHETHER LOCATED WITHIN OR OUTSIDE OF THIS STATE, other than a wholesale dealer engaged in selling cigarettes or tobacco products.

11. "Agent." Any [person] WHOLESALE DEALER licensed by the commissioner of taxation and finance to purchase and affix adhesive or meter stamps on packages of cigarettes under this article.

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

LBD02885-01-9

20. "INDIAN TRIBAL ENTITY" MEANS A FEDERALLY RECOGNIZED INDIAN TRIBE, TRIBAL ENTITY, OR ANY OTHER PERSON DOING BUSINESS AS A DEALER OF CIGARETTES ON THE INDIAN COUNTRY, AS DEFINED IN 18 U.S.C. S 1151, OF SUCH TRIBE WITHIN THIS STATE.

21. "MANUFACTURER" MEANS ANY PERSON WHO MANUFACTURES, FABRICATES, ASSEMBLES, PROCESSES, OR LABELS A FINISHED CIGARETTE.

22. "IMPORTER" MEANS ANY PERSON WHO IMPORTS INTO THE UNITED STATES, EITHER DIRECTLY OR INDIRECTLY, A FINISHED CIGARETTE FOR SALE OR DISTRIBUTION.

23. "STAMP" OR "STAMPS" MEANS THE INDICIA, INCLUDING METER IMPRESSIONS, REQUIRED TO BE PLACED ON A CIGARETTE PACKAGE THAT EVIDENCE PAYMENT OF THE TAX ON CIGARETTES UNDER SECTION FOUR HUNDRED SEVENTY-ONE OF THIS ARTICLE, OR THE INDICIA, INCLUDING METER IMPRESSIONS, USED TO INDICATE THAT THE CIGARETTES ARE INTENDED FOR A SALE OR DISTRIBUTION IN THIS STATE THAT IS EXEMPT FROM STATE TAX UNDER PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED SEVENTY-ONE-F OF THIS ARTICLE.

24. "LICENSED," WHEN USED WITH REFERENCE TO A MANUFACTURER, IMPORTER, AGENT, WHOLESALE DEALER OR RETAIL DEALER, MEANS ONLY THOSE PERSONS WHO HOLD A VALID AND CURRENT LICENSE ISSUED UNDER SECTION FOUR HUNDRED EIGHTY OF THIS ARTICLE FOR THE TYPE OF BUSINESS BEING ENGAGED IN. WHEN THE TERM "LICENSED" IS USED BEFORE A LIST OF ENTITIES, SUCH AS "LICENSED MANUFACTURER, IMPORTER, AGENT OR DEALER," SUCH TERM SHALL APPLY TO EACH ENTITY IN SUCH LIST.

S 2. Subdivisions 2 and 3 of section 471 of the tax law, as amended by chapter 6 of the laws of 1961, are amended to read as follows:

2. It is intended that the ultimate incidence of and liability for the tax shall be upon the consumer, and that any agent [or dealer] who shall pay the tax to the tax commission shall collect the tax from the purchaser or consumer. Except as [hereinafter] provided IN THIS SUBDIVISION, the tax shall be advanced and paid by the agent. The agent shall be liable for the collection and payment of the tax on cigarettes imposed by this article and shall pay the tax to the tax commission by purchasing, under such regulations as it shall prescribe, adhesive stamps of such designs and denominations as it shall prescribe. The tax on cigarettes may also be paid by or through the use of metering machines if the tax commission so prescribes. Agents, located within or without the state, shall purchase stamps and affix such stamps in the manner prescribed to packages of cigarettes to be sold within the state[, in which case any dealer subsequently receiving such stamped packages of cigarettes will not be required to purchase and affix stamps on such packages of cigarettes. Notwithstanding any other provision of this article, the tax commission may by regulation provide that the tax on cigarettes imposed by this article shall be collected without the use of stamps].

3. The amount of taxes advanced and paid by the agent as [hereinabove] provided IN THIS SECTION shall be added to and collected as part of the sales price of the cigarettes.

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

S 471-a. Use tax on cigarettes. There is hereby imposed and shall be paid BY ANY CONSUMER a tax on all cigarettes used in the state by [any person] SUCH CONSUMER, except that no tax shall be imposed (1) if the tax provided in section four hundred seventy-one of this article is paid, (2) on the use of cigarettes which are exempt from the tax imposed by said section, or (3) on the use of four hundred or less cigarettes, brought into the state on, or in the possession of, any [person] CONSUM-

ER. Such tax on cigarettes shall be at the rate of two dollars and seventy-five cents for each twenty cigarettes or fraction thereof, provided, however, that if a package of cigarettes contains more than twenty cigarettes, the rate of tax on the cigarettes in such package in excess of twenty shall be sixty-eight and three-quarters cents for each five cigarettes or fraction thereof. Within twenty-four hours after liability for the tax accrues, each such [person] CONSUMER shall file with the commissioner a return in such form as the commissioner may prescribe together with a remittance of the tax shown to be due thereon. For purposes of this article, the word "use" means the exercise of any right or power actual or constructive and shall include but is not limited to the receipt, storage or any keeping or retention for any length of time, but shall not include possession for sale, AND THE WORD "CONSUMER" MEANS ANY PERSON WHO USES CIGARETTES IN THIS STATE. All other provisions of this article if not inconsistent shall apply to the administration and enforcement of the tax imposed by this section in the same manner as if the language of said provisions had been incorporated in full into this section. BY FILING SUCH RETURN AND PAYING SUCH TAX, A CONSUMER SHALL NOT BE RELIEVED OF ANY CRIMINAL OR CIVIL PENALTIES THAT MAY BE APPLICABLE UNDER THIS ARTICLE OR ARTICLE THIRTY-SEVEN OF THIS CHAPTER.

S 4. The tax law is amended by adding a new section 471-f to read as follows:

S 471-F. APPLICATION OF TAX ON TRIBAL LANDS. 1. EXEMPTION FROM TAX. (A) CIGARETTES SOLD TO OR RECEIVED BY MEMBERS OF A FEDERALLY RECOGNIZED INDIAN TRIBE ON SUCH TRIBE'S INDIAN COUNTRY SHALL NOT BE SUBJECT TO TAX UNDER THIS ARTICLE.

(B) CIGARETTES EXEMPT FROM TAX UNDER 26 U.S.C. S 5701 AND THAT ARE DISTRIBUTED IN ACCORDANCE WITH FEDERAL REGULATIONS SHALL NOT BE SUBJECT TO TAX UNDER THIS ARTICLE.

2. TAX RATE ON SALES TO NON-TRIBAL MEMBERS ON INDIAN COUNTRY. THE TAX RATE APPLICABLE TO CIGARETTES SOLD TO OR RECEIVED BY NON-TRIBAL MEMBERS ON INDIAN LANDS SHALL BE EQUAL TO THE STATE TAX RATE PROVIDED IN SECTION FOUR HUNDRED SEVENTY-ONE OF THIS ARTICLE MINUS ANY TRIBAL TAX RATE, IF THE RESULTING RATE IS A POSITIVE NUMBER AND SUCH RATE SHALL BE ZERO IF THE RESULTING RATE WOULD BE A NEGATIVE NUMBER. CIGARETTES TAXED PURSUANT TO THIS SUBDIVISION SHALL BEAR A TAX STAMP AS REQUIRED BY SECTION FOUR HUNDRED SEVENTY-TWO OF THIS ARTICLE IN AN AMOUNT EQUAL TO THE TAX IMPOSED BY SECTION FOUR HUNDRED SEVENTY-ONE OF THIS ARTICLE; PROVIDED, THAT THE COMMISSION SHALL PERIODICALLY REBATE TO ANY INDIAN TRIBAL ENTITY THAT IS IN COMPLIANCE WITH THIS ARTICLE AN AMOUNT EQUAL TO THE TRIBAL TAX IMPOSED ON SALES UNDER THIS SUBDIVISION OR THE FACE VALUE OF THE TAX STAMPS AFFIXED TO CIGARETTES UNDER THIS SUBDIVISION, WHICHEVER AMOUNT IS LESS.

