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

8054--B

2013-2014 Regular Sessions

I N A S S E M B L Y

June 17, 2013

Introduced by M. of A. CYMBROWITZ -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to increasing the presumed "cost of the agent" relating to cigarette marketing standards; and to amend the state finance law, in relation to establishing the cigarette tax enforcement account; and making an appropriation therefor

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

Section 1. Subparagraph (B) of paragraph 1 of subdivision (b) of section 483 of the tax law, as amended by chapter 1 of the laws of 1999, is amended to read as follows:

(B) In the absence of the filing with the commissioner of satisfactory proof of a lesser cost of doing business of the agent making the sale, the cost of doing business by the agent shall be presumed to be seven-eighths of one percent of the basic cost of cigarettes for sales to wholesale dealers plus [one cent] NINE CENTS per package of [ten] cigarettes, [two cents per package of twenty cigarettes and in the case of a package containing more than twenty cigarettes, two cents and one-half of a cent for each five cigarettes in excess of twenty cigarettes] REGARDLESS OF THE NUMBER OF CIGARETTES CONTAINED IN SUCH PACKAGE, one and one-half percent of the basic cost of cigarettes for sales to chain stores plus [one cent] NINE CENTS per package of [ten] cigarettes, [two cents per package of twenty cigarettes and in the case of a package containing more than twenty cigarettes, two cents and one-half of a cent for each five cigarettes in excess of twenty cigarettes] REGARDLESS OF THE NUMBER OF CIGARETTES CONTAINED IN SUCH PACKAGE, and three and seven-eighths percent of the basic cost of cigarettes with respect to

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

LBD02219-10-4

sales to retail dealers plus [one cent] NINE CENTS per package of [ten] cigarettes, [two cents per package of twenty cigarettes and in the case of a package containing more than twenty cigarettes, two cents and one-half of a cent for each five cigarettes in excess of twenty cigarettes] REGARDLESS OF THE NUMBER OF CIGARETTES IN SUCH PACKAGE and the foregoing cents per pack shall be included in the "cost of doing business by the agent" referred to in paragraphs two and three of this subdivision.

S 2. Subdivision 1 of section 472 of the tax law, as amended by chapter 629 of the laws of 1996 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

1. The commissioner shall prescribe, prepare and furnish stamps of such denominations and quantities as may be necessary for the payment of the tax on cigarettes imposed by this article PLUS THE PAYMENT BY THE AGENT OF A CONCURRENT EXPENSE ALLOWANCE FOR THE CIGARETTE TAX ENFORCEMENT ACCOUNT ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-OOOO OF THE STATE FINANCE LAW OF FOUR CENTS PER STAMP WHICH SHALL BE DEPOSITED PURSUANT TO SUBDIVISION (C) OF SECTION FOUR HUNDRED EIGHTY-TWO OF THIS ARTICLE, and may from time to time and as often as he deems advisable provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design, in the manner and with the effect provided in section two hundred seventy-four of this chapter. The commissioner shall make provisions for the sale of such stamps at such places and at such times as he may deem necessary and may license agents for such purpose. The commissioner may license dealers in cigarettes, who maintain separate warehousing facilities for the purpose of receiving and distributing cigarettes and conducting their business, who have received commitments from at least two cigarette manufacturers whose aggregate market share is at least forty percent of the New York state cigarette market, and importers, exporters and manufacturers of cigarettes, and other persons within or without the state as agents to buy or affix stamps to be used in paying the tax herein imposed, but an agent shall at all times have the right to appoint the person in his employ who is to affix the stamps to any cigarettes under the agent's control. The fee for filing such application for an agent's license shall be one thousand five hundred dollars, unless such fee has been paid during the preceding twelve months, in which case, the fee for a new license shall be one thousand dollars. All of the provisions of section four hundred eighty OF THIS ARTICLE relating to wholesale dealers' licenses, including the procedure for suspension, revocation, refusal to license and for hearings, except for paragraphs (c) and (g) of subdivision one of such section, shall be applicable to agents' licenses applied for or granted pursuant to this section, as if such provisions had been set forth in full in this subdivision and had expressly referred to the applicant for, or the holder of, an agent's license. Whenever the commissioner shall sell and deliver to any such agent any such stamps, such agent shall be entitled to receive as compensation for his services and expenses as such agent in selling or affixing such stamps, and to retain out of the moneys to be paid by him for such stamps, a commission on the par value thereof. The commissioner is hereby authorized to prescribe a schedule of commissions, not exceeding five per centum, allowable to such agent for buying and affixing such stamps. Such schedule shall be uniform with respect to the different types of stamps used, and may be on a graduated scale with respect to the number of stamps purchased. The commissioner may, in his discretion, permit an agent to pay for such stamps within thirty days after the date of purchase and may require any such agent to file with

