

# STATE OF NEW YORK

3431

2019-2020 Regular Sessions

## IN ASSEMBLY

January 29, 2019

Introduced by M. of A. CYMBROWITZ -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to collecting the tax on cigarettes; and to repeal section 471-e and subdivision 5 of section 480-a of such law relating thereto

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

1 Section 1. Subdivisions 8, 9 and 11 of section 470 of the tax law,  
2 subdivision 8 as amended by section 1 of part K of chapter 61 of the  
3 laws of 2005, subdivisions 9 and 11 as amended by chapter 61 of the laws  
4 of 1989, are amended and four new subdivisions 20, 21, 22 and 23 are  
5 added to read as follows:

6 8. "Wholesale dealer." Any person, whether located within or outside  
7 of this state, who (a) sells cigarettes or tobacco products to retail  
8 dealers or other persons for purposes of resale, or (b) owns, operates  
9 or maintains one or more cigarette or tobacco product vending machines  
10 in, at or upon premises owned or occupied by any other person, or (c)  
11 sells cigarettes or tobacco products to an Indian nation or tribe or to  
12 a reservation cigarette seller on a qualified reservation. Such term  
13 shall not include any cigarette manufacturer, export warehouse proprie-  
14 tor, or importer with a valid permit under 26 U.S.C. § 5712, if such  
15 person sells or distributes cigarettes in this state only to licensed  
16 agents, or to an export warehouse proprietor or another manufacturer  
17 with a valid permit under 26 U.S.C. § 5712.

18 9. "Retail dealer." Any person, whether located within or outside of  
19 this state, other than a wholesale dealer, engaged in selling cigarettes  
20 or tobacco products to a consumer in this state.

21 11. "Agent." Any [~~person~~] wholesale dealer licensed by the commission-  
22 er of taxation and finance to purchase and affix adhesive or meter  
23 stamps on packages of cigarettes under this article.

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

LBD07490-01-9

1 20. "Manufacturer" means any person who manufactures, fabricates,  
2 assembles, processes, or labels a finished cigarette.

3 21. "Importer" means any person who imports into the United States,  
4 either directly or indirectly, a finished cigarette for sale or distrib-  
5 ution.

6 22. "Stamp" or "stamps" means the indicia, including meter  
7 impressions, required to be placed on a cigarette package that evidence  
8 payment of the tax on cigarettes under section four hundred seventy-one  
9 of this article, or the indicia, including meter impressions, used to  
10 indicate that the cigarettes are intended for a sale or distribution in  
11 this state that is exempt from state tax under paragraph (a) of subdivi-  
12 sion one of section four hundred seventy-one-e of this article.

13 23. "Licensed," when used with reference to a manufacturer, importer,  
14 agent, wholesale dealer or retail dealer, means only those persons who  
15 hold a valid and current license issued under section four hundred  
16 eighty of this article for the type of business being engaged in. When  
17 the term "licensed" is used before a list of entities, such as "licensed  
18 manufacturer, importer, agent or dealer," such term shall apply to each  
19 entity in such list.

20 § 2. Subdivisions 2 and 3 of section 471 of the tax law, subdivision 2  
21 as amended by section 2 of part D of chapter 134 of the laws of 2010 and  
22 subdivision 3 as amended by chapter 6 of the laws of 1961, are amended  
23 to read as follows:

24 2. It is intended that the ultimate incidence of and liability for the  
25 tax shall be upon the consumer, and that any agent [~~or dealer~~] who shall  
26 pay the tax to the commissioner shall collect the tax from the purchaser  
27 or consumer. Except as [~~hereinafter~~] provided in this subdivision, the  
28 tax shall be advanced and paid by the agent. The agent shall be liable  
29 for the collection and payment of the tax on cigarettes imposed by this  
30 article and shall pay the tax to the commissioner by purchasing, under  
31 such regulations as he or she shall prescribe, adhesive stamps of such  
32 designs and denominations as he or she shall prescribe. The tax on ciga-  
33 rettes may also be paid by or through the use of metering machines if  
34 the commissioner so prescribes. Agents, located within or without the  
35 state, shall purchase stamps and affix such stamps in the manner  
36 prescribed to packages of cigarettes to be sold within the state[~~, in~~  
37 ~~which case any dealer subsequently receiving such stamped packages of~~  
38 ~~cigarettes will not be required to purchase and affix stamps on such~~  
39 ~~packages of cigarettes~~]. All cigarettes sold by agents and wholesalers  
40 to Indian nations or tribes or reservation cigarette sellers located on  
41 an Indian reservation must bear a tax stamp.

42 3. The amount of taxes advanced and paid by the agent as [~~hereinabove~~]  
43 provided in this section shall be added to and collected as part of the  
44 sales price of the cigarettes.

45 § 3. Section 471-a of the tax law, as amended by section 5 of part D  
46 of chapter 134 of the laws of 2010, is amended to read as follows:

47 § 471-a. Use tax on cigarettes. There is hereby imposed and shall be  
48 paid by any consumer a tax on all cigarettes used in the state by any  
49 [~~person~~] such consumer, except that no tax shall be imposed (1) if the  
50 tax provided in section four hundred seventy-one of this article is  
51 paid, (2) on the use of cigarettes which are exempt from the tax imposed  
52 by said section, or (3) on the use of four hundred or less cigarettes,  
53 brought into the state on, or in the possession of, any [~~person~~] consum-  
54 er. Such tax on cigarettes shall be at the rate of four dollars and  
55 thirty-five cents for each twenty cigarettes or fraction thereof,  
56 provided, however, that if a package of cigarettes contains more than

1 twenty cigarettes, the rate of tax on the cigarettes in such package in  
2 excess of twenty shall be one dollar and eight and three-quarters cents  
3 for each five cigarettes or fraction thereof. Within twenty-four hours  
4 after liability for the tax accrues, each such ~~person~~ consumer shall  
5 file with the commissioner a return in such form as the commissioner may  
6 prescribe together with a remittance of the tax shown to be due thereon.  
7 For purposes of this article, the word "use" means the exercise of any  
8 right or power actual or constructive and shall include but is not  
9 limited to the receipt, storage or any keeping or retention for any  
10 length of time, but shall not include possession for sale, and the word  
11 "consumer" means any person who uses cigarettes in this state. All  
12 other provisions of this article if not inconsistent shall apply to the  
13 administration and enforcement of the tax imposed by this section in the  
14 same manner as if the language of said provisions had been incorporated  
15 in full into this section. By filing such return and paying such tax, a  
16 consumer shall not be relieved of any criminal or civil penalties that  
17 may be applicable under this article or article thirty-seven of this  
18 chapter.

