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

5107

2011-2012 Regular Sessions

I N A S S E M B L Y

February 11, 2011

Introduced by M. of A. KELLNER -- read once and referred to the Committee on Cities

AN ACT to amend the tax law, in relation to authorizing the cities with a population of one million or more people to establish a tax on plastic carry-out bags used by major grocery stores and pharmacies; and to amend the environmental conservation law, in relation to requiring major grocery stores and pharmacies to issue to customers reusable tote bags and to collect a deposit for such tote bags

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

Section 1. Section 1201 of the tax law is amended by adding a new subdivision (f-1) to read as follows:

(F-1) (1) TAX ON THE SALE OR DISTRIBUTION OF PLASTIC CARRY-OUT SHOPPING BAGS BY RETAIL GROCERY STORES AND PHARMACIES OCCUPYING SPACE IN EXCESS OF FIVE THOUSAND SQUARE FEET. SUCH TAXES SHALL BE LEVIED UPON THE OPERATORS OF RETAIL GROCERY STORES AND PHARMACIES OCCUPYING SPACE IN EXCESS OF FIVE THOUSAND SQUARE FEET THAT PURCHASE PLASTIC CARRY-OUT BAGS FOR USE OR DISTRIBUTION TO CUSTOMERS IN CONNECTION WITH AND AS PART OF SALES AT RETAIL. SUCH TAXES SHALL BE IMPOSED AT RATES NOT TO EXCEED TWENTY-FIVE CENTS FOR EACH PLASTIC CARRY-OUT BAG.

(2) ANY LOCAL LAW ENACTED PURSUANT TO THIS SUBDIVISION MAY PROVIDE THAT PAPERBOARD OR FIBER BAGS WHICH HAVE BEEN IMPREGNATED, LINED OR COATED WITH PLASTIC OR OTHER MATERIALS SHALL BE CONSIDERED TO BE CLASSIFIED AND TAXABLE AS PLASTIC CARRY-OUT BAGS.

(3) ANY LOCAL LAW ENACTED PURSUANT TO THIS SUBDIVISION MAY PROVIDE THAT PLASTIC CARRY-OUT BAGS SOLD OR FURNISHED CONTAINING PRODUCTS INTENDED FOR USE IN MANUFACTURING PROCESSES AND NOT FOR FINAL RETAIL SALE SHALL BE EXEMPT FROM SUCH TAXES.

(4) LOCAL LAWS IMPOSING TAXES AUTHORIZED BY THIS SUBDIVISION SHALL PROVIDE FOR THE ALLOWANCE OF CREDITS AGAINST SUCH TAXES OF FIVE CENTS

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

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FOR EACH TAXABLE PLASTIC CARRY-OUT BAG IF MANUFACTURED WITH A MINIMUM OF THIRTY PERCENT RECYCLED MATERIAL.

(5) LOCAL LAWS IMPOSING A TAX AS AUTHORIZED BY THIS SUBDIVISION SHALL PROVIDE FOR THE ALLOWANCE OF A DEDUCTION AGAINST TAX DUE TO THE CITY BY RETAIL GROCERY STORES AND PHARMACIES, WHICH DEDUCTION MAY BE CLAIMED BY ANY RETAIL GROCERY STORE OR PHARMACY PROVIDING REUSABLE TOTE BAGS TO CUSTOMERS AS AN ALTERNATIVE TO PLASTIC CARRY-OUT BAGS, PROVIDED SUCH REUSABLE TOTE BAGS ARE CONSTRUCTED OF MATERIALS DESIGNATED AS BEING ENVIRONMENTALLY FRIENDLY BY THE CITY IMPOSING A TAX AS AUTHORIZED IN THIS SUBDIVISION. THE DEDUCTION SHALL BE TAKEN AGAINST THE COST INCURRED BY THE GROCERY STORE OR PHARMACY OF MANUFACTURING OR OTHERWISE OBTAINING THE REUSABLE TOTE BAGS AND SHALL BE CALCULATED BY MULTIPLYING AN AMOUNT OF NOT LESS THAN TWENTY PERCENT OF THE COST OF THE TAX ASSESSED BY THE CITY PER PLASTIC CARRY-OUT BAG BY THE NUMBER OF REUSABLE TOTE BAGS OBTAINED BY THE GROCERY STORE OR PHARMACY.

