

7106

2013-2014 Regular Sessions

I N   A S S E M B L Y

May 1, 2013

---

Introduced by M. of A. GOTTFRIED, DINOWITZ, GALEF, PAULIN, ROSENTHAL, JAFFEE, MILLMAN, SEPULVEDA, TITUS -- Multi-Sponsored by -- M. of A. BOYLAND, BROOK-KRASNY, CLARK, COOK, JACOBS, McDONALD, ROSA -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the tax law, in relation to amending certain definitions relating to tobacco products; and to amend the public health law and the tax law, in relation to changing the minimum pack sizes for tobacco products and the tax amount for tobacco products

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

1     Section 1. Subdivision 5 of section 1399-aa of the public health law,  
2     as amended by chapter 152 of the laws of 2004, is amended and a new  
3     subdivision 14 is added to read as follows:  
4     5. "Tobacco products" means one or more cigarettes or cigars, bidis,  
5     chewing tobacco, LOOSE TOBACCO, SINGLE-UNIT TOBACCO, powdered tobacco,  
6     nicotine water or any other tobacco products AND ALSO INCLUDES ANY OTHER  
7     PRODUCT CONTAINING TOBACCO OR NICOTINE THAT IS INTENDED OR EXPECTED TO  
8     BE CONSUMED EXCEPT FOR ANY SUCH PRODUCT THAT HAS BEEN APPROVED BY THE  
9     U.S. FOOD AND DRUG ADMINISTRATION FOR SALE AS A TOBACCO USE CESSATION  
10    PRODUCT OR FOR OTHER MEDICAL PURPOSES AND IS BEING MARKETING AND SOLD  
11    SOLELY FOR THAT APPROVED PURPOSE.  
12    14. "CIGARETTE" MEANS ANY ROLL FOR SMOKING MADE WHOLLY OR IN PART OF  
13    TOBACCO OR OF ANY OTHER SUBSTANCE, IRRESPECTIVE OF SIZE, SHAPE, APPEAR-  
14    ANCE, PACKAGING, PRICING, MARKETING OR LABELING AND WHETHER OR NOT SUCH  
15    TOBACCO OR SUBSTANCE IS FLAVORED, ADULTERATED OR MIXED WITH ANY OTHER  
16    INGREDIENT, THE WRAPPER OR COVER OF WHICH IS MADE OF PAPER OR ANY OTHER  
17    SUBSTANCE OR MATERIAL BUT IS NOT MADE IN WHOLE OR IN PART OF TOBACCO  
18    THAT IS LIKELY TO BE OFFERED TO, PURCHASED BY, OR CONSUMED BY CONSUMERS  
19    AS A CIGARETTE, AS DEFINED ABOVE, INCLUDING ANY ROLL FOR SMOKING  
20    CONTAINING TOBACCO WRAPPED IN A SUBSTANCE CONTAINING TOBACCO THAT WEIGHS

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

LBD08228-02-3

1 NO MORE THAN FOUR AND A HALF POUNDS PER THOUSAND UNLESS IT IS WRAPPED IN  
2 WHOLE TOBACCO LEAF AND DOES NOT HAVE AN INTERNAL FILTER.

3 S 2. Subdivisions 1, 2 and 2-a of section 470 of the tax law, subdivi-  
4 sion 1 as amended by section 14 and subdivision 2 as amended by section  
5 15 of part D of chapter 134 of the laws of 2010 and subdivision 2-a as  
6 added by chapter 552 of the laws of 2008, are amended and two new subdivi-  
7 sions 2-c and 2-d are added to read as follows:

8 1. "Cigarette." Any roll for smoking made wholly or in part of tobacco  
9 or of any other substance, irrespective of size [or], shape, APPEARANCE,  
10 PACKAGING, PRICING, MARKETING OR LABELING and whether or not such tobac-  
11 co or substance is flavored, adulterated or mixed with any other ingre-  
12 dient, the wrapper or cover of which is made of paper or any other  
13 substance or material but is not made in whole or in part of tobacco  
14 THAT IS LIKELY TO BE OFFERED TO, PURCHASED BY, OR CONSUMED BY CONSUMERS  
15 AS A CIGARETTE, AS DEFINED ABOVE, INCLUDING ANY ROLL FOR SMOKING  
16 CONTAINING TOBACCO WRAPPED IN A SUBSTANCE CONTAINING TOBACCO THAT WEIGHS  
17 NO MORE THAN FOUR AND A HALF POUNDS PER THOUSAND UNLESS IT IS WRAPPED IN  
18 WHOLE TOBACCO LEAF AND DOES NOT HAVE AN INTERNAL FILTER.

