

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

3649--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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

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

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

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 corrections and community supervision would have to pay
55 for the purchase of such cigarettes for sale to or use by inmates in
56 institutions under the jurisdiction of such department,] the tax commis-

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

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

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

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

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

1 section as a preconviction forfeiture crime. Subdivisions (b) and (c) of
2 this section do not apply to roll-your-own tobacco seized pursuant to
3 this subdivision.

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

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

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

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

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

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

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

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

53 (e) In the alternative, [if the commissioner of finance concludes that
54 any cigarettes seized pursuant to this section, when offered at public
55 sale, will bring a price less than the reasonably estimated price which
56 the department of correction would have to pay for the purchase of such

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