S 5. Subdivision 1 of section 472 of the tax law, as amended by chapter 629 of the laws of 1996, is amended, subdivisions 2 and 3 are renumbered subdivisions 3 and 4 and a new subdivision 2 is added 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, OR FOR INDICATION THAT THE CIGARETTES ARE TAX-EXEMPT UNDER SECTION FOUR HUNDRED SEVENTY-ONE-F OF 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 WHOLESALE dealers in cigarettes, who maintain separate warehousing facilities for the purpose of receiving and distributing cigarettes and conducting their business, AND 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] OR ARE THEMSELVES ALSO LICENSED AS MANUFACTURERS, IMPORTERS OR agents to buy [or] AND affix stamps to be used in paying the tax [herein] imposed BY THIS ARTICLE. NO PERSON OTHER THAN A LICENSED AGENT MAY PURCHASE OR AFFIX STAMPS AND AGENTS SHALL NOT SELL OR PROVIDE SUCH STAMPS TO ANY OTHER AGENT OR PERSON, 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)] (F) 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.

2. STAMPS SHALL BE APPLIED BY A LICENSED AGENT TO EACH PACKAGE OF CIGARETTES SOLD OR DISTRIBUTED WITHIN THIS STATE AS FOLLOWS: (A) A TAX STAMP SHALL BE APPLIED TO ALL CIGARETTE PACKAGES CONTAINING CIGARETTES SUBJECT TO STATE TAX UNDER THIS ARTICLE, INCLUDING TO CIGARETTES SUBJECT

TO REDUCED STATE TAX UNDER SUBDIVISION TWO OF SECTION FOUR HUNDRED SEVENTY-ONE-F OF THIS ARTICLE.

(B) EXCEPT AS PROVIDED IN PARAGRAPH (C) OF THIS SUBDIVISION, A TAX-EXEMPT STAMP SHALL BE APPLIED TO ALL CIGARETTE PACKAGES INTENDED FOR SALE OR DISTRIBUTION TO CONSUMERS NOT SUBJECT TO STATE TAX UNDER PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED SEVENTY-ONE-F OF THIS ARTICLE.

(C) NO STAMP SHALL BE APPLIED TO ANY CIGARETTE PACKAGE EXEMPT FROM TAX UNDER PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED SEVENTY-ONE-F OF THIS ARTICLE.

S 6. Section 473 of the tax law, as amended by chapter 489 of the laws of 1940, is amended to read as follows:

S 473. Affixation and cancellation of stamps; presumption. Each agent [shall affix] within [the time hereinafter prescribed] TEN CALENDAR DAYS OF RECEIPT OF ANY CIGARETTES, SHALL AFFIX to each package of SUCH cigarettes, stamps evidencing the payment of the tax imposed by this article OR STAMPS EVIDENCING THE EXEMPTION FROM PAYMENT OF THE TAX IMPOSED BY THIS ARTICLE and shall cancel such stamps, WITH A NUMBER UNIQUE TO SUCH AGENT THAT IS LEGIBLE AT THE POINT OF SALE, before such cigarettes are offered for sale or before they are otherwise disposed of, unless stamps have been affixed to such packages of cigarettes and cancelled before such agent received them. Each dealer, other than an agent, shall immediately upon the receipt of any cigarettes at his place of business mark in ink on each unopened box, carton or other container of such cigarettes the word "received" and the year, month, day and hour of such receipt, and shall affix his signature thereto, or in any other manner prescribed.

Each retail dealer shall open such box, carton or other container within twenty-four hours after such receipt and prior to exposing for sale or selling such cigarettes and examine the packages contained therein for the purpose of ascertaining whether or not the said packages have affixed thereto the proper tax stamp; if unstamped or improperly stamped packages of cigarettes are discovered, the retail dealer shall immediately notify the WHOLESALE dealer from whom said cigarettes were purchased. Upon such notification, the WHOLESALE dealer from whom said cigarettes were purchased will replace such unstamped or improperly stamped packages of cigarettes with those upon which stamps have been properly affixed.

Whenever any cigarettes are found in the place of business of such dealer, other than an agent, without the stamps affixed and cancelled, or not marked as having been received within the preceding twenty-four hours, the presumption shall be that such cigarettes are kept therein in violation of the provisions of this article. Stamps shall be affixed to each package of cigarettes of an aggregate denomination not less than the amount of the tax upon the contents therein, and shall be affixed in such manner as to be visible to the purchaser.

S 7. The tax law is amended by adding a new section 473-c to read as follows:

S 473-C. DUTIES OF MANUFACTURERS, IMPORTERS, AGENTS, AND DEALERS. 1. AGENTS MAY APPLY STAMPS ONLY TO CIGARETTE PACKAGES THAT THEY HAVE RECEIVED DIRECTLY FROM A LICENSED MANUFACTURER OR IMPORTER OF CIGARETTES.

2. AGENTS SHALL BE PERMITTED TO SET ASIDE, WITHOUT APPLICATION OF STAMPS, ONLY SUCH PART OF THE AGENT'S STOCK THAT IS IDENTIFIED FOR SALE OR DISTRIBUTION OUTSIDE OF THIS STATE; PROVIDED, THAT ANY SUCH UNSTAMPED CIGARETTES SHALL BE STORED SEPARATELY FROM STAMPED CIGARETTE PACKAGES.

NO AGENT SHALL TRANSFER UNSTAMPED CIGARETTE PACKAGES TO ANOTHER FACILITY OF THE AGENT WITHIN THIS STATE OR TO ANOTHER PERSON WITHIN THIS STATE.

3. A MANUFACTURER OR IMPORTER MAY SELL OR DISTRIBUTE CIGARETTES TO A PERSON LOCATED OR DOING BUSINESS WITHIN THIS STATE (INCLUDING ON ANY TRIBAL LANDS LOCATED WITHIN THIS STATE) ONLY IF SUCH PERSON IS A LICENSED IMPORTER OR AGENT. AN IMPORTER MAY OBTAIN CIGARETTES ONLY FROM A LICENSED MANUFACTURER. AN AGENT MAY OBTAIN CIGARETTES ONLY FROM A LICENSED MANUFACTURER, IMPORTER OR AGENT. AN AGENT MAY SELL OR DISTRIBUTE CIGARETTES TO A PERSON LOCATED OR DOING BUSINESS WITHIN THIS STATE (INCLUDING ON ANY TRIBAL LANDS LOCATED WITHIN THIS STATE) ONLY IF SUCH PERSON IS A LICENSED AGENT, WHOLESALE DEALER OR RETAIL DEALER. A RETAIL DEALER MAY OBTAIN CIGARETTES ONLY FROM A LICENSED AGENT OR WHOLESALE DEALER.

4. ANY PERSON WHO IS DOING BUSINESS BOTH AS AN AGENT AND A WHOLESALE DEALER OR A RETAIL DEALER, SHALL MAINTAIN SEPARATE AREAS FOR STAMPED AND UNSTAMPED PRODUCT.

5. (A) A RETAIL DEALER SHALL REPORT TO THE COMMISSION EACH SALE OR DISTRIBUTION OF MORE THAN ONE THOUSAND CIGARETTES TO ANY CONSUMER IN ANY SINGLE TRANSACTION. SUCH REPORT SHALL INCLUDE:

(I) THE NAME, ADDRESS, DESTINATION (INCLUDING STREET ADDRESS), VEHICLE LICENSE NUMBER, DRIVER'S LICENSE NUMBER, SIGNATURE OF THE PERSON RECEIVING SUCH CIGARETTES, AND THE NAME OF THE PURCHASER;

(II) A DECLARATION OF THE SPECIFIC PURPOSE OF THE RECEIPT (PERSONAL USE, RESALE, OR DELIVERY TO ANOTHER); AND

(III) A DECLARATION OF THE NAME AND ADDRESS OF THE RECIPIENT'S PRINCIPAL IN ALL CASES WHEN THE RECIPIENT IS ACTING AS AN AGENT.

(B) A RETAIL DEALER SHALL NOT KNOWINGLY SELL MORE THAN ONE THOUSAND CIGARETTES TO ANY PERSON IN ANY SERIES OF TRANSACTIONS IN ANY TWO-DAY PERIOD WITHOUT FILING A REPORT AS REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION.

