

4598

2011-2012 Regular Sessions

I N A S S E M B L Y

February 4, 2011

Introduced by M. of A. CYMBROWITZ -- read once and referred to the
Committee on Ways and Means

AN ACT to amend the tax law, in relation to collecting the tax on ciga-
rettes; and to repeal section 471-e and subdivision 5 of section 480-a
of such law relating thereto

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

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

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

18 9. "Retail dealer." Any person, WHETHER LOCATED WITHIN OR OUTSIDE OF
19 THIS STATE, other than a wholesale dealer, engaged in selling cigarettes
20 or tobacco products TO A CONSUMER IN THIS STATE.

21 11. "Agent." Any [person] WHOLESale DEALER licensed by the commission-
22 er of taxation and finance to purchase and affix adhesive or meter
23 stamps on packages of cigarettes under this article.

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

LBD07854-02-1

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

3 21. "IMPORTER" MEANS ANY PERSON WHO IMPORTS INTO THE UNITED STATES,
4 EITHER DIRECTLY OR INDIRECTLY, A FINISHED CIGARETTE FOR SALE OR DISTRIB-
5 UTION.

6 22. "STAMP" OR "STAMPS" MEANS THE INDICIA, INCLUDING METER
7 IMPRESSIONS, REQUIRED TO BE PLACED ON A CIGARETTE PACKAGE THAT EVIDENCE
8 PAYMENT OF THE TAX ON CIGARETTES UNDER SECTION FOUR HUNDRED SEVENTY-ONE
9 OF THIS ARTICLE, OR THE INDICIA, INCLUDING METER IMPRESSIONS, USED TO
10 INDICATE THAT THE CIGARETTES ARE INTENDED FOR A SALE OR DISTRIBUTION IN
11 THIS STATE THAT IS EXEMPT FROM STATE TAX UNDER PARAGRAPH (A) OF SUBDIVI-
12 SION ONE OF SECTION FOUR HUNDRED SEVENTY-ONE-E OF THIS ARTICLE.

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

20 S 2. Subdivisions 2 and 3 of section 471 of the tax law, subdivision 2
21 as amended by section 2 of part D of chapter 134 of the laws of 2010 and
22 subdivision 3 as amended by chapter 6 of the laws of 1961, are amended
23 to read as follows:

24 2. It is intended that the ultimate incidence of and liability for the
25 tax shall be upon the consumer, and that any agent [or dealer] who shall
26 pay the tax to the commissioner shall collect the tax from the purchaser
27 or consumer. Except as [hereinafter] provided IN THIS SUBDIVISION, the
28 tax shall be advanced and paid by the agent. The agent shall be liable
29 for the collection and payment of the tax on cigarettes imposed by this
30 article and shall pay the tax to the commissioner by purchasing, under
31 such regulations as he or she shall prescribe, adhesive stamps of such
32 designs and denominations as he or she shall prescribe. The tax on ciga-
33 rettes may also be paid by or through the use of metering machines if
34 the commissioner so prescribes. Agents, located within or without the
35 state, shall purchase stamps and affix such stamps in the manner
36 prescribed to packages of cigarettes to be sold within the state[, in
37 which case any dealer subsequently receiving such stamped packages of
38 cigarettes will not be required to purchase and affix stamps on such
39 packages of cigarettes]. All cigarettes sold by agents and wholesalers
40 to Indian nations or tribes or reservation cigarette sellers located on
41 an Indian reservation must bear a tax stamp.

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

45 S 3. Section 471-a of the tax law, as amended by section 5 of part D
46 of chapter 134 of the laws of 2010, is amended to read as follows:

47 S 471-a. Use tax on cigarettes. There is hereby imposed and shall be
48 paid BY ANY CONSUMER a tax on all cigarettes used in the state by any
49 [person] SUCH CONSUMER, except that no tax shall be imposed (1) if the
50 tax provided in section four hundred seventy-one of this article is
51 paid, (2) on the use of cigarettes which are exempt from the tax imposed
52 by said section, or (3) on the use of four hundred or less cigarettes,
53 brought into the state on, or in the possession of, any [person] CONSUM-
54 ER. Such tax on cigarettes shall be at the rate of four dollars and
55 thirty-five cents for each twenty cigarettes or fraction thereof,
56 provided, however, that if a package of cigarettes contains more than

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

19 S 4. Section 471-e of the tax law is REPEALED and a new section 471-e
20 is added to read as follows:

21 S 471-E. APPLICATION OF TAX ON TRIBAL LANDS. 1. EXEMPTION FROM TAX.

22 (A) CIGARETTES SOLD TO OR RECEIVED BY MEMBERS OF A FEDERALLY RECOGNIZED
23 INDIAN TRIBE ON SUCH TRIBE'S INDIAN COUNTRY SHALL NOT BE SUBJECT TO TAX
24 UNDER THIS ARTICLE.