19 § 4. Section 471-e of the tax law is REPEALED and a new section 471-e  
20 is added to read as follows:

21 § 471-e. Application of tax on tribal lands. 1. Exemption from tax.  
22 (a) Cigarettes sold to or received by members of a federally recognized  
23 Indian tribe on such tribe's Indian country shall not be subject to tax  
24 under this article.

25 (b) Cigarettes exempt from tax under 26 U.S.C. § 5701 and that are  
26 distributed in accordance with federal regulations shall not be subject  
27 to tax under this article.

28 2. Tax rate on sales to non-tribal members on Indian country. The tax  
29 rate applicable to cigarettes sold to or received by non-tribal members  
30 on Indian lands shall be equal to the state tax rate provided in section  
31 four hundred seventy-one of this article minus any tribal tax rate, if  
32 the resulting rate is a positive number and such rate shall be zero if  
33 the resulting rate would be a negative number. Cigarettes taxed pursuant  
34 to this subdivision shall bear a tax stamp as required by section four  
35 hundred seventy-two of this article in an amount equal to the tax  
36 imposed by section four hundred seventy-one of this article; provided,  
37 that the commissioner shall periodically rebate to any Indian tribal  
38 entity that is in compliance with this article an amount equal to the  
39 tribal tax imposed on sales under this subdivision or the face value of  
40 the tax stamps affixed to cigarettes under this subdivision, whichever  
41 amount is less.

42 § 5. Subdivision 1 of section 472 of the tax law, as amended by chap-  
43 ter 629 of the laws of 1996 and as further amended by section 104 of  
44 part A of chapter 62 of the laws of 2011, is amended, subdivisions 2 and  
45 3 are renumbered subdivisions 3 and 4 and a new subdivision 2 is added  
46 to read as follows:

47 1. The commissioner shall prescribe, prepare and furnish stamps of  
48 such denominations and quantities as may be necessary for the payment of  
49 the tax on cigarettes imposed by this article, or for indication that  
50 the cigarettes are tax-exempt under section four hundred seventy-one-e  
51 of this article, and may from time to time and as often as he or she  
52 deems advisable provide for the issuance and exclusive use of stamps of  
53 a new design and forbid the use of stamps of any other design, in the  
54 manner and with the effect provided in section two hundred seventy-four  
55 of this chapter. The commissioner shall make provisions for the sale of  
56 such stamps at such places and at such times as he or she may deem

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

51 2. Stamps shall be applied by a licensed agent to each package of  
52 cigarettes sold or distributed within this state as follows: (a) A tax  
53 stamp shall be applied to all cigarette packages containing cigarettes  
54 subject to state tax under this article, including to cigarettes subject  
55 to reduced state tax under subdivision two of section four hundred  
56 seventy-one-e of this article.

(b) Except as provided in paragraph (c) of this subdivision, a tax-exempt stamp shall be applied to all cigarette packages intended for sale or distribution to consumers not subject to state tax under paragraph (a) of subdivision one of section four hundred seventy-one-e of this article.

(c) No stamp shall be applied to any cigarette package exempt from tax under paragraph (b) of subdivision one of section four hundred seventy-one-e of this article.

§ 6. Section 473 of the tax law, as amended by chapter 489 of the laws of 1940, is amended to read as follows:

§ 473. Affixation and cancellation of stamps; presumption. Each agent ~~[shall affix]~~ within ~~[the time hereinafter prescribed]~~ twenty-one calendar days of receipt of any cigarettes, shall affix to each package of such cigarettes, stamps evidencing the payment of the tax imposed by this article or stamps evidencing the exemption from payment of the tax imposed by this article and shall cancel such stamps, with a number unique to such agent that is legible at the point of sale, before such cigarettes are offered for sale or before they are otherwise disposed of, unless stamps have been affixed to such packages of cigarettes and cancelled before such agent received them. Each dealer, other than an agent, shall immediately upon the receipt of any cigarettes at his or her place of business mark in ink on each unopened box, carton or other container of such cigarettes the word "received" and the year, month, day and hour of such receipt, and shall affix his or her signature thereto, or in any other manner prescribed.

Each retail dealer shall open such box, carton or other container within twenty-four hours after such receipt and prior to exposing for sale or selling such cigarettes and examine the packages contained therein for the purpose of ascertaining whether or not the said packages have affixed thereto the proper tax stamp; if unstamped or improperly stamped packages of cigarettes are discovered, the retail dealer shall immediately notify the wholesale dealer from whom said cigarettes were purchased. Upon such notification, the wholesale dealer from whom said cigarettes were purchased will replace such unstamped or improperly stamped packages of cigarettes with those upon which stamps have been properly affixed.

Whenever any cigarettes are found in the place of business of such dealer, other than an agent, without the stamps affixed and cancelled, or not marked as having been received within the preceding twenty-four hours, the presumption shall be that such cigarettes are kept therein in violation of the provisions of this article. Stamps shall be affixed to each package of cigarettes of an aggregate denomination not less than the amount of the tax upon the contents therein, and shall be affixed in such manner as to be visible to the purchaser.

§ 7. The tax law is amended by adding a new section 473-c to read as follows:

§ 473-c. Duties of manufacturers, importers, agents, and dealers. 1. Agents may apply stamps only to cigarette packages that they have received directly from a licensed manufacturer or importer of cigarettes.

2. Agents shall be permitted to set aside, without application of stamps, only such part of the agent's stock that is identified for sale or distribution outside of this state; provided, that any such unstamped cigarettes shall be stored separately from stamped cigarette packages. No agent shall transfer unstamped cigarette packages to another facility of the agent within this state or to another person within this state.



3. A manufacturer or importer may sell or distribute cigarettes to a person located or doing business within this state (including on any tribal lands located within this state) only if such person is a licensed importer or agent. An importer may obtain cigarettes only from a licensed manufacturer. An agent may obtain cigarettes only from a licensed manufacturer, importer or agent. An agent may sell or distribute cigarettes to a person located or doing business within this state (including on any tribal lands located within this state) only if such person is a licensed agent, wholesale dealer or retail dealer. A retail dealer may obtain cigarettes only from a licensed agent or wholesale dealer.

4. Any person who is doing business both as an agent and a wholesale dealer or a retail dealer, shall maintain separate areas for stamped and unstamped product.