S 8. Subdivisions 1 and 4 of section 474 of the tax law, as amended by chapter 61 of the laws of 1989, are amended to read as follows:

1. (A) Every person who shall possess or transport any unstamped cigarettes upon the public highways, roads or streets of the state, shall be required to have in his actual possession invoices or delivery tickets for such cigarettes. Such invoices or delivery tickets shall show the name and address of the consignor or seller, the name and address of the consignee or purchaser, the quantity [and brands] BY BRAND STYLE of the cigarettes transported, and the name and address of the person who has or shall assume the payment of the tax. The absence of such invoices or delivery tickets shall be prima facie evidence that such person is a dealer in cigarettes in this state and subject to the provisions of this article.

(B) ANY PERSON WHO SHIPS UNSTAMPED CIGARETTE PACKAGES INTO THIS STATE OTHER THAN TO A LICENSED MANUFACTURER, IMPORTER OR AGENT SHALL FIRST FILE WITH THE COMMISSIONER NOTICE OF SUCH SHIPMENT. THIS PARAGRAPH SHALL NOT APPLY TO ANY COMMON OR CONTRACT CARRIER THAT IS TRANSPORTING CIGARETTES THROUGH THIS STATE TO ANOTHER LOCATION UNDER A PROPER BILL OF LADING OR FREIGHT BILL, WHICH STATES THE QUANTITY BY BRAND STYLE, SOURCE, AND DESTINATION OF SUCH CIGARETTES.

4. At the time of delivering cigarettes to any person each MANUFACTURER, IMPORTER, agent or wholesale dealer, and at the time of delivering tobacco products to any person each distributor or wholesale dealer of tobacco products, shall make a true duplicate invoice showing the date of delivery, the number of packages BY BRAND STYLE and number of cigarettes contained therein, in each shipment of cigarettes delivered, and

the items and quantity and wholesale price of each item in each shipment of tobacco products delivered, and the name of the purchaser to whom delivery is made, and shall retain the same for a period of [three] FIVE years subject to the use and inspection of the commissioner of taxation and finance. Each dealer shall procure and retain invoices showing the number of packages BY BRAND STYLE and number of cigarettes contained therein, in each shipment of cigarettes received by him OR HER, and the items and quantity and wholesale price of each item in each shipment of tobacco products received by him OR HER, the date thereof, and the name of the shipper, and shall retain the same for a period of [three] FIVE years subject to the use and inspection of the commissioner [of taxation and finance]. The commissioner [of taxation and finance] by regulation may provide that whenever cigarettes or tobacco products are shipped into the state, the railroad company, express company, trucking company or other public carrier transporting any shipment thereof shall file with the commissioner of taxation and finance a copy of the freight bill within ten days after the delivery in the state of each shipment. All dealers shall maintain and keep for a period of [three] FIVE years such other records of cigarettes or tobacco products received, sold or delivered within the state as may be required by the commissioner [of taxation and finance]. The commissioner [of taxation and finance] is hereby authorized to examine the books, papers, invoices and other records of any person WHO HOLDS A LICENSE OR REGISTRATION UNDER THIS ARTICLE OR WHO IS in possession, control or occupancy of any premises where cigarettes or tobacco products are placed, stored, sold or offered for sale, and the equipment of any such person pertaining to the stamping of cigarettes or the sale and delivery of cigarettes or tobacco products taxable under this article, as well as the stock of cigarettes or tobacco products in any such premises or vehicle. To verify the accuracy of the tax imposed and assessed by this article, each such person is hereby directed and required to give to the commissioner [of taxation and finance] or his OR HER duly authorized representatives, the means, facilities and opportunity for such examinations as are [herein] provided for IN THIS SECTION and required. ALL INVOICES REQUIRED TO BE RETAINED BY THIS SECTION SHALL SHOW THE NAME AND ADDRESS OF THE SELLER AND THE QUANTITY BY BRAND STYLE OF THE CIGARETTES INVOLVED IN THE TRANSACTION AND SHALL BE ITEMIZED FOR EACH FACILITY OF THE MANUFACTURER, IMPORTER, AGENT OR WHOLESALE DEALER. RECORDS REQUIRED UNDER THIS ARTICLE SHALL BE PRESERVED ON THE PREMISES DESCRIBED IN THE RELEVANT LICENSE OR REGISTRATION IN SUCH A MANNER AS TO ENSURE PERMANENCY AND ACCESSIBILITY FOR INSPECTION AT REASONABLE HOURS BY AUTHORIZED PERSONNEL OF THE TAX COMMISSION. WITH THE PERMISSION OF THE COMMISSIONER, PERSONS WITH MULTIPLE PLACES OF BUSINESS MAY RETAIN CENTRALIZED RECORDS, BUT SHALL TRANSMIT DUPLICATES OF THE INVOICES OR THE EQUIVALENT DOCUMENTATION TO EACH PLACE OF BUSINESS WITHIN TWENTY-FOUR HOURS UPON THE REQUEST OF THE COMMISSIONER.

THE COMMISSIONER AND HIS OR HER DESIGNEES AND THE UNITED STATES SECRETARY OF THE TREASURY OR HIS OR HER DESIGNEE, UPON REQUEST, SHALL HAVE ACCESS TO RECORDS REQUIRED UNDER THIS SECTION AND REPORTS REQUIRED UNDER SECTION FOUR HUNDRED SEVENTY-FOUR-A OF THIS ARTICLE. SUCH COMMISSIONER AT HIS OR HER SOLE DISCRETION MAY SHARE THE RECORDS AND REPORTS REQUIRED BY THIS ARTICLE WITH OTHER LAW ENFORCEMENT OFFICIALS OF THE FEDERAL GOVERNMENT OR OTHER STATES. PUBLIC ACCESS TO REPORTS SUBMITTED BY LICENSEES SHALL BE PROVIDED UNDER THE PROCEDURES ESTABLISHED BY THE NEW YORK FREEDOM OF INFORMATION LAW. IN NO CASE, HOWEVER, SHALL INFORMATION ABOUT QUANTITIES OF CIGARETTES BY BRAND STYLE BE RELEASED TO ANYONE OTHER THAN

THE COMMISSIONER, THE UNITED STATES SECRETARY OF THE TREASURY, OR OTHER STATE AND FEDERAL LAW ENFORCEMENT OFFICIALS WITH WHOM SUCH COMMISSIONER HAS ELECTED TO SHARE REPORTS AND RECORDS REQUIRED BY THIS ARTICLE.

S 9. The tax law is amended by adding a new section 474-a to read as follows:

S 474-A. REPORTS. 1. AGENTS AND DEALERS SHALL SUBMIT TO THE COMMISSIONER MONTHLY REPORTS SETTING FORTH THE FOLLOWING INFORMATION, ITEMIZED OR SUBMITTED SEPARATELY FOR EACH OF THEIR PLACES OF BUSINESS: (A) THE QUANTITIES OF CIGARETTES, BY BRAND STYLE, ON HAND BOTH AT THE BEGINNING AND ENDING OF THE REPORTING PERIOD;

(B) THE QUANTITIES OF CIGARETTES, BY BRAND STYLE AND TRANSACTION, THAT WERE RECEIVED DURING THE REPORTING PERIOD AND THE NAME AND ADDRESS OF EACH PERSON FROM WHOM THOSE PRODUCTS WERE RECEIVED;

(C) THE QUANTITIES OF CIGARETTES, BY BRAND STYLE AND TRANSACTION, DISTRIBUTED OR SHIPPED INTO THIS STATE OR BETWEEN LOCATIONS IN THIS STATE DURING THE REPORTING PERIOD (OTHER THAN SALES DIRECTLY TO CONSUMERS) AND THE NAME AND ADDRESS OF EACH PERSON TO WHOM THOSE PRODUCTS WERE DISTRIBUTED OR SHIPPED;

(D) THE QUANTITIES OF CIGARETTES, BY BRAND STYLE AND TRANSACTION, DISTRIBUTED OR SHIPPED TO ANY DESTINATION WHEREVER LOCATED, INCLUDING THE QUANTITIES REPORTED UNDER PARAGRAPH (C) OF THIS SUBDIVISION, DURING THE REPORTING PERIOD (OTHER THAN SALES DIRECTLY TO CONSUMERS) AND THE NAME AND ADDRESS OF EACH PERSON TO WHOM THOSE PRODUCTS WERE DISTRIBUTED OR SHIPPED; AND

(E) THE QUANTITIES OF CIGARETTES, BY BRAND STYLE, SOLD TO CONSUMERS, ITEMIZED TO SHOW SALES TO CONSUMERS IN THIS STATE AND SALES TO CONSUMERS OUTSIDE OF THIS STATE.