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

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

42 S 5. Subdivision 1 of section 472 of the tax law, as amended by chap-
43 ter 629 of the laws of 1996, is amended, subdivisions 2 and 3 are renum-
44 bered subdivisions 3 and 4 and a new subdivision 2 is added to read as
45 follows:

46 1. The commissioner shall prescribe, prepare and furnish stamps of
47 such denominations and quantities as may be necessary for the payment of
48 the tax on cigarettes imposed by this article, OR FOR INDICATION THAT
49 THE CIGARETTES ARE TAX-EXEMPT UNDER SECTION FOUR HUNDRED SEVENTY-ONE-E
50 OF THIS ARTICLE, and may from time to time and as often as he OR SHE
51 deems advisable provide for the issuance and exclusive use of stamps of
52 a new design and forbid the use of stamps of any other design, in the
53 manner and with the effect provided in section two hundred seventy-four
54 of this chapter. The commissioner shall make provisions for the sale of
55 such stamps at such places and at such times as he OR SHE may deem
56 necessary and may license agents for such purpose. The commissioner may

1 license WHOLESALE dealers in cigarettes, who maintain separate warehous-
2 ing facilities for the purpose of receiving and distributing cigarettes
3 and conducting their business, AND who have received commitments from at
4 least two cigarette manufacturers whose aggregate market share is at
5 least forty percent of the New York state cigarette market, [and import-
6 ers, exporters and manufacturers of cigarettes, and other persons within
7 or without the state as] OR ARE THEMSELVES ALSO LICENSED AS MANUFACTUR-
8 ERS, IMPORTERS OR agents to buy [or] AND affix stamps to be used in
9 paying the tax [herein] imposed BY THIS ARTICLE. NO PERSON OTHER THAN A
10 LICENSED AGENT MAY PURCHASE OR AFFIX STAMPS AND AGENTS SHALL NOT SELL OR
11 PROVIDE SUCH STAMPS TO ANY OTHER AGENT OR PERSON, but an agent shall at
12 all times have the right to appoint the person in his OR HER employ who
13 is to affix the stamps to any cigarettes under the agent's control. The
14 fee for filing such application for an agent's license shall be one
15 thousand five hundred dollars, unless such fee has been paid during the
16 preceding twelve months, in which case, the fee for a new license shall
17 be one thousand dollars. All of the provisions of section four hundred
18 eighty OF THIS ARTICLE relating to wholesale dealers' licenses, includ-
19 ing the procedure for suspension, revocation, refusal to license and for
20 hearings, except for paragraphs (c) and [(g)] (F) of subdivision one of
21 such section, shall be applicable to agents' licenses applied for or
22 granted pursuant to this section, as if such provisions had been set
23 forth in full in this subdivision and had expressly referred to the
24 applicant for, or the holder of, an agent's license. Whenever the
25 commissioner shall sell and deliver to any such agent any such stamps,
26 such agent shall be entitled to receive as compensation for his OR HER
27 services and expenses as such agent in [selling or] affixing such
28 stamps, and to retain out of the moneys to be paid by him OR HER for
29 such stamps, a commission on the par value thereof. The commissioner is
30 hereby authorized to prescribe a schedule of commissions, not exceeding
31 five per centum, allowable to such agent for buying and affixing such
32 stamps. Such schedule shall be uniform with respect to the different
33 types of stamps used, and may be on a graduated scale with respect to
34 the number of stamps purchased. The commissioner may, in his OR HER
35 discretion, permit an agent to pay for such stamps within thirty days
36 after the date of purchase and may require any such agent to file with
37 the department [of taxation and finance] a bond issued by a surety
38 company approved by the superintendent of insurance as to solvency and
39 responsibility and authorized to transact business in the state or other
40 security acceptable to the commissioner, in such amount as the commis-
41 sioner may fix, to secure the payment of any sums due from such agent
42 pursuant to this article. If securities are deposited as security under
43 this subdivision, such securities shall be kept in the custody of the
44 commissioner and may be sold by the commissioner if it becomes necessary
45 so to do in order to recover any sums due from such agent pursuant to
46 this article, but no such sale shall be had until after such agent shall
47 have had opportunity to litigate the validity of any tax if it elects so
48 to do. Upon any such sale, the surplus, if any, above the sums due under
49 this article shall be returned to such agent.