5. (a) A retail dealer shall report to the commission each sale or distribution of more than one thousand cigarettes to any consumer in any single transaction. Such report shall include:

(i) the name, address, destination (including street address), vehicle license number, driver's license number, signature of the person receiving such cigarettes, and the name of the purchaser;

(ii) a declaration of the specific purpose of the receipt (personal use, resale, or delivery to another); and

(iii) a declaration of the name and address of the recipient's principal in all cases when the recipient is acting as an agent.

(b) A retail dealer shall not knowingly sell more than one thousand cigarettes to any person in any series of transactions in any two-day period without filing a report as required by paragraph (a) of this subdivision.

§ 8. Subdivisions 1 and 4 of section 474 of the tax law, as amended by chapter 61 of the laws of 1989, are amended to read as follows:

1. (a) Every person who shall possess or transport any unstamped cigarettes upon the public highways, roads or streets of the state, shall be required to have in his or her actual possession invoices or delivery tickets for such cigarettes. Such invoices or delivery tickets shall show the name and address of the consignor or seller, the name and address of the consignee or purchaser, the quantity [~~and—brands~~] by brand style of the cigarettes transported, and the name and address of the person who has or shall assume the payment of the tax. The absence of such invoices or delivery tickets shall be prima facie evidence that such person is a dealer in cigarettes in this state and subject to the provisions of this article.

(b) Any person who ships unstamped cigarette packages into this state other than to a licensed manufacturer, importer or agent shall first file with the commissioner notice of such shipment. This paragraph shall not apply to any common or contract carrier that is transporting cigarettes through this state to another location under a proper bill of lading or freight bill, which states the quantity by brand style, source, and destination of such cigarettes.

4. At the time of delivering cigarettes to any person each manufacturer, importer, agent or wholesale dealer, and at the time of delivering tobacco products to any person each distributor or wholesale dealer of tobacco products, shall make a true duplicate invoice showing the date of delivery, the number of packages by brand style and number of cigarettes contained therein, in each shipment of cigarettes delivered, and the items and quantity and wholesale price of each item in each shipment of tobacco products delivered, and the name of the purchaser to whom

1 delivery is made, and shall retain the same for a period of [~~three~~] five  
2 years subject to the use and inspection of the commissioner [~~of taxation~~  
3 ~~and finance~~]. Each dealer shall procure and retain invoices showing the  
4 number of packages by brand style and number of cigarettes contained  
5 therein, in each shipment of cigarettes received by him or her, and the  
6 items and quantity and wholesale price of each item in each shipment of  
7 tobacco products received by him or her, the date thereof, and the name  
8 of the shipper, and shall retain the same for a period of [~~three~~] five  
9 years subject to the use and inspection of the commissioner [~~of taxation~~  
10 ~~and finance~~]. The commissioner [~~of taxation and finance~~] by regulation  
11 may provide that whenever cigarettes or tobacco products are shipped  
12 into the state, the railroad company, express company, trucking company  
13 or other public carrier transporting any shipment thereof shall file  
14 with the commissioner [~~of taxation and finance~~] a copy of the freight  
15 bill within ten days after the delivery in the state of each shipment.  
16 All dealers shall maintain and keep for a period of [~~three~~] five years  
17 such other records of cigarettes or tobacco products received, sold or  
18 delivered within the state as may be required by the commissioner [~~of~~  
19 ~~taxation and finance~~]. The commissioner [~~of taxation and finance~~] is  
20 hereby authorized to examine the books, papers, invoices and other  
21 records of any person who holds a license or registration under this  
22 article or who is in possession, control or occupancy of any premises  
23 where cigarettes or tobacco products are placed, stored, sold or offered  
24 for sale, and the equipment of any such person pertaining to the stamp-  
25 ing of cigarettes or the sale and delivery of cigarettes or tobacco  
26 products taxable under this article, as well as the stock of cigarettes  
27 or tobacco products in any such premises or vehicle. To verify the accu-  
28 racy of the tax imposed and assessed by this article, each such person  
29 is hereby directed and required to give to the commissioner [~~of taxation~~  
30 ~~and finance~~] or his or her duly authorized representatives, the means,  
31 facilities and opportunity for such examinations as are [~~herein~~]  
32 provided for in this section and required. All invoices required to be  
33 retained by this section shall show the name and address of the seller  
34 and the quantity by brand style of the cigarettes involved in the trans-  
35 action and shall be itemized for each facility of the manufacturer,  
36 importer, agent or wholesale dealer. Records required under this arti-  
37 cle shall be preserved on the premises described in the relevant license  
38 or registration in such a manner as to ensure permanency and accessibil-  
39 ity for inspection at reasonable hours by authorized personnel of the  
40 tax commission. With the permission of the commissioner, persons with  
41 multiple places of business may retain centralized records, but shall  
42 transmit duplicates of the invoices or the equivalent documentation to  
43 each place of business within twenty-four hours upon the request of the  
44 commissioner.

45 The commissioner and his or her designees and the United States secre-  
46 tary of the treasury or his or her designee, upon request, shall have  
47 access to records required under this section and reports required under  
48 section four hundred seventy-four-a of this article. The commissioner at  
49 his or her sole discretion may share the records and reports required by  
50 this article with other law enforcement officials of the federal govern-  
51 ment or other states. Public access to reports submitted by licensees  
52 shall be provided under the procedures established by the New York free-  
53 dom of information law. In no case, however, shall information about  
54 quantities of cigarettes by brand style be released to anyone other than  
55 the commissioner, the United States secretary of the treasury, or other

1 state and federal law enforcement officials with whom the commissioner  
2 has elected to share reports and records required by this article.

3 § 9. The tax law is amended by adding a new section 474-a to read as  
4 follows:

5 § 474-a. Reports. 1. Agents and dealers shall submit to the commis-  
6 sioner monthly reports setting forth the following information, itemized  
7 or submitted separately for each of their places of business: (a) the  
8 quantities of cigarettes, by brand style, on hand both at the beginning  
9 and ending of the reporting period;

10 (b) the quantities of cigarettes, by brand style and transaction, that  
11 were received during the reporting period and the name and address of  
12 each person from whom those products were received;

13 (c) the quantities of cigarettes, by brand style and transaction,  
14 distributed or shipped into this state or between locations in this  
15 state during the reporting period (other than sales directly to consum-  
16 ers) and the name and address of each person to whom those products were  
17 distributed or shipped;

18 (d) the quantities of cigarettes, by brand style and transaction,  
19 distributed or shipped to any destination wherever located, including  
20 the quantities reported under paragraph (c) of this subdivision, during  
21 the reporting period (other than sales directly to consumers) and the  
22 name and address of each person to whom those products were distributed  
23 or shipped; and

24 (e) the quantities of cigarettes, by brand style, sold to consumers,  
25 itemized to show sales to consumers in this state and sales to consumers  
26 outside of this state.

