

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

1958--B

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. GOLDEN -- 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 -- 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 fund

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

1 Section 1. Subparagraph (B) of paragraph 1 of subdivision (b) of
2 section 483 of the tax law, as amended by chapter 1 of the laws of 1999,
3 is amended to read as follows:
4 (B) In the absence of the filing with the commissioner of satisfactory
5 proof of a lesser cost of doing business of the agent making the sale,
6 the cost of doing business by the agent shall be presumed to be seven-
7 eighths of one percent of the basic cost of cigarettes for sales to
8 wholesale dealers plus [one cent] SEVENTEEN CENTS per package of [ten]
9 cigarettes, [two cents per package of twenty cigarettes and in the case
10 of a package containing more than twenty cigarettes, two cents and one-
11 half of a cent for each five cigarettes in excess of twenty cigarettes]
12 REGARDLESS OF THE NUMBER OF CIGARETTES CONTAINED IN SUCH PACKAGE, one
13 and one-half percent of the basic cost of cigarettes for sales to chain
14 stores plus [one cent] SEVENTEEN CENTS per package of [ten] cigarettes,
15 [two cents per package of twenty cigarettes and in the case of a package
16 containing more than twenty cigarettes, two cents and one-half of a cent
17 for each five cigarettes in excess of twenty cigarettes] REGARDLESS OF
18 THE NUMBER OF CIGARETTES CONTAINED IN SUCH PACKAGE, and three and

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

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1 seven-eighths percent of the basic cost of cigarettes with respect to
2 sales to retail dealers plus [one cent] SEVENTEEN CENTS per package of
3 [ten] cigarettes, [two cents per package of twenty cigarettes and in the
4 case of a package containing more than twenty cigarettes, two cents and
5 one-half of a cent for each five cigarettes in excess of twenty ciga-
6 rettes] REGARDLESS OF THE NUMBER OF CIGARETTES IN SUCH PACKAGE and the
7 foregoing cents per pack shall be included in the "cost of doing busi-
8 ness by the agent" referred to in paragraphs two and three of this
9 subdivision.

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

13 1. The commissioner shall prescribe, prepare and furnish stamps of
14 such denominations and quantities as may be necessary for the payment of
15 the tax on cigarettes imposed by this article PLUS A CONCURRENT EXPENSE
16 ALLOWANCE FOR THE CIGARETTE TAX ENFORCEMENT FUND OF THREE CENTS PER
17 STAMP WHICH SHALL BE DEPOSITED PURSUANT TO SUBDIVISION (C) OF SECTION
18 FOUR HUNDRED EIGHTY-TWO OF THIS ARTICLE, and may from time to time and
19 as often as he deems advisable provide for the issuance and exclusive
20 use of stamps of a new design and forbid the use of stamps of any other
21 design, in the manner and with the effect provided in section two
22 hundred seventy-four of this chapter. The commissioner shall make
23 provisions for the sale of such stamps at such places and at such times
24 as he may deem necessary and may license agents for such purpose. The
25 commissioner may license dealers in cigarettes, who maintain separate
26 warehousing facilities for the purpose of receiving and distributing
27 cigarettes and conducting their business, who have received commitments
28 from at least two cigarette manufacturers whose aggregate market share
29 is at least forty percent of the New York state cigarette market, and
30 importers, exporters and manufacturers of cigarettes, and other persons
31 within or without the state as agents to buy or affix stamps to be used
32 in paying the tax herein imposed, but an agent shall at all times have
33 the right to appoint the person in his employ who is to affix the stamps
34 to any cigarettes under the agent's control. The fee for filing such
35 application for an agent's license shall be one thousand five hundred
36 dollars, unless such fee has been paid during the preceding twelve
37 months, in which case, the fee for a new license shall be one thousand
38 dollars. All of the provisions of section four hundred eighty OF THIS
39 ARTICLE relating to wholesale dealers' licenses, including the procedure
40 for suspension, revocation, refusal to license and for hearings, except
41 for paragraphs (c) and (g) of subdivision one of such section, shall be
42 applicable to agents' licenses applied for or granted pursuant to this
43 section, as if such provisions had been set forth in full in this subdivi-
44 sion and had expressly referred to the applicant for, or the holder
45 of, an agent's license. Whenever the commissioner shall sell and deliver
46 to any such agent any such stamps, such agent shall be entitled to
47 receive as compensation for his services and expenses as such agent in
48 selling or affixing such stamps, and to retain out of the moneys to be
49 paid by him for such stamps, a commission on the par value thereof. The
50 commissioner is hereby authorized to prescribe a schedule of commis-
51 sions, not exceeding five per centum, allowable to such agent for buying
52 and affixing such stamps. Such schedule shall be uniform with respect to
53 the different types of stamps used, and may be on a graduated scale with
54 respect to the number of stamps purchased. The commissioner may, in his
55 discretion, permit an agent to pay for such stamps within thirty days
56 after the date of purchase and may require any such agent to file with

