

3649

2011-2012 Regular Sessions

I N S E N A T E

February 28, 2011

Introduced by Sen. GALLIVAN -- 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 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 (d) as added by
5 chapter 384 of the laws of 1999, is amended to read as follows:
6 S 1846. Seizure and forfeiture of cigarettes.--(a) Whenever a police
7 officer designated in section 1.20 of the criminal procedure law or a
8 peace officer designated in subdivision four of section 2.10 of such
9 law, acting pursuant to his or her special duties, shall discover any
10 cigarettes subject to tax provided by article twenty of this chapter or
11 by chapter thirteen of title eleven of the administrative code of the
12 city of New York, and upon which the tax has not been paid or the stamps
13 not affixed as required by such article or such chapter thirteen, they
14 are hereby authorized and empowered forthwith to seize and take
15 possession of such cigarettes, together with any vending machine or
16 receptacle in which they are held for sale. Such cigarettes, vending
17 machine or receptacle seized by a police officer or such peace officer
18 shall be turned over to the commissioner. Such seized cigarettes, vend-
19 ing machine or receptacle, not including money contained in such vending
20 machine or receptacle, shall be forfeited to the state. The commission-
21 er may, within a reasonable time thereafter, upon publication of a
22 notice to such effect for at least five successive days, before the day
23 of sale, in a newspaper published or circulated in the county where the

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

LBD04509-03-1

1 seizure was made, sell such forfeited [cigarettes and] vending machines
2 or receptacles at public sale and pay the proceeds into the state treas-
3 ury to the credit of the general fund. [Cigarettes so seized and sold
4 shall be sold only to an agent under article twenty of this chapter and
5 the notice of sale shall contain a provision to this effect.] Notwith-
6 standing any other provision of this section, the commissioner may enter
7 into an agreement with any city of this state which is authorized to
8 impose a tax similar to that imposed by article twenty of this chapter
9 to provide for the disposition between the state and any such city of
10 the proceeds from any such sale. ALL CIGARETTES FORFEITED TO THE STATE
11 SHALL BE DESTROYED OR USED FOR LAW ENFORCEMENT PURPOSES, EXCEPT THAT
12 CIGARETTES THAT VIOLATE, OR ARE SUSPECTED OF VIOLATING, FEDERAL TRADE-
13 MARK LAWS OR IMPORT LAWS SHALL NOT BE USED FOR LAW ENFORCEMENT PURPOSES.
14 IF THE COMMISSIONER DETERMINES THE CIGARETTES MAY NOT BE USED FOR LAW
15 ENFORCEMENT PURPOSES, THE COMMISSIONER MUST, WITHIN A REASONABLE TIME
16 AFTER THE FORFEITURE OF SUCH CIGARETTES, UPON PUBLICATION OF A NOTICE TO
17 SUCH EFFECT FOR AT LEAST FIVE SUCCESSIVE DAYS BEFORE THE DAY OF
18 DESTRUCTION, IN A NEWSPAPER PUBLISHED OR CIRCULATED IN THE COUNTY WHERE
19 THE SEIZURE WAS MADE, DESTROY SUCH FORFEITED CIGARETTES. THE COMMISSION-
20 ER MAY, PRIOR TO ANY DESTRUCTION OF CIGARETTES, PERMIT THE TRUE HOLDER
21 OF THE TRADEMARK RIGHTS IN THE CIGARETTES TO INSPECT SUCH FORFEITED
22 CIGARETTES IN ORDER TO ASSIST IN ANY INVESTIGATION REGARDING SUCH CIGA-
23 RETTES.

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

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

51 (c) In the alternative, [if the tax commission concludes that any
52 cigarettes seized pursuant to this section, when offered at public sale,
53 will bring a price less than the reasonably estimated price which the
54 department of correctional services would have to pay for the purchase
55 of such cigarettes for sale to or use by inmates in institutions under
56 the jurisdiction of such department,] the tax commission may dispose of

1 [such] ANY cigarettes SEIZED PURSUANT TO THIS SECTION, EXCEPT THOSE THAT
2 VIOLATE, OR ARE SUSPECTED OF VIOLATING, FEDERAL TRADEMARK LAWS OR IMPORT
3 LAWS, by transferring them to the department of correctional services
4 for sale to or use by inmates in such institutions.

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

11 S 2. Section 1846-a of the tax law, as added by chapter 61 of the laws
12 of 1989, subdivision (a-1) as added by chapter 552 of the laws of 2008,
13 is amended to read as follows:

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

45 (a-1) Whenever a police officer designated in section 1.20 of the
46 criminal procedure law or a peace officer designated in subdivision four
47 of section 2.10 of the criminal procedure law, acting pursuant to his or
48 her special duties, discovers any roll-your-own tobacco that is in
49 violation of section four hundred eighty-c of this chapter, the officer
50 is authorized and empowered to seize and take possession of the roll-
51 your-own tobacco, and the roll-your-own tobacco is subject to a forfei-
52 ture action under the procedures provided for in article thirteen-A of
53 the civil practice law and rules, as if that article specifically
54 provided for forfeiture of roll-your-own tobacco seized under this
55 section as a preconviction forfeiture crime. Subdivisions (b) and (c) of

1 this section do not apply to roll-your-own tobacco seized pursuant to
2 this subdivision.

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

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

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

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

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

1 commissioner of finance an undertaking, issued by a surety company
2 authorized to transact business in New York state and approved by the
3 superintendent of insurance of New York state as to solvency and respon-
4 sibility, in such amount as a justice of the supreme court shall
5 approve, to the effect that if such proceeding be dismissed, or the
6 seizure confirmed, the petitioner will pay all costs and charges which
7 may accrue in the prosecution of the proceeding.

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

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

50 (e) In the alternative, [if the commissioner of finance concludes that
51 any cigarettes seized pursuant to this section, when offered at public
52 sale, will bring a price less than the reasonably estimated price which
53 the department of correction would have to pay for the purchase of such
54 cigarettes for sale to or use by inmates in institutions under the
55 jurisdiction of such department,] the commissioner of finance may
56 dispose of [such] ANY cigarettes SEIZED PURSUANT TO THIS SECTION, EXCEPT

1 THOSE THAT VIOLATE, OR ARE SUSPECTED OF VIOLATING, FEDERAL TRADEMARK
2 LAWS OR IMPORT LAWS, by transferring them to the department of
3 correction for sale to or use by inmates in such institutions.
4 S 4. This act shall take effect immediately.