27 2. Manufacturers and importers shipping cigarettes into or within this  
28 state shall file a monthly report with the commissioner containing the  
29 information regarding such cigarettes set forth in paragraph (c) of  
30 subdivision one of this section.

31 3. Indian tribal entities engaged in the retail sale or distribution  
32 of cigarettes shall include in such entities' reports submitted pursuant  
33 to subdivision one of this section the names and addresses of every  
34 tribal member that purchased cigarettes during the reporting period and  
35 the quantity of cigarettes, by brand style, purchased by each such  
36 tribal member.

37 4. The reports submitted pursuant to subdivision one of this section  
38 shall be further itemized to disclose the quantity of reported ciga-  
39 rettes bearing tax stamps of this state, tax exempt stamps of this  
40 state, stamps of another state, and unstamped cigarettes. Agent reports  
41 shall include, if applicable, the quantity of New York tax and tax  
42 exempt stamps that were not affixed to cigarettes and that were on hand  
43 at the beginning and ending of the reporting period, the quantity of  
44 each type of New York stamp received during the reporting period, and  
45 the quantity of each type of New York stamp applied during the reporting  
46 period.

47 5. The commissioner may issue regulations requiring such additional  
48 information in the monthly reports as he or she may determine is neces-  
49 sary or appropriate for purposes of enforcing the provisions of this  
50 article.

51 § 10. Section 475 of the tax law is amended by adding a new closing  
52 paragraph to read as follows:

53 In any case where the commissioner or his or her duly authorized  
54 agent, or any police or peace officer of New York state, has knowledge  
55 or reasonable grounds to believe that any vehicle is transporting ciga-  
56 rettes in violation of this article, the commissioner, such agent, or



1 such police or peace officer, is authorized to stop such vehicle and to  
2 inspect the same for contraband cigarettes.

3 § 11. Section 476 of the tax law, as amended by chapter 61 of the laws  
4 of 1989, is amended to read as follows:

5 § 476. Refunds; sales of stamps. Whenever any cigarettes upon which  
6 stamps have been placed or tobacco products upon which the tax has been  
7 paid have been sold and shipped into another state for sale or use there  
8 or have become unfit for use and consumption or unsalable, or have been  
9 destroyed (except for cigarettes destroyed pursuant to section eighteen  
10 hundred forty-six of this chapter), or whenever the commissioner [~~of~~  
11 ~~taxation and finance~~] shall have determined that any tax imposed by this  
12 article shall have been paid in error, the agent, dealer or tobacco  
13 products distributor, as the case may be, shall be entitled to a refund  
14 of the actual amount of tax so paid, provided application therefor is  
15 filed with the commissioner [~~of taxation and finance~~] within two years  
16 after the stamps were affixed to such cigarettes or the tax was paid  
17 upon such tobacco products, except if an agreement under the provisions  
18 of section four hundred seventy-eight of this article (extending the  
19 period for determination of tax imposed by this article) is made within  
20 the two-year period for the filing of an application for refund provided  
21 for in this section, the period for filing an application for refund  
22 shall not expire prior to six months after the expiration of the period  
23 within which a determination may be made pursuant to the agreement or  
24 any extension thereof. If the commissioner [~~of taxation and finance~~] is  
25 satisfied that any agent or dealer is entitled to a refund he or she  
26 shall issue to such [~~dealer~~] agent stamps of sufficient value to cover  
27 the refund of the tax on cigarettes or may, subject to audit by the  
28 comptroller, make a refund of the tax on cigarettes or on tobacco  
29 products to such agent. No person shall sell or offer for sale any stamp  
30 or stamps issued under this article except by written permission of the  
31 commissioner [~~of taxation and finance~~]. The commissioner [~~of taxation~~  
32 ~~and finance~~] may redeem unused stamps lawfully in possession of any  
33 [~~person~~] agent. The commissioner [~~of taxation and finance~~] may prescribe  
34 necessary rules and regulations concerning refunds, sales of stamps, and  
35 redemptions under the provisions of this article.

36 § 12. Subdivisions 1, 5 and paragraph (a) of subdivision 6 of section  
37 480 of the tax law, subdivision 1 as amended by chapter 629 of the laws  
38 of 1996, paragraph (c) of subdivision 1 as further amended by section  
39 104 of part A of chapter 62 of the laws of 2011, paragraph (k) of subdivi-  
40 sion 1 as amended by chapter 262 of the laws of 2000, subdivision 5 as  
41 added by chapter 860 of the laws of 1987 and paragraph (a) of subdivi-  
42 sion 6 as amended by chapter 576 of the laws of 1994, are amended,  
43 subdivision 3 is amended by adding a new paragraph (c) and a new subdivi-  
44 sion 7 is added to read as follows:

45 1. General. (a) [~~On and after July first, nineteen hundred thirty-nine~~  
46 ~~no~~] No person shall be a manufacturer, importer, agent, or wholesale  
47 dealer unless he or she has been granted and publicly displays in his or  
48 her place of business a license from the department for each such activ-  
49 ity engaged in. Each place of business in this state shall be separately  
50 licensed. If the applicant does not have a place of business in this  
51 state, the license shall be issued for such applicant's principal place  
52 of business, wherever located. Applications for licenses shall be made  
53 on forms prescribed by the commissioner. Each application shall state  
54 the name and address of the applicant; the address of the applicant's  
55 principal place of business; each place of business where the appli-  
56 cant's business will be conducted within this state; and any other

1 information such commissioner may require. If the applicant is a firm,  
2 partnership, or association, the application shall state the name and  
3 address of each of its members. If the applicant is a corporation, the  
4 application shall state the name and address of each of its members. If  
5 the applicant is a corporation, the application shall state the name and  
6 address of each of its officers and the name of any person who owns,  
7 directly or indirectly, in the aggregate, more than ten percent of the  
8 ownership interests in the corporation.

9 (b) Applications shall be accompanied by proof of the applicant's  
10 financial responsibility, including, but not limited to, satisfactory  
11 proof of a minimum net worth of twenty-five thousand dollars if the  
12 applicant is an individual, or net worth in the capitalization of the  
13 business if the applicant is not an individual equal to a minimum of  
14 twenty-five thousand dollars.

