

STATE OF NEW YORK

4280--A

2017-2018 Regular Sessions

IN ASSEMBLY

February 2, 2017

Introduced by M. of A. ORTIZ, MALLIOTAKIS, STIRPE -- read once and referred to the Committee on Ways and Means -- 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 and the state finance law, in relation to the creation of the cigarette tax enforcement fund; and making an appropriation therefor

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

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

5 1. The commissioner shall prescribe, prepare and furnish stamps of
6 such denominations and quantities as may be necessary for the payment of
7 the tax on cigarettes imposed by this article, plus the payment by the
8 agent of a concurrent expense allowance for the cigarette tax enforce-
9 ment fund established pursuant to section ninety-nine-ee of the state
10 finance law of four cents per stamp which shall be deposited pursuant to
11 subdivision (c) of section four hundred eighty-two of this article, and
12 may from time to time and as often as he deems advisable provide for the
13 issuance and exclusive use of stamps of a new design and forbid the use
14 of stamps of any other design, in the manner and with the effect
15 provided in section two hundred seventy-four of this chapter. The
16 commissioner shall make provisions for the sale of such stamps at such
17 places and at such times as he may deem necessary and may license agents
18 for such purpose. The commissioner may license dealers in cigarettes,
19 who maintain separate warehousing facilities for the purpose of receiv-
20 ing and distributing cigarettes and conducting their business, who have
21 received commitments from at least two cigarette manufacturers whose

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

LBD08857-03-8

1 aggregate market share is at least forty percent of the New York state
2 cigarette market, and importers, exporters and manufacturers of ciga-
3 rettes, and other persons within or without the state as agents to buy
4 or affix stamps to be used in paying the tax herein imposed, but an
5 agent shall at all times have the right to appoint the person in his
6 employ who is to affix the stamps to any cigarettes under the agent's
7 control. The fee for filing such application for an agent's license
8 shall be one thousand five hundred dollars, unless such fee has been
9 paid during the preceding twelve months, in which case, the fee for a
10 new license shall be one thousand dollars. All of the provisions of
11 section four hundred eighty of this article relating to wholesale deal-
12 ers' licenses, including the procedure for suspension, revocation,
13 refusal to license and for hearings, except for paragraphs (c) and (g)
14 of subdivision one of such section, shall be applicable to agents'
15 licenses applied for or granted pursuant to this section, as if such
16 provisions had been set forth in full in this subdivision and had
17 expressly referred to the applicant for, or the holder of, an agent's
18 license. Whenever the commissioner shall sell and deliver to any such
19 agent any such stamps, such agent shall be entitled to receive as
20 compensation for his services and expenses as such agent in selling or
21 affixing such stamps, and to retain out of the moneys to be paid by him
22 for such stamps, a commission on the par value thereof. The commissioner
23 is hereby authorized to prescribe a schedule of commissions, not exceed-
24 ing five per centum, allowable to such agent for buying and affixing
25 such stamps. Such schedule shall be uniform with respect to the differ-
26 ent types of stamps used, and may be on a graduated scale with respect
27 to the number of stamps purchased. The commissioner may, in his
28 discretion, permit an agent to pay for such stamps within thirty days
29 after the date of purchase and may require any such agent to file with
30 the department [~~of taxation and finance~~] a bond issued by a surety
31 company approved by the superintendent of financial services as to
32 solvency and responsibility and authorized to transact business in the
33 state or other security acceptable to the commissioner, in such amount
34 as the commissioner may fix, to secure the payment of any sums due from
35 such agent pursuant to this article. If securities are deposited as
36 security under this subdivision, such securities shall be kept in the
37 custody of the commissioner and may be sold by the commissioner if it
38 becomes necessary so to do in order to recover any sums due from such
39 agent pursuant to this article, but no such sale shall be had until
40 after such agent shall have had opportunity to litigate the validity of
41 any tax if it elects so to do. Upon any such sale, the surplus, if any,
42 above the sums due under this article shall be returned to such agent.

43 § 2. Section 482 of the tax law is amended by adding a new subdivision
44 (c) to read as follows:

45 (c) From the amounts received pursuant to subdivision one of section
46 four hundred seventy-two of this article, the commissioner shall deposit
47 in the cigarette tax enforcement fund established pursuant to section
48 ninety-nine-ee of the state finance law the concurrent expense allowance
49 for the cigarette tax enforcement fund of four cents per stamp.

