

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

451--B

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law and the administrative code of the city of New York, in relation to the destruction of seized and forfeited cigarettes and tobacco products

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

1 Section 1. Section 1846 of the tax law, as added by chapter 65 of the
2 laws of 1985, subdivision (a) as amended by section 2 of part E of chap-
3 ter 93 of the laws of 2002, subdivision (a-1) as added by section 3 of
4 part J of chapter 383 of the laws of 2001, subdivision (c) as amended by
5 section 169 of subpart B of part C of chapter 62 of the laws of 2011,
6 subdivision (d) as added by chapter 384 of the laws of 1999, is amended
7 to read as follows:
8 S 1846. Seizure and forfeiture of cigarettes.--(a) Whenever a police
9 officer designated in section 1.20 of the criminal procedure law or a
10 peace officer designated in subdivision four of section 2.10 of such
11 law, acting pursuant to his or her special duties, shall discover any
12 cigarettes subject to tax provided by article twenty of this chapter or
13 by chapter thirteen of title eleven of the administrative code of the
14 city of New York, and upon which the tax has not been paid or the stamps
15 not affixed as required by such article or such chapter thirteen, they
16 are hereby authorized and empowered forthwith to seize and take
17 possession of such cigarettes, together with any vending machine or
18 receptacle in which they are held for sale. Such cigarettes, vending
19 machine or receptacle seized by a police officer or such peace officer
20 shall be turned over to the commissioner. Such seized cigarettes, vend-

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

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1 ing machine or receptacle, not including money contained in such vending
2 machine or receptacle, shall be forfeited to the state. The commission-
3 er may, within a reasonable time thereafter, upon publication of a
4 notice to such effect for at least five successive days, before the day
5 of sale, in a newspaper published or circulated in the county where the
6 seizure was made, sell such forfeited [cigarettes and] vending machines
7 or receptacles at public sale and pay the proceeds into the state treas-
8 ury to the credit of the general fund. [Cigarettes so seized and sold
9 shall be sold only to an agent under article twenty of this chapter and
10 the notice of sale shall contain a provision to this effect.] Notwith-
11 standing any other provision of this section, the commissioner may enter
12 into an agreement with any city of this state which is authorized to
13 impose a tax similar to that imposed by article twenty of this chapter
14 to provide for the disposition between the state and any such city of
15 the proceeds from any such sale. ALL CIGARETTES FORFEITED TO THE STATE
16 SHALL BE DESTROYED OR USED FOR LAW ENFORCEMENT PURPOSES, EXCEPT THAT
17 CIGARETTES THAT VIOLATE, OR ARE SUSPECTED OF VIOLATING, FEDERAL TRADE-
18 MARK LAWS OR IMPORT LAWS SHALL NOT BE USED FOR LAW ENFORCEMENT PURPOSES.
19 IF THE COMMISSIONER DETERMINES THE CIGARETTES MAY NOT BE USED FOR LAW
20 ENFORCEMENT PURPOSES, THE COMMISSIONER MUST, WITHIN A REASONABLE TIME
21 AFTER THE FORFEITURE OF SUCH CIGARETTES, UPON PUBLICATION IN THE STATE
22 REGISTRY, DESTROY SUCH FORFEITED CIGARETTES. THE COMMISSIONER MAY, PRIOR
23 TO ANY DESTRUCTION OF CIGARETTES, PERMIT THE TRUE HOLDER OF THE TRADE-
24 MARK RIGHTS IN THE CIGARETTES TO INSPECT SUCH FORFEITED CIGARETTES IN
25 ORDER TO ASSIST IN ANY INVESTIGATION REGARDING SUCH CIGARETTES.

26 (a-1) Whenever a police officer designated in section 1.20 of the
27 criminal procedure law or a peace officer designated in subdivision four
28 of section 2.10 of such law, acting pursuant to his or her special
29 duties, shall discover any cigarettes which have been stamped in
30 violation of section four hundred eighty-b of this chapter, such officer
31 is hereby authorized and empowered forthwith to seize and take
32 possession of such cigarettes, and such cigarettes shall be subject to a
33 forfeiture action pursuant to the procedures provided for in article
34 thirteen-A of the civil practice law and rules, as if such article
35 specifically provided for forfeiture of cigarettes seized pursuant to
36 this section as a preconviction forfeiture crime. Subdivisions (b), (c)
37 and (d) of this section shall not apply to cigarettes seized pursuant to
38 this subdivision.