15 (c) Each applicant shall file with the department a bond issued by a  
16 surety company approved by the superintendent of financial services as  
17 to solvency and responsibility and authorized to transact business in  
18 the state, in the face amount of ten thousand dollars, to secure payment  
19 of any sums due for any violation of this article [~~twenty~~] or article  
20 twenty-A of this chapter, or the regulations of the commissioner there-  
21 under.

22 (d) [~~Each applicant shall file satisfactory proof that it will main-~~  
23 ~~tain a secure separate warehousing facility for the purpose of receiving~~  
24 ~~and distributing cigarettes or tobacco products and conducting its~~  
25 ~~wholesale business. Such proof shall consist of a copy of a deed, or a~~  
26 ~~copy of an executed lease for a minimum period of two years, to a sepa-~~  
27 ~~rate, secure warehouse. If the applicant carries on another business in~~  
28 ~~conjunction with the warehouse facility, the other business shall also~~  
29 ~~be identified.~~

30 ~~(e)~~ Each applicant shall file satisfactory proof that it will provide  
31 disability and workers' compensation insurance for its employees.

32 [~~(f)~~] (e) Each applicant shall submit proof of United States citizen-  
33 ship or eligibility to obtain employment within the United States if not  
34 a citizen. If the applicant is not an individual, such proof shall be  
35 submitted with respect to each controlling person of the applicant.

36 [~~(g)~~] (f) The fee for the filing of an application for a license shall  
37 be fifteen hundred dollars, unless such fee has been paid during the  
38 preceding twelve months, in which case, the fee for a new license shall  
39 be one thousand dollars. Each application shall be accompanied by a  
40 certified check for the required application fee.

41 [~~(h)~~] (g) Except as provided in subdivision four of this section, a  
42 license shall continue in effect [~~until revoked or suspended for cause~~  
43 ~~or surrendered~~] for such length of time as determined by regulations of  
44 the commissioner; in no case, however, shall a license issued under this  
45 section remain in effect for a period longer than three years.

46 [~~(i)~~] (h) A license shall not be assignable but an applicant who is  
47 purchasing the business of a licensee shall file a copy of the contract  
48 of sale and any related documents with its application.

49 [~~(j)~~] (i) The commissioner may for cause refuse to issue, or may  
50 suspend or revoke [~~a wholesaler's~~] any license under this section, or  
51 may forbid a retail dealer to continue selling cigarettes or tobacco  
52 products or may forbid a person required to be appointed as a distribu-  
53 tor of tobacco products who has not been so appointed from selling ciga-  
54 rettes or tobacco products, after an opportunity for hearing has been  
55 afforded. A violation of any provision of this article or of any regu-  
56 lation issued under it shall be cause to suspend or revoke a license

1 issued under this section or to forbid a retail dealer to continue sell-  
2 ing cigarettes or tobacco products.

3 ~~[(k)]~~ (j) No agent shall sell cigarettes and no distributor shall sell  
4 tobacco products to an unlicensed wholesale dealer, or to a wholesale  
5 dealer whose license has been suspended or revoked, or to a retail deal-  
6 er who is not registered under section four hundred eighty-a of this  
7 article, or whose registration has been suspended or revoked, and no  
8 wholesale dealer shall sell cigarettes or tobacco products to a retail  
9 dealer who is not registered under section four hundred eighty-a of this  
10 article, or whose registration has been suspended or revoked, and no  
11 retail dealer shall sell cigarettes or tobacco products unless such  
12 dealer is registered under section four hundred eighty-a of this arti-  
13 cle.

14 ~~[(l)]~~ (k) Paragraphs (b), (c) and ~~[(g)]~~ (f) of this subdivision shall  
15 not apply to the filing of an application for a license as a wholesale  
16 dealer that is based solely upon the ownership, operation or maintenance  
17 of one or more cigarette or tobacco products vending machines in, at or  
18 upon premises owned or occupied by another person, or that is based  
19 solely upon the sale of tobacco products for resale, or that is based  
20 upon both the ownership, operation or maintenance of one or more ciga-  
21 rette or tobacco products vending machines in, at or upon premises owned  
22 or occupied by another person and the sale of tobacco products for  
23 resale.

24 (c) License availability. Notwithstanding other subdivisions of this  
25 section, no license shall be granted, maintained or renewed if the  
26 applicant or any controlling person:

27 (i) Owes five hundred dollars or more in delinquent cigarette taxes;

28 (ii) Had a license under this section or registration under section  
29 four hundred eighty-a of this article revoked by the commissioner within  
30 the past two years;

31 (iii) Has been convicted of a crime relating to stolen or counterfeit  
32 cigarettes;

33 (iv) Is a cigarette manufacturer or importer that is neither (A) a  
34 participating manufacturer (as such term is defined in section II(jj) of  
35 the master settlement agreement) as required in subdivision one of  
36 section thirteen hundred ninety-nine-pp of the public health law; nor  
37 (B) in full compliance with section four hundred eighty-b of this arti-  
38 cle and subdivision two of section thirteen hundred ninety-nine-pp of  
39 the public health law;

40 (v) Has imported, or caused to be imported, into the United States any  
41 cigarette in violation of 19 U.S.C. 1681a; or

42 (vi) Has imported, or caused to be imported into the United States, or  
43 manufactured for sale or distribution in the United States any cigarette  
44 that does not fully comply with the Federal Cigarette Labeling and  
45 Advertising Act (15 U.S.C. 1331, et seq.).

46 5. Hearing procedure. (a) General. A notice of proposed cancellation  
47 or suspension of a license or refusal to issue a license shall be given  
48 to ~~[the wholesale dealer]~~ any person licensed pursuant to this article  
49 or to an applicant applying for such license in the manner prescribed  
50 for a notice of deficiency of tax and all the provisions applicable to a  
51 notice of deficiency under article twenty-seven of this chapter, includ-  
52 ing, but not limited to, those provisions authorizing the ~~[tax commis-~~  
53 ~~sion]~~ commissioner to abate on its own motion, shall apply to a notice  
54 issued pursuant to this subdivision, insofar as such provisions can be  
55 made applicable to a notice authorized by this subdivision, with such  
56 modifications as may be necessary in order to adapt the language of such

provisions to the notice authorized by this subdivision. Such notice of proposed cancellation or suspension or of proposed refusal to license must be given to such person within five years from the date of the act or omission referred to in subdivision two or three of this section, except that in the case of acts involving falsity or fraud, such notice may be issued at any time. All of such notices shall contain a statement advising the person to whom it is issued that the cancellation, suspension or refusal to license may be challenged through a hearing process and that the petition for such challenge must be filed with the ~~[tax commission]~~ commissioner within ninety days after the giving of such notice. Where a license is cancelled or suspended prior to a hearing, the cancellation or suspension may be challenged through the hearing process provided the petition for such challenge is filed within ninety days after the giving of notice of such cancellation or suspension.