50 § 3. The state finance law is amended by adding a new section 99-ee to
51 read as follows:

52 § 99-ee. Cigarette tax enforcement fund. 1. There is hereby created in
53 the joint custody of the state comptroller and the commissioner of taxa-
54 tion and finance an account of the miscellaneous special revenue fund to
55 be known as the "cigarette tax enforcement fund".

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 fund 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, monies received from the commissioner of taxation and finance from the sale of forfeited cigarettes authorized pursuant to section eighteen hundred forty-six 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 fund shall be used solely to enforce (i) the collection of the cigarette tax imposed by article twenty of the tax law or (ii) the cigarette marketing standards act, as established by article twenty-A of the tax law.

4. Monies in the cigarette tax enforcement fund shall be kept separate and apart and shall not be commingled with any other moneys in the custody of the comptroller and shall only be expended as provided herein.

5. Monies of the fund shall be available to the commissioner of taxation and finance for purposes of carrying out the provisions of subdivision (j) of section eighteen hundred fourteen of the tax law and shall be paid out of the fund on the audit and warrant of the comptroller on vouchers certified or approved by the commissioner of taxation and finance.

6. In the month immediately following the month in which the balance of the fund exceeds six million five hundred thousand dollars, the comptroller shall, upon receipt of a certificate of allocation issued by the director of the division of the budget, transfer six million dollars to the division of state police to support the division's cigarette tax, as imposed by article twenty of the tax law, and the cigarette marketing standards act, as established by article twenty-A of the tax law, enforcement activities. These funds may be apportioned to either the patrol activities or criminal investigation activities programs 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 or the cigarette marketing standards act, and may be used to contract with local enforcement agencies for cigarette tax and/or cigarette marketing standards act enforcement activities.

§ 4. Subdivisions (a), (b) and (c) of section 1846 of the tax law, 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 peace officer designated in subdivision four of section 2.10 of such law, acting pursuant to his or her special duties, shall discover any cigarettes subject to tax provided by article twenty of this chapter or by chapter thirteen of title eleven of the administrative code of the city of New York, and upon which the tax has not been paid or the stamps not affixed as required by such article or such chapter thirteen, 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. Such seized cigarettes, vending machine or receptacle, not including money contained in such vending machine or receptacle, shall be forfeited to the state. The

commissioner may, within a reasonable time thereafter, upon publication of a notice to such effect for at least five successive days, before the day of sale, in a newspaper published or circulated in the county where the seizure was made, sell such forfeited vending machines or receptacles at public sale and pay the proceeds into the state treasury to the credit of the general fund. Notwithstanding any other provision of this section, the commissioner may enter into an agreement with any city of this state which is authorized to impose a tax similar to that imposed by article twenty of this chapter to provide for the disposition between the state and any such city of the proceeds from any such sale. All cigarettes forfeited to the state [~~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~~], upon publication in the state registry, be available for inspection by the manufacturer who shall determine whether such cigarettes are of saleable quality and such cigarettes shall be offered for sale to such manufacturers. Any cigarettes that are either not inspected by the manufacturer within five days of the publication in the state registry or are not purchased by the manufacturer after being determined to be of saleable quality shall, upon publication in the state registry, be offered for sale to agents, as such term is defined in subdivision eleven of section four hundred seventy of this chapter, to a price equaling two dollars and twenty cents per pack of twenty cigarettes. Any such cigarettes that are either not sold within a reasonable period of time after being offered for sale to agents or deemed unsaleable by the manufacturer shall, upon publication in the state registry, be destroyed or used for law enforcement purposes. If the commissioner determines the cigarettes may not be offered for sale to the manufacturers or agents, or used for law enforcement purposes because such cigarettes violate, or are suspected of violating, federal trademark laws or import laws, the commissioner must, within a reasonable time after the forfeiture of such cigarettes, upon publication in the state registry, destroy such forfeited cigarettes. The 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. The revenue from all sales of cigarettes made pursuant to this subdivision shall be deposited in the cigarette tax enforcement fund, as established in section ninety-nine-ee of the state finance law.

