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

10749

I N A S S E M B L Y

June 18, 2012

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Dinowitz) -- read once and referred to the Committee on Cities

AN ACT to amend the administrative code of the city of New York, in relation to the enforcement of the cigarette tax and the regulation of tobacco products and cigarette rolling machines

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

Section 1. The administrative code of the city of New York is amended by adding a new section 11-1303.1 to read as follows:

S 11-1303.1 SIGNS REQUIRED. A. A RETAIL DEALER SHALL POST A SIGN ON SUCH DEALER'S PREMISES STATING THAT CIGARETTES SOLD IN THE CITY MUST BE IN PACKAGES BEARING VALID TAX STAMPS. THE SIGN SHALL BE POSTED IN A CONSPICUOUS PLACE IN CLOSE PROXIMITY TO THE CASH REGISTER OR OTHER PLACE WHERE CIGARETTES ARE DISPLAYED. THE COMMISSIONER OF FINANCE MAY PROMULGATE RULES DETAILING THE FORM, CONTENT, AND SIZE OF SUCH SIGNS.

B. THE COMMISSIONER OF FINANCE MAY, AFTER A HEARING AND AN OPPORTUNITY TO BE HEARD, IMPOSE A PENALTY ON A RETAIL DEALER FOR A VIOLATION OF THIS SECTION OF NOT MORE THAN TWO HUNDRED FIFTY DOLLARS PER DAY IN ADDITION TO ANY OTHER PENALTY THAT MAY BE IMPOSED UNDER THIS CODE.

S 2. Subdivision 1 of section 11-1308 of the administrative code of the city of New York is amended to read as follows:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof; and to require the filing of reports AND THE SUBMISSION OF OTHER DATA by agents and/or WHOLESALE AND/OR RETAIL dealers IN AN ELECTRONIC FORM; AND TO IMPOSE PENALTIES FOR THE FAILURE TO FILE SUCH REPORTS OR SUBMIT SUCH DATA;

S 3. Section 11-1308 of the administrative code of the city of New York is amended by adding a new subdivision 12 to read as follows:

12. TO DESIGNATE HEARING OFFICERS OR TRIBUNALS TO CONDUCT ANY HEARING PROVIDED BY THIS CHAPTER OR CHAPTER FORTY OF THIS TITLE FOR WHICH A HEARING BY THE TAX APPEALS TRIBUNAL HAS NOT BEEN PROVIDED BY LAW.

S 4. Subdivisions a and b of section 11-1317 of the administrative code of the city of New York, subdivision b as amended by chapter 458 of the laws of 2006, are amended to read as follows:

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

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a. Any person failing to pay a tax payable under this chapter when due shall be subject to a penalty of [fifty] ONE HUNDRED per centum of the amount of tax due, but the commissioner of finance, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid and disposed of in the same manner as other revenues under this chapter. Unpaid penalties may be enforced in the same manner as the tax imposed by this chapter.

b. (1) In addition to any other penalty imposed by this section, the commissioner of finance may (a) impose a penalty of not more than [one] TWO hundred dollars for each two hundred cigarettes or fraction thereof in excess of [one] FOUR HUNDRED BUT NOT MORE THAN TWO thousand cigarettes in unstamped or unlawfully stamped packages in the possession or under the control of any person, AND A PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS FOR EACH TWO HUNDRED CIGARETTES IN EXCESS OF TWO THOUSAND CIGARETTES and (b) impose a penalty of not more than [two hundred] ONE THOUSAND dollars for each ten [affixed or] unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions, or fraction thereof, [in excess of one hundred affixed or unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions] in the possession or under the control of any person. Such penalty shall be determined as provided in section 11-1310 of this chapter, and may be reviewed only pursuant to such section. Such penalty may be enforced in the same manner as the tax imposed by this chapter. The commissioner of finance, in his or her discretion, may remit all or part of such penalty. Such penalty shall be paid and disposed of in the same manner as other revenues under this chapter.