50 2. STAMPS SHALL BE APPLIED BY A LICENSED AGENT TO EACH PACKAGE OF
51 CIGARETTES SOLD OR DISTRIBUTED WITHIN THIS STATE AS FOLLOWS: (A) A TAX
52 STAMP SHALL BE APPLIED TO ALL CIGARETTE PACKAGES CONTAINING CIGARETTES
53 SUBJECT TO STATE TAX UNDER THIS ARTICLE, INCLUDING TO CIGARETTES SUBJECT
54 TO REDUCED STATE TAX UNDER SUBDIVISION TWO OF SECTION FOUR HUNDRED
55 SEVENTY-ONE-E OF THIS ARTICLE.

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

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

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

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

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

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

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

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

51 2. AGENTS SHALL BE PERMITTED TO SET ASIDE, WITHOUT APPLICATION OF
52 STAMPS, ONLY SUCH PART OF THE AGENT'S STOCK THAT IS IDENTIFIED FOR SALE
53 OR DISTRIBUTION OUTSIDE OF THIS STATE; PROVIDED, THAT ANY SUCH UNSTAMPED
54 CIGARETTES SHALL BE STORED SEPARATELY FROM STAMPED CIGARETTE PACKAGES.
55 NO AGENT SHALL TRANSFER UNSTAMPED CIGARETTE PACKAGES TO ANOTHER FACILITY
56 OF THE AGENT WITHIN THIS STATE OR TO ANOTHER PERSON WITHIN THIS STATE.

1 3. A MANUFACTURER OR IMPORTER MAY SELL OR DISTRIBUTE CIGARETTES TO A
2 PERSON LOCATED OR DOING BUSINESS WITHIN THIS STATE (INCLUDING ON ANY
3 TRIBAL LANDS LOCATED WITHIN THIS STATE) ONLY IF SUCH PERSON IS A
4 LICENSED IMPORTER OR AGENT. AN IMPORTER MAY OBTAIN CIGARETTES ONLY FROM
5 A LICENSED MANUFACTURER. AN AGENT MAY OBTAIN CIGARETTES ONLY FROM A
6 LICENSED MANUFACTURER, IMPORTER OR AGENT. AN AGENT MAY SELL OR DISTRIB-
7 UTE CIGARETTES TO A PERSON LOCATED OR DOING BUSINESS WITHIN THIS STATE
8 (INCLUDING ON ANY TRIBAL LANDS LOCATED WITHIN THIS STATE) ONLY IF SUCH
9 PERSON IS A LICENSED AGENT, WHOLESALE DEALER OR RETAIL DEALER. A RETAIL
10 DEALER MAY OBTAIN CIGARETTES ONLY FROM A LICENSED AGENT OR WHOLESALE
11 DEALER.

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

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

18 (I) THE NAME, ADDRESS, DESTINATION (INCLUDING STREET ADDRESS), VEHICLE
19 LICENSE NUMBER, DRIVER'S LICENSE NUMBER, SIGNATURE OF THE PERSON RECEIV-
20 ING SUCH CIGARETTES, AND THE NAME OF THE PURCHASER;

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

23 (III) A DECLARATION OF THE NAME AND ADDRESS OF THE RECIPIENT'S PRINCI-
24 PAL IN ALL CASES WHEN THE RECIPIENT IS ACTING AS AN AGENT.

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

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

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

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

49 4. At the time of delivering cigarettes to any person each MANUFACTUR-
50 ER, IMPORTER, agent or wholesale dealer, and at the time of delivering
51 tobacco products to any person each distributor or wholesale dealer of
52 tobacco products, shall make a true duplicate invoice showing the date
53 of delivery, the number of packages BY BRAND STYLE and number of ciga-
54 rettes contained therein, in each shipment of cigarettes delivered, and
55 the items and quantity and wholesale price of each item in each shipment
56 of tobacco products delivered, and the name of the purchaser to whom