(b) Refusal to license. In the case of a person applying to be licensed ~~[as a wholesale dealer]~~ under this article, a notice of proposed refusal to license shall be issued promptly after application for license is received by the ~~[tax commission]~~ commissioner. Upon timely application therefor, a hearing shall be scheduled, and within three months from such application for hearing (determined with regard to any postponements of any scheduled hearing or conference or other delay made at the request of the applicant) the ~~[tax commission]~~ commissioner shall issue a notice of refusal to license or shall license the applicant. If the ~~[tax commission]~~ commissioner fails to issue a notice of refusal to license within such three month period (or such period as extended pursuant to this paragraph), the ~~[tax commission]~~ commissioner shall license the applicant immediately upon the conclusion of such period so long as the applicant has filed a bond or other security as required by the ~~[tax commission]~~ commissioner.

(a) An officer, director or partner or, in the case of a limited liability company, a member or a person having with respect to such limited liability company authority analogous to that of an officer or director with respect to a corporation of an applicant for a ~~[wholesale dealer's]~~ license under this article or of a licensee under this article, or

7. Maintenance of list of licensees. The commissioner shall create and maintain a website setting forth the identity of persons holding valid and current licenses under this section, itemized by type of license possessed, and the identity of persons holding valid and current registrations under section four hundred eighty-a of this article, and shall update the site no less frequently than once per month.

§ 13. Paragraph (d) of subdivision 1, and paragraph (a) of subdivision 4 of section 480-a of the tax law, paragraph (d) of subdivision 1 as added by chapter 799 of the laws of 1992, and paragraph (a) of subdivision 4 as added by chapter 629 of the laws of 1996, are amended to read as follows:

(d) (i) The commissioner shall not register retail dealers or vending machines or such registration may be cancelled or suspended by the commissioner upon notification that the applicant or retail dealer, or any combination of persons owning directly or indirectly, in the aggregate, more than ten percent of the ownership interests in the applicant or retail dealer has been convicted in a criminal proceeding of a violation of subdivision ~~[five]~~ three of section ~~[260.20]~~ 260.21 of the penal law or as directed by an enforcement officer pursuant to article thirteen-F of the public health law. The clerk of the court shall promptly report all criminal convictions under subdivision ~~[five]~~ three

1 of section [~~260.20~~] 260.21 of the penal law to the commissioner, together with a direction to the commissioner to cancel such registration or to suspend it for a specified period of time.

2  
3 (ii) The commissioner shall not register retail dealers or vending machines or such registration shall be cancelled or suspended by the commissioner upon notification that the applicant or retail dealer, or any combination of persons owning directly or indirectly, in the aggregate, more than ten percent of the ownership interests in the applicant or retail dealer:

4 (A) Owes five hundred dollars or more in delinquent cigarette taxes;

5 (B) Had a registration issued under this section or a license issued under section four hundred eighty of this article revoked by the commissioner within the past two years; or

6 (C) Has been convicted of a crime relating to counterfeit cigarettes.

7  
8 Anything to the contrary in any law notwithstanding, retail dealers shall have no right to a hearing under this chapter and shall have no right to commence a court action or proceeding or to any other legal recourse against the commissioner with respect to any action taken by the commissioner under this paragraph, provided nothing herein shall be construed to deny retail dealers a hearing under article thirteen-F of the public health law or to prohibit retail dealers from commencing a court action or proceeding against an enforcement officer as defined in section thirteen hundred ninety-nine-aa of the public health law.

9 ~~[(ii)]~~ (iii) Anything to the contrary in any law notwithstanding, the commissioner shall provide upon request to an enforcement officer as defined in section thirteen hundred ninety-nine-aa of the public health law such registration information as is relevant and necessary for the implementation of article thirteen-F of the public health law.

10 (a) If a retail dealer possesses or sells unstamped or unlawfully stamped packages of cigarettes, ~~[or if a retail dealer is also licensed as an agent pursuant to section four hundred seventy-two and it possesses unlawfully stamped packages of cigarettes or sells unstamped or unlawfully stamped packages of cigarettes at retail,]~~ (i) its registration shall be suspended for a period of not more than six months, or (ii) for a second such possession or sale within a period of five years, its registration shall be suspended for a period of up to thirty-six months, or (iii) for a third such possession or sale within a period of five years, its registration may be revoked for a period of up to five years. A retail dealer registration shall be suspended or revoked pursuant to this subdivision immediately upon such dealer's receipt of written notice of suspension or revocation from the commissioner. ~~[If a retail dealer sells cigarettes through more than one place of business in this state, the retail dealer registration shall not be suspended or revoked pursuant to this subdivision, but the certificate of registration issued to the place of business, cart, stand, truck or other merchandising device where unstamped or unlawfully stamped cigarettes were found shall be suspended or cancelled for possession or sale of unstamped or unlawfully stamped packages of cigarettes, as if such certificate of registration were a retail dealer registration. A suspension or cancellation of a certificate of registration shall be treated as if it were a suspension or revocation of a registration. If unstamped or unlawfully stamped cigarettes are found in a retail dealer's warehouse, the]~~ The suspension or revocation of the retail dealer's registration pursuant to this subdivision shall be applicable to each retail place of business in this state through which such retail dealer sells cigarettes. If a retail dealer commits any violation other than those



described in this subdivision or subdivision one of this section, the commissioner may suspend or revoke the retail dealer's registration.

§ 14. Subdivision 5 of section 480-a of the tax law is REPEALED.

§ 15. Subparagraph (v) of paragraph (a) of subdivision 1 and paragraph (b) of subdivision 2 of section 481 of the tax law, subparagraph (v) of paragraph (a) of subdivision 1 as amended by chapter 65 of the laws of 1985 and paragraph (b) of subdivision 2 as amended by chapter 61 of the laws of 1989, are amended, subdivision 4 is renumbered subdivision 9 and five new subdivisions 4, 5, 6, 7 and 8 are added to read as follows:

(v) The penalties and interest provided for in this paragraph, in addition to any other penalty imposed by this article, shall be determined, assessed, collected and paid in the same manner as the taxes imposed by this article and shall be disposed of as [~~hereinafter~~] provided in this subdivision with respect to moneys derived from the tax. Interest under this paragraph shall be compounded daily.

