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

10303

I N A S S E M B L Y

May 22, 2012

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

AN ACT to amend the New York city charter and the administrative code of the city of New York, in relation to the licensing of wholesale cigarette dealers and the tax on cigarettes; and to repeal subdivisions d and f of section 11-1303 of the administrative code of the city of New York relating to the suspension or revocation of wholesale cigarette licenses and sanctions on retail dealers

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

Section 1. Subdivision a of section 168 of the New York city charter, as amended by local law number 59 of the city of New York for the year 2007, is amended to read as follows:

a. An independent tax appeals tribunal is hereby established. Such tribunal shall be within the office of administrative tax appeals established under section one hundred fifty of this charter. The tribunal shall have jurisdiction to hear and determine cases initiated by the filing of petitions protesting notices issued by the commissioner of finance[, which] THAT give a person the right to a hearing[,] including, but not limited to, any notice of determination of tax due, of a tax deficiency, of a denial of a refund or credit application [or of the refusal to grant, the suspension or the revocation of a license issued pursuant to], AND ANY NOTICE AUTHORIZED UNDER chapter thirteen of title eleven of the administrative code, which notices relate to WHOLESALE CIGARETTE LICENSES OR SANCTIONS ISSUED OR IMPOSED BY THE CITY OR nonproperty taxes, excise taxes and annual vault charges imposed by the city, except those taxes and charges administered by the State of New York on behalf of the City of New York. For purposes of the preceding sentence, if the commissioner of finance fails to act with respect to a refund application before the expiration of the time period after which the taxpayer may file a petition for refund with the tribunal pursuant to subdivision (c) of section 11-529 or subdivision three of section 11-680 of the administrative code, such failure shall be deemed to be a notice of denial of a refund issued by the commissioner of finance

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

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pursuant to such subdivision. The tribunal shall review petitions and other documents submitted to it, hold hearings, and render decisions as provided in this chapter. In rendering its decisions on claims asserted by taxpayers or the commissioner of finance, the tribunal shall have the same power and authority as the commissioner of finance to impose, modify or waive any taxes within its jurisdiction, interest thereon, and any applicable civil penalties, AND TO MAKE DECISIONS WITH RESPECT TO WHOLESALE CIGARETTE LICENSES OR SANCTIONS UNDER CHAPTER THIRTEEN OF TITLE ELEVEN OF THE ADMINISTRATIVE CODE. In appeals in which the rules of the commissioner of finance are at issue, the tribunal shall have the power and authority to rule on the legality of such rules.

S 2. Subdivision c of section 169 of the New York city charter, as amended by chapter 808 of the laws of 1992, is amended to read as follows:

c. [A procedure] PROCEDURES for promptly hearing and determining: (1) any matter concerning jeopardy assessments or predecision warrants based thereon, AND (2) WITH RESPECT TO WHOLESALE CIGARETTE LICENSES AND SANCTIONS, ANY MATTER CONCERNING SANCTION ACTIONS, EXCEPT FOR MATTERS INVOLVING SOLELY THE IMPOSITION OF CIVIL PENALTIES;

S 3. Subdivision a of section 170 of the New York city charter, as amended by chapter 808 of the laws of 1992, is amended to read as follows:

a. Any taxpayer who has been issued a notice referred to in subdivision a of section one hundred sixty-eight of the charter by the commissioner of finance may petition the tribunal for administrative review. To commence a proceeding, such a taxpayer must, within ninety days after being issued the notice at issue by the commissioner of finance or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the administrative code and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of the conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serve a petition upon the commissioner of finance and (2) file the petition with the tribunal. Notwithstanding the time specified in the preceding sentence for filing a petition, A PETITION TO SEEK REVIEW OF A NOTICE IN ANY MATTER CONCERNING WHOLESALE CIGARETTE LICENSES OR SANCTIONS PURSUANT TO CHAPTER THIRTEEN OF TITLE ELEVEN OF THE ADMINISTRATIVE CODE MUST BE SERVED AND FILED WITHIN THIRTY DAYS FROM THE DATE OF SUCH NOTICE, AND a petition for refund filed pursuant to subdivision (c) of section 11-529 of the administrative code or subdivision three of section 11-680 of such code [may] MUST be SERVED AND filed within the time specified in such subdivision (c) or such subdivision three. The tribunal shall not extend the time limitations for commencing a proceeding for any petitioner failing to comply with such time limitations. The petition shall contain a plain and concise statement of the facts and law on which the proceeding is based.