(6) THE FISCAL OFFICER OF ANY SUCH CITY IN CHARGE OF THE ADMINISTRATION OF ANY TAX IMPOSED PURSUANT TO THIS SUBDIVISION, MAY BE AUTHORIZED BY ANY LOCAL LAW ENACTED PURSUANT TO THIS SUBDIVISION, TO PRESCRIBE BY REGULATION, UPON THE JOINT RECOMMENDATION OF THE CHIEF OFFICER IN CHARGE OF THE DEPARTMENT OR AGENCY OF SUCH CITY DEALING WITH THE INTERESTS OF CONSUMERS AND THE CHIEF OFFICER IN CHARGE OF THE DEPARTMENT OR AGENCY OF SUCH CITY CHARGED WITH THE DUTY OF WASTE COLLECTION AND DISPOSAL:

(I) ADDITIONAL EXEMPTIONS FROM AND CREDITS AGAINST THE TAX IMPOSED BY SUCH LOCAL LAW; AND

(II) AN ADDITIONAL SURTAX TO BE IMPOSED UPON PLASTIC CARRY-OUT BAGS.

IN GRANTING SUCH EXEMPTION OR CREDIT OR PROVIDING FOR SUCH ADDITIONAL SURTAX, THE ABOVE MENTIONED OFFICERS SHALL TAKE INTO CONSIDERATION THE FOLLOWING QUALITIES AND CHARACTERISTICS OF THE PLASTIC CARRY-OUT BAG IN QUESTION:

(A) THE DIFFICULTY THE PLASTIC CARRY-OUT BAG'S MATERIAL POSES TO THE PROCESS OF MAKING RECYCLED MATERIAL;

(B) THE DIFFICULTY OF ITS MANUFACTURE FROM RECYCLED MATERIALS;

(C) THE DIFFICULTY AND RELATIVE COST OF ITS DISPOSAL;

(D) ANY OBSTACLE IT POSES TO CONSUMER PROTECTION;

(E) THE DEGREE TO WHICH THE PLASTIC CARRY-OUT BAG CAN OR CANNOT BE REUSED; AND

(F) THE SLOWNESS, DIFFICULTY, AND INCOMPLETENESS WITH WHICH THE PLASTIC CARRY-OUT BAG DEGRADES IN THE NATURAL ENVIRONMENT, EITHER CHEMICALLY OR BIOLOGICALLY.

ANY SUCH EXEMPTION, CREDIT OR SURTAX MAY BE REVOKED BY JOINT ACTION OF SUCH OFFICERS, OR BY LOCAL LAW.

(7) THERE SHALL BE EXEMPTED FROM ANY TAX IMPOSED PURSUANT TO THE AUTHORITY OF THIS SUBDIVISION, PLASTIC CARRY-OUT BAGS USED AS DIRECT RECEPTACLES FOR FOOD, FOOD PRODUCTS, BEVERAGES, DIETARY FOODS AND HEALTH SUPPLEMENTS, SOLD FOR HUMAN CONSUMPTION.

(8) GROCERY STORES OR PHARMACIES OCCUPYING LESS THAN FIVE THOUSAND SQUARE FEET SHALL NOT BE SUBJECT TO THE TAX ON PLASTIC CARRY-OUT BAGS AS PROVIDED IN THIS SUBDIVISION, BUT MAY, AT THEIR OPTION, ISSUE ENVIRONMENTALLY FRIENDLY REUSABLE TOTE BAGS AND CLAIMING ANY TAX DEDUCTION AS PROVIDED IN PARAGRAPH FIVE OF THIS SUBDIVISION.