(2) The penalties imposed by this paragraph may be imposed by the commissioner of finance in addition to any other penalty imposed by this section, but in lieu of the penalties imposed by subparagraph (a) of paragraph one of this subdivision: (a) not less than [thirty] TWO HUNDRED dollars but not more than [two] FIVE hundred dollars for each two hundred cigarettes, or fraction thereof, in excess of [one thousand] FOUR HUNDRED cigarettes but less than or equal to [five] TWO thousand cigarettes in unstamped or unlawfully stamped packages knowingly in the possession or knowingly under the control of any person; (b) not less than [seventy-five] TWO HUNDRED FIFTY dollars but not more than [two hundred] ONE THOUSAND dollars for each two hundred cigarettes, or fraction thereof, in excess of [five] TWO thousand cigarettes but less than or equal to [twenty] TEN thousand cigarettes in unstamped or unlawfully stamped packages knowingly in the possession or knowingly under the control of any person; and (c) not less than [one] FIVE hundred dollars but not more than [two hundred] ONE THOUSAND dollars for each two hundred cigarettes, or fraction thereof, in excess of [twenty] FIVE thousand cigarettes in unstamped or unlawfully stamped packages, knowingly in the possession or knowingly under the control of any person. Such penalty shall be determined as provided in section 11-1310 of this chapter, and may be reviewed only pursuant to such section. Such penalty may be enforced in the same manner as the tax imposed by this chapter. The commissioner of finance, in his or her discretion, may remit all or part of such penalty. Such penalty shall be paid and disposed of in the same manner as other revenues under this chapter.

(3) A PERSON, IN THE POSSESSION OF MORE THAN FOUR HUNDRED CIGARETTES IN UNSTAMPED OR UNLAWFULLY STAMPED PACKAGES, WHO IS ALSO IN THE POSSESSION OF UNAFFIXED, FALSE, ALTERED OR COUNTERFEIT CIGARETTE TAX STAMPS, IMPRINTS OR IMPRESSIONS, SHALL BE PRESUMED TO KNOWINGLY BE IN THE POSSESSION OF, OR HAVE UNDER HIS, HER OR ITS CONTROL, THE UNSTAMPED

OR UNLAWFULLY STAMPED PACKAGES DESCRIBED IN PARAGRAPH TWO OF THIS SUBDIVISION.

S 5. Section 11-1317 of the administrative code of the city of New York is amended by adding a new subdivision f to read as follows:

F. THE COMMISSIONER OF FINANCE MAY IMPOSE A PENALTY OF UP TO TWO THOUSAND FIVE HUNDRED DOLLARS FOR THE FAILURE OF AGENTS AND/OR WHOLESALE AND/OR RETAIL DEALERS TO FILE ANY REQUIRED REPORTS OR TO SUBMIT ANY REQUIRED DATA TO THE DEPARTMENT.

S 6. Subdivisions (a), (c) and (d) of section 11-4012 of the administrative code of the city of New York, subdivision (a) as amended by chapter 201 of the laws of 2009, subdivision (c) as added by chapter 262 of the laws of 2000, paragraph 1 of subdivision (c) as amended by chapter 508 of the laws of 2004, and subdivision (d) as added by chapter 765 of the laws of 1985, are amended to read as follows:

(a) Attempt to evade or defeat tax. Any person who willfully attempts in any manner to evade or defeat any tax imposed by chapter thirteen of this title or payment thereof where: (1) such tax is unpaid on [ten] FIVE thousand cigarettes or more or (2) such person has previously been convicted [two or more times] of a crime set forth in this chapter relating to cigarette taxes; shall be guilty of a class E felony.

(c) (1) Any person, other than an agent so authorized by the commissioner of finance, who willfully possesses or transports for the purpose of sale [ten] FIVE thousand or more cigarettes subject to the tax imposed by chapter thirteen of this title in any unstamped or unlawfully stamped packages or who willfully sells or offers for sale [ten] FIVE thousand or more cigarettes in any unstamped or unlawfully stamped packages in violation of such chapter shall be guilty of a class E felony.

(2) Any person, other than an agent appointed by the commissioner of finance, who willfully possesses or transports for the purpose of sale [thirty] TEN thousand or more cigarettes subject to the tax imposed by chapter thirteen of this title in any unstamped or unlawfully stamped packages or who willfully sells or offers for sale [thirty] TEN thousand or more cigarettes in any unstamped or unlawfully stamped packages in violation of such chapter shall be guilty of a class D felony.

(d) For the purposes of this section, the possession or transportation within this city by any person, other than an agent, at any one time of [five thousand] FOUR HUNDRED 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 chapter thirteen of this title. With respect to such possession or transportation, any provisions of chapter thirteen of this title providing for a time period during which a use tax imposed by such chapter 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 city of [more than] four hundred OR MORE 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 chapter thirteen of this title.

S 7. The section heading and subdivisions (a) and (c) of section 11-4021 of the administrative code of the city of New York, as amended by chapter 556 of the laws of 2011, are amended to read as follows:

Seizure and forfeiture of cigarettes, FLAVORED TOBACCO PRODUCTS AND CIGARETTE ROLLING MACHINES. (a) Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer designated in subdivision TWO OR SUBDIVISION five of section 2.10 of such law,

acting pursuant to his special duties, shall discover any cigarettes subject to any tax provided by chapter thirteen of this title, and upon which the tax has not been paid or the stamps not affixed as required by such 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 of finance.