1 delivery is made, and shall retain the same for a period of [three] FIVE
2 years subject to the use and inspection of the commissioner [of taxation
3 and finance]. Each dealer shall procure and retain invoices showing the
4 number of packages BY BRAND STYLE and number of cigarettes contained
5 therein, in each shipment of cigarettes received by him OR HER, and the
6 items and quantity and wholesale price of each item in each shipment of
7 tobacco products received by him OR HER, the date thereof, and the name
8 of the shipper, and shall retain the same for a period of [three] FIVE
9 years subject to the use and inspection of the commissioner [of taxation
10 and finance]. The commissioner [of taxation and finance] by regulation
11 may provide that whenever cigarettes or tobacco products are shipped
12 into the state, the railroad company, express company, trucking company
13 or other public carrier transporting any shipment thereof shall file
14 with the commissioner [of taxation and finance] a copy of the freight
15 bill within ten days after the delivery in the state of each shipment.
16 All dealers shall maintain and keep for a period of [three] FIVE years
17 such other records of cigarettes or tobacco products received, sold or
18 delivered within the state as may be required by the commissioner [of
19 taxation and finance]. The commissioner [of taxation and finance] is
20 hereby authorized to examine the books, papers, invoices and other
21 records of any person WHO HOLDS A LICENSE OR REGISTRATION UNDER THIS
22 ARTICLE OR WHO IS in possession, control or occupancy of any premises
23 where cigarettes or tobacco products are placed, stored, sold or offered
24 for sale, and the equipment of any such person pertaining to the stamp-
25 ing of cigarettes or the sale and delivery of cigarettes or tobacco
26 products taxable under this article, as well as the stock of cigarettes
27 or tobacco products in any such premises or vehicle. To verify the accu-
28 racy of the tax imposed and assessed by this article, each such person
29 is hereby directed and required to give to the commissioner [of taxation
30 and finance] or his OR HER duly authorized representatives, the means,
31 facilities and opportunity for such examinations as are [herein]
32 provided for IN THIS SECTION and required. ALL INVOICES REQUIRED TO BE
33 RETAINED BY THIS SECTION SHALL SHOW THE NAME AND ADDRESS OF THE SELLER
34 AND THE QUANTITY BY BRAND STYLE OF THE CIGARETTES INVOLVED IN THE TRANS-
35 ACTION AND SHALL BE ITEMIZED FOR EACH FACILITY OF THE MANUFACTURER,
36 IMPORTER, AGENT OR WHOLESALE DEALER. RECORDS REQUIRED UNDER THIS ARTI-
37 CLE SHALL BE PRESERVED ON THE PREMISES DESCRIBED IN THE RELEVANT LICENSE
38 OR REGISTRATION IN SUCH A MANNER AS TO ENSURE PERMANENCY AND ACCESSIBIL-
39 ITY FOR INSPECTION AT REASONABLE HOURS BY AUTHORIZED PERSONNEL OF THE
40 TAX COMMISSION. WITH THE PERMISSION OF THE COMMISSIONER, PERSONS WITH
41 MULTIPLE PLACES OF BUSINESS MAY RETAIN CENTRALIZED RECORDS, BUT SHALL
42 TRANSMIT DUPLICATES OF THE INVOICES OR THE EQUIVALENT DOCUMENTATION TO
43 EACH PLACE OF BUSINESS WITHIN TWENTY-FOUR HOURS UPON THE REQUEST OF THE
44 COMMISSIONER.

45 THE COMMISSIONER AND HIS OR HER DESIGNEES AND THE UNITED STATES SECRE-
46 TARY OF THE TREASURY OR HIS OR HER DESIGNEE, UPON REQUEST, SHALL HAVE
47 ACCESS TO RECORDS REQUIRED UNDER THIS SECTION AND REPORTS REQUIRED UNDER
48 SECTION FOUR HUNDRED SEVENTY-FOUR-A OF THIS ARTICLE. THE COMMISSIONER AT
49 HIS OR HER SOLE DISCRETION MAY SHARE THE RECORDS AND REPORTS REQUIRED BY
50 THIS ARTICLE WITH OTHER LAW ENFORCEMENT OFFICIALS OF THE FEDERAL GOVERN-
51 MENT OR OTHER STATES. PUBLIC ACCESS TO REPORTS SUBMITTED BY LICENSEES
52 SHALL BE PROVIDED UNDER THE PROCEDURES ESTABLISHED BY THE NEW YORK FREE-
53 DOM OF INFORMATION LAW. IN NO CASE, HOWEVER, SHALL INFORMATION ABOUT
54 QUANTITIES OF CIGARETTES BY BRAND STYLE BE RELEASED TO ANYONE OTHER THAN
55 THE COMMISSIONER, THE UNITED STATES SECRETARY OF THE TREASURY, OR OTHER

1 STATE AND FEDERAL LAW ENFORCEMENT OFFICIALS WITH WHOM THE COMMISSIONER
2 HAS ELECTED TO SHARE REPORTS AND RECORDS REQUIRED BY THIS ARTICLE.

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

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

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

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

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

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

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

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

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

47 5. THE COMMISSIONER MAY ISSUE REGULATIONS REQUIRING SUCH ADDITIONAL
48 INFORMATION IN THE MONTHLY REPORTS AS HE OR SHE MAY DETERMINE IS NECES-
49 SARY OR APPROPRIATE FOR PURPOSES OF ENFORCING THE PROVISIONS OF THIS
50 ARTICLE.

