

STATE OF NEW YORK

8232

IN SENATE

April 20, 2018

Introduced by Sen. STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

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
22 aggregate market share is at least forty percent of the New York state
23 cigarette market, and importers, exporters and manufacturers of ciga-
24 rettes, and other persons within or without the state as agents to buy
25 or affix stamps to be used in paying the tax herein imposed, but an
26 agent shall at all times have the right to appoint the person in his
27 employ who is to affix the stamps to any cigarettes under the agent's

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

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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.

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

(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 fund established pursuant to section ninety-nine-ee of the state finance law the concurrent expense allowance for the cigarette tax enforcement fund of four cents per stamp.

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

§ 99-ee. Cigarette tax enforcement fund. 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 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 author-

1 ized pursuant to section eighteen hundred forty-six of the tax law, and
2 other monies appropriated, credited or transferred thereto from any
3 other fund or source.

4 3. The proceeds of the cigarette tax enforcement fund shall be used
5 solely to enforce (i) the collection of the cigarette tax imposed by
6 article twenty of the tax law or (ii) the cigarette marketing standards
7 act, as established by article twenty-A of the tax law.

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

12 5. Monies of the fund shall be available to the commissioner of tax-
13 ation and finance for purposes of carrying out the provisions of subdivi-
14 sion (j) of section eighteen hundred fourteen of the tax law and shall
15 be paid out of the fund on the audit and warrant of the comptroller on
16 vouchers certified or approved by the commissioner of taxation and
17 finance.

18 6. In the month immediately following the month in which the balance
19 of the fund exceeds six million five hundred thousand dollars, the comp-
20 troller shall, upon receipt of a certificate of allocation issued by the
21 director of the division of the budget, transfer six million dollars to
22 the division of state police to support the division's cigarette tax, as
23 imposed by article twenty of the tax law, and the cigarette marketing
24 standards act, as established by article twenty-A of the tax law,
25 enforcement activities. These funds may be apportioned to either the
26 patrol activities or criminal investigation activities programs of the
27 division of state police, may be transferred or suballocated to any
28 other state agency or public authority for their costs associated with
29 the enforcement of the cigarette tax or the cigarette marketing stand-
30 ards act, and may be used to contract with local enforcement agencies
31 for cigarette tax and/or cigarette marketing standards act enforcement
32 activities.

33 § 4. Subdivisions (a), (b) and (c) of section 1846 of the tax law, as
34 amended by chapter 556 of the laws of 2011, are amended to read as
35 follows:

36 (a) Whenever a police officer designated in section 1.20 of the crimi-
37 nal procedure law or a peace officer designated in subdivision four of
38 section 2.10 of such law, acting pursuant to his or her special duties,
39 shall discover any cigarettes subject to tax provided by article twenty
40 of this chapter or by chapter thirteen of title eleven of the adminis-
41 trative code of the city of New York, and upon which the tax has not
42 been paid or the stamps not affixed as required by such article or such
43 chapter thirteen, they are hereby authorized and empowered forthwith to
44 seize and take possession of such cigarettes, together with any vending
45 machine or receptacle in which they are held for sale. Such cigarettes,
46 vending machine or receptacle seized by a police officer or such peace
47 officer shall be turned over to the commissioner. Such seized ciga-
48 rettes, vending machine or receptacle, not including money contained in
49 such vending machine or receptacle, shall be forfeited to the state. The
50 commissioner may, within a reasonable time thereafter, upon publication
51 of a notice to such effect for at least five successive days, before the
52 day of sale, in a newspaper published or circulated in the county where
53 the seizure was made, sell such forfeited vending machines or recepta-
54 cles at public sale and pay the proceeds into the state treasury to the
55 credit of the general fund. Notwithstanding any other provision of this
56 section, the commissioner may enter into an agreement with any city of