(b) [~~In the alternative~~] Prior to making forfeited cigarettes available for inspection or purchase by the manufacturer, offering such cigarettes for sale to agents, or using such cigarettes for law enforcement purposes in accordance with subdivision (a) of this section, the tax commission, on reasonable notice by mail or otherwise, may permit the person from whom said cigarettes were seized to redeem the said cigarettes, and any vending machine or receptacle seized therewith, by the payment of the tax due, plus a penalty of fifty per centum thereof, plus interest on the amount of tax due for each month or fraction thereof after such tax became due (determined without regard to any extension of time for filing or paying) at the rate applicable under subparagraph (ii) of paragraph (a) of subdivision one of section four hundred eighty-one of this chapter and the costs incurred in such proceeding, which total payment shall not be less than five dollars; provided, however, that such seizure and sale or redemption shall not be deemed to relieve

1 any person from fine or imprisonment provided for in this article for
2 violation of any provision of article twenty of this chapter.

3 (c) [~~In the alternative~~] After making forfeited cigarettes available
4 for inspection or purchase by the manufacturer and offering such ciga-
5 rettes for sale to agents in accordance with subdivision (a) of this
6 section, the tax commission may dispose of any cigarettes seized pursu-
7 ant to this section, except those that violate, or are suspected of
8 violating, federal trademark laws or import laws, by transferring them
9 to the department of corrections and community supervision for sale to
10 or use by inmates in such institutions.

11 § 5. Subdivision (b) of section 483 of the tax law, as amended by
12 chapter 860 of the laws of 1987, subparagraph (A) of paragraph 1 and
13 subparagraph (B) of paragraph 3 as amended by chapter 744 of the laws of
14 1990, subparagraph (B) of paragraph 1 as amended by chapter 1 of the
15 laws of 1999 and subparagraph (B) of paragraph 2 as amended by chapter 4
16 of the laws of 1988, is amended to read as follows:

17 (b) 1. (A) The term "cost of the agent" shall mean the basic cost of
18 cigarettes plus the cost of doing business by the agent as evidenced by
19 the accounting standards and methods regularly employed by said agent in
20 his determination of costs for the purpose of federal income tax report-
21 ing for the total operation of his establishment, and must include,
22 without limitation, labor, including salaries of executives and offi-
23 cers, rent, depreciation, selling costs, maintenance of equipment,
24 delivery costs, interest payable, all types of licenses, taxes, insur-
25 ance and advertising expressed as a percentage and applied to the basic
26 cost of cigarettes. Any fractional part of a cent in the cost to the
27 agent per carton of cigarettes shall be rounded off to the next higher
28 cent. In the case of sales at retail by an agent, the "cost of the
29 agent" shall be the same as the "cost of the retail dealer". In the case
30 of sales of cigarettes to a chain store having fifteen or more retail
31 outlets, excluding vending machine operators, which are delivered to a
32 central warehouse owned and operated by such chain store and which are
33 delivered to its retail outlets by the chain store, the "cost of the
34 agent" shall be presumed to be the basic cost of cigarettes. There shall
35 be determined a separate cost of the agent for sales to wholesale deal-
36 ers and for sales to retail dealers.

37 (B) In the absence of the filing with the commissioner of satisfactory
38 proof of a lesser cost of doing business of the agent making the sale,
39 the cost of doing business by the agent shall be presumed to be [~~seven-~~
40 ~~eighths of one~~] two and one-quarter percent of the basic cost of ciga-
41 rettes for sales to wholesale dealers plus one cent per package of ten
42 cigarettes, two cents per package of twenty cigarettes and in the case
43 of a package containing more than twenty cigarettes, two cents and one-
44 half of a cent for each five cigarettes in excess of twenty cigarettes,
45 [~~one and one-half~~] five and three-quarter percent of the basic cost of
46 cigarettes for sales to chain stores plus one cent per package of ten
47 cigarettes, two cents per package of twenty cigarettes and in the case
48 of a package containing more than twenty cigarettes, two cents and one-
49 half of a cent for each five cigarettes in excess of twenty cigarettes
50 and [~~three and seven-eighths~~] five and three-quarter percent of the
51 basic cost of cigarettes with respect to sales to retail dealers plus
52 one cent per package of ten cigarettes, two cents per package of twenty
53 cigarettes and in the case of a package containing more than twenty
54 cigarettes, two cents and one-half of a cent for each five cigarettes in
55 excess of twenty cigarettes and the foregoing cents per pack shall be

1 included in the "cost of doing business by the agent" referred to in
2 paragraphs two and three of this subdivision.