39 (b) In the alternative, the tax commission, on reasonable notice by
40 mail or otherwise, may permit the person from whom said cigarettes were
41 seized to redeem the said cigarettes, and any vending machine or recep-
42 tacle seized therewith, by the payment of the tax due, plus a penalty of
43 fifty per centum thereof, plus interest on the amount of tax due for
44 each month or fraction thereof after such tax became due (determined
45 without regard to any extension of time for filing or paying) at the
46 rate applicable under subparagraph (ii) of paragraph (a) of subdivision
47 one of section four hundred eighty-one of this chapter and the costs
48 incurred in such proceeding, which total payment shall not be less than
49 five dollars; provided, however, that such seizure and sale or redemp-
50 tion shall not be deemed to relieve any person from fine or imprisonment
51 provided for in this article for violation of any provision of article
52 twenty of this chapter.

53 (c) In the alternative, [if the tax commission concludes that any
54 cigarettes seized pursuant to this section, when offered at public sale,
55 will bring a price less than the reasonably estimated price which the
56 department of corrections and community supervision would have to pay

1 for the purchase of such cigarettes for sale to or use by inmates in
2 institutions under the jurisdiction of such department,] the tax commis-
3 sion may dispose of [such] ANY cigarettes SEIZED PURSUANT TO THIS
4 SECTION, EXCEPT THOSE THAT VIOLATE, OR ARE SUSPECTED OF VIOLATING,
5 FEDERAL TRADEMARK LAWS OR IMPORT LAWS, by transferring them to the
6 department of corrections and community supervision for sale to or use
7 by inmates in such institutions.

8 (d) Cigarettes seized pursuant to a violation of section four hundred
9 seventy-three-b of this chapter shall be destroyed [or sold for export
10 at the discretion of the commissioner]. The department may also seize
11 and destroy any vending machine or receptacle in which cigarettes
12 stamped in violation of section four hundred seventy-three-b of this
13 chapter are held for sale.

14 S 2. Section 1846-a of the tax law, as added by chapter 61 of the laws
15 of 1989, subdivision (a-1) as added by chapter 552 of the laws of 2008,
16 subdivision (c) as amended by section 170 of subpart B of part C of
17 chapter 62 of the laws of 2011, is amended to read as follows:

18 S 1846-a. Forfeiture action with respect to tobacco products. (a)
19 Whenever a police officer designated in section 1.20 of the criminal
20 procedure law or a peace officer designated in subdivision four of
21 section 2.10 of such law, acting pursuant to his special duties, shall
22 discover any tobacco products in excess of five hundred cigars or ten
23 pounds of tobacco which are being imported for sale in the state where
24 the person importing or causing such tobacco products to be imported has
25 not been appointed as a distributor pursuant to section four hundred
26 seventy-two of this chapter, such police officer or peace officer is
27 hereby authorized and empowered forthwith to seize and take possession
28 of such tobacco products. Such tobacco products seized by a police offi-
29 cer or peace officer shall be turned over to the commissioner [of taxa-
30 tion and finance]. Such seized tobacco products shall be forfeited to
31 the state. [The] ALL TOBACCO PRODUCTS FORFEITED TO THE STATE SHALL BE
32 DESTROYED OR USED FOR LAW ENFORCEMENT PURPOSES, EXCEPT THAT TOBACCO
33 PRODUCTS THAT VIOLATE, OR ARE SUSPECTED OF VIOLATING, FEDERAL TRADEMARK
34 LAWS OR IMPORT LAWS SHALL NOT BE USED FOR LAW ENFORCEMENT PURPOSES. IF
35 THE COMMISSIONER DETERMINES THE TOBACCO PRODUCTS MAY NOT BE USED FOR LAW
36 ENFORCEMENT PURPOSES, THE commissioner [of taxation and finance may]
37 MUST, within a reasonable time thereafter, upon publication IN THE STATE
38 REGISTRY of a notice to such effect [for at least five successive days,]
39 before the day of [sale, in a newspaper published or circulated in the
40 county where the seizure was made, sell] DESTRUCTION, DESTROY such
41 forfeited tobacco products [at public sale and pay the proceeds into the
42 state treasury to the credit of the general fund. Tobacco products so
43 seized and sold shall be sold only to a distributor appointed under
44 article twenty of this chapter and the notice of sale shall contain a
45 provision to this effect]. THE COMMISSIONER MAY, PRIOR TO ANY
46 DESTRUCTION OF TOBACCO PRODUCTS, PERMIT THE TRUE HOLDER OF THE TRADEMARK
47 RIGHTS IN THE TOBACCO PRODUCTS TO INSPECT SUCH FORFEITED PRODUCTS IN
48 ORDER TO ASSIST IN ANY INVESTIGATION REGARDING SUCH TOBACCO PRODUCTS.