1 this state which is authorized to impose a tax similar to that imposed
2 by article twenty of this chapter to provide for the disposition between
3 the state and any such city of the proceeds from any such sale. All
4 cigarettes forfeited to the state [~~shall be destroyed or used for law~~
5 ~~enforcement purposes~~], except [~~that~~] cigarettes that violate, or are
6 suspected of violating, federal trademark laws or import laws shall [~~not~~
7 ~~be used for law enforcement purposes. If the commissioner determines the~~
8 ~~cigarettes may not be used for law enforcement purposes~~], upon publica-
9 tion in the state registry, be available for inspection by the manufac-
10 turer who shall determine whether such cigarettes are of saleable quali-
11 ty and such cigarettes shall be offered for sale to such manufacturers.
12 Any cigarettes that are either not inspected by the manufacturer within
13 five days of the publication in the state registry or are not purchased
14 by the manufacturer after being determined to be of saleable quality
15 shall, upon publication in the state registry, be offered for sale to
16 agents, as such term is defined in subdivision eleven of section four
17 hundred seventy of this chapter, to a price equaling two dollars and
18 twenty cents per pack of twenty cigarettes. Any such cigarettes that are
19 either not sold within a reasonable period of time after being offered
20 for sale to agents or deemed unsaleable by the manufacturer shall, upon
21 publication in the state registry, be destroyed or used for law enforce-
22 ment purposes. If the commissioner determines the cigarettes may not be
23 offered for sale to the manufacturers or agents, or used for law
24 enforcement purposes because such cigarettes violate, or are suspected
25 of violating, federal trademark laws or import laws, the commissioner
26 must, within a reasonable time after the forfeiture of such cigarettes,
27 upon publication in the state registry, destroy such forfeited ciga-
28 rettes. The commissioner may, prior to any destruction of cigarettes,
29 permit the true holder of the trademark rights in the cigarettes to
30 inspect such forfeited cigarettes in order to assist in any investi-
31 gation regarding such cigarettes. The revenue from all sales of ciga-
32 rettes made pursuant to this subdivision shall be deposited in the ciga-
33 rette tax enforcement fund, as established in section ninety-nine-ee of
34 the state finance law.

35 (b) [~~In the alternative~~] Prior to making forfeited cigarettes avail-
36 able for inspection or purchase by the manufacturer, offering such ciga-
37 rettes for sale to agents, or using such cigarettes for law enforcement
38 purposes in accordance with subdivision (a) of this section, the tax
39 commission, on reasonable notice by mail or otherwise, may permit the
40 person from whom said cigarettes were seized to redeem the said ciga-
41 rettes, and any vending machine or receptacle seized therewith, by the
42 payment of the tax due, plus a penalty of fifty per centum thereof, plus
43 interest on the amount of tax due for each month or fraction thereof
44 after such tax became due (determined without regard to any extension of
45 time for filing or paying) at the rate applicable under subparagraph
46 (ii) of paragraph (a) of subdivision one of section four hundred eight-
47 y-one of this chapter and the costs incurred in such proceeding, which
48 total payment shall not be less than five dollars; provided, however,
49 that such seizure and sale or redemption shall not be deemed to relieve
50 any person from fine or imprisonment provided for in this article for
51 violation of any provision of article twenty of this chapter.

52 (c) [~~In the alternative~~] After making forfeited cigarettes available
53 for inspection or purchase by the manufacturer and offering such ciga-
54 rettes for sale to agents in accordance with subdivision (a) of this
55 section, the tax commission may dispose of any cigarettes seized pursu-
56 ant to this section, except those that violate, or are suspected of

1 violating, federal trademark laws or import laws, by transferring them
2 to the department of corrections and community supervision for sale to
3 or use by inmates in such institutions.