3 2. (A) The term "cost of the wholesale dealer" shall mean the basic
4 cost of cigarettes plus the cost of doing business by the wholesale
5 dealer as evidenced by the accounting standards and methods regularly
6 employed by said wholesale dealer in his determination of costs for the
7 purpose of federal income tax reporting for the total operation of his
8 establishment, and must include, without limitation, labor, including
9 salaries of executives and officers, rent, depreciation, selling costs,
10 maintenance of equipment, delivery costs, interest payable, all types of
11 licenses, taxes, insurance and advertising expressed as a percentage and
12 applied to the basic cost of cigarettes, plus the cost of doing business
13 by the agent with respect to sales of cigarettes to wholesale dealers.
14 Any fractional part of a cent in the cost to the wholesale dealer per
15 carton of cigarettes shall be rounded off to the next higher cent. In
16 the case of sales at retail by a wholesale dealer, the "cost of the
17 wholesale dealer" shall be the same as the "cost of the retail dealer".
18 There shall be determined a separate cost of the wholesale dealer for
19 sales to chain stores and for sales to retail dealers.

20 (B) In the absence of the filing with the tax commission of satisfac-
21 tory proof of a lesser cost of doing business of the wholesale dealer
22 making the sale, the cost of doing business by the wholesale dealer with
23 respect to sales to retail dealers shall be presumed to be three and
24 one-half per centum of the basic cost of cigarettes, and with respect to
25 sales to chain stores, [~~five-eighths of one~~] three and one-half percent
26 of the basic cost of cigarettes.

27 3. (A) The term "cost of the retail dealer" shall mean the basic cost
28 of cigarettes plus the cost of doing business by the retail dealer as
29 evidenced by the accounting standards and methods regularly employed by
30 said retail dealer in his determination of costs for the purpose of
31 federal income tax reporting for the total operation of his establish-
32 ment, and shall include, without limitation, labor, including salaries
33 of executives and officers, rent, depreciation, selling costs, mainte-
34 nance of equipment, delivery costs, interest payable, all types of
35 licenses, taxes, insurance and advertising expressed as a percentage and
36 applied to the basic cost of cigarettes, plus the cost of doing business
37 by the agent with respect to sales of cigarettes to retail dealers. Any
38 fractional part of a cent in the cost to the retail dealer per package
39 or per carton shall be rounded off to the next higher cent.

40 (B) In the absence of the filing with the commissioner of taxation and
41 finance of satisfactory proof of a lesser cost of doing business by the
42 retail dealer making the sale, the cost of doing business by the retail
43 dealer shall be presumed to be [~~seven~~] ten per centum of the sum of the
44 basic cost of cigarettes plus the cost of doing business by the agent
45 with respect to cigarettes sold to retail dealers.

46 § 6. Section 1814 of the tax law is amended by adding a new subdivi-
47 sion (j) to read as follows:

48 (j) (1) Notwithstanding any provision of law, rule or regulation to
49 the contrary, the commissioner shall establish a program to allow indi-
50 viduals to submit a sworn statement affirming the observation of a
51 violation of article twenty of this chapter and, where the commissioner
52 deems it appropriate, allow for a reward for any such sworn statement.
53 Where enforcement action is taken pursuant to this article or article
54 twenty of this chapter based upon a sworn statement by one or more indi-
55 viduals and where the commissioner determines, in the exercise of his or
56 her discretion, that such sworn statement, either alone or in conjunc-

tion with the testimony of the person submitting such sworn statement contributes to the imposition of a civil or criminal penalty upon any person for a violation of this article, or article twenty of this chapter, the commissioner shall offer as a reward to such individual or individuals an amount that, in the aggregate, is five dollars. No peace officer, police officer or employee of the department, employee of any company under contract with the department, or employee of any governmental entity that, in conjunction with the department, conducts enforcement activity relating to a violation of this article or article twenty of this chapter, shall be entitled to obtain the benefit of any such reward when acting in the discharge of his or her official duties.

(2) All rewards paid pursuant to this section shall be paid from the cigarette tax enforcement fund, as established in section ninety-nine-ee of the state finance law.

§ 7. Beginning the month immediately following the month in which the cigarette tax enforcement fund, as established in section 99-ee of the state finance law, is established, there is hereby appropriated to the division of state police the amount of six million dollars (\$6,000,000) from the cigarette tax enforcement fund to support cigarette tax, as imposed by article 20 of the tax law, and cigarette marketing standards act, as established by article 20-A of the tax law, enforcement activities. This appropriation may be apportioned to either the patrol activities or criminal investigation activities programs 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 or the cigarette marketing standards act, and may be used to contract with local enforcement agencies for cigarette tax and/or cigarette marketing standards act enforcement activities. No monies shall be available from this appropriation absent a certificate of allocation from the director of the budget.

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