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

53 IN ANY CASE WHERE THE COMMISSIONER OR HIS OR HER DULY AUTHORIZED
54 AGENT, OR ANY POLICE OR PEACE OFFICER OF NEW YORK STATE, HAS KNOWLEDGE
55 OR REASONABLE GROUNDS TO BELIEVE THAT ANY VEHICLE IS TRANSPORTING CIGA-
56 RETTES IN VIOLATION OF THIS ARTICLE, THE COMMISSIONER, SUCH AGENT, OR

1 SUCH POLICE OR PEACE OFFICER, IS AUTHORIZED TO STOP SUCH VEHICLE AND TO
2 INSPECT THE SAME FOR CONTRABAND CIGARETTES.

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

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

36 S 12. Subdivisions 1, 5 and paragraph (a) of subdivision 6 of section
37 480 of the tax law, subdivision 1 as amended by chapter 629 of the laws
38 of 1996, paragraph (k) of subdivision 1 as amended by chapter 262 of the
39 laws of 2000, subdivision 5 as added by chapter 860 of the laws of 1987
40 and paragraph (a) of subdivision 6 as amended by chapter 576 of the laws
41 of 1994, are amended, subdivision 3 is amended by adding a new paragraph
42 (c) and a new subdivision 7 is added to read as follows:

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

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

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

13 (c) Each applicant shall file with the department a bond issued by a
14 surety company approved by the superintendent of insurance as to solven-
15 cy and responsibility and authorized to transact business in the state,
16 in the face amount of ten thousand dollars, to secure payment of any
17 sums due for any violation of THIS article [twenty] or article twenty-A
18 of this chapter, or the regulations of the commissioner thereunder.

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

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

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

33 [(g)] (F) The fee for the filing of an application for a license shall
34 be fifteen hundred dollars, unless such fee has been paid during the
35 preceding twelve months, in which case, the fee for a new license shall
36 be one thousand dollars. Each application shall be accompanied by a
37 certified check for the required application fee.

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

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

46 [(j)] (I) The commissioner may for cause refuse to issue, or may
47 suspend or revoke [a wholesaler's] ANY license UNDER THIS SECTION, or
48 may forbid a retail dealer to continue selling cigarettes or tobacco
49 products or may forbid a person required to be appointed as a distribu-
50 tor of tobacco products who has not been so appointed from selling ciga-
51 rettes or tobacco products, after an opportunity for hearing has been
52 afforded. A violation of any provision of this article or of any regu-
53 lation issued under it shall be cause to SUSPEND OR REVOKE A LICENSE
54 ISSUED UNDER THIS SECTION OR TO forbid a retail dealer to continue sell-
55 ing cigarettes or tobacco products.

1 [(k)] (J) No agent shall sell cigarettes and no distributor shall sell
2 tobacco products to an unlicensed wholesale dealer, or to a wholesale
3 dealer whose license has been suspended or revoked, or to a retail deal-
4 er who is not registered under section four hundred eighty-a of this
5 article, or whose registration has been suspended or revoked, and no
6 wholesale dealer shall sell cigarettes or tobacco products to a retail
7 dealer who is not registered under section four hundred eighty-a of this
8 article, or whose registration has been suspended or revoked, and no
9 retail dealer shall sell cigarettes or tobacco products unless such
10 dealer is registered under section four hundred eighty-a of this arti-
11 cle.

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

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

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

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

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

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

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

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

44 5. Hearing procedure. (a) General. A notice of proposed cancellation
45 or suspension of a license or refusal to issue a license shall be given
46 to [the wholesale dealer] ANY PERSON licensed pursuant to this article
47 or to an applicant applying for such license in the manner prescribed
48 for a notice of deficiency of tax and all the provisions applicable to a
49 notice of deficiency under article twenty-seven of this chapter, includ-
50 ing, but not limited to, those provisions authorizing the [tax commis-
51 sion] COMMISSIONER to abate on its own motion, shall apply to a notice
52 issued pursuant to this subdivision, insofar as such provisions can be
53 made applicable to a notice authorized by this subdivision, with such
54 modifications as may be necessary in order to adapt the language of such
55 provisions to the notice authorized by this subdivision. Such notice of
56 proposed cancellation or suspension or of proposed refusal to license

1 must be given to such person within five years from the date of the act
2 or omission referred to in subdivision two or three of this section,
3 except that in the case of acts involving falsity or fraud, such notice
4 may be issued at any time. All of such notices shall contain a statement
5 advising the person to whom it is issued that the cancellation, suspen-
6 sion or refusal to license may be challenged through a hearing process
7 and that the petition for such challenge must be filed with the [tax
8 commission] COMMISSIONER within ninety days after the giving of such
9 notice. Where a license is cancelled or suspended prior to a hearing,
10 the cancellation or suspension may be challenged through the hearing
11 process provided the petition for such challenge is filed within ninety
12 days after the giving of notice of such cancellation or suspension.