S 4. Subdivision b of section 171 of the New York city charter, as amended by chapter 808 of the laws of 1992, is amended to read as follows:

b. Except as otherwise provided in subdivisions d and e of section one hundred sixty-nine of the charter, each decision of the tribunal, shall finally and irrevocably decide all the issues raised in the proceedings before it, unless the petitioner who commenced the proceeding seeks judicial review of any such decision in the manner provided in article seventy-eight of the civil practice law and rules [within four months after the giving of the notice of such decision]. JUDICIAL

REVIEW OF DECISIONS, OTHER THAN THOSE INVOLVING WHOLESALE CIGARETTE LICENSES OR SANCTIONS UNDER CHAPTER THIRTEEN OF TITLE ELEVEN OF THE ADMINISTRATIVE CODE, SHALL BE SOUGHT WITHIN FOUR MONTHS AFTER THE GIVING OF THE NOTICE OF SUCH DECISION. NOTWITHSTANDING ANY LAW TO THE CONTRARY, JUDICIAL REVIEW OF ANY DECISION INVOLVING WHOLESALE CIGARETTE LICENSES OR SANCTIONS UNDER CHAPTER THIRTEEN OF TITLE ELEVEN OF THE ADMINISTRATIVE CODE SHALL BE SOUGHT WITHIN THIRTY DAYS AFTER THE GIVING OF THE NOTICE OF SUCH DECISION.

S 5. Subdivision a of section 11-124 of the administrative code of the city of New York, as added by chapter 808 of the laws of 1992, is amended to read as follows:

a. The commissioner of finance may establish a procedure for providing conciliation conferences for purposes of settling contested determinations of taxes or charges or denials of refunds or credits with respect to taxes or charges imposed under chapter five, six, seven, eight, nine, eleven, twelve, thirteen, fourteen, [fifteen,] twenty-one, twenty-two, twenty-four, twenty-five or twenty-seven of this title[, or for the purpose of settling disputes arising from the notification of the refusal to grant, the suspension or the revocation of a license issued pursuant to chapter thirteen of this title]. If such a procedure is established, a conciliation conference shall be provided at the option of any taxpayer or any other person subject to the provisions of any of such chapters. For purposes of this subdivision, if the commissioner of finance fails to act with respect to a refund application before the expiration of the time period after which the taxpayer may file a petition for refund with the tax appeals tribunal established by section one hundred sixty-eight of the charter pursuant to subdivision (c) of section 11-529 or subdivision three of section 11-680 of the code, such failure shall be deemed to be the denial of a refund.

S 6. Section 11-1301 of the administrative code of the city of New York is amended by adding three new subdivisions 14, 15 and 16 to read as follows:

14. "CONTROLLING PERSON." ANY PERSON WHO IS:

(A) AN OFFICER, DIRECTOR, PARTNER, OR IN THE CASE OF A LIMITED LIABILITY COMPANY, A MEMBER OR A PERSON HAVING AUTHORITY, WITH RESPECT TO SUCH LIMITED LIABILITY COMPANY, ANALOGOUS TO THE AUTHORITY OF AN OFFICER OR DIRECTOR WITH RESPECT TO A CORPORATION, OF A WHOLESALE DEALER OR OF AN APPLICANT FOR A WHOLESALE CIGARETTE LICENSE (WHETHER OR NOT A WHOLESALE DEALER);

(B) A SHAREHOLDER, DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF SUCH WHOLESALE DEALER OR APPLICANT ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES. FOR PURPOSES OF THIS PARAGRAPH, WHERE REFERENCE IS MADE TO DIRECT OR INDIRECT OWNERSHIP OF MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF THE APPLICANT OR ANOTHER PERSON ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES, IN THE CASE OF AN APPLICANT OR ANOTHER PERSON WHICH AT THE RELEVANT TIME HAS FOUR OR FEWER SHAREHOLDERS HOLDING SHARES ENTITLING THE HOLDERS THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES, TWENTY-FIVE PERCENT OR MORE SHALL BE SUBSTITUTED AS THE APPLICABLE PERCENTAGE IN SUCH REFERENCES TO OWNERSHIP, DIRECTLY OR INDIRECTLY, OF VOTING STOCK; OR

(C) ANY PERSON WHO IS A MEMBER OF THE FAMILY, AS DEFINED IN PARAGRAPH FOUR OF SUBSECTION (C) OF SECTION TWO HUNDRED SIXTY-SEVEN OF THE INTERNAL REVENUE CODE, OF A WHOLESALE DEALER, AN APPLICANT FOR A WHOLESALE CIGARETTE LICENSE, OR A PERSON DESCRIBED IN PARAGRAPH (A) OR (B) OF THIS SUBDIVISION.

15. "RELATED STATUTE." THE TERM "RELATED STATUTE" SHALL HAVE THE SAME MEANING AS SET FORTH IN SUBDIVISION (D) OF SECTION EIGHTEEN HUNDRED OF THE TAX LAW.