(9) WHEN USED IN THIS SUBDIVISION:

(I) "GROCERY STORE" MEANS ANY RETAIL ESTABLISHMENT WHERE FOODSTUFFS ARE REGULARLY AND CUSTOMARILY SOLD IN A BONA FIDE MANNER FOR THE CONSUMPTION OFF THE PREMISES;

(II) "PLASTIC CARRY-OUT BAG" MEANS A PLASTIC CARRY-OUT BAG, OTHER THAN A REUSABLE BAG, PROVIDED BY A STORE TO A CUSTOMER AT THE POINT OF SALE;

(III) "RECYCLED MATERIAL" MEANS COMPONENT MATERIALS WHICH HAVE BEEN DERIVED FROM PREVIOUSLY USED MATERIAL OR FROM NEW OR OLD SCRAP MATERIAL;

(IV) "RETAIL SALE" OR "SALE AT RETAIL" MEANS A SALE TO ANY PERSON FOR ANY PURPOSE OTHER THAN FOR RESALE AS SUCH OR AS A PHYSICAL COMPONENT PART OF TANGIBLE PERSONAL PROPERTY; AND

(V) "REUSABLE TOTE BAG" MEANS (A) A BAG MADE OF CLOTH OR OTHER MACHINE WASHABLE FABRIC THAT HAS HANDLES, OR (B) A DURABLE PLASTIC BAG, WITH HANDLES, THAT IS AT LEAST 2.25 MILS THICK AND IS SPECIFICALLY DESIGNED AND MANUFACTURED FOR MULTIPLE REUSE.

S 2. Article 27 of the environmental conservation law is amended by adding a new title 28 to read as follows:

TITLE 28

PLASTIC CARRY-OUT BAGS AND RECYCLING

SECTION 27-2801. DEFINITIONS.
27-2803. PLASTIC CARRY-OUT BAGS; REUSABLE TOTE BAGS.
27-2805. DEPOSIT.
27-2807. PENALTIES.

S 27-2801. DEFINITIONS.

WHEN USED IN THIS TITLE: 1. "CHAIN OF STORES" MEANS FIVE OR MORE STORES LOCATED WITHIN THE STATE THAT ARE ENGAGED IN THE SAME GENERAL FIELD OF BUSINESS AND (A) CONDUCT BUSINESS UNDER THE SAME BUSINESS NAME OR (B) OPERATE UNDER COMMON OWNERSHIP OR MANAGEMENT OR PURSUANT TO A FRANCHISE AGREEMENT WITH THE SAME FRANCHISOR.

2. "CUSTOMER" MEANS ANY PERSON WHO PURCHASES A PRODUCT FROM A STORE THAT IS PLACED IN A PLASTIC CARRY-OUT BAG AT THE TIME OF SALE.

3. "OPERATOR" MEANS A PERSON, FIRM OR CORPORATION THAT OWNS OR IS IN CONTROL OF, OR HAS RESPONSIBILITY FOR, THE DAILY OPERATION OF A QUALIFYING STORE.

4. "PLASTIC CARRY-OUT BAG" MEANS A PLASTIC BAG, OTHER THAN A REUSABLE BAG, PROVIDED BY A STORE TO A CUSTOMER AT THE POINT OF SALE.

5. "QUALIFYING STORE" MEANS A RETAIL OR WHOLESALE PHARMACY OR GROCERY ESTABLISHMENT, OTHER THAN A FOOD SERVICE ESTABLISHMENT, THAT SELLS PRODUCTS AND PROVIDES PLASTIC CARRY-OUT BAGS TO CUSTOMERS IN WHICH TO PLACE THESE PRODUCTS AND (A) HAS OVER FIVE THOUSAND SQUARE FEET OF RETAIL OR WHOLESALE SPACE OR (B) IS ONE OF A CHAIN OF STORES.

6. "REUSABLE TOTE BAG" MEANS (A) A BAG MADE OF CLOTH OR OTHER MACHINE WASHABLE FABRIC THAT HAS HANDLES, OR (B) A DURABLE PLASTIC BAG, WITH HANDLES, THAT IS AT LEAST 2.25 MILS THICK AND IS SPECIFICALLY DESIGNED AND MANUFACTURED FOR MULTIPLE REUSE.

S 27-2803. PLASTIC CARRY-OUT BAGS; REUSABLE TOTE BAGS.

