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

2981

2011-2012 Regular Sessions

I N S E N A T E

February 4, 2011

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to increasing the tax imposed upon the sale or use of cigarettes; and to amend the state finance law, in relation to the tobacco use prevention and control program fund

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

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

1. There is hereby imposed and shall be paid a tax on all cigarettes possessed in the state by any person for sale, except that no tax shall be imposed on cigarettes sold under such circumstances that this state is without power to impose such tax, including sales to qualified Indians for their own use and consumption on their nations' or tribes' qualified reservation, or sold to the United States or sold to or by a voluntary unincorporated organization of the armed forces of the United States operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States, to the extent provided in such regulations and policy statements of such an agency applicable to such sales. The tax imposed by this section is imposed on all cigarettes sold on an Indian reservation to non-members of the Indian nation or tribe and to non-Indians and evidence of such tax shall be by means of an affixed cigarette tax stamp. Indian nations or tribes may elect to participate in the Indian tax exemption coupon system established in section four hundred seventy-one-e of this article which provides a mechanism for the collection of the tax imposed by this section on cigarette sales on qualified reservations to such non-members and non-Indians and for the delivery of quantities of tax-exempt ciga-

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

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rettes to Indian nations or tribes for the personal use and consumption of qualified members of the Indian nation or tribe. If an Indian nation or tribe does not elect to participate in the Indian tax exemption coupon system, the prior approval system shall be the mechanism for the delivery of quantities of tax-exempt cigarettes to Indian nations or tribes for the personal use and consumption of qualified members of the Indian nation or tribe as provided for in paragraph (b) of subdivision five of this section. Such tax on cigarettes shall be at the rate of [four] SIX dollars [and thirty-five cents] for each twenty cigarettes or fraction thereof, provided, however, that if a package of cigarettes contains more than twenty cigarettes, the rate of tax on the cigarettes in such package in excess of twenty shall be one dollar and [eight and three-quarters] FIFTY cents for each five cigarettes or fraction thereof. Such tax is intended to be imposed upon only one sale of the same package of cigarettes. It shall be presumed that all cigarettes within the state are subject to tax until the contrary is established, and the burden of proof that any cigarettes are not taxable hereunder shall be upon the person in possession thereof.

S 2. Section 471-a of the tax law, as amended by section 5 of part D of chapter 134 of the laws of 2010, is amended to read as follows:

S 471-a. Use tax on cigarettes. There is hereby imposed and shall be paid a tax on all cigarettes used in the state by any person, except that no tax shall be imposed (1) if the tax provided in section four hundred seventy-one of this article is paid, (2) on the use of cigarettes which are exempt from the tax imposed by said section, or (3) on the use of four hundred or less cigarettes, brought into the state on, or in the possession of, any person. Such tax on cigarettes shall be at the rate of [four] SIX dollars [and thirty-five cents] for each twenty cigarettes or fraction thereof, provided, however, that if a package of cigarettes contains more than twenty cigarettes, the rate of tax on the cigarettes in such package in excess of twenty shall be one dollar and [eight and three-quarters] FIFTY cents for each five cigarettes or fraction thereof. Within twenty-four hours after liability for the tax accrues, each such person shall file with the commissioner a return in such form as the commissioner may prescribe together with a remittance of the tax shown to be due thereon. For purposes of this article, the word "use" means the exercise of any right or power actual or constructive and shall include but is not limited to the receipt, storage or any keeping or retention for any length of time, but shall not include possession for sale. All other provisions of this article if not inconsistent shall apply to the administration and enforcement of the tax imposed by this section in the same manner as if the language of said provisions had been incorporated in full into this section.

S 3. Section 482 of the tax law, as amended by section 10 of part D of chapter 134 of the laws of 2010, is amended to read as follows:

S 482. Deposit and disposition of revenue. (a) All taxes, fees, interest and penalties collected or received by the commissioner under this article and article twenty-A of this chapter shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter. (b) From the taxes, interest and penalties collected or received by the commissioner under sections four hundred seventy-one and four hundred seventy-one-a of this article, effective on and after March first, two thousand, forty-nine and fifty-five hundredths, and effective on and after February first, two thousand two, forty-three and seventy hundredths; and effective on and after May first, two thousand two, sixty-four and fifty-five hundredths; and

effective on and after April first, two thousand three, sixty-one and twenty-two hundredths percent; and effective on and after June third, two thousand eight, seventy and sixty-three hundredths percent; and effective on and after July first, two thousand ten, seventy-six percent collected or received under those sections must be deposited to the credit of the tobacco control and insurance initiatives pool to be established and distributed by the commissioner of health in accordance with section twenty-eight hundred seven-v of the public health law. (c) From the fees collected or received by the commissioner under subdivision two of section four hundred eighty-a of this article, effective on or after September first, two thousand nine, any monies collected or received under that section in excess of three million dollars must be deposited to the credit of the tobacco control and insurance initiatives pool to be distributed by the commissioner of health in accordance with section twenty-eight hundred seven-v of the public health law. NOTWITHSTANDING THE PROVISIONS OF SECTION ONE HUNDRED SEVENTY-ONE-A OF THIS CHAPTER, AS ADDED BY CHAPTER SIXTY-NINE OF THE LAWS OF NINETEEN HUNDRED SEVENTY-EIGHT, AS AMENDED, TWENTY-ONE AND ONE-HALF PERCENT OF THE TAXES COLLECTED OR RECEIVED BY THE COMMISSIONER PURSUANT TO SECTIONS FOUR HUNDRED SEVENTY-ONE AND FOUR HUNDRED SEVENTY-ONE-A OF THIS ARTICLE SHALL BE CREDITED TO AND DEPOSITED IN THE TOBACCO USE PREVENTION AND CONTROL PROGRAM FUND ESTABLISHED PURSUANT TO SECTION EIGHTY-SIX OF THE STATE FINANCE LAW.

S 4. The state finance law is amended by adding a new section 86 to read as follows:

S 86. TOBACCO USE PREVENTION AND CONTROL PROGRAM FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE A SPECIAL FUND TO BE KNOWN AS THE "TOBACCO USE PREVENTION AND CONTROL PROGRAM FUND".

2. THE TOBACCO USE PREVENTION AND CONTROL PROGRAM FUND SHALL CONSIST OF MONEYS APPROPRIATED THERETO, AND FUNDS TRANSFERRED FROM ANY OTHER FUND OR SOURCES INCLUDING TAX REVENUE REQUIRED TO BE DEPOSITED THEREIN PURSUANT TO SECTION FOUR HUNDRED EIGHTY-TWO OF THE TAX LAW.

3. THE MONEYS RECEIVED BY SUCH FUND SHALL BE EXPENDED PURSUANT TO APPROPRIATION ONLY FOR THE PURPOSES OF IMPLEMENTING THE TOBACCO USE PREVENTION AND CONTROL PROGRAM PURSUANT TO SECTION THIRTEEN HUNDRED NINETY-NINE-II OF THE PUBLIC HEALTH LAW.

S 5. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.