19 2. "Tobacco products." Any cigar, including a little cigar, or tobac-  
20 co, other than cigarettes, [intended for consumption by smoking, chew-  
21 ing, or as snuff] AND ALSO INCLUDES ANY OTHER PRODUCT CONTAINING TOBACCO  
22 OR NICOTINE THAT IS INTENDED OR EXPECTED TO BE CONSUMED EXCEPT FOR ANY  
23 SUCH PRODUCT THAT HAS BEEN APPROVED BY THE U.S. FOOD AND DRUG ADMINIS-  
24 TRATION FOR SALE AS A TOBACCO USE CESSATION PRODUCT OR FOR OTHER MEDICAL  
25 PURPOSES AND IS BEING MARKETING AND SOLD SOLELY FOR THAT APPROVED  
26 PURPOSE.

27 2-a. "[Roll-your-own] LOOSE tobacco." Any tobacco product that,  
28 because of its appearance, type, packaging or labeling, is suitable for  
29 use and likely to be offered to, or purchased by, consumers as tobacco  
30 for making cigarettes. LOOSE TOBACCO SHALL ALSO INCLUDE PIPE TOBACCO,  
31 ROLL-YOUR-OWN TOBACCO AND ANY OTHER LOOSE TOBACCO USED FOR SMOKING.

32 2-C. "SINGLE-UNIT TOBACCO PRODUCTS." ANY TOBACCO PRODUCT, INCLUDING  
33 FINELY CUT, GROUND OR POWDERED LOOSE TOBACCO OR BLEND CONTAINING TOBACCO  
34 INTENDED FOR ORAL CONSUMPTION WITHOUT BEING COMBUSTED, OTHER THAN CIGA-  
35 RETTES OR CIGARS, THAT IS OFFERED IN DISCRETE SINGLE-USE TABLETS,  
36 LOZENGES, POUCHES, PILLS, OR OTHER SINGLE-DOSE OR SINGLE-USE UNITS, OR  
37 IN PACKAGES OF SUCH SINGLE-USE UNITS.

38 2-D. "MOIST SNUFF." FINELY CUT, GROUND OR POWDERED LOOSE TOBACCO OR  
39 BLEND CONTAINING TOBACCO INTENDED FOR ORAL CONSUMPTION WITHOUT BEING  
40 COMBUSTED THAT IS NOT A SINGLE-UNIT TOBACCO PRODUCT AS DEFINED IN SUBDI-  
41 VISION TWO-C OF THIS SECTION.

42 S 3. Subdivision 2 of section 1399-gg of the public health law, as  
43 added by chapter 513 of the laws of 2004, is amended to read as follows:

44 2. No person engaged in the business of manufacturing, selling or  
45 otherwise distributing tobacco products, herbal cigarettes, cigarette  
46 wrapping papers, wrapping leaves or tubes, or any agent or employee of  
47 such person, shall manufacture or cause to be manufactured for sale in  
48 this state, or sell or distribute in this state: (a) any package or  
49 other container of cigarettes containing fewer than twenty cigarettes;  
50 (b) any package of [roll-your-own] LOOSE tobacco containing less than  
51 [six-tenths] SIXTY-FIVE HUNDREDTHS of an ounce of tobacco; [or] (c) ANY  
52 PACKAGE OF CIGARS CONTAINING FEWER THAN FIVE CIGARS; (D) ANY PACKAGE OF  
53 SINGLE-UNIT TOBACCO, AS DEFINED IN SUBDIVISION TWO-C OF SECTION FOUR  
54 HUNDRED SEVENTY OF THE TAX LAW, CONTAINING FEWER THAN TWENTY PIECES OF  
55 SINGLE-USE UNITS; (E) ANY PACKAGE OF MOIST SNUFF CONTAINING LESS THAN AN  
56 OUNCE OF TOBACCO; OR (F) any package or other container of cigarette

1 wrapping papers, wrapping leaves or tubes, that are or are held out to  
2 be suitable for use or used as devices to wrap tobacco for smoking,  
3 containing fewer than twenty sheets, leaves or tubes.