49 (a-1) Whenever a police officer designated in section 1.20 of the
50 criminal procedure law or a peace officer designated in subdivision four
51 of section 2.10 of the criminal procedure law, acting pursuant to his or
52 her special duties, discovers any roll-your-own tobacco that is in
53 violation of section four hundred eighty-c of this chapter, the officer
54 is authorized and empowered to seize and take possession of the roll-
55 your-own tobacco, and the roll-your-own tobacco is subject to a forfei-
56 ture action under the procedures provided for in article thirteen-A of

1 the civil practice law and rules, as if that article specifically
2 provided for forfeiture of roll-your-own tobacco seized under this
3 section as a preconviction forfeiture crime. Subdivisions (b) and (c) of
4 this section do not apply to roll-your-own tobacco seized pursuant to
5 this subdivision.

6 (b) In the alternative, the commissioner, on reasonable notice by mail
7 or otherwise, may permit the person from whom said tobacco products were
8 seized to redeem the said tobacco products by the payment of the tax
9 due, plus a penalty of fifty per centum thereof, plus interest on the
10 amount of tax due for each month or fraction thereof after such tax
11 became due (determined without regard to any extension of time for
12 filing or paying) at the rate applicable under subparagraph (ii) of
13 paragraph (a) of subdivision one of section four hundred eighty-one of
14 this chapter and the costs incurred in such proceeding, which total
15 payment shall not be less than five dollars; provided, however, that
16 such seizure and sale or redemption shall not be deemed to relieve any
17 person from fine or imprisonment provided for in this article for
18 violation of any provision of article twenty of this chapter.

19 (c) In the alternative, [if the commissioner concludes that any tobac-
20 co products seized pursuant to this section, when offered at public
21 sale, will bring a price less than the reasonably estimated price which
22 the department of corrections and community supervision would have to
23 pay for the purchase of such tobacco products for sale to or use by
24 inmates in institutions under the jurisdiction of such department,] the
25 commissioner may dispose of [such] ANY tobacco products SEIZED PURSUANT
26 TO THIS SECTION, EXCEPT THOSE THAT VIOLATE, OR ARE SUSPECTED OF VIOLAT-
27 ING, FEDERAL TRADEMARK OR IMPORT LAWS, by transferring them to the
28 department of corrections and community supervision for sale to or use
29 by inmates in such institutions.

30 S 3. Section 11-4021 of the administrative code of the city of New
31 York, as added by chapter 765 of the laws of 1985, is amended to read as
32 follows:

33 S 11-4021 Seizure and forfeiture of cigarettes. (a) Whenever a police
34 officer designated in section 1.20 of the criminal procedure law or a
35 peace officer designated in subdivision five of section 2.10 of such
36 law, acting pursuant to his special duties, shall discover any ciga-
37 rettes subject to any tax provided by chapter thirteen of this title,
38 and upon which the tax has not been paid or the stamps not affixed as
39 required by such chapter, they are hereby authorized and empowered
40 forthwith to seize and take possession of such cigarettes, together with
41 any vending machine or receptacle in which they are held for sale. Such
42 cigarettes, vending machine or receptacle seized by a police officer or
43 such peace officer shall be turned over to the commissioner of finance.

44 (b) The seized cigarettes and any vending machine or receptacle seized
45 therewith, but not the money contained in such vending machine or recep-
46 tacle shall thereupon be forfeited to the city, unless the person from
47 whom the seizure is made, or the owner of such seized cigarettes, vend-
48 ing machine or receptacle, or any other person having an interest in
49 such property, shall within ten days of such seizure, apply to the
50 commissioner of finance for a hearing to determine the propriety of the
51 seizure, or unless the commissioner of finance shall on his own motion
52 release the seized cigarettes, vending machine or receptacle. After such
53 hearing the commissioner of finance shall give notice of his decision to
54 the petitioner. The decision of the commissioner shall be reviewable for
55 error, illegality, unconstitutionality or any other reason whatsoever by
56 a proceeding under article seventy-eight of the civil practice law and

1 rules if application therefor is made to the supreme court within thirty
2 days after the giving of the notice of such decision. Such proceeding
3 shall not be instituted unless there shall first be filed with the
4 commissioner of finance an undertaking, issued by a surety company
5 authorized to transact business in New York state and approved by the
6 superintendent of insurance of New York state as to solvency and respon-
7 sibility, in such amount as a justice of the supreme court shall
8 approve, to the effect that if such proceeding be dismissed, or the
9 seizure confirmed, the petitioner will pay all costs and charges which
10 may accrue in the prosecution of the proceeding.