4 § 5. Subdivision (b) of section 483 of the tax law, as amended by
5 chapter 860 of the laws of 1987, subparagraph (A) of paragraph 1 and
6 subparagraph (B) of paragraph 3 as amended by chapter 744 of the laws of
7 1990, subparagraph (B) of paragraph 1 as amended by chapter 1 of the
8 laws of 1999 and subparagraph (B) of paragraph 2 as amended by chapter 4
9 of the laws of 1988, is amended to read as follows:

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

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

51 2. (A) The term "cost of the wholesale dealer" shall mean the basic
52 cost of cigarettes plus the cost of doing business by the wholesale
53 dealer as evidenced by the accounting standards and methods regularly
54 employed by said wholesale dealer in his determination of costs for the
55 purpose of federal income tax reporting for the total operation of his
56 establishment, and must include, without limitation, labor, including

1 salaries of executives and officers, rent, depreciation, selling costs,
2 maintenance of equipment, delivery costs, interest payable, all types of
3 licenses, taxes, insurance and advertising expressed as a percentage and
4 applied to the basic cost of cigarettes, plus the cost of doing business
5 by the agent with respect to sales of cigarettes to wholesale dealers.
6 Any fractional part of a cent in the cost to the wholesale dealer per
7 carton of cigarettes shall be rounded off to the next higher cent. In
8 the case of sales at retail by a wholesale dealer, the "cost of the
9 wholesale dealer" shall be the same as the "cost of the retail dealer".
10 There shall be determined a separate cost of the wholesale dealer for
11 sales to chain stores and for sales to retail dealers.

12 (B) In the absence of the filing with the tax commission of satisfac-
13 tory proof of a lesser cost of doing business of the wholesale dealer
14 making the sale, the cost of doing business by the wholesale dealer with
15 respect to sales to retail dealers shall be presumed to be three and
16 one-half per centum of the basic cost of cigarettes, and with respect to
17 sales to chain stores, [~~five-eighths of one~~] three and one-half percent
18 of the basic cost of cigarettes.

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

32 (B) In the absence of the filing with the commissioner of taxation and
33 finance of satisfactory proof of a lesser cost of doing business by the
34 retail dealer making the sale, the cost of doing business by the retail
35 dealer shall be presumed to be [~~seven~~] ten per centum of the sum of the
36 basic cost of cigarettes plus the cost of doing business by the agent
37 with respect to cigarettes sold to retail dealers.

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

40 (j) (1) Notwithstanding any provision of law, rule or regulation to
41 the contrary, the commissioner shall establish a program to allow indi-
42 viduals to submit a sworn statement affirming the observation of a
43 violation of article twenty of this chapter and, where the commissioner
44 deems it appropriate, allow for a reward for any such sworn statement.
45 Where enforcement action is taken pursuant to this article or article
46 twenty of this chapter based upon a sworn statement by one or more indi-
47 viduals and where the commissioner determines, in the exercise of his or
48 her discretion, that such sworn statement, either alone or in conjunc-
49 tion with the testimony of the person submitting such sworn statement
50 contributes to the imposition of a civil or criminal penalty upon any
51 person for a violation of this article, or article twenty of this chap-
52 ter, the commissioner shall offer as a reward to such individual or
53 individuals an amount that, in the aggregate, is five dollars. No peace
54 officer, police officer or employee of the department, employee of any
55 company under contract with the department, or employee of any govern-
56 mental entity that, in conjunction with the department, conducts

1 enforcement activity relating to a violation of this article or article
2 twenty of this chapter, shall be entitled to obtain the benefit of any
3 such reward when acting in the discharge of his or her official duties.

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

7 § 7. Beginning the month immediately following the month in which the
8 cigarette tax enforcement fund, as established in section 99-ee of the
9 state finance law, is established, there is hereby appropriated to the
10 division of state police the amount of six million dollars (\$6,000,000)
11 from the cigarette tax enforcement fund to support cigarette tax, as
12 imposed by article 20 of the tax law, and cigarette marketing standards
13 act, as established by article 20-A of the tax law, enforcement activ-
14 ities. This appropriation may be apportioned to either the patrol activ-
15 ities or criminal investigation activities programs of the division of
16 state police, may be transferred or suballocated to any other state
17 agency or public authority for their costs associated with the enforce-
18 ment of the cigarette tax or the cigarette marketing standards act, and
19 may be used to contract with local enforcement agencies for cigarette
20 tax and/or cigarette marketing standards act enforcement activities. No
21 monies shall be available from this appropriation absent a certificate
22 of allocation from the director of the budget.

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