

STATE OF NEW YORK

5144

2019-2020 Regular Sessions

IN ASSEMBLY

February 7, 2019

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

AN ACT to amend the tax law, in relation to increasing the presumed "cost of the agent" relating to cigarette marketing standards; and to amend the state finance law, in relation to establishing the cigarette tax enforcement account; 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. Subparagraph (B) of paragraph 1 of subdivision (b) of
2 section 483 of the tax law, as amended by chapter 1 of the laws of 1999,
3 is amended to read as follows:

4 (B) In the absence of the filing with the commissioner of satisfactory
5 proof of a lesser cost of doing business of the agent making the sale,
6 the cost of doing business by the agent shall be presumed to be seven-
7 eighths of one percent of the basic cost of cigarettes for sales to
8 wholesale dealers plus [~~one-cent~~] nine cents per package of [~~ten~~] ciga-
9 rettes, [~~two cents per package of twenty cigarettes and in the case of a~~
10 ~~package containing more than twenty cigarettes, two cents and one-half~~
11 ~~of a cent for each five cigarettes in excess of twenty cigarettes]~~
12 regardless of the number of cigarettes contained in such package, one
13 and one-half percent of the basic cost of cigarettes for sales to chain
14 stores plus [~~one-cent~~] nine cents per package of [~~ten~~] cigarettes, [~~two~~
15 ~~cents per package of twenty cigarettes and in the case of a package~~
16 ~~containing more than twenty cigarettes, two cents and one-half of a cent~~
17 ~~for each five cigarettes in excess of twenty cigarettes]~~ regardless of
18 the number of cigarettes contained in such package, and three and
19 seven-eighths percent of the basic cost of cigarettes with respect to
20 sales to retail dealers plus [~~one-cent~~] nine cents per package of [~~ten~~]
21 cigarettes, [~~two cents per package of twenty cigarettes and in the case~~
22 ~~of a package containing more than twenty cigarettes, two cents and one-~~
23 ~~half of a cent for each five cigarettes in excess of twenty cigarettes]~~

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

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1 regardless of the number of cigarettes in such package and the foregoing
2 cents per pack shall be included in the "cost of doing business by the
3 agent" referred to in paragraphs two and three of this subdivision.

4 § 2. Subdivision 1 of section 472 of the tax law, as amended by chap-
5 ter 629 of the laws of 1996 and as further amended by section 104 of
6 part A of chapter 62 of the laws of 2011, is amended to read as follows:

7 1. The commissioner shall prescribe, prepare and furnish stamps of
8 such denominations and quantities as may be necessary for the payment of
9 the tax on cigarettes imposed by this article plus the payment by the
10 agent of a concurrent expense allowance for the cigarette tax enforce-
11 ment account established pursuant to section ninety-seven-ssss of the
12 state finance law of four cents per stamp which shall be deposited
13 pursuant to subdivision (c) of section four hundred eighty-two of this
14 article, and may from time to time and as often as he deems advisable
15 provide for the issuance and exclusive use of stamps of a new design and
16 forbid the use of stamps of any other design, in the manner and with the
17 effect provided in section two hundred seventy-four of this chapter. The
18 commissioner shall make provisions for the sale of such stamps at such
19 places and at such times as he may deem necessary and may license agents
20 for such purpose. The commissioner may license dealers in cigarettes,
21 who maintain separate warehousing facilities for the purpose of receiv-
22 ing and distributing cigarettes and conducting their business, who have
23 received commitments from at least two cigarette manufacturers whose
24 aggregate market share is at least forty percent of the New York state
25 cigarette market, and importers, exporters and manufacturers of ciga-
26 rettes, and other persons within or without the state as agents to buy
27 or affix stamps to be used in paying the tax herein imposed, but an
28 agent shall at all times have the right to appoint the person in his
29 employ who is to affix the stamps to any cigarettes under the agent's
30 control. The fee for filing such application for an agent's license
31 shall be one thousand five hundred dollars, unless such fee has been
32 paid during the preceding twelve months, in which case, the fee for a
33 new license shall be one thousand dollars. All of the provisions of
34 section four hundred eighty of this article relating to wholesale deal-
35 ers' licenses, including the procedure for suspension, revocation,
36 refusal to license and for hearings, except for paragraphs (c) and (g)
37 of subdivision one of such section, shall be applicable to agents'
38 licenses applied for or granted pursuant to this section, as if such
39 provisions had been set forth in full in this subdivision and had
40 expressly referred to the applicant for, or the holder of, an agent's
41 license. Whenever the commissioner shall sell and deliver to any such
42 agent any such stamps, such agent shall be entitled to receive as
43 compensation for his services and expenses as such agent in selling or
44 affixing such stamps, and to retain out of the moneys to be paid by him
45 for such stamps, a commission on the par value thereof. The commissioner
46 is hereby authorized to prescribe a schedule of commissions, not exceed-
47 ing five per centum, allowable to such agent for buying and affixing
48 such stamps. Such schedule shall be uniform with respect to the differ-
49 ent types of stamps used, and may be on a graduated scale with respect
50 to the number of stamps purchased. The commissioner may, in his
51 discretion, permit an agent to pay for such stamps within thirty days
52 after the date of purchase and may require any such agent to file with
53 the department [~~of taxation and finance~~] a bond issued by a surety
54 company approved by the superintendent of financial services as to
55 solvency and responsibility and authorized to transact business in the
56 state or other security acceptable to the commissioner, in such amount