(c) The commissioner of finance may, within a reasonable time after the forfeiture to the city of such vending machines or receptacles, upon publication of a notice to such effect for at least five successive days, in a newspaper published or circulated in the city, sell such forfeited vending machines or receptacles at public sale and pay the proceeds into the treasury of the city to the credit of the general fund. Such seized vending machines or receptacles may be sold prior to forfeiture if the owner of the seized property consents to the sale. Notwithstanding any other provision of this section, the commissioner of finance may enter into an agreement with the state tax commission to provide for the disposition between the city and state of the proceeds from any such sale. The commissioner of finance may [also] transfer any seized cigarettes to the state for destruction. All cigarettes forfeited to the [state] CITY shall be destroyed or used for law enforcement purposes, except that cigarettes that violate, or are suspected of violating, federal trademark laws or import laws shall not be used for law enforcement purposes. If the commissioner determines the cigarettes may not be used for law enforcement purposes, the commissioner of finance must, within a reasonable time after the forfeiture to the city of such cigarettes, upon publication of a notice to such effect for at least five successive days, prior to destruction, in a newspaper published or circulated in the city, destroy such forfeited cigarettes. Such commissioner may, prior to any destruction of cigarettes, permit the true holder of the trademark rights in the cigarettes to inspect such forfeited cigarettes in order to assist in any investigation regarding such cigarettes.

S 8. Section 11-4021 of the administrative code of the city of New York is amended by adding a new subdivision (f) to read as follows:

(F) THE AUTHORITY PROVIDED BY SUBDIVISION (A) AND THE PROCEDURES DESCRIBED IN SUBDIVISIONS (B) AND (C) OF THIS SECTION SHALL ALSO APPLY TO THE SEIZURE AND FORFEITURE OF ANY FLAVORED TOBACCO PRODUCT OR TOBACCO ROLLING MACHINE OR COMPARABLE EQUIPMENT, ALONG WITH ANY TOBACCO PRODUCT USED IN CONNECTION WITH SUCH MACHINE OR EQUIPMENT, THAT IS POSSESSED, OFFERED FOR SALE, OR USED FOR A COMMERCIAL PURPOSE IN VIOLATION OF THIS TITLE OR TITLE SEVENTEEN OF THIS CODE.

S 9. Subdivision j of section 17-713 of the administrative code of the city of New York, as added by local law number 69 of the city of New York for the year 2009, is amended to read as follows:

j. "Tobacco product" means any [substance which contains tobacco, including, but not limited to, cigars and chewing tobacco; provided, however, that such term shall not include cigarettes] PRODUCT MADE OR DERIVED FROM TOBACCO THAT IS INTENDED FOR HUMAN CONSUMPTION, INCLUDING ANY COMPONENT, PART, OR ACCESSORY OF A TOBACCO PRODUCT (EXCEPT RAW MATERIALS OTHER THAN TOBACCO USED IN MANUFACTURING A COMPONENT PART, OR ACCESSORY OF A TOBACCO PRODUCT). TOBACCO PRODUCT SHALL ALSO INCLUDE, WITHOUT LIMITATION, ANY CIGAR, CHEWING TOBACCO, PIPE TOBACCO, ROLL-YOUR-OWN TOBACCO, SNUS, BIDI, SNUFF, AND DISSOLVABLE TOBACCO PRODUCTS. TOBACCO PRODUCT SHALL NOT INCLUDE CIGARETTES OR ANY PRODUCT

THAT HAS BEEN APPROVED BY THE U.S. FOOD AND DRUG ADMINISTRATION, PURSUANT TO ITS AUTHORITY OVER DRUGS AND DEVICES, FOR SALE AS A TOBACCO USE CESSATION PRODUCT OR FOR OTHER MEDICAL PURPOSES AND THAT IS BEING MARKETED AND SOLD SOLELY FOR SUCH PURPOSES.

S 10. Section 17-715 of the administrative code of the city of New York, as amended by local law number 69 of the city of New York for the year 2009, is amended to read as follows:

S 17-715 Sale of flavored tobacco products prohibited. A. It shall be unlawful for any person to sell or offer for sale, OR TO POSSESS WITH INTENT TO SELL OR OFFER FOR SALE, any flavored tobacco product except in a tobacco bar.

B. THE POSSESSION OR TRANSPORTATION AT ANY ONE TIME OF TEN OR MORE FLAVORED TOBACCO PRODUCTS (OF THE SAME OR DIFFERENT VARIANTS) SHALL CONSTITUTE PRESUMPTIVE EVIDENCE THAT SUCH PERSON POSSESSES SUCH TOBACCO PRODUCTS WITH INTENT TO SELL OR OFFER FOR SALE. THIS SECTION SHALL NOT APPLY TO A MANUFACTURER OR AN AGENT, OR A PERSON DELIVERING PRODUCTS IN THE REGULAR COURSE OF BUSINESS FOR A MANUFACTURER OR AN AGENT.