4 S 4. Subdivision 1 of section 471-b of the tax law, as amended by  
5 section 2 of part QQ-1 of chapter 57 of the laws of 2008, paragraphs (a)  
6 and (b) as amended by section 18 and paragraph (c) as added by section  
7 19 of part D of chapter 134 of the laws of 2010, is amended to read as  
8 follows:

9 1. There is hereby imposed and shall be paid a tax on all tobacco  
10 products possessed in this state by any person for sale, except that no  
11 tax shall be imposed on tobacco products sold under such circumstances  
12 that this state is without power to impose such tax, or sold to the  
13 United States, or sold to or by a voluntary unincorporated organization  
14 of the armed forces of the United States operating a place for the sale  
15 of goods pursuant to regulations promulgated by the appropriate execu-  
16 tive agency of the United States, to the extent provided in such regu-  
17 lations and policy statements of such an agency applicable to such  
18 sales.

19 (a) Such tax on tobacco products [other than snuff and little cigars]  
20 shall be at the rate of [seventy-five] NINETY-FIVE percent of the whole-  
21 sale price OR THE MINIMUM RATES AS INDICATED IN PARAGRAPH (B), (C), (D),  
22 (E) OR (F) OF THIS SUBDIVISION, WHICHEVER IS HIGHER, and is intended to  
23 be imposed only once upon the sale of any tobacco products [other than  
24 snuff and little cigars].

25 (b) Such MINIMUM tax on MOIST snuff shall be at the rate of [two]  
26 THREE dollars AND SIXTY-THREE CENTS per ounce and a proportionate rate  
27 on any fractional parts of an ounce[, provided that cans or packages of  
28 snuff with a net weight of less than one ounce shall be taxed at the  
29 equivalent rate of cans or packages weighing one ounce]. Such tax shall  
30 be computed based on the net weight as listed by the manufacturer, and  
31 is intended to be imposed only once upon the sale of any MOIST snuff.

32 (c) Such tax on little cigars shall be at the same rate imposed on  
33 cigarettes under this article and is intended to be imposed only once  
34 upon the sale of any little cigars.

35 (D) SUCH MINIMUM TAX ON SINGLE-UNIT TOBACCO PRODUCTS SHALL BE AT THE  
36 SAME RATE IMPOSED ON CIGARETTES UNDER THIS ARTICLE AND IS INTENDED TO BE  
37 IMPOSED ONLY ONCE UPON THE SALE OF ANY SINGLE-DOSE OR SINGLE-UNIT TOBAC-  
38 CO PRODUCTS.

39 (E) SUCH MINIMUM TAX ON ANY LOOSE TOBACCO MEANT FOR SMOKING SHALL BE  
40 EQUAL TO THE AMOUNT OF THE TOTAL TAX ON A PACK OF TWENTY CIGARETTES  
41 UNDER THIS ARTICLE PER 0.65 OUNCES WITH A PROPORTIONATE TAX ON ANY OTHER  
42 WEIGHTS, BASED ON THE NET WEIGHT DETERMINED BY THE MANUFACTURER. SUCH  
43 TAX IS INTENDED TO BE IMPOSED ONLY ONCE UPON THE SALE OF ANY LOOSE  
44 TOBACCO.

45 (F) SUCH MINIMUM TAX ON CIGARS, OTHER THAN LITTLE CIGARS, SHALL BE  
46 EQUAL TO THE AMOUNT OF THE TOTAL TAX ON A PACK OF TWENTY CIGARETTES  
47 UNDER THIS ARTICLE WITH A PROPORTIONATE TAX ON PACKAGES WITH FEWER THAN  
48 FIVE CIGARS AND IS INTENDED TO BE IMPOSED ONLY ONCE UPON THE SALE OF ANY  
49 CIGARS.

50 It shall be presumed that all tobacco products within the state are  
51 subject to tax until the contrary is established, and the burden of  
52 proof that any tobacco products are not taxable hereunder shall be upon  
53 the person in possession thereof.

54 S 5. This act shall take effect immediately.