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

1926

2015-2016 Regular Sessions

I N A S S E M B L Y

January 13, 2015

Introduced by M. of A. DINOWITZ, JAFFEE, ROBERTS, COOK, SEPULVEDA -- Multi-Sponsored by -- M. of A. GOTTFRIED -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, the New York city criminal court act, the New York city charter, and the administrative code of the city of New York, in relation to the enforcement of the state and New York city cigarette taxes and other New York city taxes and the regulation of cigarettes and tobacco products

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

Section 1. Subdivision 34 of section 1.20 of the criminal procedure law is amended by adding a new paragraph (w) to read as follows:

(W) THE SHERIFF, UNDERSHERIFF AND DEPUTY SHERIFFS OF NEW YORK CITY AND EMPLOYEES OF THE NEW YORK CITY DEPARTMENT OF FINANCE DESCRIBED IN SUBDIVISION FIVE OF SECTION 2.10 OF THIS TITLE RESPONSIBLE FOR THE ENFORCEMENT OF LAWS RELATING TO THE TAX ON CIGARETTES AND TOBACCO PRODUCTS CONTAINED IN ARTICLE TWENTY AND SECTION EIGHTEEN HUNDRED FOURTEEN OF THE TAX LAW, THE NEW YORK CITY CIGARETTE TAX CONTAINED IN CHAPTERS THIRTEEN AND FORTY OF TITLE ELEVEN OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK, AND ANY OTHER LAW RELATING TO THE NEW YORK CITY CIGARETTE TAX OR THE TAX ON CIGARETTES AND TOBACCO PRODUCTS, FOR PURPOSES OF:

A. EXECUTING A WARRANT OF ARREST UNDER ARTICLE ONE HUNDRED TWENTY OF THIS CHAPTER;

B. PROCURING AND SERVING A SUMMONS PURSUANT TO ARTICLE ONE HUNDRED THIRTY OF THIS CHAPTER;

C. ISSUING AND SERVING AN APPEARANCE TICKET PURSUANT TO ARTICLE ONE HUNDRED FIFTY OF THIS CHAPTER;

D. EXECUTING A BENCH WARRANT PURSUANT TO SECTION 530.70 OF THIS CHAPTER;

E. EXECUTING A MATERIAL WITNESS WARRANT PURSUANT TO SECTION 620.70 OF THIS CHAPTER; AND

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

LBD01856-01-5

F. APPLYING FOR AND EXECUTING SEARCH WARRANTS UNDER ARTICLE SIX HUNDRED NINETY OF THIS CHAPTER.

S 2. Subdivision 5 of section 2.10 of the criminal procedure law, as added by chapter 843 of the laws of 1980, is amended to read as follows:

5. Employees of the New York city department of finance assigned BY THE COMMISSIONER OF FINANCE to enforcement of [the tax on cigarettes imposed by title D of chapter forty-six of the administrative code of the city of New York by the commissioner of finance]:

(A) LAWS RELATING TO NEW YORK CITY TAXES CONTAINED IN TITLE ELEVEN OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK ADMINISTERED BY THE DEPARTMENT OF FINANCE; AND

(B) ANY STATE OR LOCAL LAW CONCERNING CIGARETTES OR TOBACCO PRODUCTS.

S 3. Subdivision 15 of section 58 of the New York city criminal court act, as amended by chapter 843 of the laws of 1980, is amended to read as follows:

