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

8496

I N S E N A T E

October 8, 2010

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

AN ACT to amend the tax law, in relation to taxes on cigarettes sold on an Indian reservation to non-members of the Indian nation or tribe

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

Section 1. Subdivision 1 of section 471 of the tax law, as amended by section 1 of part D of chapter 134 of the laws of 2010, is amended to read as follows:

1. There is hereby imposed and shall be paid a tax on all cigarettes possessed in the state by any person for sale, except that no tax shall be imposed on cigarettes sold under such circumstances that this state is without power to impose such tax, including sales to qualified Indians for their own use and consumption on their nations' or tribes' qualified reservation, or sold to the United States or sold to or by a voluntary unincorporated organization of the armed forces of the United States operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States, to the extent provided in such regulations and policy statements of such an agency applicable to such sales. The tax imposed by this section is imposed on all cigarettes sold on an Indian reservation to non-members of the Indian nation or tribe and to non-Indians and evidence of such tax shall be by means of an affixed cigarette tax stamp. Indian nations or tribes may elect to participate in the Indian tax exemption coupon system established in section four hundred seventy-one-e of this article which provides a mechanism for the collection of the tax imposed by this section on cigarette sales on qualified reservations to such non-members and non-Indians and for the delivery of quantities of tax-exempt cigarettes to Indian nations or tribes for the personal use and consumption of qualified members of the Indian nation or tribe. If an Indian nation or tribe does not elect to participate in the Indian tax exemption coupon system, the prior approval system shall be the mechanism for the delivery of quantities of tax-exempt cigarettes to Indian nations or tribes for the personal use and consumption of qualified members of the

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

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Indian nation or tribe as provided for in paragraph (b) of subdivision five of this section. Such tax on cigarettes shall be at the rate of four dollars and thirty-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 one dollar and eight and three-quarters cents for each five cigarettes or fraction thereof. PROVIDED FURTHER THAT IF THE STATE FAILS TO COLLECT TAXES ON CIGARETTES SOLD ON AN INDIAN RESERVATION TO NON-MEMBERS OF THE INDIAN NATION OR TRIBE BY SEPTEMBER FIRST, TWO THOUSAND TEN, THAT SUCH CIGARETTE TAX RATE WOULD REVERT TO THE RATE OF TWO DOLLARS AND SEVENTY-FIVE CENTS AS PREVIOUSLY STATED IN LAW BEFORE THE PASSAGE OF CHAPTER ONE HUNDRED THIRTY-FOUR OF THE LAWS OF TWO THOUSAND TEN. ONCE THE STATE BEGINS COLLECTING TAXES ON CIGARETTES SOLD ON AN INDIAN RESERVATION TO NON-MEMBERS OF THE INDIAN NATION OR TRIBE, THE CIGARETTE TAX RATE WOULD BE IMPOSED AT FOUR DOLLARS AND THIRTY-FIVE CENTS AS SPECIFIED IN CHAPTER ONE HUNDRED THIRTY-FOUR OF THE LAWS OF TWO THOUSAND TEN. Such tax is intended to be imposed upon only one sale of the same package of cigarettes. It shall be presumed that all cigarettes within the state are subject to tax until the contrary is established, and the burden of proof that any cigarettes are not taxable hereunder shall be upon the person in possession thereof.

S 2. This act shall take effect immediately.