S 11. The administrative code of the city of New York is amended by adding a new section 17-715.1 to read as follows:

S 17-715.1 COMMERCIAL USE OF CIGARETTE ROLLING MACHINE PROHIBITED. IT SHALL BE UNLAWFUL FOR ANY PERSON TO PROVIDE PUBLIC ACCESS FOR COMMERCIAL PURPOSES TO A CIGARETTE ROLLING MACHINE, OR COMPARABLE EQUIPMENT, FOR THE ASSEMBLY, MANUFACTURE, OR FABRICATION OF CIGARETTES, CIGARS, OR ANY OTHER TOBACCO PRODUCT, OR TO POSSESS A CIGARETTE ROLLING MACHINE OR COMPARABLE EQUIPMENT WITH INTENT TO VIOLATE THIS SECTION.

S 12. Section 17-716 of the administrative code of the city of New York, as amended by local law number 69 of the city of New York for the year 2009, is amended to read as follows:

S 17-716 Violations and penalties. a. Any person who violates section 17-714 of this subchapter or any rules promulgated hereunder shall be liable for a civil penalty of not less than [two hundred and fifty] FIVE HUNDRED dollars, nor more than two thousand dollars for each violation.

b. Any person who violates section 17-715 OR 17-715.1 of this subchapter shall be liable for a civil penalty of not more than [five hundred] ONE THOUSAND dollars for the first violation, and not more than [five hundred] ONE THOUSAND dollars for each additional violation found on that day; and not more than [one] TWO thousand dollars for the second violation at the same place of business within a [two-year] THREE-YEAR period, and not more than [one] TWO thousand dollars for each additional violation found on that day; and not more than [two] FIVE thousand dollars for the third and all subsequent violations at the same place of business within a [two-year] THREE-YEAR period. In addition, for a third violation occurring on a different day and all subsequent violations occurring on different days at the same place of business within a [two-year] THREE-YEAR period, any person who engages in business as a retail dealer, as such term is defined in section 20-201 of the code, shall be subject to the mandatory suspension of his or her cigarette license, issued pursuant to 20-202 of the code, for such place of business, for a period not to exceed one year. A cigarette license shall be suspended at the same hearing at which a retail dealer is found liable for a third violation or subsequent violations at the same place of business within a [two-year] THREE-YEAR period.

S 13. Section 17-717 of the administrative code of the city of New York, as added by local law number 69 of the city of New York for the year 2009, is amended to read as follows:

S 17-717 Enforcement. The department [and], the department of consumer affairs AND THE DEPARTMENT OF FINANCE shall enforce the provisions of this subchapter. A proceeding to recover any civil penalty authorized pursuant to section 17-716 of this subchapter shall be commenced by the service of a notice of violation returnable to the [administrative tribunal established by the board of health] HEALTH TRIBUNAL AT THE OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS where the department OR THE DEPARTMENT OF FINANCE issues such a notice or to the adjudication division of the department of consumer affairs where such department issues such a notice. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged. Such notice shall contain a statement that any hearing for a third violation or subsequent violation [of section 17-715] DESCRIBED IN SUBDIVISION B OF SECTION 17-716 of this subchapter at the same place of business within a [two-year] THREE-YEAR period shall also constitute a hearing for the suspension of a retail dealer's cigarette license where the retail dealer is found to be in violation of such section. The [administrative tribunal of the board of health] HEALTH TRIBUNAL AT THE OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS and the adjudication division of the department of consumer affairs shall have the power to render decisions and to impose the remedies and penalties provided for in section 17-716 of this subchapter, in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings. The department, THE DEPARTMENT OF FINANCE and the department of consumer affairs shall notify each other within thirty days of finding that a retail dealer has been found liable for any section of this subchapter.

S 14. Section 17-718 of the administrative code of the city of New York, as added by local law number 69 of the city of New York for the year 2009, is amended to read as follows:

S 17-718 Rules. The commissioner of the department, THE COMMISSIONER OF THE DEPARTMENT OF FINANCE and the commissioner of the department of consumer affairs shall promulgate any rules as may be necessary for the purposes of carrying out the provisions of this [section] SUBCHAPTER.

S 15. This act shall take effect on the one hundred twentieth day after it shall have become a law, provided that the department of finance and the department of health and mental hygiene of the city of New York may promulgate any rules necessary for the implementation of this act prior to such effective date.