16. "ASSOCIATE." ANY PERSON, OTHER THAN A CONTROLLING PERSON, WHO IS AN EMPLOYEE, SHAREHOLDER OR OTHER PERSON ACTING ON BEHALF OF OR AS A REPRESENTATIVE OF A WHOLESALE DEALER, AN APPLICANT FOR A WHOLESALE CIGARETTE LICENSE, OR A CONTROLLING PERSON.

S 7. Subdivisions d and f of section 11-1303 of the administrative code of the city of New York are REPEALED.

S 8. Paragraph 1 of subdivision b of section 11-1303 of the administrative code of the city of New York, as amended by local law number 2 of the city of New York for the year 2000, is amended to read as follows:

1. Wholesale cigarette license. In order to obtain a license to engage in business as a wholesale dealer, a person shall file AN application with the commissioner of finance for one license for each place of business that he or she desires to have for the sale of cigarettes in the city. Every application for a wholesale cigarette license shall be made upon a form prescribed and prepared by the commissioner of finance and shall set forth such information as the commissioner shall require. [The commissioner of finance may, for cause, refuse to issue a wholesale cigarette license.] Upon approval of the application, the commissioner of finance shall grant and issue to the applicant a wholesale cigarette license for each place of business [within the city] set forth in the application. Cigarette licenses shall not be assignable and shall be valid only for the persons in whose names such licenses have been issued and for the transaction of business in the places designated therein and shall at all times be conspicuously displayed at the places for which issued.

S 9. Section 11-1303 of the administrative code of the city of New York is amended by adding seven new subdivisions h, i, j, k, l, m and n to read as follows:

H. REFUSAL TO ISSUE A NEW LICENSE. THE COMMISSIONER OF FINANCE MAY REFUSE TO ISSUE A WHOLESALE CIGARETTE LICENSE UPON DETERMINING THAT, AT THE TIME OF THE WHOLESALE LICENSE APPLICATION, THERE IS ONE OR MORE GROUNDS PURSUANT TO SUBDIVISION K OF THIS SECTION TO IMPOSE SANCTIONS ON THE APPLICANT OR ON ANY CONTROLLING PERSON OF THE APPLICANT.

I. SANCTIONS OF WHOLESALE DEALERS, CONTROLLING PERSONS, AND ASSOCIATES. BASED ON THE GROUNDS DESCRIBED IN SUBDIVISION K OF THIS SECTION, THE COMMISSIONER OF FINANCE MAY, SUBJECT TO THE RIGHT TO SEEK A HEARING AND REVIEW AS PROVIDED IN SUBDIVISION L OF THIS SECTION, TAKE ONE OR MORE OF THE FOLLOWING ACTIONS:

1. REFUSE TO RENEW ANY WHOLESALE LICENSE REQUIRED UNDER THIS CHAPTER;

2. SUSPEND OR REVOKE ANY SUCH LICENSE;

3. TEMPORARILY OR PERMANENTLY BAN ANY WHOLESALE LICENSEE, CONTROLLING PERSON, OR ASSOCIATE FROM HOLDING ANY LICENSE REQUIRED UNDER THIS CHAPTER, OR FROM ACTING AS A WHOLESALE DEALER, OR A CONTROLLING PERSON OR ASSOCIATE OF ANY WHOLESALE DEALER IN THE CITY; OR

4. IMPOSE CIVIL PENALTIES AS PROVIDED IN SUBDIVISION J OF THIS SECTION.

J. CIVIL PENALTIES.

1. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CODE OR ANY OTHER LAW, THE COMMISSIONER OF FINANCE MAY IMPOSE CIVIL PENALTIES AGAINST A WHOLESALE DEALER (WHETHER OR NOT LICENSED UNDER THIS SECTION), CONTROLLING PERSON, OR ASSOCIATE FOR ANY OF THE ACTS OR OMISSIONS THAT WOULD CONSTITUTE GROUNDS FOR SANCTIONS OF A LICENSEE, CONTROLLING PERSON, OR ASSOCI-

ATE SET FORTH IN SUBDIVISION K OF THIS SECTION PURSUANT TO RULES PROMULGATED BY THE COMMISSIONER OF FINANCE.

2. A WHOLESALE DEALER, CONTROLLING PERSON, OR ASSOCIATE MAY BE SUBJECT TO CIVIL PENALTIES OF UP TO TEN THOUSAND DOLLARS FOR EACH ACT OR OMISSION THAT CONSTITUTES GROUNDS FOR SANCTIONS UNDER SUBDIVISION K OF THIS SECTION. ANY CONTROLLING PERSON OF A WHOLESALE DEALER SHALL BE JOINTLY AND SEVERALLY LIABLE WITH THE WHOLESALE DEALER WITH RESPECT TO ANY CIVIL PENALTIES IMPOSED PURSUANT TO THIS SUBDIVISION ON THE WHOLESALE DEALER OR ANY OTHER CONTROLLING PERSON.