1. (A) IN EVERY CITY WITH A POPULATION OF ONE MILLION OR MORE PEOPLE, EVERY OPERATOR THAT PROVIDES CARRY-OUT PLASTIC BAGS TO ITS CUSTOMERS AT THE POINT OF SALE SHALL COLLECT FROM SUCH CUSTOMERS A CHARGE FOR EACH PLASTIC CARRY-OUT BAG DISTRIBUTED TO THE CUSTOMER, SUCH CHARGE TO BE EQUAL TO THE AMOUNT OF TAX IMPOSED PER PLASTIC CARRY-OUT BAG PURSUANT TO SUBDIVISION (F-1) OF SECTION TWELVE HUNDRED ONE OF THE TAX LAW.

(B) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (A) OF THIS SUBDIVISION, SUCH CHARGE SHALL NOT BE IMPOSED UPON ANY PERSON UTILIZING FOOD STAMPS IN CONNECTION WITH ALL OR PART OF HIS OR HER PURCHASE.

2. IN EVERY CITY WITH A POPULATION OF ONE MILLION OR MORE PEOPLE, EVERY OPERATOR THAT PROVIDES CARRY-OUT PLASTIC BAGS TO ITS CUSTOMERS AT THE POINT OF SALE SHALL MAKE AVAILABLE TO SUCH CUSTOMERS REUSABLE TOTE BAGS AS AN ALTERNATIVE TO PLASTIC CARRY-OUT BAGS. SUCH BAGS SHALL HAVE PRINTED OR DISPLAYED ON THE OUTSIDE FACE OF THE BAG (I) THE NAME OF THE

STORE ISSUING THE REUSABLE TOTE BAG AND (II) THE WORDS "PLEASE REUSE OR RETURN FOR DEPOSIT TO A PARTICIPATING STORE" USING LETTERS AT LEAST ONE-HALF INCH IN HEIGHT; PROVIDED, HOWEVER, THAT SUCH STORE SHALL BE ALLOWED, FOR SIX MONTHS FROM THE EFFECTIVE DATE OF THIS SECTION, TO USE ITS EXISTING STOCK OF REUSABLE TOTE BAGS AND MAY APPLY TO THE COMMISSIONER FOR A WAIVER, BASED ON ECONOMIC HARDSHIP, TO EXTEND SUCH SIX-MONTH PERIOD.

3. OPERATORS MAY CHARGE CUSTOMERS A DEPOSIT PER TOTE BAG DISTRIBUTED TO THE CUSTOMER PROVIDED THAT SUCH DEPOSIT SHALL NOT EXCEED THE TAX PAID BY THE OPERATOR PER PLASTIC CARRY-OUT BAG PURSUANT TO SUBDIVISION (F-1) OF SECTION TWELVE HUNDRED ONE OF THE TAX LAW. SUCH DEPOSIT MAY BE REDEEMED BY THE CUSTOMER FROM THE OPERATOR WITHIN TWELVE MONTHS OF THE DATE UPON WHICH THE DEPOSIT IS PAID, UPON RETURN OF THE REUSABLE TOTE BAG TO THE OPERATOR; PROVIDED THAT THE OPERATOR SHALL NOT BE REQUIRED TO ACCEPT FOR RETURN ANY REUSABLE TOTE BAG THAT IS NOT FIT FOR REHABILITATION AND REUSE AS PROVIDED IN SUBDIVISION THREE OF THIS SECTION, NOR SHALL THE OPERATOR BE REQUIRED TO REFUND ANY DEPOSIT PAID FOR SUCH REUSABLE TOTE BAG.