2. MANUFACTURERS AND IMPORTERS SHIPPING CIGARETTES INTO OR WITHIN THIS STATE SHALL FILE A MONTHLY REPORT WITH THE COMMISSIONER CONTAINING THE INFORMATION REGARDING SUCH CIGARETTES SET FORTH IN PARAGRAPH (C) OF SUBDIVISION ONE OF THIS SECTION.

3. INDIAN TRIBAL ENTITIES ENGAGED IN THE RETAIL SALE OR DISTRIBUTION OF CIGARETTES SHALL INCLUDE IN SUCH ENTITIES' REPORTS SUBMITTED PURSUANT TO SUBDIVISION ONE OF THIS SECTION THE NAMES AND ADDRESSES OF EVERY TRIBAL MEMBER THAT PURCHASED CIGARETTES DURING THE REPORTING PERIOD AND THE QUANTITY OF CIGARETTES, BY BRAND STYLE, PURCHASED BY EACH SUCH TRIBAL MEMBER.

4. THE REPORTS SUBMITTED PURSUANT TO SUBDIVISION ONE OF THIS SECTION SHALL BE FURTHER ITEMIZED TO DISCLOSE THE QUANTITY OF REPORTED CIGARETTES BEARING TAX STAMPS OF THIS STATE, TAX EXEMPT STAMPS OF THIS STATE, STAMPS OF ANOTHER STATE, AND UNSTAMPED CIGARETTES. AGENT REPORTS SHALL INCLUDE, IF APPLICABLE, THE QUANTITY OF NEW YORK TAX AND TAX EXEMPT STAMPS THAT WERE NOT AFFIXED TO CIGARETTES AND THAT WERE ON HAND AT THE BEGINNING AND ENDING OF THE REPORTING PERIOD, THE QUANTITY OF EACH TYPE OF NEW YORK STAMP RECEIVED DURING THE REPORTING PERIOD, AND THE QUANTITY OF EACH TYPE OF NEW YORK STAMP APPLIED DURING THE REPORTING PERIOD.

5. THE COMMISSIONER MAY ISSUE REGULATIONS REQUIRING SUCH ADDITIONAL INFORMATION IN THE MONTHLY REPORTS AS HE OR SHE MAY DETERMINE IS NECESSARY OR APPROPRIATE FOR PURPOSES OF ENFORCING THE PROVISIONS OF THIS ARTICLE.

S 10. Section 475 of the tax law is amended by adding a new closing paragraph to read as follows:

IN ANY CASE WHERE THE COMMISSIONER OR HIS OR HER DULY AUTHORIZED AGENT, OR ANY POLICE OR PEACE OFFICER OF NEW YORK STATE, HAS KNOWLEDGE OR REASONABLE GROUNDS TO BELIEVE THAT ANY VEHICLE IS TRANSPORTING CIGA-

RETTES IN VIOLATION OF THIS ARTICLE, SUCH COMMISSIONER, SUCH AGENT, OR SUCH POLICE OR PEACE OFFICER, IS AUTHORIZED TO STOP SUCH VEHICLE AND TO INSPECT THE SAME FOR CONTRABAND CIGARETTES.

S 11. Section 476 of the tax law, as amended by chapter 61 of the laws of 1989, is amended to read as follows:

S 476. Refunds; sales of stamps. Whenever any cigarettes upon which stamps have been placed or tobacco products upon which the tax has been paid have been sold and shipped into another state for sale or use there or have become unfit for use and consumption or unsalable, or have been destroyed (EXCEPT FOR CIGARETTES DESTROYED PURSUANT TO SECTION EIGHTEEN HUNDRED FORTY-SIX OF THIS CHAPTER), or whenever the commissioner of taxation and finance shall have determined that any tax imposed by this article shall have been paid in error, the agent, dealer or tobacco products distributor, as the case may be, shall be entitled to a refund of the actual amount of tax so paid, provided application therefor is filed with the commissioner of taxation and finance within two years after the stamps were affixed to such cigarettes or the tax was paid upon such tobacco products, except if an agreement under the provisions of section four hundred seventy-eight (extending the period for determination of tax imposed by this article) is made within the two-year period for the filing of an application for refund provided for in this section, the period for filing an application for refund shall not expire prior to six months after the expiration of the period within which a determination may be made pursuant to the agreement or any extension thereof. If the commissioner [of taxation and finance] is satisfied that any AGENT OR dealer is entitled to a refund he OR SHE shall issue to such [dealer] AGENT stamps of sufficient value to cover the refund of the tax on cigarettes or may, subject to audit by the comptroller, make a refund of the tax on cigarettes or on tobacco products TO SUCH AGENT. No person shall sell or offer for sale any stamp or stamps issued under this article except by written permission of the commissioner [of taxation and finance]. The commissioner [of taxation and finance] may redeem unused stamps lawfully in possession of any [person] AGENT. The commissioner [of taxation and finance] may prescribe necessary rules and regulations concerning refunds, sales of stamps, and redemptions under the provisions of this article.

S 12. Subdivisions 1, 5 and paragraph (a) of subdivision 6 of section 480 of the tax law, subdivision 1 as amended by chapter 629 of the laws of 1996, paragraph (k) of subdivision 1 as amended by chapter 262 of the laws of 2000, subdivision 5 as added by chapter 860 of the laws of 1987 and paragraph (a) of subdivision 6 as amended by chapter 576 of the laws of 1994, are amended, subdivision 3 is amended by adding a new paragraph (c), and a new subdivision 7 is added to read as follows:

1. General. (a) [On and after July first, nineteen hundred thirty-nine no] NO person shall be a MANUFACTURER, IMPORTER, AGENT, OR wholesale dealer unless he OR SHE has been granted and publicly displays in his OR HER place of business a license from the department FOR EACH SUCH ACTIVITY ENGAGED IN. EACH PLACE OF BUSINESS IN THIS STATE SHALL BE SEPARATELY LICENSED. IF THE APPLICANT DOES NOT HAVE A PLACE OF BUSINESS IN THIS STATE, THE LICENSE SHALL BE ISSUED FOR SUCH APPLICANT'S PRINCIPAL PLACE OF BUSINESS, WHEREVER LOCATED. Applications for licenses shall be made on forms prescribed by the commissioner. EACH APPLICATION SHALL STATE THE NAME AND ADDRESS OF THE APPLICANT; THE ADDRESS OF THE APPLICANT'S PRINCIPAL PLACE OF BUSINESS; EACH PLACE OF BUSINESS WHERE THE APPLICANT'S BUSINESS WILL BE CONDUCTED WITHIN THIS STATE; AND ANY OTHER INFORMATION SUCH COMMISSIONER MAY REQUIRE. IF THE APPLICANT IS A FIRM,

PARTNERSHIP, OR ASSOCIATION, THE APPLICATION SHALL STATE THE NAME AND ADDRESS OF EACH OF ITS MEMBERS. IF THE APPLICANT IS A CORPORATION, THE APPLICATION SHALL STATE THE NAME AND ADDRESS OF EACH OF ITS MEMBERS. IF THE APPLICANT IS A CORPORATION, THE APPLICATION SHALL STATE THE NAME AND ADDRESS OF EACH OF ITS OFFICERS AND THE NAME OF ANY PERSON WHO OWNS, DIRECTLY OR INDIRECTLY, IN THE AGGREGATE, MORE THAN TEN PERCENT OF THE OWNERSHIP INTERESTS IN THE CORPORATION.

(b) Applications shall be accompanied by proof of the applicant's financial responsibility, including, but not limited to, satisfactory proof of a minimum net worth of twenty-five thousand dollars if the applicant is an individual, or net worth in the capitalization of the business if the applicant is not an individual equal to a minimum of twenty-five thousand dollars.

(c) Each applicant shall file with the department 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, in the face amount of ten thousand dollars, to secure payment of any sums due for any violation of article twenty or article twenty-A of this chapter, or the regulations of [the] SUCH commissioner thereunder.