(15) Where an appearance ticket has been served by an officer or employee of the department of taxation and finance of the state of New York[, or by an employee of the New York city department of finance] who is a peace officer under the provisions of section 2.10 of the criminal procedure law, in lieu of arrest as authorized by article one hundred fifty of the criminal procedure law, in cases relating to enforcement of the tax on cigarettes imposed by article twenty of the tax law [or by title D of chapter forty-six of the administrative code of the city of New York], any officer or employee of the state department of taxation and finance assigned to act in the capacity of director of special investigations, principal special tax investigator, associate special tax investigator, supervising excise tax examiner or supervising excise tax investigator[, and in the city of New York, the assistant commissioner, chief of special investigations, or deputy chief of special investigations employed by the New York city department of finance] is empowered, upon written authorization of the commissioner of taxation and finance [or the commissioner of finance of the city of New York], a copy of which shall be filed with the court in the manner provided by rule or order of court, to administer to such officers all necessary oaths in connection with the execution of the accusatory instrument to be presented in court by such officers in the prosecution of such offense. The total number of New York state officers or employees authorized to administer oaths pursuant to this subdivision shall not exceed fifteen.

S 4. Section 58 of the New York city criminal court act is amended by adding two new subdivisions 21 and 22 to read as follows:

(21) WHERE AN APPEARANCE TICKET HAS BEEN SERVED BY A MEMBER OF THE OFFICE OF THE SHERIFF OF THE CITY OF NEW YORK WHO IS A PEACE OFFICER UNDER SUBDIVISION TWO OF SECTION 2.10 OF THE CRIMINAL PROCEDURE LAW, IN LIEU OF AN ARREST IN CASES AUTHORIZED BY ARTICLE ONE HUNDRED FIFTY OF THE CRIMINAL PROCEDURE LAW, A SERGEANT DEPUTY SHERIFF, A LIEUTENANT DEPUTY SHERIFF, UNDERSHERIFF OR SHERIFF OF SUCH OFFICE IS AUTHORIZED TO ADMINISTER TO SUCH PEACE OFFICER ALL NECESSARY OATHS IN CONNECTION WITH THE EXECUTION OF THE ACCUSATORY INSTRUMENT TO BE PRESENTED IN COURT BY SUCH PEACE OFFICER IN THE PROSECUTION OF SUCH OFFENSE.

(22) WHERE AN APPEARANCE TICKET HAS BEEN SERVED BY AN EMPLOYEE OF THE NEW YORK CITY DEPARTMENT OF FINANCE WHO IS A PEACE OFFICER UNDER SUBDIVISION FIVE OF SECTION 2.10 OF THE CRIMINAL PROCEDURE LAW, IN LIEU OF AN ARREST IN CASES AUTHORIZED BY ARTICLE ONE HUNDRED FIFTY OF THE CRIMINAL PROCEDURE LAW, THE DEPUTY COMMISSIONER, ASSISTANT COMMISSIONER, DIRECTOR OF TAX ENFORCEMENT OR ANY OTHER SUPERVISOR OF SUCH PEACE OFFICER

EMPLOYED BY THE DEPARTMENT OF FINANCE, IS EMPOWERED, UPON WRITTEN AUTHORIZATION OF THE COMMISSIONER OF FINANCE OF THE CITY OF NEW YORK, A COPY OF WHICH SHALL BE FILED WITH THE COURT IN A MANNER PROVIDED BY RULE OR ORDER OF THE COURT, TO ADMINISTER TO SUCH PEACE OFFICER ALL NECESSARY OATHS IN CONNECTION WITH THE EXECUTION OF THE ACCUSATORY INSTRUMENT TO BE PRESENTED IN COURT BY SUCH PEACE OFFICER IN THE PROSECUTION OF SUCH OFFENSE.

S 5. 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 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 chapter thirteen of title eleven of the administrative code], which notices relate to 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 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. 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 6. 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 7. Paragraphs 2 and 4 of subdivision d 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, are amended to read as follows:

(2) The commissioner of finance may also suspend or revoke a wholesale cigarette license IN ACCORDANCE WITH THE REQUIREMENTS OF ANY OTHER SECTION OF THIS CODE or any rules promulgated thereunder which authorizes the suspension or revocation of a wholesale cigarette license.