K. GROUNDS FOR SANCTIONS.

1. THE FOLLOWING ARE THE GROUNDS FOR THE ACTION DESCRIBED IN SUBDIVISION H OF THIS SECTION AND, WITH RESPECT TO WHOLESALE LICENSEES AND CONTROLLING PERSONS, FOR THE ACTIONS DESCRIBED IN SUBDIVISION I OF THIS SECTION:

(A) THE WHOLESALE LICENSEE OR ANY CONTROLLING PERSON HAS:

(I) FAILED TO COMPLY WITH ANY OF THE PROVISIONS OF THIS CHAPTER OR ANY OF THE RULES PROMULGATED THEREUNDER;

(II) KNOWINGLY AIDED AND ABETTED ANOTHER PERSON IN VIOLATING ANY OF THE PROVISIONS OF THIS CHAPTER OR ANY OF THE RULES PROMULGATED THEREUNDER;

(III) FAILED TO COMPLY WITH ANY OF THE PROVISIONS OF ARTICLE TWENTY OR ARTICLE TWENTY-A OF THE TAX LAW OR THE REGULATIONS PROVIDED THEREUNDER AS FINALLY DETERMINED IN A PROCEEDING COMMENCED BY THE NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE OR OTHER COMPETENT STATE AGENCY OR AUTHORITY;

(IV) BEEN CONVICTED IN A COURT OF COMPETENT JURISDICTION OF A CRIME PROVIDED FOR IN THIS TITLE OR IN THE TAX LAW, OR OF ANY OTHER CRIME THAT, IN ACCORDANCE WITH SECTION SEVEN HUNDRED FIFTY-THREE OF THE CORRECTION LAW, HAS A DIRECT BEARING ON THE APPLICANT'S ABILITY TO PERFORM THE DUTIES AND RESPONSIBILITIES OF A WHOLESALE LICENSEE UNDER THIS CHAPTER;

(V) COMMITTED FRAUD OR DECEIT DURING OPERATIONS AS A WHOLESALE DEALER OR HAS COMMITTED FRAUD OR DECEIT IN PROCURING A LICENSE, OR IN ATTEMPTING TO PROCURE A LICENSE;

(VI) AIDED AND ABETTED OR OTHERWISE ASSISTED ANOTHER PERSON IN VIOLATING ANY SANCTION IMPOSED UNDER THIS CHAPTER;

(VII) IMPERSONATED ANY OTHER PERSON LICENSED UNDER THIS CHAPTER, OR ANY CONTROLLING PERSON OR ASSOCIATE OF SUCH A PERSON; OR

(VIII) IMPERSONATED ANY PERSON REPRESENTED TO BE LICENSED UNDER THIS CHAPTER, OR A CONTROLLING PERSON OR ASSOCIATE OF SUCH A PERSON, WHO IS NOT IN FACT LICENSED UNDER THIS CHAPTER.

(B) ANY ASSOCIATE OF THE WHOLESALE LICENSEE OR ANY CONTROLLING PERSON HAS:

(I) SOLD, TRANSPORTED, OR POSSESSED ANY UNSTAMPED OR UNLAWFULLY STAMPED CIGARETTES IN VIOLATION OF ANY PROVISION OF THIS CHAPTER OR ANY RULES PROMULGATED THEREUNDER;

(II) ENGAGED IN THE UNLAWFUL STAMPING OF CIGARETTES; OR

(III) AIDED AND ABETTED ANY OTHER PERSON IN ENGAGING IN THE CONDUCT DESCRIBED IN THIS SUBPARAGRAPH.

(C) ANY SANCTION AUTHORIZED BY THIS SECTION HAS BEEN FINALLY DETERMINED PURSUANT TO THIS CHAPTER AGAINST ANY WHOLESALE LICENSEE OR CONTROLLING PERSON, AND THE SUBJECT WHOLESALE LICENSEE OR CONTROLLING PERSON HAS VIOLATED OR ATTEMPTED TO VIOLATE SUCH SANCTION, OR HAS NOT PAID IN FULL ANY CIVIL PENALTY IMPOSED.

(D) ANY TAX (INCLUDING ANY RELATED TAX PENALTY) IMPOSED UNDER THIS TITLE, THE TAX LAW, OR ANY RELATED STATUTE HAS BEEN FINALLY DETERMINED

TO BE DUE FROM THE WHOLESALE LICENSEE OR ANY CONTROLLING PERSON, AND SUCH TAX HAS NOT BEEN PAID IN FULL.

(E) THE WHOLESALE LICENSEE OR ANY CONTROLLING PERSON IS THE CONTROLLING PERSON IN A WHOLESALE DEALER THAT THE COMMISSIONER HAS DETERMINED IS RESPONSIBLE FOR ANY ACTS OR OMISSIONS THAT WOULD CONSTITUTE GROUNDS FOR SANCTIONS UNDER THIS SUBDIVISION.