(d) [Each applicant shall file satisfactory proof that it will maintain a secure separate warehousing facility for the purpose of receiving and distributing cigarettes or tobacco products and conducting its wholesale business. Such proof shall consist of a copy of a deed, or a copy of an executed lease for a minimum period of two years, to a separate, secure warehouse. If the applicant carries on another business in conjunction with the warehouse facility, the other business shall also be identified.

(e)] Each applicant shall file satisfactory proof that it will provide disability and workers' compensation insurance for its employees.

[(f)] (E) Each applicant shall submit proof of United States citizenship or eligibility to obtain employment within the United States if not a citizen. If the applicant is not an individual, such proof shall be submitted with respect to each controlling person of the applicant.

[(g)] (F) The fee for the filing of an application for a license shall be fifteen 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. Each application shall be accompanied by a certified check for the required application fee.

[(h)] (G) Except as provided in subdivision four of this section, a license shall continue in effect [until revoked or suspended for cause or surrendered] FOR SUCH LENGTH OF TIME AS DETERMINED BY REGULATIONS OF THE TAX COMMISSION; IN NO CASE, HOWEVER, SHALL A LICENSE ISSUED UNDER THIS SECTION REMAIN IN EFFECT FOR A PERIOD LONGER THAN THREE YEARS.

[(i)] (H) A license shall not be assignable but an applicant who is purchasing the business of a licensee shall file a copy of the contract of sale and any related documents with its application.

[(j)] (I) The commissioner may for cause refuse to issue, or may suspend or revoke [a wholesaler's] ANY license UNDER THIS SECTION, or may forbid a retail dealer to continue selling cigarettes or tobacco products or may forbid a person required to be appointed as a distributor of tobacco products who has not been so appointed from selling cigarettes or tobacco products, after an opportunity for hearing has been afforded. A violation of any provision of this article or of any regulation issued under it shall be cause to SUSPEND OR REVOKE A LICENSE ISSUED UNDER THIS SECTION OR TO forbid a retail dealer to continue selling cigarettes or tobacco products.

[(k)] (J) No agent shall sell cigarettes and no distributor shall sell tobacco products to an unlicensed wholesale dealer, or to a wholesale dealer whose license has been suspended or revoked, or to a retail dealer who is not registered under section four hundred eighty-a of this article, or whose registration has been suspended or revoked, and no wholesale dealer shall sell cigarettes or tobacco products to a retail dealer who is not registered under section four hundred eighty-a of this article, or whose registration has been suspended or revoked, and no retail dealer shall sell cigarettes or tobacco products unless such dealer is registered under section four hundred eighty-a of this article.

[(l)] (K) Paragraphs (b), (c) and [(g)] (F) of this subdivision shall not apply to the filing of an application for a license as a wholesale dealer that is based solely upon the ownership, operation or maintenance of one or more cigarette or tobacco products vending machines in, at or upon premises owned or occupied by another person, or that is based solely upon the sale of tobacco products for resale, or that is based upon both the ownership, operation or maintenance of one or more cigarette or tobacco products vending machines in, at or upon premises owned or occupied by another person and the sale of tobacco products for resale.

(C) LICENSE AVAILABILITY. NOTWITHSTANDING OTHER SUBDIVISIONS OF THIS SECTION, NO LICENSE SHALL BE GRANTED, MAINTAINED OR RENEWED IF THE APPLICANT OR ANY CONTROLLING PERSON:

(I) OWES FIVE HUNDRED DOLLARS OR MORE IN DELINQUENT CIGARETTE TAXES;

(II) HAD A LICENSE UNDER THIS SECTION OR REGISTRATION UNDER SECTION FOUR HUNDRED EIGHTY-A OF THIS ARTICLE REVOKED BY THE COMMISSIONER WITHIN THE PAST TWO YEARS;

(III) HAS BEEN CONVICTED OF A CRIME RELATING TO STOLEN OR COUNTERFEIT CIGARETTES;

(IV) IS A CIGARETTE MANUFACTURER OR IMPORTER THAT IS NEITHER (A) A PARTICIPATING MANUFACTURER (AS SUCH TERM IS DEFINED IN SECTION II(JJ) OF THE MASTER SETTLEMENT AGREEMENT) AS REQUIRED IN SUBDIVISION ONE OF SECTION THIRTEEN HUNDRED NINETY-NINE-PP OF THE PUBLIC HEALTH LAW; NOR (B) IN FULL COMPLIANCE WITH SECTION FOUR HUNDRED EIGHTY-B OF THIS ARTICLE AND SUBDIVISION TWO OF SECTION THIRTEEN HUNDRED NINETY-NINE-PP OF THE PUBLIC HEALTH LAW;

(V) HAS IMPORTED, OR CAUSED TO BE IMPORTED, INTO THE UNITED STATES ANY CIGARETTE IN VIOLATION OF 19 U.S.C. 1681A; OR

(VI) HAS IMPORTED, OR CAUSED TO BE IMPORTED INTO THE UNITED STATES, OR MANUFACTURED FOR SALE OR DISTRIBUTION IN THE UNITED STATES ANY CIGARETTE THAT DOES NOT FULLY COMPLY WITH THE FEDERAL CIGARETTE LABELING AND ADVERTISING ACT (15 U.S.C. 1331, ET SEQ.).

5. Hearing procedure. (a) General. A notice of proposed cancellation or suspension of a license or refusal to issue a license shall be given to [the wholesale dealer] ANY PERSON licensed pursuant to this article or to an applicant applying for such license in the manner prescribed for a notice of deficiency of tax and all the provisions applicable to a notice of deficiency under article twenty-seven of this chapter, including, but not limited to, those provisions authorizing the tax commission to abate on its own motion, shall apply to a notice issued pursuant to this subdivision, insofar as such provisions can be made applicable to a notice authorized by this subdivision, with such modifications as may be necessary in order to adapt the language of such provisions to the notice authorized by this subdivision. Such notice of proposed cancellation or suspension or of proposed refusal to license must be given to

such person within five years from the date of the act or omission referred to in subdivision two or three of this section, except that in the case of acts involving falsity or fraud, such notice may be issued at any time. All of such notices shall contain a statement advising the person to whom it is issued that the cancellation, suspension or refusal to license may be challenged through a hearing process and that the petition for such challenge must be filed with the tax commission within ninety days after the giving of such notice. Where a license is cancelled or suspended prior to a hearing, the cancellation or suspension may be challenged through the hearing process provided the petition for such challenge is filed within ninety days after the giving of notice of such cancellation or suspension.

(b) Refusal to license. In the case of a person applying to be licensed [as a wholesale dealer] UNDER THIS ARTICLE, a notice of proposed refusal to license shall be issued promptly after application for license is received by the [tax commission] COMMISSIONER. Upon timely application therefor, a hearing shall be scheduled, and within three months from such application for hearing (determined with regard to any postponements of any scheduled hearing or conference or other delay made at the request of the applicant) the [tax commission] COMMISSIONER shall issue a notice of refusal to license or shall license the applicant. If the [tax commission] COMMISSIONER fails to issue a notice of refusal to license within such three month period (or such period as extended pursuant to this paragraph), the [tax commission] COMMISSIONER shall license the applicant immediately upon the conclusion of such period so long as the applicant has filed a bond or other security as required by the [tax commission] COMMISSIONER.

(a) An officer, director or partner or, in the case of a limited liability company, a member or a person having with respect to such limited liability company authority analogous to that of an officer or director with respect to a corporation of an applicant for a [wholesale dealer's] license UNDER THIS ARTICLE or of a licensee under this article, or

7. MAINTENANCE OF LIST OF LICENSEES. THE TAX COMMISSION SHALL CREATE AND MAINTAIN A WEB SITE SETTING FORTH THE IDENTITY OF PERSONS HOLDING VALID AND CURRENT LICENSES UNDER THIS SECTION, ITEMIZED BY TYPE OF LICENSE POSSESSED, AND THE IDENTITY OF PERSONS HOLDING VALID AND CURRENT REGISTRATIONS UNDER SECTION FOUR HUNDRED EIGHTY-A OF THIS ARTICLE, AND SHALL UPDATE THE SITE NO LESS FREQUENTLY THAN ONCE PER MONTH.