the department [of taxation and finance] a bond issued by a surety company approved by the superintendent of financial services as to solvency and responsibility and authorized to transact business in the state or other security acceptable to the commissioner, in such amount as the commissioner may fix, to secure the payment of any sums due from such agent pursuant to this article. If securities are deposited as security under this subdivision, such securities shall be kept in the custody of the commissioner and may be sold by the commissioner if it becomes necessary so to do in order to recover any sums due from such agent pursuant to this article, but no such sale shall be had until after such agent shall have had opportunity to litigate the validity of any tax if it elects so to do. Upon any such sale, the surplus, if any, above the sums due under this article shall be returned to such agent.

S 3. Section 482 of the tax law, as amended by section 2 of part T of chapter 61 of the laws of 2011, 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 AMOUNTS RECEIVED PURSUANT TO SUBDIVISION ONE OF SECTION FOUR HUNDRED SEVENTY-TWO OF THIS ARTICLE, THE COMMISSIONER SHALL DEPOSIT IN THE CIGARETTE TAX ENFORCEMENT ACCOUNT ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-OOOO OF THE STATE FINANCE LAW THE CONCURRENT EXPENSE ALLOWANCE FOR THE CIGARETTE TAX ENFORCEMENT FUND OF FOUR CENTS PER STAMP.

S 4. The state finance law is amended by adding a new section 97-oooo to read as follows:

S 97-OOOO. CIGARETTE TAX ENFORCEMENT ACCOUNT. 1. THERE IS HEREBY CREATED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE AN ACCOUNT OF THE MISCELLANEOUS SPECIAL REVENUE FUND TO BE KNOWN AS THE "CIGARETTE TAX ENFORCEMENT ACCOUNT".

2. NOTWITHSTANDING ANY OTHER LAW, RULE OR REGULATION TO THE CONTRARY, THE STATE COMPTROLLER IS HEREBY AUTHORIZED AND DIRECTED TO RECEIVE FOR DEPOSIT TO THE CREDIT OF THE CIGARETTE TAX ENFORCEMENT ACCOUNT MONIES RECEIVED FROM THE COMMISSIONER OF TAXATION AND FINANCE FROM THE CONCURRENT EXPENSE ALLOWANCE PAID PURSUANT TO SUBDIVISION ONE OF SECTION FOUR HUNDRED SEVENTY-TWO OF THE TAX LAW, AND OTHER MONIES APPROPRIATED, CREDITED OR TRANSFERRED THERETO FROM ANY OTHER FUND OR SOURCE.

3. THE PROCEEDS OF THE CIGARETTE TAX ENFORCEMENT ACCOUNT SHALL BE USED SOLELY TO ENFORCE THE COLLECTION OF THE CIGARETTE TAX, AS PROVIDED FOR IN ARTICLE TWENTY OF THE TAX LAW.

S 5. There is hereby appropriated to the division of state police the amount of six million dollars ($6,000,000) from the cigarette tax enforcement account to support cigarette tax enforcement activities. This appropriation may be apportioned to either the patrol activities or criminal investigation activities program of the division of state police, may be transferred or suballocated to any other state agency or public authority for their costs associated with the enforcement of the cigarette tax, and may be used to contract with local enforcement agencies for cigarette tax enforcement activities. No monies shall be available from this appropriation absent a certificate of allocation from the director of the budget.

S 6. This act shall take effect September 1, 2014 and shall apply in accordance with the applicable transitional provisions of sections 1106 and 1217 of the tax law.