(F) THE WHOLESALE LICENSEE DOES NOT HAVE A VALID LICENSE TO ENGAGE IN THE BUSINESS OF A WHOLESALE CIGARETTE DEALER IN THE STATE OF NEW YORK PURSUANT TO SECTION FOUR HUNDRED EIGHTY OF THE TAX LAW. IF THE GROUNDS FOR SANCTIONS ARE ON THE BASIS SPECIFIED IN THIS SUBPARAGRAPH, THE SANCTIONS MUST INCLUDE THE REVOCATION OF THE WHOLESALE LICENSE.

2. A TEMPORARY OR PERMANENT BAN ON HOLDING ANY LICENSE REQUIRED UNDER THIS CHAPTER OR ON ACTING AS A WHOLESALE DEALER, CONTROLLING PERSON, OR ASSOCIATE, OR THE IMPOSITION OF A CIVIL PENALTY, PURSUANT TO PARAGRAPHS THREE AND FOUR OF SUBDIVISION I OF THIS SECTION, MAY BE IMPOSED ON ANY ASSOCIATE OF A WHOLESALE LICENSEE OR OF A CONTROLLING PERSON FOR ANY OF THE GROUNDS SET FORTH IN SUBPARAGRAPH (B) OF PARAGRAPH ONE OF THIS SUBDIVISION. SUCH SANCTIONS MAY ALSO BE IMPOSED ON ANY ASSOCIATE OF A WHOLESALE LICENSEE OR OF A CONTROLLING PERSON FOR ANY OF THE GROUNDS SET FORTH IN SUBPARAGRAPH (A), (C), (D), OR (E) OF PARAGRAPH ONE OF THIS SUBDIVISION, AS IF THE ACTIONS OF SUCH AN ASSOCIATE WERE THE ACTIONS OF A WHOLESALE LICENSEE OR CONTROLLING PERSON ACTING UNDER THOSE SUBPARAGRAPHS.

3. A TEMPORARY OR PERMANENT BAN ON HOLDING ANY LICENSE REQUIRED UNDER THIS CHAPTER OR ON ACTING AS A WHOLESALE DEALER, CONTROLLING PERSON, OR ASSOCIATE, OR THE IMPOSITION OF A CIVIL PENALTY, PURSUANT TO PARAGRAPHS THREE AND FOUR OF SUBDIVISION I OF THIS SECTION, MAY BE IMPOSED ON ANY UNLICENSED WHOLESALE DEALER, OR ANY CONTROLLING PERSON OR ASSOCIATE OF SUCH AN UNLICENSED WHOLESALE DEALER, FOR ANY OF THE GROUNDS SET FORTH IN THIS SUBDIVISION.

L. NOTICES, AND HEARING AND REVIEW PROCEDURE.

1. REQUIREMENTS FOR NOTICES.

(A) ANY NOTICE PROVIDED UNDER THIS SUBDIVISION, OTHER THAN A NOTICE OF DETERMINATION OF REFUSAL TO APPROVE OR RENEW A LICENSE ISSUED PURSUANT TO PARAGRAPH TWO OF THIS SUBDIVISION, SHALL BE ISSUED TO THE PERSON SUBJECT TO THE NOTICE WITHIN FIVE YEARS OF THE ACT OR OMISSION OR OTHER GROUNDS PROVIDING THE BASIS FOR THE NOTICE AS DESCRIBED IN SUBDIVISION K OF THIS SECTION, IF SUCH NOTICE IS BASED ON THE GROUNDS SET FORTH IN CLAUSE (I), (II), (III), OR (IV) OF SUBPARAGRAPH (A), OR IN SUBPARAGRAPH (B) OR (E) OF PARAGRAPH ONE OF SUBDIVISION K OF THIS SECTION. ANY NOTICE BASED ON GROUNDS SET FORTH IN CLAUSE (V), (VI), (VII), OR (VIII) OF SUBPARAGRAPH (A), OR IN SUBPARAGRAPH (C), (D), OR (F) OF PARAGRAPH ONE OF SUBDIVISION K OF THIS SECTION, MAY BE ISSUED AT ANY TIME.

(B) ALL NOTICES PROVIDED UNDER THIS SUBDIVISION SHALL ADVISE THE PERSON SUBJECT TO THE NOTICE THAT THE PROPOSED SANCTIONS OR REFUSAL TO LICENSE MAY BE REVIEWED THROUGH A HEARING PROCESS AS DESCRIBED IN PARAGRAPH FOUR OF THIS SUBDIVISION.