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

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

34 7. MAINTENANCE OF LIST OF LICENSEES. THE COMMISSIONER SHALL CREATE AND
35 MAINTAIN A WEBSITE SETTING FORTH THE IDENTITY OF PERSONS HOLDING VALID
36 AND CURRENT LICENSES UNDER THIS SECTION, ITEMIZED BY TYPE OF LICENSE
37 POSSESSED, AND THE IDENTITY OF PERSONS HOLDING VALID AND CURRENT REGIS-
38 TRATIONS UNDER SECTION FOUR HUNDRED EIGHTY-A OF THIS ARTICLE, AND SHALL
39 UPDATE THE SITE NO LESS FREQUENTLY THAN ONCE PER MONTH.

40 S 13. Paragraph (d) of subdivision 1, and paragraph (a) of subdivision
41 4 of section 480-a of the tax law, paragraph (d) of subdivision 1 as
42 added by chapter 799 of the laws of 1992, and paragraph (a) of subdivi-
43 sion 4 as added by chapter 629 of the laws of 1996, are amended to read
44 as follows:

45 (d) (i) The commissioner shall not register retail dealers OR VENDING
46 MACHINES or such registration may be cancelled or suspended by the
47 commissioner upon notification that the applicant or retail dealer, OR
48 ANY COMBINATION OF PERSONS OWNING DIRECTLY OR INDIRECTLY, IN THE AGGRE-
49 GATE, MORE THAN TEN PERCENT OF THE OWNERSHIP INTERESTS IN THE APPLICANT
50 OR RETAIL DEALER has been convicted in a criminal proceeding of a
51 violation of subdivision [five] THREE of section [260.20] 260.21 of the
52 penal law or as directed by an enforcement officer pursuant to article
53 thirteen-F of the public health law. The clerk of the court shall
54 promptly report all criminal convictions under subdivision [five] THREE
55 of section [260.20] 260.21 of the penal law to the commissioner, togeth-

1 er with a direction to the commissioner to cancel such registration or
2 to suspend it for a specified period of time.

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

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

10 (B) HAD A REGISTRATION ISSUED UNDER THIS SECTION OR A LICENSE ISSUED
11 UNDER SECTION FOUR HUNDRED EIGHTY OF THIS ARTICLE REVOKED BY THE COMMIS-
12 SIONER WITHIN THE PAST TWO YEARS; OR

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

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

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

28 (a) If a retail dealer possesses or sells unstamped or unlawfully
29 stamped packages of cigarettes, [or if a retail dealer is also licensed
30 as an agent pursuant to section four hundred seventy-two and it
31 possesses unlawfully stamped packages of cigarettes or sells unstamped
32 or unlawfully stamped packages of cigarettes at retail,] (i) its regis-
33 tration shall be suspended for a period of not more than six months, or
34 (ii) for a second such possession or sale within a period of five years,
35 its registration shall be suspended for a period of up to thirty-six
36 months, or (iii) for a third such possession or sale within a period of
37 five years, its registration may be revoked for a period of up to five
38 years. A retail dealer registration shall be suspended or revoked pursu-
39 ant to this subdivision immediately upon such dealer's receipt of writ-
40 ten notice of suspension or revocation from the commissioner. [If a
41 retail dealer sells cigarettes through more than one place of business
42 in this state, the retail dealer registration shall not be suspended or
43 revoked pursuant to this subdivision, but the certificate of registra-
44 tion issued to the place of business, cart, stand, truck or other
45 merchandising device where unstamped or unlawfully stamped cigarettes
46 were found shall be suspended or cancelled for possession or sale of
47 unstamped or unlawfully stamped packages of cigarettes, as if such
48 certificate of registration were a retail dealer registration. A suspen-
49 sion or cancellation of a certificate of registration shall be treated
50 as if it were a suspension or revocation of a registration. If unstamped
51 or unlawfully stamped cigarettes are found in a retail dealer's ware-
52 house, the] THE suspension or revocation of the retail dealer's regis-
53 tration pursuant to this subdivision shall be applicable to each retail
54 place of business in this state through which such retail dealer sells
55 cigarettes. IF A RETAIL DEALER COMMITS ANY VIOLATION OTHER THAN THOSE

1 DESCRIBED IN THIS SUBDIVISION OR SUBDIVISION ONE OF THIS SECTION, THE
2 COMMISSIONER MAY SUSPEND OR REVOKE THE RETAIL DEALER'S REGISTRATION.