S 13. Paragraph (d) of subdivision 1, subdivision 3 and paragraph (a) of subdivision 4 of section 480-a of the tax law, paragraph (d) of subdivision 1 as added by chapter 799 of the laws of 1992, subdivision 3 as amended by chapter 262 of the laws of 2000 and paragraph (a) of subdivision 4 as added by chapter 629 of the laws of 1996, are amended to read as follows:

(d) (i) The commissioner shall not register retail dealers OR VENDING MACHINES or such registration may be cancelled or suspended by the commissioner upon notification that the applicant or retail dealer, OR ANY COMBINATION OF PERSONS OWNING DIRECTLY OR INDIRECTLY, IN THE AGGREGATE, MORE THAN TEN PERCENT OF THE OWNERSHIP INTERESTS IN THE APPLICANT OR RETAIL DEALER has been convicted in a criminal proceeding of a violation of subdivision [five] THREE of section [260.20] 260.21 of the penal law or as directed by an enforcement officer pursuant to article thirteen-F of the public health law. The clerk of the court shall promptly report all criminal convictions under subdivision [five] THREE of section [260.20] 260.21 of the penal law to the commissioner, together with a direction to the commissioner to cancel such registration or to suspend it for a specified period of time.

(II) THE COMMISSIONER SHALL NOT REGISTER RETAIL DEALERS OR VENDING MACHINES OR SUCH REGISTRATION SHALL BE CANCELLED OR SUSPENDED BY THE COMMISSIONER UPON NOTIFICATION THAT THE APPLICANT OR RETAIL DEALER, OR ANY COMBINATION OF PERSONS OWNING DIRECTLY OR INDIRECTLY, IN THE AGGREGATE, MORE THAN TEN PERCENT OF THE OWNERSHIP INTERESTS IN THE APPLICANT OR RETAIL DEALER:

(A) OWES FIVE HUNDRED DOLLARS OR MORE IN DELINQUENT CIGARETTE TAXES;

(B) HAD A REGISTRATION ISSUED UNDER THIS SECTION OR A LICENSE ISSUED UNDER SECTION FOUR HUNDRED EIGHTY OF THIS ARTICLE REVOKED BY THE COMMISSIONER WITHIN THE PAST TWO YEARS; OR

(C) HAS BEEN CONVICTED OF A CRIME RELATING TO COUNTERFEIT CIGARETTES.

Anything to the contrary in any law notwithstanding, retail dealers shall have no right to a hearing under this chapter and shall have no right to commence a court action or proceeding or to any other legal recourse against the commissioner with respect to any action taken by the commissioner under this paragraph, provided nothing herein shall be construed to deny retail dealers a hearing under article thirteen-F of the public health law or to prohibit retail dealers from commencing a court action or proceeding against an enforcement officer as defined in section thirteen hundred ninety-nine-aa of the public health law.

[(ii)] (III) Anything to the contrary in any law notwithstanding, the commissioner shall provide upon request to an enforcement officer as defined in section thirteen hundred ninety-nine-aa of the public health law such registration information as is relevant and necessary for the implementation of article thirteen-F of the public health law.

3. In addition to any other penalty imposed by this chapter: (a) Any retail dealer who violates the provisions of this section shall, after due notice and an opportunity for a hearing, for a first violation be liable for a civil fine [not less than] OF five [hundred dollars but not to exceed two] thousand dollars and for a second or subsequent violation within three years following a prior finding of violation be liable for a civil fine [not less than one] OF TEN thousand dollars [but not to exceed three thousand five hundred dollars]; or

(b) Any person who owns or, if the owner is not the operator, then any person who operates one or more vending machines through which cigarettes or tobacco products are sold in this state and who violates the provisions of this section shall, after due notice and an opportunity for a hearing, for a first violation be liable for a civil fine [not less than seventy-five dollars but not to exceed two hundred] OF FIVE THOUSAND dollars and for a second or subsequent violation within three years following a prior finding of violation be liable for a civil fine [not less than two hundred dollars but not to exceed six hundred] OF TEN THOUSAND dollars.

(a) If a retail dealer possesses or sells unstamped or unlawfully stamped packages of cigarettes, [or if a retail dealer is also licensed as an agent pursuant to section four hundred seventy-two and it possesses unlawfully stamped packages of cigarettes or sells unstamped or unlawfully stamped packages of cigarettes at retail,] (i) its registration shall be suspended for a period of not more than six months, or (ii) for a second such possession or sale within a period of five years, its registration shall be suspended for a period of up to thirty-six months, or (iii) for a third such possession or sale within a period of five years, its registration may be revoked for a period of up to five years. A retail dealer registration shall be suspended or revoked pursuant to this subdivision immediately upon such dealer's receipt of written notice of suspension or revocation from the commissioner. [If a retail dealer sells cigarettes through more than one place of business in this state, the retail dealer registration shall not be suspended or revoked pursuant to this subdivision, but the certificate of registration issued to the place of business, cart, stand, truck or other merchandising device where unstamped or unlawfully stamped cigarettes were found shall be suspended or cancelled for possession or sale of unstamped or unlawfully stamped packages of cigarettes, as if such certificate of registration were a retail dealer registration. A suspension or cancellation of a certificate of registration shall be treated as if it were a suspension or revocation of a registration. If unstamped or unlawfully stamped cigarettes are found in a retail dealer's warehouse, the] THE suspension or revocation of the retail dealer's registration pursuant to this subdivision shall be applicable to each retail place of business in this state through which such retail dealer sells cigarettes. IF A RETAIL DEALER COMMITS ANY VIOLATION OTHER THAN THOSE DESCRIBED IN THIS SUBDIVISION OR SUBDIVISION ONE OF THIS SECTION, THE COMMISSIONER MAY SUSPEND OR REVOKE THE RETAIL DEALER'S REGISTRATION.

S 14. Subdivision 5 of section 480-a of the tax law is REPEALED.

S 15. Subparagraph (v) of paragraph (a) of subdivision 1 and paragraph (b) of subdivision 2 of section 481 of the tax law, subparagraph (v) of paragraph (a) of subdivision 1 as amended by chapter 65 of the laws of 1985 and paragraph (b) of subdivision 2 as amended by chapter 61 of the laws of 1989, are amended and five new subdivisions 5, 6, 7, 8 and 9 are added to read as follows:

(v) The penalties and interest provided for in this paragraph, IN ADDITION TO ANY OTHER PENALTY IMPOSED BY THIS ARTICLE, shall be determined, assessed, collected and paid in the same manner as the taxes imposed by this article and shall be disposed of as [hereinafter] provided IN THIS SUBDIVISION with respect to moneys derived from the tax. Interest under this paragraph shall be compounded daily.

(b) Nothing in this section shall apply to common or contract carriers or warehousemen while engaged in lawfully transporting [or storing] tobacco products or unstamped packages of cigarettes as merchandise THROUGH THIS STATE TO ANOTHER LOCATION UNDER A PROPER BILL OF LADING OR FREIGHT BILL, OR STORING TOBACCO PRODUCTS OR UNSTAMPED CIGARETTES ON BEHALF OF A LICENSED AGENT, nor to any employee of such carrier or warehouseman acting within the scope of his employment, nor to public officers or employees in the performance of their official duties requiring possession or control of tobacco products or unstamped or unlawfully stamped packages of cigarettes, nor to temporary incidental possession by employees or agents of persons lawfully entitled to possession, nor to persons whose possession is for the purpose of aiding police officers in performing their duties.

5. WHOEVER OMITS, NEGLECTS, OR REFUSES TO COMPLY WITH ANY DUTY IMPOSED UPON HIM OR HER BY THIS ARTICLE, OR TO DO, OR CAUSE TO BE DONE, ANY OF THE THINGS REQUIRED BY THIS ARTICLE, OR DOES ANYTHING PROHIBITED BY THIS ARTICLE, SHALL, IN ADDITION TO ANY OTHER PENALTY PROVIDED IN THIS ARTICLE OR ARTICLE THIRTY-SEVEN OF THIS CHAPTER, BE LIABLE TO A PENALTY OF FIVE THOUSAND DOLLARS OR FIVE TIMES THE RETAIL VALUE OF THE CIGARETTES INVOLVED, WHICHEVER IS GREATER, TO BE RECOVERED, WITH COSTS OF SUIT, IN A CIVIL ACTION.