2. A NOTICE OF DETERMINATION OF REFUSAL TO APPROVE OR RENEW A LICENSE SHALL BE ISSUED WITHIN THIRTY DAYS AFTER A COMPLETE APPLICATION FOR THE LICENSE IS RECEIVED BY THE COMMISSIONER OF FINANCE. SUCH NOTICE MAY BE COMBINED WITH A NOTICE OF DETERMINATION OF PROPOSED SANCTIONS.

3. A PROCEEDING TO CHALLENGE A REFUSAL TO APPROVE A LICENSE OR TO CHALLENGE SANCTIONS AUTHORIZED BY THIS SECTION SHALL BE COMMENCED BY THE FILING OF A PETITION PROTESTING THE NOTICE OF REFUSAL ISSUED TO AN APPLICANT OR THE NOTICE OF DETERMINATION OF PROPOSED SANCTIONS ISSUED TO

A WHOLESALE DEALER, CONTROLLING PERSON, OR ASSOCIATE, AS PROVIDED IN PARAGRAPH FOUR OF THIS SUBDIVISION.

4. THE PERSON TO WHOM A NOTICE DESCRIBED IN PARAGRAPH ONE OR TWO OF THIS SUBDIVISION IS ISSUED SHALL HAVE THE RIGHT TO A HEARING IF SUCH PERSON, WITHIN THIRTY DAYS FROM THE DATE OF SUCH NOTICE, BOTH:

(A) SERVES A PETITION FOR A HEARING UPON THE COMMISSIONER OF FINANCE; AND

(B) FILES THE PETITION WITH THE TAX APPEALS TRIBUNAL.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS CODE TO THE CONTRARY, THE PERSON TO WHOM SUCH NOTICE IS ISSUED SHALL NOT HAVE THE RIGHT TO REQUEST A CONCILIATION CONFERENCE WITH RESPECT TO SUCH NOTICE.

5. SUCH HEARING SHALL BE HELD PURSUANT TO THE RULES OF THE TAX APPEALS TRIBUNAL FOR EXPEDITED PROCEEDINGS, EXCEPT THAT THIS PARAGRAPH SHALL NOT APPLY TO A HEARING TO REVIEW SOLELY THE IMPOSITION OF CIVIL PENALTIES PURSUANT TO SUBDIVISION J OF THIS SECTION.

6. THE COMMISSIONER MAY ONLY IMPOSE SANCTIONS PURSUANT TO SUBDIVISION I OF THIS SECTION SUBSEQUENT TO THE HEARING DESCRIBED IN PARAGRAPH FOUR OF THIS SUBDIVISION.

M. SUSPENSION OF LICENSE AND IMPOSITION OF TEMPORARY BAN BEFORE A HEARING.

1. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION TO THE CONTRARY, THE COMMISSIONER MAY ISSUE A NOTICE SUSPENDING A LICENSE OR IMPOSING A TEMPORARY BAN ON HOLDING ANY LICENSE REQUIRED UNDER THIS CHAPTER OR ON ACTING AS A WHOLESALE DEALER, CONTROLLING PERSON, OR ASSOCIATE AS AUTHORIZED BY PARAGRAPHS TWO AND THREE OF SUBDIVISION I OF THIS SECTION, PRIOR TO A HEARING UPON FINDING ANY OF THE FOLLOWING EXIGENT CIRCUMSTANCES:

(A) THERE ARE GROUNDS FOR SANCTIONS AGAINST ANY LICENSEE, CONTROLLING PERSON, OR ASSOCIATE PURSUANT TO CLAUSE (III), (IV), (V), (VI), (VII), OR (VIII) OF SUBPARAGRAPH (A), OR PURSUANT TO SUBPARAGRAPH (C) OF PARAGRAPH ONE OF SUBDIVISION K OF THIS SECTION.

(B) THERE ARE GROUNDS FOR REVOCATION OF THE WHOLESALE CIGARETTE LICENSE PURSUANT TO SUBPARAGRAPH (F) OF PARAGRAPH ONE OF SUBDIVISION K OF THIS SECTION.

(C) THE LICENSEE, CONTROLLING PERSON, OR ASSOCIATE HAS ENGAGED IN ANY ACTIVITY FOR WHICH SANCTIONS MAY BE IMPOSED PURSUANT TO SUBDIVISION I OF THIS SECTION WITH RESPECT TO THE UNLAWFUL STAMPING OF CIGARETTES, SUCH AS THE UNAUTHORIZED STAMPING OF CIGARETTE PACKAGES, THE PRODUCTION, SALE, TRANSPORT, OR USE OF COUNTERFEIT TAX STAMPS, INCLUDING THE PLACEMENT OF COUNTERFEIT TAX STAMPS ON PACKAGES OF CIGARETTES, OR THE AIDING OR ABETTING OF ANY OTHER PERSON IN ANY SUCH ACTIVITY.