(4) Upon suspending or revoking any wholesale cigarette license, the commissioner of finance shall direct the holder thereof to surrender to the commissioner of finance immediately all wholesale cigarette licenses or duplicates thereof issued to such holder and the holder shall surrender promptly all such licenses to the commissioner of finance as directed. Before the commissioner of finance suspends or revokes a wholesale cigarette license or notifies the commissioner of consumer affairs of a finding of a violation of this chapter with respect to a retail cigarette license pursuant to paragraph (1) of this subdivision, he or she shall notify the holder and PROVIDE the holder [shall be entitled to a hearing, if desired, if the holder, within ninety days from the date of such notification, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (A) serves a petition upon the commissioner of finance and (B) files a petition with the tax appeals tribunal for] WITH a hearing. After such hearing, the commissioner of finance, good cause appearing therefor, may suspend or revoke the wholesale cigarette license, and, in the case of a retail cigarette license, notify the commissioner of consumer affairs of a violation of this chapter or any rules promulgated thereunder. Upon such notification, the commissioner of consumer affairs may suspend or revoke a retail cigarette license as provided in subdivision b of section 20-206 of the code. The commissioner of finance may, by rule, provide for granting a similar hearing to an applicant who has been refused a wholesale cigarette license by the commissioner of finance.

S 8. Subdivision 1 of section 11-1308 of the administrative code of the city of New York is amended to read as follows:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof; [and] to require the filing of reports AND THE SUBMISSION OF OTHER DATA by agents and/or WHOLESALE AND RETAIL dealers IN AN ELECTRONIC FORM; AND TO IMPOSE PENALTIES OF UP TO TWO THOUSAND FIVE HUNDRED DOLLARS FOR THE FAILURE TO FILE SUCH REPORTS OR SUBMIT SUCH DATA;

S 9. Section 11-1308 of the administrative code of the city of New York is amended by adding a new subdivision 12 to read as follows:

12. TO DESIGNATE HEARING OFFICERS OR AN ADMINISTRATIVE TRIBUNAL TO CONDUCT ANY HEARING PROVIDED FOR UNDER THIS CHAPTER OR UNDER CHAPTER FORTY OF THIS TITLE WITH RESPECT TO ANY MATTER FOR WHICH A TRIBUNAL HAS NOT BEEN PROVIDED UNDER THIS CODE OR ANY OTHER LAW.

S 10. The administrative code of the city of New York is amended by adding a new section 11-1308.1 to read as follows:

S 11-1308.1 JUDICIAL REVIEW. A. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, JUDICIAL REVIEW OF ANY DECISION FOLLOWING ANY HEARING PROVIDED UNDER THIS CHAPTER SHALL BE SOUGHT WITHIN THIRTY DAYS AFTER THE GIVING OF THE NOTICE OF SUCH DECISION.

B. SUBDIVISION A OF THIS SECTION SHALL NOT APPLY TO ANY DETERMINATION MADE REGARDING:

(1) ANY CIGARETTE TAX OR CIGARETTE TAX REFUND UNDER SECTION 11-1310 OR 11-1311 OF THIS CHAPTER, OR

(2) ANY CIGARETTE TAX PENALTY IMPOSED UNDER SECTION 11-1317 OF THIS CHAPTER.

S 11. Subdivisions a and b of section 11-1317 of the administrative code of the city of New York, subdivision b as amended by chapter 458 of the laws of 2006, are amended to read as follows:

a. Any person failing to pay a tax payable under this chapter when due shall be subject to a penalty of [fifty] ONE HUNDRED per centum of the amount of tax due, but the commissioner of finance, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid and disposed of in the same manner as other revenues under this chapter. Unpaid penalties may be enforced in the same manner as the tax imposed by this chapter.