11 (c) The commissioner of finance may, within a reasonable time after
12 the forfeiture to the city of such [cigarettes,] vending machines or
13 receptacles, upon publication of a notice to such effect for at least
14 five successive days, in a newspaper published or circulated in the
15 city, sell such forfeited [cigarettes and] vending machines or recepta-
16 cles at public sale and pay the proceeds into the treasury of the city
17 to the credit of the general fund. [Cigarettes so seized and sold shall
18 be sold only to an agent under chapter thirteen of this title and the
19 notice of sale shall contain a provision to this effect.] Such seized
20 [cigarettes,] vending machines or receptacles may be sold prior to
21 forfeiture if the owner of the seized property consents to the sale.
22 Notwithstanding any other provision of this section, the commissioner of
23 finance may enter into an agreement with the state tax commission to
24 provide for the disposition between the city and state of the proceeds
25 from any such sale. THE COMMISSIONER OF FINANCE MAY ALSO TRANSFER ANY
26 SEIZED CIGARETTES TO THE STATE FOR DESTRUCTION. ALL CIGARETTES
27 FORFEITED TO THE STATE SHALL BE DESTROYED OR USED FOR LAW ENFORCEMENT
28 PURPOSES, EXCEPT THAT CIGARETTES THAT VIOLATE, OR ARE SUSPECTED OF
29 VIOLATING, FEDERAL TRADEMARK LAWS OR IMPORT LAWS SHALL NOT BE USED FOR
30 LAW ENFORCEMENT PURPOSES. IF THE COMMISSIONER DETERMINES THE CIGARETTES
31 MAY NOT BE USED FOR LAW ENFORCEMENT PURPOSES, THE COMMISSIONER OF
32 FINANCE MUST, WITHIN A REASONABLE TIME AFTER THE FORFEITURE TO THE CITY
33 OF SUCH CIGARETTES, UPON PUBLICATION OF A NOTICE TO SUCH EFFECT FOR AT
34 LEAST FIVE SUCCESSIVE DAYS, PRIOR TO DESTRUCTION, IN A NEWSPAPER
35 PUBLISHED OR CIRCULATED IN THE CITY, DESTROY SUCH FORFEITED CIGARETTES.
36 SUCH COMMISSIONER MAY, PRIOR TO ANY DESTRUCTION OF CIGARETTES, PERMIT
37 THE TRUE HOLDER OF THE TRADEMARK RIGHTS IN THE CIGARETTES TO INSPECT
38 SUCH FORFEITED CIGARETTES IN ORDER TO ASSIST IN ANY INVESTIGATION
39 REGARDING SUCH CIGARETTES.

40 (d) In the alternative, the commissioner of finance, on reasonable
41 notice by mail or otherwise, may permit the person from whom said ciga-
42 rettes were seized to redeem the said cigarettes, and any vending
43 machine or receptacle seized therewith, or may permit the owner of any
44 such cigarettes, vending machine or receptacle to redeem the same, by
45 the payment of the tax due, plus a penalty of fifty percent thereof,
46 plus interest on the amount of tax due for each month or fraction there-
47 of after such tax became due (determined without regard to any extension
48 of time for filing or paying) at the rate applicable under subdivision
49 [(d)] D of section 11-1317 of this title and the costs incurred in such
50 proceeding, which total payment shall not be less than five dollars;
51 provided, however, that such seizure and sale or redemption shall not be
52 deemed to relieve any person from fine or imprisonment provided for in
53 this chapter for violation of any provisions of this chapter or chapter
54 thirteen of this title.

55 (e) In the alternative, [if the commissioner of finance concludes that
56 any cigarettes seized pursuant to this section, when offered at public

1 sale, will bring a price less than the reasonably estimated price which
2 the department of correction would have to pay for the purchase of such
3 cigarettes for sale to or use by inmates in institutions under the
4 jurisdiction of such department,] the commissioner of finance may
5 dispose of [such] ANY cigarettes SEIZED PURSUANT TO THIS SECTION, EXCEPT
6 THOSE THAT VIOLATE, OR ARE SUSPECTED OF VIOLATING, FEDERAL TRADEMARK
7 LAWS OR IMPORT LAWS, by transferring them to the department of
8 correction for sale to or use by inmates in such institutions.
9 S 4. This act shall take effect immediately.