6. WHOEVER FAILS TO PAY ANY TAX IMPOSED BY THIS ARTICLE AT THE TIME PRESCRIBED BY LAW OR REGULATIONS, SHALL, IN ADDITION TO ANY OTHER PENAL-

TY PROVIDED IN THIS ARTICLE, BE LIABLE TO A PENALTY OF FIVE TIMES THE TAX DUE BUT UNPAID.

7. ALL CIGARETTES WHICH ARE HELD FOR SALE, DISTRIBUTION OR USE WITHIN THE BORDERS OF THIS STATE IN VIOLATION OF THE REQUIREMENTS OF THIS ARTICLE SHALL BE FORFEITED TO THE STATE.

8. (A) WHOEVER, WITH INTENT TO DEFRAUD THIS STATE, FAILS TO COMPLY WITH ANY REQUIREMENT OF THIS ARTICLE OR REGULATIONS PRESCRIBED PURSUANT TO THIS ARTICLE SHALL, FOR EACH SUCH OFFENSE, IN ADDITION TO ANY OTHER PENALTY PROVIDED IN THIS ARTICLE OR ARTICLE THIRTY-SEVEN OF THIS CHAPTER, BE FINED TEN THOUSAND DOLLARS OR BE IMPRISONED FOR NOT MORE THAN FIVE YEARS, OR BOTH.

(B) WHOEVER KNOWINGLY VIOLATES ANY PROVISION OF THIS ARTICLE OR OF REGULATIONS PRESCRIBED PURSUANT TO THIS ARTICLE SHALL, FOR EACH SUCH OFFENSE, IN ADDITION TO ANY OTHER PENALTY PROVIDED IN THIS ARTICLE, BE FINED NOT MORE THAN FIVE THOUSAND DOLLARS OR FIVE TIMES THE RETAIL VALUE OF THE CIGARETTES INVOLVED, WHICHEVER IS GREATER, OR IMPRISONED NOT MORE THAN ONE YEAR, OR BOTH.

9. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE SALE OR POSSESSION FOR SALE OF COUNTERFEIT CIGARETTES BY A MANUFACTURER, IMPORTER, AGENT, OR DEALER SHALL RESULT IN THE SEIZURE OF THE PRODUCT AND RELATED MACHINERY BY THE COMMISSIONER OR ANY LAW ENFORCEMENT AGENCY AND SHALL BE PUNISHABLE AS FOLLOWS: (A) A FIRST VIOLATION WITH A TOTAL QUANTITY OF LESS THAN TWO CARTONS OF CIGARETTES SHALL BE PUNISHABLE BY A FINE OF ONE THOUSAND DOLLARS OR FIVE TIMES THE RETAIL VALUE OF THE CIGARETTES INVOLVED, WHICHEVER IS GREATER, OR IMPRISONMENT NOT TO EXCEED FIVE YEARS, OR BOTH.

(B) A SUBSEQUENT VIOLATION WITH A TOTAL QUANTITY OF LESS THAN TWO CARTONS OF CIGARETTES SHALL BE PUNISHABLE BY A FINE OF FIVE THOUSAND DOLLARS OR FIVE TIMES THE RETAIL VALUE OF THE CIGARETTES INVOLVED, WHICHEVER IS GREATER, OR IMPRISONMENT NOT TO EXCEED FIVE YEARS, OR BOTH, AND SHALL ALSO RESULT IN THE REVOCATION BY SUCH COMMISSIONER OF THE MANUFACTURER, IMPORTER, AGENT, OR DEALER LICENSE.

(C) A FIRST VIOLATION WITH A TOTAL QUANTITY OF TWO CARTONS OF CIGARETTES OR MORE SHALL BE PUNISHABLE BY A FINE OF TWO THOUSAND DOLLARS OR FIVE TIMES THE RETAIL VALUE OF THE CIGARETTES INVOLVED, WHICHEVER IS GREATER, OR IMPRISONMENT NOT TO EXCEED FIVE YEARS, OR BOTH.

(D) A SUBSEQUENT VIOLATION WITH A QUANTITY OF TWO CARTONS OF CIGARETTES OR MORE SHALL BE PUNISHABLE BY A FINE OF FIFTY THOUSAND DOLLARS OR FIVE TIMES THE RETAIL VALUE OF THE CIGARETTES INVOLVED, WHICHEVER IS GREATER, OR IMPRISONMENT NOT TO EXCEED FIVE YEARS, OR BOTH, AND SHALL ALSO RESULT IN THE REVOCATION BY SUCH COMMISSIONER OF THE MANUFACTURER, IMPORTER, AGENT, OR DEALER LICENSE.

FOR PURPOSES OF THIS SUBDIVISION, COUNTERFEIT CIGARETTES INCLUDE CIGARETTES THAT HAVE FALSE MANUFACTURING LABELS OR PACKAGES OF CIGARETTES BEARING COUNTERFEIT TAX STAMPS. ANY COUNTERFEIT CIGARETTES SEIZED BY THE COMMISSIONER SHALL BE DESTROYED.

S 16. Subdivision (a) of section 1846 of the tax law, as added by section 2 of part E of chapter 93 of the laws of 2002, is amended to read as follows:

(a) Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer designated in subdivision four of section 2.10 of such law, acting pursuant to his or her special duties, shall discover any cigarettes subject to tax provided by article twenty of this chapter or by chapter thirteen of title eleven of the administrative code of the city of New York, and upon which the tax has not been paid or the stamps not affixed as required by such article or such chapter thirteen, OR ANY CIGARETTES OTHERWISE BEING POSSESSED OR HELD IN VIOLATION OF ARTICLE TWENTY OF THIS CHAPTER, they are hereby authorized and empowered forthwith to seize and take possession of such cigarettes, together with any vending machine or receptacle in which they are held for sale. Such cigarettes, vending machine or receptacle seized by a police officer or such peace officer shall be turned over to the commissioner. Such seized cigarettes, vending machine or receptacle, not including money contained in such vending machine or receptacle, shall be forfeited to the state. The commissioner may, within a reasonable time thereafter, upon publication of a notice to such effect for at least five successive days, before the day of sale, in a newspaper published or circulated in the county where the seizure was made, sell such forfeited cigarettes and vending machines or receptacles at public sale and pay the proceeds into the state treasury to the credit of the general fund. Cigarettes so seized and sold shall be sold only to an agent under article twenty of this chapter and the notice of sale shall contain a provision to this effect. Notwithstanding any other provision of this section, the commissioner may enter into an agreement with any city of this state which is authorized to impose a tax similar to that imposed by article twenty of this chapter to provide for the disposition between the state and any such city of the proceeds from any such sale.

S 17. Section 1814 of the tax law, as added by chapter 65 of the laws of 1985, the section heading, subdivisions (c), (g) and (h) as amended and subdivision (j) as added by chapter 61 of the laws of 1989, paragraph 2 of subdivision (a) and paragraph 1 of subdivision (e) as amended by chapter 508 of the laws of 2004, subdivisions (d) and (e) as amended by chapter 262 of the laws of 2000 and subdivision (k) as added by chapter 190 of the laws of 1990, is amended to read as follows:

S 1814. Cigarette and tobacco products tax.--(a) Attempt to evade or defeat tax.--(1) Any person who willfully attempts in any manner to evade or defeat any tax imposed by article twenty of this chapter or the payment thereof shall, in addition to other penalties provided by law, be guilty of a [misdemeanor] CLASS E FELONY.

(2) Any person who willfully attempts in any manner to evade or defeat the taxes imposed by article twenty of this chapter or payment thereof on (i) ten thousand cigarettes or more (ii) twenty-two thousand cigars or more, or (iii) four hundred forty pounds of tobacco or more or has previously been convicted two or more times of a violation of paragraph one of this subdivision shall be guilty of a class [E] D felony.

(b) Willful failure to file a return or report, or pay tax.--Any person required under article twenty of this chapter to pay or make a return or report, who willfully fails to pay such tax or make such return or report, at the time or times so required, shall be guilty of a [misdemeanor] CLASS E FELONY.