b. (1) In addition to any other penalty imposed by this section, the commissioner of finance may (a) impose a penalty of not more than [one] TWO hundred dollars for each two hundred cigarettes or fraction thereof in excess of [one] FOUR HUNDRED BUT NOT MORE THAN TWO thousand cigarettes in unstamped or unlawfully stamped packages in the possession or under the control of any person, AND A PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS FOR EACH TWO HUNDRED CIGARETTES IN EXCESS OF TWO THOUSAND CIGARETTES and (b) impose a penalty of not more than [two hundred] ONE THOUSAND dollars for each ten [affixed or] unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions, or fraction thereof, [in excess of one hundred affixed or unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions] in the possession or under the control of any person. Such penalty shall be determined as provided in section 11-1310 of this chapter, and may be reviewed only pursuant to such section. Such penalty may be enforced in the same manner as the tax imposed by this chapter. The commissioner of finance, in his or her discretion, may remit all or part of such penalty. Such penalty shall be paid and disposed of in the same manner as other revenues under this chapter.

(2) The penalties imposed by this paragraph may be imposed by the commissioner of finance in addition to any other penalty imposed by this section, but in lieu of the penalties imposed by subparagraph (a) of paragraph one of this subdivision: (a) not less than [thirty] TWO HUNDRED dollars but not more than [two] FIVE hundred dollars for each two hundred cigarettes, or fraction thereof, in excess of [one thousand] FOUR HUNDRED cigarettes but less than or equal to [five] TWO thousand cigarettes in unstamped or unlawfully stamped packages knowingly in the possession or knowingly under the control of any person; (b) not less than [seventy-five] TWO HUNDRED FIFTY dollars but not more than [two hundred] ONE THOUSAND dollars for each two hundred cigarettes, or fraction thereof, in excess of [five] TWO thousand cigarettes but less than or equal to [twenty] TEN thousand cigarettes in unstamped or unlawfully stamped packages knowingly in the possession or knowingly under the control of any person; and (c) not less than [one] FIVE hundred dollars but not more than [two hundred] ONE THOUSAND dollars for each two hundred cigarettes, or fraction thereof, in excess of [twenty] FIVE

thousand cigarettes in unstamped or unlawfully stamped packages, knowingly in the possession or knowingly under the control of any person. Such penalty shall be determined as provided in section 11-1310 of this chapter, and may be reviewed only pursuant to such section. Such penalty may be enforced in the same manner as the tax imposed by this chapter. The commissioner of finance, in his or her discretion, may remit all or part of such penalty. Such penalty shall be paid and disposed of in the same manner as other revenues under this chapter.

(3) A PERSON, IN THE POSSESSION OF MORE THAN FOUR HUNDRED CIGARETTES IN UNSTAMPED OR UNLAWFULLY STAMPED PACKAGES, WHO IS ALSO IN THE POSSESSION OF UNAFFIXED, FALSE, ALTERED OR COUNTERFEIT CIGARETTE TAX STAMPS, IMPRINTS OR IMPRESSIONS, SHALL BE PRESUMED TO KNOWINGLY BE IN THE POSSESSION OF, OR HAVE UNDER HIS, HER OR ITS CONTROL, THE UNSTAMPED OR UNLAWFULLY STAMPED PACKAGES DESCRIBED IN PARAGRAPH TWO OF THIS SUBDIVISION.

S 12. Subdivisions (a), (c) and (d) of section 11-4012 of the administrative code of the city of New York, subdivision (a) as amended by chapter 201 of the laws of 2009, subdivision (c) as amended by chapter 262 of the laws of 2000, paragraph 1 of subdivision (c) as amended by chapter 508 of the laws of 2004, and subdivision (d) as added by chapter 765 of the laws of 1985, are amended to read as follows:

(a) Attempt to evade or defeat tax. Any person who willfully attempts in any manner to evade or defeat any tax imposed by chapter thirteen of this title or payment thereof where: (1) such tax is unpaid on [ten] FIVE thousand cigarettes or more or (2) such person has previously been convicted [two or more times] of a crime set forth in this chapter relating to cigarette taxes; shall be guilty of a class E felony.