(b) Nothing in this section shall apply to common or contract carriers or warehousemen while engaged in lawfully transporting [~~or storing~~] through this state to another location under a proper bill of lading or freight bill, or storing tobacco products or unstamped cigarettes on behalf of a licensed agent, nor to any employee of such carrier or warehouseman acting within the scope of his or her employment, nor to public officers or employees in the performance of their official duties requiring possession or control of tobacco products or unstamped or unlawfully stamped packages of cigarettes, nor to temporary incidental possession by employees or agents of persons lawfully entitled to possession, nor to persons whose possession is for the purpose of aiding police officers in performing their duties.

4. Whoever omits, neglects, or refuses to comply with any duty imposed upon him or her by this article, or to do, or cause to be done, any of the things required by this article, or does anything prohibited by this article, shall, in addition to any other penalty provided in this article or article thirty-seven of this chapter, be liable to a penalty of five thousand dollars or five times the retail value of the cigarettes involved, whichever is greater, to be recovered, with costs of suit, in a civil action.

5. Whoever fails to pay any tax imposed by this article at the time prescribed by law or regulations, shall, in addition to any other penalty provided in this article, be liable to a penalty of five times the tax due but unpaid.

6. All cigarettes which are held for sale, distribution or use within the borders of this state in violation of the requirements of this article shall be forfeited to the state.

7. (a) Whoever, with intent to defraud this state, fails to comply with any requirement of this article or regulations prescribed pursuant to this article shall, for each such offense, in addition to any other penalty provided in this article or article thirty-seven of this chapter, be fined ten thousand dollars or be imprisoned for not more than five years, or both.

(b) Whoever knowingly violates any provision of this article or of regulations prescribed pursuant to this article shall, for each such offense, in addition to any other penalty provided in this article, be fined not more than five thousand dollars or five times the retail value of the cigarettes involved, whichever is greater, or imprisoned not more than one year, or both.

1 8. Notwithstanding any other provision of law, the sale or possession  
2 for sale of counterfeit cigarettes by a manufacturer, importer, agent,  
3 or dealer shall result in the seizure of the product and related machin-  
4 ery by the commissioner or any law enforcement agency and shall be  
5 punishable as follows: (a) A first violation with a total quantity of  
6 less than two cartons of cigarettes shall be punishable by a fine of one  
7 thousand dollars or five times the retail value of the cigarettes  
8 involved, whichever is greater, or imprisonment not to exceed five  
9 years, or both.

10 (b) A subsequent violation with a total quantity of less than two  
11 cartons of cigarettes shall be punishable by a fine of five thousand  
12 dollars or five times the retail value of the cigarettes involved,  
13 whichever is greater, or imprisonment not to exceed five years, or both,  
14 and shall also result in the revocation by such commissioner of the  
15 manufacturer, importer, agent, or dealer license.

16 (c) A first violation with a total quantity of two cartons of ciga-  
17 rettes or more shall be punishable by a fine of two thousand dollars or  
18 five times the retail value of the cigarettes involved, whichever is  
19 greater, or imprisonment not to exceed five years, or both.

20 (d) A subsequent violation with a quantity of two cartons of ciga-  
21 rettes or more shall be punishable by a fine of fifty thousand dollars  
22 or five times the retail value of the cigarettes involved, whichever is  
23 greater, or imprisonment not to exceed five years, or both, and shall  
24 also result in the revocation by such commissioner of the manufacturer,  
25 importer, agent, or dealer license.

26 For purposes of this subdivision, counterfeit cigarettes include ciga-  
27 rettes that have false manufacturing labels or packages of cigarettes  
28 bearing counterfeit tax stamps. Any counterfeit cigarettes seized by the  
29 commissioner shall be destroyed.

30 § 16. Subdivision (a) of section 1846 of the tax law, as amended by  
31 chapter 556 of the laws of 2011, is amended to read as follows:

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

§ 17. Section 1814 of the tax law, as amended by section 28 of subpart I of part V-1 of chapter 57 of the laws of 2009, is amended to read as follows:

§ 1814. Cigarette and tobacco products tax.--(a) Any person who willfully attempts in any manner to evade or defeat the taxes imposed by article twenty of this chapter or payment thereof on (i) ten thousand cigarettes or more (ii) twenty-two thousand cigars or more, or (iii) four hundred forty pounds of tobacco or more or has previously been convicted two or more times of a violation of paragraph ~~[one]~~ (i) of this subdivision shall be guilty of a class ~~[E]~~ D felony.

(b) Any person, other than an agent licensed by the commissioner, who possesses or transports for the purpose of sale any unstamped or unlawfully stamped packages of cigarettes subject to tax imposed by section four hundred seventy-one of this chapter, or who sells or offers for sale unstamped or unlawfully stamped packages of cigarettes in violation of the provisions of article twenty of this chapter shall be guilty of a ~~[misdemeanor]~~ class E felony. Any person who violates the provisions of this subdivision after having previously been convicted of a violation of this subdivision within the preceding five years shall be guilty of a class ~~[E]~~ D felony.

(c) (1) Any person, other than an agent licensed by the commissioner, who willfully possesses or transports for the purpose of sale ten thousand or more cigarettes subject to the tax imposed by section four hundred seventy-one of this chapter in any unstamped or unlawfully stamped packages or who willfully sells or offers for sale ten thousand or more cigarettes in any unstamped or unlawfully stamped packages in violation of article twenty of this chapter shall be guilty of a class ~~[E]~~ D felony.

(2) Any person, other than an agent licensed by the commissioner, who willfully possesses or transports for the purpose of sale thirty thousand or more cigarettes subject to the tax imposed by section four hundred seventy-one of this chapter in any unstamped or unlawfully stamped packages or who willfully sells or offers for sale thirty thousand or more cigarettes in any unstamped or unlawfully stamped packages in violation of article twenty of this chapter shall be guilty of a class ~~[D]~~ C felony.