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

4 S 15. Subparagraph (v) of paragraph (a) of subdivision 1 and paragraph
5 (b) of subdivision 2 of section 481 of the tax law, subparagraph (v) of
6 paragraph (a) of subdivision 1 as amended by chapter 65 of the laws of
7 1985 and paragraph (b) of subdivision 2 as amended by chapter 61 of the
8 laws of 1989, are amended, subdivision 4 is renumbered subdivision 9 and
9 five new subdivisions 4, 5, 6, 7 and 8 are added to read as follows:

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

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

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

37 5. WHOEVER FAILS TO PAY ANY TAX IMPOSED BY THIS ARTICLE AT THE TIME
38 PRESCRIBED BY LAW OR REGULATIONS, SHALL, IN ADDITION TO ANY OTHER PENAL-
39 TY PROVIDED IN THIS ARTICLE, BE LIABLE TO A PENALTY OF FIVE TIMES THE
40 TAX DUE BUT UNPAID.

41 6. ALL CIGARETTES WHICH ARE HELD FOR SALE, DISTRIBUTION OR USE WITHIN
42 THE BORDERS OF THIS STATE IN VIOLATION OF THE REQUIREMENTS OF THIS ARTI-
43 CLE SHALL BE FORFEITED TO THE STATE.

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

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

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

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

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

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

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

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

33 (a) Whenever a police officer designated in section 1.20 of the crimi-
34 nal procedure law or a peace officer designated in subdivision four of
35 section 2.10 of such law, acting pursuant to his or her special duties,
36 shall discover any cigarettes subject to tax provided by article twenty
37 of this chapter or by chapter thirteen of title eleven of the adminis-
38 trative code of the city of New York, and upon which the tax has not
39 been paid or the stamps not affixed as required by such article or such
40 chapter thirteen, OR ANY CIGARETTES OTHERWISE BEING POSSESSED OR HELD IN
41 VIOLATION OF ARTICLE TWENTY OF THIS CHAPTER, they are hereby authorized
42 and empowered forthwith to seize and take possession of such cigarettes,
43 together with any vending machine or receptacle in which they are held
44 for sale. Such cigarettes, vending machine or receptacle seized by a
45 police officer or such peace officer shall be turned over to the commis-
46 sioner. Such seized cigarettes, vending machine or receptacle, not
47 including money contained in such vending machine or receptacle, shall
48 be forfeited to the state. The commissioner may, within a reasonable
49 time thereafter, upon publication of a notice to such effect for at
50 least five successive days, before the day of sale, in a newspaper
51 published or circulated in the county where the seizure was made, sell
52 such forfeited cigarettes and vending machines or receptacles at public
53 sale and pay the proceeds into the state treasury to the credit of the
54 general fund. Cigarettes so seized and sold shall be sold only to an
55 agent under article twenty of this chapter and the notice of sale shall
56 contain a provision to this effect. Notwithstanding any other provision

1 of this section, the commissioner may enter into an agreement with any
2 city of this state which is authorized to impose a tax similar to that
3 imposed by article twenty of this chapter to provide for the disposition
4 between the state and any such city of the proceeds from any such sale.

5 S 17. Section 1814 of the tax law, as amended by section 28 of sub-
6 part I of part V-1 of chapter 57 of the laws of 2009, is amended to read
7 as follows:

8 S 1814. Cigarette and tobacco products tax.--(a) Any person who will-
9 fully attempts in any manner to evade or defeat the taxes imposed by
10 article twenty of this chapter or payment thereof on (i) ten thousand
11 cigarettes or more (ii) twenty-two thousand cigars or more, or (iii)
12 four hundred forty pounds of tobacco or more or has previously been
13 convicted two or more times of a violation of paragraph one of this
14 subdivision shall be guilty of a class [E] D felony.

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

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

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

41 (d) For the purposes of this section, the possession or transportation
42 within this state by any person, other than an agent, at any one time of
43 five thousand or more cigarettes in unstamped or unlawfully stamped
44 packages shall be presumptive evidence that such cigarettes are
45 possessed or transported for the purpose of sale and are subject to the
46 tax imposed by section four hundred seventy-one of this chapter. With
47 respect to such possession or transportation any provisions of article
48 twenty of this chapter providing for a time period during which a use
49 tax imposed by such article may be paid on unstamped cigarettes or
50 unlawfully or improperly stamped cigarettes or during which such ciga-
51 rettes may be returned to an agent shall not apply. The possession with-
52 in this state of more than four hundred cigarettes in unstamped or
53 unlawfully stamped packages by any person other than an agent at any one
54 time shall be presumptive evidence that such cigarettes are subject to
55 tax as provided by article twenty of this chapter.