(c) (1) Any person, other than an agent so authorized by the commissioner of finance, who willfully possesses or transports for the purpose of sale [ten] FIVE thousand or more cigarettes subject to the tax imposed by chapter thirteen of this title in any unstamped or unlawfully stamped packages or who willfully sells or offers for sale [ten] FIVE thousand or more cigarettes in any unstamped or unlawfully stamped packages in violation of such chapter shall be guilty of a class E felony.

(2) Any person, other than an agent appointed by the commissioner of finance, who willfully possesses or transports for the purpose of sale [thirty] TEN thousand or more cigarettes subject to the tax imposed by chapter thirteen of this title in any unstamped or unlawfully stamped packages or who willfully sells or offers for sale [thirty] TEN thousand or more cigarettes in any unstamped or unlawfully stamped packages in violation of such chapter shall be guilty of a class D felony.

(d) For the purposes of this section, the possession or transportation within this city by any person, other than an agent, at any one time of [five thousand or] more THAN FOUR HUNDRED cigarettes in unstamped or unlawfully stamped packages shall be presumptive evidence that such cigarettes are possessed or transported for the purpose of sale and are subject to the tax imposed by chapter thirteen of this title. With respect to such possession or transportation, any provisions of chapter thirteen of this title providing for a time period during which a use tax imposed by such chapter may be paid on unstamped cigarettes or unlawfully or improperly stamped cigarettes or during which such cigarettes may be returned to an agent shall not apply. The possession within this city of more than four hundred cigarettes in unstamped or unlawfully stamped packages by any person other than an agent at any one time shall be presumptive evidence that such cigarettes are subject to tax as provided by chapter thirteen of this title.

S 13. Subdivisions (a) and (c) of section 11-4021 of the administrative code of the city of New York, as amended by chapter 556 of the laws of 2011, are amended to read as follows:

(a) Whenever a police officer designated in section 1.20 of the criminal procedure law or A SHERIFF, UNDERSHERIFF OR DEPUTY SHERIFF OF THE CITY OF NEW YORK DESIGNATED A PEACE OFFICER IN SUBDIVISION TWO OF SECTION 2.10 OF SUCH LAW, OR a peace officer designated in subdivision five of section 2.10 of such law, acting pursuant to his special duties, shall discover any cigarettes subject to any tax provided by chapter thirteen of this title, and upon which the tax has not been paid or the stamps not affixed as required by such chapter, they are hereby authorized and empowered forthwith to seize and take possession of such cigarettes, together with any vending machine or receptacle in which they are held for sale. Such cigarettes, vending machine or receptacle seized by a police officer or such peace officer shall be turned over to the commissioner of finance.

(c) The commissioner of finance may, within a reasonable time after the forfeiture to the city of such vending machines or receptacles, upon publication of a notice to such effect for at least five successive days, in a newspaper published or circulated in the city, sell such forfeited vending machines or receptacles at public sale and pay the proceeds into the treasury of the city to the credit of the general fund. Such seized vending machines or receptacles may be sold prior to forfeiture if the owner of the seized property consents to the sale. Notwithstanding any other provision of this section, the commissioner of finance may enter into an agreement with the state tax commission to provide for the disposition between the city and state of the proceeds from any such sale. The commissioner of finance may [also] transfer any seized cigarettes to the state for destruction. All cigarettes forfeited to the [state] CITY shall be destroyed or used for law enforcement purposes, except that cigarettes that violate, or are suspected of violating, federal trademark laws or import laws shall not be used for law enforcement purposes. If the commissioner determines the cigarettes may not be used for law enforcement purposes, the commissioner of finance must, within a reasonable time after the forfeiture to the city of such cigarettes, upon publication of a notice to such effect for at least five successive days, prior to destruction, in a newspaper published or circulated in the city, destroy such forfeited cigarettes. Such commissioner may, prior to any destruction of cigarettes, permit the true holder of the trademark rights in the cigarettes to inspect such forfeited cigarettes in order to assist in any investigation regarding such cigarettes.

S 14. This act shall take effect immediately.