(D) THE LICENSEE, CONTROLLING PERSON, OR ASSOCIATE HAS ENGAGED IN ANY ACTIVITY FOR WHICH SANCTIONS MAY BE IMPOSED PURSUANT TO SUBDIVISION I OF THIS SECTION THAT RESULTED IN TAXES ON MORE THAN TEN THOUSAND CIGARETTES BEING UNPAID OR THAT CREATED A SUBSTANTIAL RISK TO PUBLIC HEALTH OR SAFETY OR PUBLIC ORDER.

2. ALL NOTICES PROVIDED UNDER THIS SUBDIVISION SHALL ADVISE THE PERSON SUBJECT TO THE NOTICE THAT SUCH SUSPENSION OR TEMPORARY BAN MAY BE REVIEWED THROUGH A HEARING PROCESS AS DESCRIBED IN PARAGRAPH THREE OF THIS SUBDIVISION. THE PERSON TO WHOM SUCH A NOTICE IS ISSUED SHALL HAVE THE RIGHT TO A HEARING IF SUCH PERSON, WITHIN THIRTY DAYS FROM THE DATE OF SUCH NOTICE, SERVES A PETITION FOR A HEARING UPON THE COMMISSIONER OF FINANCE AND FILES THE PETITION WITH THE TAX APPEALS TRIBUNAL. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CODE TO THE CONTRARY, THE PERSON TO WHOM SUCH NOTICE IS ISSUED SHALL NOT HAVE THE RIGHT TO REQUEST A CONCILIATION CONFERENCE WITH RESPECT TO SUCH NOTICE.

3. THE TAX APPEALS TRIBUNAL SHALL PROMULGATE RULES FOR A HEARING TO BE HELD ON AN ACCELERATED SCHEDULE FOLLOWING THE COMMISSIONER'S SUSPENSION OF A LICENSE OR ISSUANCE OF A TEMPORARY BAN PURSUANT TO THIS PARAGRAPH. SUCH A HEARING SHALL COMMENCE WITHIN SEVEN BUSINESS DAYS FROM THE RECEIPT OF A PETITION IN PROPER FORM FOR SUCH A HEARING, AND A DETERMINATION SHALL BE RENDERED WITHIN TWELVE BUSINESS DAYS FROM THE COMPLETION OF THE HEARING OR THE SUBMISSION OF BRIEFS RELATED TO THE HEARING, WHICHEVER IS LATER. THE TRIBUNAL WILL REVIEW EN BANC THE DETERMINATION FROM AN ACCELERATED HEARING UPON A REQUEST FOR REVIEW MADE BY ANY PARTY WITHIN SEVEN BUSINESS DAYS FROM THE GIVING OF NOTICE OF SUCH DETERMINATION. THE TRIBUNAL SHALL ISSUE A DECISION WITHIN TWENTY BUSINESS DAYS FROM THE RECEIPT OF SUCH REQUEST FOR REVIEW, THE SUBMISSION OF BRIEFS OR THE DATE OF THE ORAL ARGUMENT, WHICHEVER IS LATEST. ANY REQUEST BY THE PETITIONER THAT DELAYS SUCH A HEARING OR DETERMINATION OR REVIEW OF THE DETERMINATION OR DECISION SHALL EXTEND THE TIME LIMITATIONS IMPOSED BY THIS PARAGRAPH.

N. AUTHORITY OF THE COMMISSIONER OF CONSUMER AFFAIRS. IN ADDITION TO ANY AUTHORITY PROVIDED UNDER ANY OTHER SECTION OF THIS CODE, THE COMMISSIONER OF CONSUMER AFFAIRS MAY SUSPEND OR REVOKE A RETAIL CIGARETTE LICENSE AND IMPOSE ANY CIVIL PENALTIES AUTHORIZED UNDER TITLE TWENTY OF THIS CODE, UPON NOTIFICATION THAT A HOLDER OF SUCH LICENSE HAS BEEN FINALLY DETERMINED PURSUANT TO THIS CHAPTER TO HAVE FAILED TO COMPLY WITH THE PROVISIONS OF THIS CHAPTER OR ANY RULES OF THE COMMISSIONER OF FINANCE PROMULGATED UNDER THIS CHAPTER. THE AUTHORITY PROVIDED TO THE COMMISSIONER OF CONSUMER AFFAIRS IN THIS SUBDIVISION SHALL NOT LIMIT THE AUTHORITY OF THE COMMISSIONER OF FINANCE TO IMPOSE SANCTIONS AND CIVIL PENALTIES UNDER THIS CHAPTER.