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

14 S 3. Section 482 of the tax law, as amended by section 2 of part T of
15 chapter 61 of the laws of 2011, is amended to read as follows:

16 S 482. Deposit and disposition of revenue. (a) All taxes, fees, inter-
17 est and penalties collected or received by the commissioner under this
18 article and article twenty-A of this chapter shall be deposited and
19 disposed of pursuant to the provisions of section one hundred seventy-
20 one-a of this chapter. (b) From the taxes, interest and penalties
21 collected or received by the commissioner under sections four hundred
22 seventy-one and four hundred seventy-one-a of this article, effective on
23 and after March first, two thousand, forty-nine and fifty-five
24 hundredths, and effective on and after February first, two thousand two,
25 forty-three and seventy hundredths; and effective on and after May
26 first, two thousand two, sixty-four and fifty-five hundredths; and
27 effective on and after April first, two thousand three, sixty-one and
28 twenty-two hundredths percent; and effective on and after June third,
29 two thousand eight, seventy and sixty-three hundredths percent; and
30 effective on and after July first, two thousand ten, seventy-six percent
31 collected or received under those sections must be deposited to the
32 credit of the tobacco control and insurance initiatives pool to be
33 established and distributed by the commissioner of health in accordance
34 with section twenty-eight hundred seven-v of the public health law. (C)
35 FROM THE AMOUNTS RECEIVED PURSUANT TO SUBDIVISION ONE OF SECTION FOUR
36 HUNDRED SEVENTY-TWO OF THIS ARTICLE, THE COMMISSIONER SHALL DEPOSIT IN
37 THE CIGARETTE TAX ENFORCEMENT FUND ESTABLISHED PURSUANT TO SECTION NINE-
38 TY-TWO-GG OF THE STATE FINANCE LAW THE CONCURRENT EXPENSE ALLOWANCE FOR
39 THE CIGARETTE TAX ENFORCEMENT FUND OF THREE CENTS PER STAMP.

40 S 4. The state finance law is amended by adding a new section 92-gg to
41 read as follows:

42 S 92-GG. CIGARETTE TAX ENFORCEMENT FUND. 1. THERE IS HEREBY ESTAB-
43 LISHED IN THE JOINT CUSTODY OF THE COMPTROLLER AND THE COMMISSIONER OF
44 TAXATION AND FINANCE A SPECIAL FUND TO BE KNOWN AS THE "CIGARETTE TAX
45 ENFORCEMENT FUND".

46 2. SUCH FUND SHALL CONSIST OF ALL REVENUES RECEIVED BY THE DEPARTMENT
47 OF TAXATION AND FINANCE PURSUANT TO THE PROVISIONS OF SECTION FOUR
48 HUNDRED EIGHTY-TWO OF THE TAX LAW AND ALL OTHER MONEY APPROPRIATED,
49 CREDITED, OR TRANSFERRED THERETO FROM ANY OTHER FUND OR SOURCE PURSUANT
50 TO LAW.

51 3. MONIES OF THE FUND SHALL BE EXPENDED ONLY FOR COSTS ASSOCIATED WITH
52 THE STATE'S ENFORCEMENT OF THE STATE'S CIGARETTE TAX AND THE CIGARETTE
53 MARKETING STANDARDS UNDER ARTICLE TWENTY-A OF THE TAX LAW.

54 4. MONIES OF THE ACCOUNT, FOLLOWING APPROPRIATION BY THE LEGISLATURE,
55 SHALL BE ALLOCATED UPON A CERTIFICATE OF APPROVAL OF AVAILABILITY BY THE
56 DIRECTOR OF THE BUDGET FOR THE PURPOSES SET FORTH IN THIS SECTION.

1 S 5. This act shall take effect on the first day of the sales tax
2 quarterly period, as described in subdivision (b) of section 1136 of the
3 tax law, next succeeding the ninetieth day after it shall have become a
4 law and shall apply in accordance with the applicable transitional
5 provisions of sections 1106 and 1217 of the tax law.