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

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

20 (g) Any person who falsely or fraudulently makes, alters or counter-
21 feits any stamp prescribed by the [tax commission] COMMISSIONER under
22 the provisions of article twenty of this chapter, or causes or procures
23 to be falsely or fraudulently made, altered or counterfeited any such
24 stamp, or knowingly and willfully utters, purchases, passes or tenders
25 as true any such false, altered or counterfeited stamp, or knowingly and
26 willfully possesses any cigarettes in packages bearing any such false,
27 altered or counterfeited stamp, and any person who knowingly and will-
28 fully makes, causes to be made, purchases or receives any device for
29 forging or counterfeiting any stamp, prescribed by the [tax commission]
30 COMMISSIONER under the provisions of article twenty of this chapter, or
31 who knowingly and willfully possesses any such device, shall be guilty
32 of a class [E] D felony. For the purposes of this subdivision, the words
33 "stamp prescribed by the [tax commission] COMMISSIONER" shall include a
34 stamp, impression or imprint made by a metering machine, the design of
35 which has been approved by such [commission] COMMISSIONER.

36 (h) (1) Any dealer, other than a distributor appointed by the commis-
37 sioner [of taxation and finance] under article twenty of this chapter,
38 who shall knowingly transport or have in his OR HER custody, possession
39 or under his OR HER control more than ten pounds of tobacco or more than
40 five hundred cigars upon which the taxes imposed by article twenty of
41 this chapter have not been assumed or paid by a distributor appointed by
42 the commissioner of taxation and finance under article twenty of this
43 chapter, or other person treated as a distributor pursuant to section
44 four hundred seventy-one-d of this chapter, shall be guilty of a misde-
45 meanor punishable by a fine of not more than five thousand dollars or by
46 a term of imprisonment not to exceed thirty days.

47 (2) Any person, other than a dealer or a distributor appointed by the
48 commissioner under article twenty of this chapter, who shall knowingly
49 transport or have in his OR HER custody, possession or under his OR HER
50 control more than fifteen pounds of tobacco or more than seven hundred
51 fifty cigars upon which the taxes imposed by article twenty of this
52 chapter have not been assumed or paid by a distributor appointed by the
53 commissioner under article twenty of this chapter, or other person
54 treated as a distributor pursuant to section four hundred seventy-one-d
55 of this chapter shall be guilty of a misdemeanor punishable by a fine of

1 not more than five thousand dollars or by a term of imprisonment not to
2 exceed thirty days.

3 (3) Any person, other than a distributor appointed by the commissioner
4 under article twenty of this chapter, who shall knowingly transport or
5 have in his OR HER custody, possession or under his OR HER control twen-
6 ty-five hundred or more cigars or fifty or more pounds of tobacco upon
7 which the taxes imposed by article twenty of this chapter have not been
8 assumed or paid by a distributor appointed by the commissioner under
9 article twenty of this chapter, or other person treated as a distributor
10 pursuant to section four hundred seventy-one-d of this chapter shall be
11 guilty of a misdemeanor. Provided further, that any person who has twice
12 been convicted under this subdivision shall be guilty of a class E felo-
13 ny for any subsequent violation of this section, regardless of the
14 amount of tobacco products involved in such violation.

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

23 (i) Any person who falsely or fraudulently makes, alters or counter-
24 feits a registration certificate or sticker required under the
25 provisions of section four hundred eighty-a of this chapter, or causes
26 or procures to be falsely or fraudulently made, altered or counterfeited
27 any such registration certificate or sticker, or knowingly and willfully
28 utters, purchases, passes or tenders as true any such false, altered or
29 counterfeited registration certificate or sticker, and any person who
30 knowingly and willfully makes, causes to be made, purchases or receives
31 any device for forging or counterfeiting any registration certificate or
32 sticker required under the provisions of such section, or who knowingly
33 and willfully possesses any such device, shall be guilty of a class [B
34 misdemeanor] E FELONY.

35 S 18. Severability. If any provision of this act or the application of
36 any provision of this act to any person or circumstance is held to be
37 invalid, the remainder of this act and the application of the provisions
38 of this act to any other person or circumstance shall not be affected
39 thereby and shall continue to be enforced to the fullest extent possi-
40 ble.

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