1 as the commissioner may fix, to secure the payment of any sums due from
2 such agent pursuant to this article. If securities are deposited as
3 security under this subdivision, such securities shall be kept in the
4 custody of the commissioner and may be sold by the commissioner if it
5 becomes necessary so to do in order to recover any sums due from such
6 agent pursuant to this article, but no such sale shall be had until
7 after such agent shall have had opportunity to litigate the validity of
8 any tax if it elects so to do. Upon any such sale, the surplus, if any,
9 above the sums due under this article shall be returned to such agent.

10 § 3. Section 482 of the tax law, as amended by section 2 of part T of
11 chapter 61 of the laws of 2011, is amended to read as follows:

12 § 482. Deposit and disposition of revenue. (a) All taxes, fees, inter-
13 est and penalties collected or received by the commissioner under this
14 article and article twenty-A of this chapter shall be deposited and
15 disposed of pursuant to the provisions of section one hundred seventy-
16 one-a of this chapter. (b) From the taxes, interest and penalties
17 collected or received by the commissioner under sections four hundred
18 seventy-one and four hundred seventy-one-a of this article, effective on
19 and after March first, two thousand, forty-nine and fifty-five
20 hundredths, and effective on and after February first, two thousand two,
21 forty-three and seventy hundredths; and effective on and after May
22 first, two thousand two, sixty-four and fifty-five hundredths; and
23 effective on and after April first, two thousand three, sixty-one and
24 twenty-two hundredths percent; and effective on and after June third,
25 two thousand eight, seventy and sixty-three hundredths percent; and
26 effective on and after July first, two thousand ten, seventy-six percent
27 collected or received under those sections must be deposited to the
28 credit of the tobacco control and insurance initiatives pool to be
29 established and distributed by the commissioner of health in accordance
30 with section twenty-eight hundred seven-v of the public health law. (c)
31 From the amounts received pursuant to subdivision one of section four
32 hundred seventy-two of this article, the commissioner shall deposit in
33 the cigarette tax enforcement account established pursuant to section
34 ninety-seven-ssss of the state finance law the concurrent expense allow-
35 ance for the cigarette tax enforcement fund of four cents per stamp.

36 § 4. The state finance law is amended by adding a new section 97-ssss
37 to read as follows:

38 § 97-ssss. Cigarette tax enforcement account. 1. There is hereby
39 created in the joint custody of the state comptroller and the commis-
40 sioner of taxation and finance an account of the miscellaneous special
41 revenue fund to be known as the "cigarette tax enforcement account".

42 2. Notwithstanding any other law, rule or regulation to the contrary,
43 the state comptroller is hereby authorized and directed to receive for
44 deposit to the credit of the cigarette tax enforcement account monies
45 received from the commissioner of taxation and finance from the concu-
46 rent expense allowance paid pursuant to subdivision one of section four
47 hundred seventy-two of the tax law, and other monies appropriated, cred-
48 ited or transferred thereto from any other fund or source.

49 3. The proceeds of the cigarette tax enforcement account shall be used
50 solely to enforce the collection of the cigarette tax, as provided for
51 in article twenty of the tax law.

52 § 5. There is hereby appropriated to the division of state police the
53 amount of six million dollars (\$6,000,000) from the cigarette tax
54 enforcement account to support cigarette tax enforcement activities.
55 This appropriation may be apportioned to either the patrol activities or
56 criminal investigation activities program of the division of state

1 police, may be transferred or suballocated to any other state agency or
2 public authority for their costs associated with the enforcement of the
3 cigarette tax, and may be used to contract with local enforcement agen-
4 cies for cigarette tax enforcement activities. No monies shall be avail-
5 able from this appropriation absent a certificate of allocation from the
6 director of the budget.

7 § 6. This act shall take effect September 1, 2019, and shall apply in
8 accordance with the applicable transitional provisions of sections 1106
9 and 1217 of the tax law.