(d) For the purposes of this section, the possession or transportation within this state by any person, other than an agent, at any one time of five thousand or more 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 section four hundred seventy-one of this chapter. With respect to such possession or transportation any provisions of article twenty of this chapter providing for a time period during which a use

1 tax imposed by such article may be paid on unstamped cigarettes or  
2 unlawfully or improperly stamped cigarettes or during which such ciga-  
3 rettes may be returned to an agent shall not apply. The possession with-  
4 in this state of more than four hundred cigarettes in unstamped or  
5 unlawfully stamped packages by any person other than an agent at any one  
6 time shall be presumptive evidence that such cigarettes are subject to  
7 tax as provided by article twenty of this chapter.

8 (e) Nothing in this section shall apply to common or contract carriers  
9 or warehousemen while engaged in lawfully transporting ~~[or storing]~~  
10 tobacco products or unstamped packages of cigarettes as merchandise  
11 through this state to another location under a proper bill of lading or  
12 freight bill, or ~~[lawfully transporting or]~~ storing tobacco products or  
13 unstamped cigarettes on behalf of a licensed agent, nor to any employee  
14 of such carrier or warehouseman acting within the scope of his or her  
15 employment, nor to public officers or employees in the performance of  
16 their official duties requiring possession or control of unstamped or  
17 unlawfully stamped packages of cigarettes or possession or control of  
18 tobacco products, nor to temporary incidental possession by employees or  
19 agents of persons lawfully entitled to possession, nor to persons whose  
20 possession is for the purpose of aiding police officers in performing  
21 their duties.

22 (f) Any willful act or omission, other than those described in section  
23 eighteen hundred one of this article or subdivision (a), (b), (c), (d),  
24 (e), (g), (h) or (i) of this section, by any person which constitutes a  
25 violation of any provision of article twenty of this chapter shall  
26 constitute a ~~[misdemeanor]~~ class E felony.

27 (g) Any person who falsely or fraudulently makes, alters or counter-  
28 feits any stamp prescribed by the ~~[tax commission]~~ commissioner under  
29 the provisions of article twenty of this chapter, or causes or procures  
30 to be falsely or fraudulently made, altered or counterfeited any such  
31 stamp, or knowingly and willfully utters, purchases, passes or tenders  
32 as true any such false, altered or counterfeited stamp, or knowingly and  
33 willfully possesses any cigarettes in packages bearing any such false,  
34 altered or counterfeited stamp, and any person who knowingly and will-  
35 fully makes, causes to be made, purchases or receives any device for  
36 forging or counterfeiting any stamp, prescribed by the ~~[tax commission]~~  
37 commissioner under the provisions of article twenty of this chapter, or  
38 who knowingly and willfully possesses any such device, shall be guilty  
39 of a class ~~[E]~~ D felony. For the purposes of this subdivision, the words  
40 "stamp prescribed by the ~~[tax commission]~~ commissioner" shall include a  
41 stamp, impression or imprint made by a metering machine, the design of  
42 which has been approved by such ~~[commission]~~ commissioner.

43 (h) (1) Any dealer, other than a distributor appointed by the commis-  
44 sioner ~~[of taxation and finance]~~ under article twenty of this chapter,  
45 who shall knowingly transport or have in his or her custody, possession  
46 or under his or her control more than ten pounds of tobacco or more than  
47 five hundred cigars upon which the taxes imposed by article twenty of  
48 this chapter have not been assumed or paid by a distributor appointed by  
49 the commissioner of taxation and finance under article twenty of this  
50 chapter, or other person treated as a distributor pursuant to section  
51 four hundred seventy-one-d of this chapter, shall be guilty of a misde-  
52 meanor punishable by a fine of not more than five thousand dollars or by  
53 a term of imprisonment not to exceed thirty days.

54 (2) Any person, other than a dealer or a distributor appointed by the  
55 commissioner under article twenty of this chapter, who shall knowingly  
56 transport or have in his or her custody, possession or under his or her

1 control more than fifteen pounds of tobacco or more than seven hundred  
2 fifty cigars upon which the taxes imposed by article twenty of this  
3 chapter have not been assumed or paid by a distributor appointed by the  
4 commissioner under article twenty of this chapter, or other person  
5 treated as a distributor pursuant to section four hundred seventy-one-d  
6 of this chapter shall be guilty of a misdemeanor punishable by a fine of  
7 not more than five thousand dollars or by a term of imprisonment not to  
8 exceed thirty days.

9 (3) Any person, other than a distributor appointed by the commissioner  
10 under article twenty of this chapter, who shall knowingly transport or  
11 have in his or her custody, possession or under his or her control twen-  
12 ty-five hundred or more cigars or fifty or more pounds of tobacco upon  
13 which the taxes imposed by article twenty of this chapter have not been  
14 assumed or paid by a distributor appointed by the commissioner under  
15 article twenty of this chapter, or other person treated as a distributor  
16 pursuant to section four hundred seventy-one-d of this chapter shall be  
17 guilty of a misdemeanor. Provided further, that any person who has twice  
18 been convicted under this subdivision shall be guilty of a class E felo-  
19 ny for any subsequent violation of this section, regardless of the  
20 amount of tobacco products involved in such violation.

21 (4) For purposes of this subdivision, such person shall knowingly  
22 transport or have in his or her custody, possession or under his or her  
23 control tobacco or cigars on which such taxes have not been assumed or  
24 paid by a distributor appointed by the commissioner where such person  
25 has knowledge of the requirement of the tax on tobacco products and,  
26 where to his or her knowledge, such taxes have not been assumed or paid  
27 on such tobacco products by a distributor appointed by the commissioner  
28 [~~of taxation and finance~~].

29 (i) Any person who falsely or fraudulently makes, alters or counter-  
30 feits a registration certificate or sticker required under the  
31 provisions of section four hundred eighty-a of this chapter, or causes  
32 or procures to be falsely or fraudulently made, altered or counterfeited  
33 any such registration certificate or sticker, or knowingly and willfully  
34 utters, purchases, passes or tenders as true any such false, altered or  
35 counterfeited registration certificate or sticker, and any person who  
36 knowingly and willfully makes, causes to be made, purchases or receives  
37 any device for forging or counterfeiting any registration certificate or  
38 sticker required under the provisions of such section, or who knowingly  
39 and willfully possesses any such device, shall be guilty of a class [~~B~~  
40 ~~misdemeanor~~] E felony.

41 § 18. Severability. If any provision of this act or the application of  
42 any provision of this act to any person or circumstance is held to be  
43 invalid, the remainder of this act and the application of the provisions  
44 of this act to any other person or circumstance shall not be affected  
45 thereby and shall continue to be enforced to the fullest extent possi-  
46 ble.

47 § 19. This act shall take effect on the ninetieth day after it shall  
48 have become a law.