4. EVERY OPERATOR PROVIDING REUSABLE TOTE BAGS TO ITS CUSTOMERS SHALL:

(A) ACCEPT FOR RETURN TOTE BAGS DISTRIBUTED BY SUCH OPERATOR AND, IN THE CASE OF STORES WHICH ARE AFFILIATED WITH A CHAIN OF STORES, TOTE BAGS DISTRIBUTED BY OTHER STORES WHICH ARE AFFILIATED WITH THE CHAIN OF STORES;

(B) PROVIDE A DESIGNATED LOCATION FOR THE COLLECTION OF REUSABLE TOTE BAGS BY THE OPERATOR AND FOR REFUND TO THE CUSTOMER OF THE DEPOSIT PAID BY THE CUSTOMER FOR THE RETURNED REUSABLE TOTE BAG. SUCH LOCATION SHALL BE CLEARLY VISIBLE AND EASILY ACCESSIBLE TO THE CUSTOMER, AND SHALL BE CLEARLY MARKED AS AVAILABLE FOR THE PURPOSE OF COLLECTING REUSABLE TOTE BAGS ISSUED BY SUCH OPERATOR;

(C) THOROUGHLY CLEAN AND SANITIZE RETURNED REUSABLE TOTE BAGS; AND

(D) RE-ISSUE FOR USE BY ITS CUSTOMERS THOSE REUSABLE TOTE BAGS THAT ARE FIT FOR SUCH PURPOSE. REISSUED REUSABLE TOTE BAGS SHALL BE FREE FROM FOREIGN MATERIALS, DIRT AND STAINS.

5. OPERATORS PROVIDING REUSABLE TOTE BAGS FOR USE BY THEIR CUSTOMERS AS PROVIDED IN THIS SECTION SHALL BE ENTITLED TO CLAIM A DEDUCTION AS PROVIDED IN PARAGRAPH FOUR OF SUBDIVISION (F-1) OF SECTION TWELVE HUNDRED ONE OF THE TAX LAW. NOTHING IN THIS SECTION SHALL PROHIBIT GROCERY STORES OR PHARMACIES OCCUPYING LESS THAN FIVE THOUSAND SQUARE FEET FROM ISSUING ENVIRONMENTALLY FRIENDLY REUSABLE TOTE BAGS AND CLAIMING ANY TAX DEDUCTION AS PROVIDED IN PARAGRAPH FIVE OF SUBDIVISION (F-1) OF SECTION TWELVE HUNDRED ONE OF THE TAX LAW.

S 27-2805. DEPOSIT.

MONIES COLLECTED BY OPERATORS FROM DEPOSITS PAID BY CUSTOMERS FOR THE USE OF REUSABLE TOTE BAGS AS PROVIDED IN SUBDIVISION THREE OF SECTION 27-2803 OF THIS TITLE THAT ARE NOT REDEEMED IN TWELVE CALENDAR MONTHS BY THE CUSTOMER SHALL BE FORFEITED BY THE CONSUMER AND SHALL BE DEPOSITED IN THE GENERAL FUND OF THE CITY IN WHICH THE STORE ISSUING THE TOTE BAG IS LOCATED.

S 27-2807. PENALTIES.

1. ANY OPERATOR WHO SHALL VIOLATE THE PROVISIONS OF SECTION 27-2803 OF THIS TITLE SHALL BE LIABLE FOR A CIVIL PENALTY OF NOT MORE THAN ONE HUNDRED DOLLARS, AND AN ADDITIONAL CIVIL PENALTY OF NOT MORE THAN ONE HUNDRED DOLLARS FOR EACH DAY DURING WHICH SUCH VIOLATION CONTINUES. IT SHALL BE AN AFFIRMATIVE DEFENSE TO A VIOLATION OF SECTION 27-2803 OF THIS TITLE THAT THE OPERATOR USED ITS BEST EFFORTS TO COMPLY WITH SUCH PARAGRAPH BUT WAS UNABLE TO BECAUSE OF CIRCUMSTANCES BEYOND SUCH OPERA-

TOR'S CONTROL. ANY CIVIL PENALTY MAY BE ASSESSED FOLLOWING A HEARING OR OPPORTUNITY TO BE HEARD.

2. THE DEPARTMENT SHALL HAVE THE AUTHORITY TO ENFORCE ALL PROVISIONS OF THIS TITLE. THE STATE CONSUMER PROTECTION BOARD ALSO SHALL HAVE THE AUTHORITY TO ENFORCE THE PROVISIONS OF SECTION 27-2803 OF THIS TITLE.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed by the commissioner of the department of environmental conservation and the department of taxation and finance on or before such effective date.