

STATE OF NEW YORK

1167--A

2021-2022 Regular Sessions

IN SENATE

January 7, 2021

Introduced by Sen. RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the tax law, in relation to amending certain definitions relating to tobacco products; and to amend the public health law and the tax law, in relation to changing the minimum pack sizes for tobacco products and the tax amount for tobacco products

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

Section 1. Subdivision 5 of section 1399-aa of the public health law, as amended by chapter 152 of the laws of 2004, is amended and a new subdivision 19 is added to read as follows:

5. "Tobacco products" means one or more cigarettes or cigars, bidis, chewing tobacco, loose tobacco, single-unit tobacco, powdered tobacco, nicotine water or any other tobacco products and also includes any other product containing tobacco that is intended or expected to be consumed except for any such product that has been approved by the U.S. Food and Drug Administration for sale as a tobacco use cessation product or for other medical purposes and is being marketed and sold solely for that approved purpose.

19. "Cigarette" means any roll for smoking made wholly or in part of tobacco or of any other substance, irrespective of size, shape, appearance, packaging, pricing, marketing or labeling and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material but is not made in whole or in part of tobacco that is likely to be offered to, purchased by, or consumed by consumers as a cigarette, as defined above, including any roll for smoking

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

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1 containing tobacco wrapped in a substance containing tobacco that weighs
2 no more than four and a half pounds per thousand unless it is wrapped in
3 whole tobacco leaf and does not have an internal filter.

4 § 2. Subdivisions 1, 2 and 2-a of section 470 of the tax law, subdivi-
5 sions 1 and 2 as amended by chapter 728 of the laws of 2019 and subdivi-
6 sion 2-a as added by chapter 552 of the laws of 2008, are amended and
7 two new subdivisions 2-c and 2-d are added to read as follows:

8 1. "Cigarette." Any roll for smoking made wholly or in part of tobacco
9 or of any other substance, irrespective of size ~~[or]~~, shape, appearance,
10 packaging, pricing, marketing or labeling and whether or not such tobac-
11 co or substance is flavored, adulterated or mixed with any other ingre-
12 dient, the wrapper or cover of which is made of paper or any other
13 substance or material but is not made in whole or in part of tobacco
14 that is likely to be offered to, purchased by, or consumed by consumers
15 as a cigarette, as defined above, including any roll for smoking
16 containing tobacco wrapped in a substance containing tobacco that weighs
17 no more than four and a half pounds per thousand unless it is wrapped in
18 whole tobacco leaf and does not have an internal filter. "Cigarette"
19 shall not include a research tobacco product.

20 2. "Tobacco products." Any cigar, including a little cigar, or tobac-
21 co, other than cigarettes, ~~[intended for consumption by smoking, chew-~~
22 ~~ing, or as snuff]~~ and also includes any other product containing tobacco
23 that is intended or expected to be consumed except for any such product
24 that has been approved by the U.S. Food and Drug Administration for sale
25 as a tobacco use cessation product or for other medical purposes and is
26 being marketed and sold solely for that approved purpose. "Tobacco
27 products" shall not include research tobacco products.

28 2-a. "~~Roll-your-own~~ Loose tobacco." Any tobacco product that,
29 because of its appearance, type, packaging or labeling, is suitable for
30 use and likely to be offered to, or purchased by, consumers as tobacco
31 for making cigarettes. Loose tobacco shall also include pipe tobacco,
32 roll-your-own tobacco and any other loose tobacco used for smoking.

33 2-c. "Single-unit tobacco products." Any tobacco product, including
34 finely cut, ground or powdered loose tobacco or blend containing tobacco
35 intended for oral consumption without being combusted, other than ciga-
36 rettes or cigars, that is offered in discrete single-use tablets,
37 lozenges, pouches, pills, or other single-dose or single-use units, or
38 in packages of such single-use units.

39 2-d. "Moist snuff." Finely cut, ground or powdered loose tobacco or
40 blend containing tobacco intended for oral consumption without being
41 combusted that is not a single-unit tobacco product.

42 § 3. Subdivision 2 of section 1399-gg of the public health law, as
43 added by chapter 513 of the laws of 2004, is amended to read as follows:

44 2. No person engaged in the business of manufacturing, selling or
45 otherwise distributing tobacco products, herbal cigarettes, cigarette
46 wrapping papers, wrapping leaves or tubes, or any agent or employee of
47 such person, shall manufacture or cause to be manufactured for sale in
48 this state, or sell or distribute in this state: (a) any package or
49 other container of cigarettes containing fewer than twenty cigarettes;
50 (b) any package of ~~[roll-your-own]~~ loose tobacco containing less than
51 ~~[six-tenths]~~ sixty-five hundredths of an ounce of tobacco; or (c) any
52 package or other container of cigarette wrapping papers, wrapping leaves
53 or tubes, that are or are held out to be suitable for use or used as
54 devices to wrap tobacco for smoking, containing fewer than twenty
55 sheets, leaves or tubes.

§ 4. Subdivision 1 of section 471-b of the tax law, as amended by section 2 of part QQ-1 of chapter 57 of the laws of 2008, paragraphs (a) and (b) as amended by section 18 and paragraph (c) as added by section 19 of part D of chapter 134 of the laws of 2010, is amended to read as follows:

1. There is hereby imposed and shall be paid a tax on all tobacco products possessed in this state by any person for sale, except that no tax shall be imposed on tobacco products sold under such circumstances that this state is without power to impose such tax, or sold to the United States, or sold to or by a voluntary unincorporated organization of the armed forces of the United States operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States, to the extent provided in such regulations and policy statements of such an agency applicable to such sales.

(a) Such tax on tobacco products [~~other than snuff and little cigars~~] shall be at the rate of [~~seventy-five~~] ninety-five percent of the whole-sale price or the minimum rates as indicated in paragraph (b), (c), (d), (e) or (f) of this subdivision, whichever is higher, and is intended to be imposed only once upon the sale of any tobacco products [~~other than snuff and little cigars~~].

(b) Such minimum tax on moist snuff shall be at the rate of [~~two~~] three dollars and sixty-three cents per ounce and a proportionate rate on any fractional parts of an ounce[~~, provided that cans or packages of snuff with a net weight of less than one ounce shall be taxed at the equivalent rate of cans or packages weighing one ounce~~]. Such tax shall be computed based on the net weight as listed by the manufacturer, and is intended to be imposed only once upon the sale of any moist snuff.

(c) Such tax on little cigars shall be at the same rate imposed on cigarettes under this article and is intended to be imposed only once upon the sale of any little cigars.

(d) Such minimum tax on single-unit tobacco products shall be at the same rate imposed on cigarettes under this article and is intended to be imposed only once upon the sale of any single-dose or single-unit tobacco products.

(e) Such minimum tax on any loose tobacco meant for smoking shall be equal to the amount of the total tax on a pack of twenty cigarettes under this article per 0.65 ounces with a proportionate tax on any other weights, based on the net weight determined by the manufacturer. Such tax is intended to be imposed only once upon the sale of any loose tobacco.

(f) Such minimum tax on cigars, other than little cigars, shall be equal to the amount of the total tax on a pack of twenty cigarettes under this article with a proportionate tax on packages with fewer than five cigars and is intended to be imposed only once upon the sale of any cigars.

It shall be presumed that all tobacco products within the state are subject to tax until the contrary is established, and the burden of proof that any tobacco products are not taxable hereunder shall be upon the person in possession thereof.

§ 5. This act shall take effect immediately.