S 10. Section 11-1306 of the administrative code of the city of New York is amended to read as follows:

S 11-1306 Possession [and] OR transportation of unstamped OR UNLAWFULLY STAMPED cigarettes. A. FOR THE PURPOSES OF THIS CHAPTER, ANY PERSON WHO SHALL POSSESS OR TRANSPORT, AT ANY ONE TIME, MORE THAN FOUR HUNDRED CIGARETTES IN UNSTAMPED OR UNLAWFULLY STAMPED PACKAGES, SHALL BE PRESUMED TO BE A WHOLESALE DEALER, EXCEPT THAT THIS PRESUMPTION SHALL NOT APPLY TO:

1. ANY PERSON POSSESSING OR TRANSPORTING MORE THAN FOUR HUNDRED CIGARETTES IN UNSTAMPED PACKAGES WHO IS A MANUFACTURER, AN AGENT, OR A PERSON DELIVERING CIGARETTES IN THE REGULAR COURSE OF BUSINESS (A) FOR A MANUFACTURER, AN AGENT, OR A LICENSED WHOLESALE DEALER, OR (B) TO A PLACE OUTSIDE OF THE CITY, PROVIDED SUCH PERSON IS NOT IN VIOLATION OF SUBDIVISION B OF THIS SECTION; OR

2. ANY PERSON POSSESSING OR TRANSPORTING ONE THOUSAND OR FEWER CIGARETTES IN STAMPED PACKAGES FOR PERSONAL USE, PROVIDED THE COMMISSIONER OF FINANCE DOES NOT PROVE THAT SUCH PERSON HAD KNOWLEDGE THAT SUCH CIGARETTES WERE IN UNLAWFULLY STAMPED PACKAGES.

B. Every person who shall possess or transport upon the public highways, roads or streets of this city more than four hundred cigarettes in unstamped packages, shall be required to have in his or her actual possession invoices or delivery tickets for such cigarettes. All such invoices or delivery tickets shall show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser and the quantity and brands of the cigarettes transported. [The absence of such invoices or delivery tickets shall be prima facie evidence that such person is a dealer in cigarettes in the city and subject to the provisions of this chapter.]

S 11. Subdivision (f) of section 11-4012 of the administrative code of the city of New York, as amended by chapter 201 of the laws of 2009, is amended to read as follows:

(f) Any willful act or omission, other than those described in section 11-4002 of this chapter or subdivision (a), (b), (c), (d), (e) [or], (g) OR (H) of this section, by any person which constitutes a violation of any provision of chapter thirteen of this title or subchapter one of chapter two of title twenty of the code shall constitute a misdemeanor.

S 12. Section 11-4012 of the administrative code of the city of New York is amended by adding a new subdivision (h) to read as follows:

(H) ANY PERSON WHO ENGAGES IN ANY ACT IN VIOLATION OF ANY TEMPORARY OR PERMANENT BAN ON HOLDING A LICENSE REQUIRED UNDER CHAPTER THIRTEEN OF THIS TITLE OR ON ACTING AS A WHOLESALE DEALER, CONTROLLING PERSON, OR ASSOCIATE AS IMPOSED BY THE COMMISSIONER OF FINANCE PURSUANT TO CHAPTER THIRTEEN OF THIS TITLE, SHALL BE GUILTY OF A CLASS E FELONY. ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SUBDIVISION AFTER PREVIOUSLY HAVING BEEN CONVICTED OF A VIOLATION OF THIS SUBDIVISION SHALL BE GUILTY OF A CLASS D FELONY.

S 13. Subdivision (b) of section 11-4021 of the administrative code of the city of New York, as amended by chapter 556 of the laws of 2011, is amended to read as follows:

(b) The seized cigarettes and any vending machine or receptacle seized therewith, but not the money contained in such vending machine or receptacle shall thereupon be forfeited [to the city], unless the person from whom the seizure is made, or the owner of such seized cigarettes, vending machine or receptacle, or any other person having an interest in such property, shall within [ten] THIRTY days [of] FROM such seizure[, apply to the commissioner of finance for a hearing to determine the propriety of the seizure,] SEEK JUDICIAL REVIEW OF THE PROPRIETY OF SUCH SEIZURE THROUGH A PROCEEDING UNDER ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES, or unless the commissioner of finance shall on his OR HER own motion release the seized cigarettes, vending machine or receptacle. [After such hearing the commissioner of finance shall give notice of his decision to the petitioner. The decision of the commissioner shall be reviewable for error, illegality, unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such decision. Such proceeding shall not be instituted unless there shall first be filed with the commissioner of finance an undertaking, issued by a surety company authorized to transact business in New York state and approved by the superintendent of insurance of New York state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed, or the seizure confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of the proceeding.]

S 14. This act shall take effect on the one hundred twentieth day after it shall have become a law, provided that the department of finance and the tax appeals tribunal may promulgate any rules necessary for the implementation of this act prior to the effective date of this act.