(c) Fraudulent returns, reports, statements or other documents.--(1) Any person who willfully makes and subscribes any return, report, statement or other document which is required to be filed with or furnished to the commissioner of taxation and finance or to any person, pursuant to article twenty of this chapter, which he does not believe to be true and correct as to every material matter shall be guilty of a [misdemeanor] CLASS D FELONY.

(2) Any person who willfully delivers or discloses to the commissioner [of taxation and finance] or to any person, pursuant to article twenty of this chapter, any list, return, report, account, statement or other document known by him to be fraudulent or to be false as to any material matter shall be guilty of a [misdemeanor] CLASS D FELONY.

(3) For purposes of this section, the omission by any person of any material matter with intent to deceive shall constitute the delivery or disclosure of a document known by him to be fraudulent or to be false as to any material matter.

(d) Any person, other than an agent licensed by the commissioner, who possesses or transports for the purpose of sale any unstamped or unlawfully stamped packages of cigarettes subject to tax imposed by section four hundred seventy-one of this chapter, or who sells or offers for sale unstamped or unlawfully stamped packages of cigarettes in violation of the provisions of article twenty of this chapter shall be guilty of a [misdemeanor] CLASS E FELONY. Any person who violates the provisions of this subdivision after having previously been convicted of a violation of this subdivision within the preceding five years shall be guilty of a class [E] D felony.

(e) (1) Any person, other than an agent licensed by the commissioner, who willfully possesses or transports for the purpose of sale ten thousand or more cigarettes subject to the tax imposed by section four hundred seventy-one of this chapter in any unstamped or unlawfully stamped packages or who willfully sells or offers for sale ten thousand or more cigarettes in any unstamped or unlawfully stamped packages in violation of article twenty of this chapter shall be guilty of a class [E] D felony.

(2) Any person, other than an agent licensed by the commissioner, who willfully possesses or transports for the purpose of sale thirty thousand or more cigarettes subject to the tax imposed by section four hundred seventy-one of this chapter in any unstamped or unlawfully stamped packages or who willfully sells or offers for sale thirty thousand or more cigarettes in any unstamped or unlawfully stamped packages in violation of article twenty of this chapter shall be guilty of a class [D] C felony.

(f) For the purposes of this section, the possession or transportation within this state by any person, other than an agent, at any one time of five thousand or more cigarettes in unstamped or unlawfully stamped packages shall be presumptive evidence that such cigarettes are possessed or transported for the purpose of sale and are subject to the tax imposed by section four hundred seventy-one of this chapter. With respect to such possession or transportation any provisions of article twenty of this chapter providing for a time period during which a use tax imposed by such article may be paid on unstamped cigarettes or unlawfully or improperly stamped cigarettes or during which such cigarettes may be returned to an agent shall not apply. The possession within this state of more than four hundred cigarettes in unstamped or unlawfully stamped packages by any person other than an agent at any one time shall be presumptive evidence that such cigarettes are subject to tax as provided by article twenty of this chapter.

(g) Nothing in this section shall apply to common or contract carriers or warehousemen while engaged in lawfully transporting [or storing] TOBACCO PRODUCTS OR unstamped packages of cigarettes as merchandise THROUGH THIS STATE TO ANOTHER LOCATION UNDER A PROPER BILL OF LADING OR FREIGHT BILL, or [lawfully transporting or] storing tobacco products OR UNSTAMPED CIGARETTES ON BEHALF OF A LICENSED AGENT, nor to any employee of such carrier or warehouseman acting within the scope of his employment, nor to public officers or employees in the performance of their official duties requiring possession or control of unstamped or unlawfully stamped packages of cigarettes or possession or control of tobacco products, nor to temporary incidental possession by employees or agents of persons lawfully entitled to possession, nor to persons whose possession is for the purpose of aiding police officers in performing their duties.

(h) Any willful act or omission, other than those described in subdivision (a), (b), (c), (d), (e), (f), (g), (i) or (j) of this section, by any person which constitutes a violation of any provision of article twenty of this chapter shall constitute a [misdemeanor] CLASS E FELONY.

(i) Any person who falsely or fraudulently makes, alters or counterfeits any stamp prescribed by the [tax commission] COMMISSIONER under the provisions of article twenty of this chapter, or causes or procures to be falsely or fraudulently made, altered or counterfeited any such stamp, or knowingly and willfully utters, purchases, passes or tenders as true any such false, altered or counterfeited stamp, or knowingly and willfully possesses any cigarettes in packages bearing any such false, altered or counterfeited stamp, and any person who knowingly and willfully makes, causes to be made, purchases or receives any device for forging or counterfeiting any stamp, prescribed by the [tax commission] COMMISSIONER under the provisions of article twenty of this chapter, or who knowingly and willfully possesses any such device, shall be guilty of a class [E] D felony. For the purposes of this subdivision, the words "stamp prescribed by the [tax commission] COMMISSIONER" shall include a stamp, impression or imprint made by a metering machine, the design of which has been approved by such [commission] COMMISSIONER.

(j) (1) Any dealer, other than a distributor appointed by the commissioner [of taxation and finance] under article twenty of this chapter, who shall knowingly transport or have in his custody, possession or under his control more than ten pounds of tobacco or more than five hundred cigars upon which the taxes imposed by article twenty of this chapter have not been assumed or paid by a distributor appointed by the commissioner [of taxation and finance] under article twenty of this chapter, or other person treated as a distributor pursuant to section four hundred seventy-one-d of this chapter, shall be guilty of a misdemeanor punishable by a fine of not more than five thousand dollars or by a term of imprisonment not to exceed thirty days.

(2) Any person, other than a dealer or a distributor appointed by the commissioner [of taxation and finance] under article twenty of this chapter, who shall knowingly transport or have in his custody, possession or under his control more than fifteen pounds of tobacco or more than seven hundred fifty cigars upon which the taxes imposed by article twenty of this chapter have not been assumed or paid by a distributor appointed by the commissioner [of taxation and finance] under article twenty of this chapter, or other person treated as a distributor pursuant to section four hundred seventy-one-d of this chapter shall be guilty of a misdemeanor punishable by a fine of not more than five thousand dollars or by a term of imprisonment not to exceed thirty days.

(3) Any person, other than a distributor appointed by the commissioner [of taxation and finance] under article twenty of this chapter, who shall knowingly transport or have in his custody, possession or under his control twenty-five hundred or more cigars or fifty or more pounds of tobacco upon which the taxes imposed by article twenty of this chapter have not been assumed or paid by a distributor appointed by the commissioner [of taxation and finance] under article twenty of this chapter, or other person treated as a distributor pursuant to section four hundred seventy-one-d of this chapter shall be guilty of a misdemeanor. Provided further, that any person who has twice been convicted

under this subdivision shall be guilty of a class E felony for any subsequent violation of this section, regardless of the amount of tobacco products involved in such violation.

(4) For purposes of this subdivision, such person shall knowingly transport or have in his custody, possession or under his control tobacco or cigars on which such taxes have not been assumed or paid by a distributor appointed by the commissioner [of taxation and finance] where such person has knowledge of the requirement of the tax on tobacco products and, where to his knowledge, such taxes have not been assumed or paid on such tobacco products by a distributor appointed by the commissioner [of taxation and finance].

(k) Any person who falsely or fraudulently makes, alters or counterfeits a registration certificate or sticker required under the provisions of section four hundred eighty-a of this chapter, or causes or procures to be falsely or fraudulently made, altered or counterfeited any such registration certificate or sticker, or knowingly and willfully utters, purchases, passes or tenders as true any such false, altered or counterfeited registration certificate or sticker, and any person who knowingly and willfully makes, causes to be made, purchases or receives any device for forging or counterfeiting any registration certificate or sticker required under the provisions of such section, or who knowingly and willfully possesses any such device, shall be guilty of a class [B misdemeanor] E FELONY.

S 18. Severability. If any provision of this act or the application of any provision of this act to any person or circumstance is held to be invalid, the remainder of this act and the application of the provisions of this act to any other person or circumstance shall not be affected thereby and shall continue to be enforced to the fullest extent possible.

S 19. This act shall take effect on the ninetieth day after it shall have become a law.