An act to enable any city of the state having a population of one million or more to adopt, and amend local laws, imposing certain specified types of taxes on cigarettes, cigars and smoking tobacco which the legislature has or would have power and authority to impose, to provide for the review of such taxes, and to limit the application of such local laws

Section 1. (1) Notwithstanding any other provision of law to the contrary, any city of the state having a population of one million or more inhabitants, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in any such city taxes on cigarettes, cigars or smoking tobacco such as the legislature has or would have power and authority to impose. Such taxes may be collected and administered by the fiscal officers of such city by such means and in such manner as may be provided by such local laws. The taxes may be imposed on the use, sale, exchange, transfer, storage, withdrawal, possession or retention of cigarettes, cigars or smoking tobacco, provided, however, that nothing in this act shall authorize the imposition of a tax on the use, possession or retention (otherwise than for sale) of two hundred cigarettes or less, of fifty cigars or less or of two pounds of smoking tobacco or less brought into the city on, or in possession of, any person.

* (a) The rate of such tax on cigarettes shall not exceed seventy-five cents for each ten cigarettes or fraction thereof, provided, however, that if a package of cigarettes contains more than twenty cigarettes, the rate of tax on the cigarettes in such package in excess of twenty shall be thirty-eight cents for each five cigarettes or fraction thereof. Such tax is intended to be imposed only once on the same package of cigarettes.

* NB Effective until December 31, 2020

* (a) The basic rate of such tax on cigarettes shall not exceed two cents for each ten cigarettes or fraction thereof and is intended to be imposed only once on the same package of cigarettes; in addition to such tax there may be imposed an additional tax at the following rates

(1) One and one-half cents for each ten cigarettes where either their tar content exceeds seventeen milligrams per cigarette or their nicotine

content exceeds one and one-tenth milligrams per cigarette;

(2) Two cents for each ten cigarettes where their tar content exceeds seventeen milligrams per cigarette and their nicotine content exceeds one and one-tenth milligrams per cigarette.

* NB Effective December 31, 2020

(b) The rate of such tax on cigars shall not exceed one cent on each cigar sold at a price of not less than seven cents and not more than fifteen cents; two cents on each cigar sold at a price of not less than sixteen cents and not more than twenty-nine cents; and three cents on each cigar sold at a price of thirty cents or more. Where more than one cigar is sold, whether or not in a package, box or container, such tax shall be applied to each cigar on the basis of the price applicable to each cigar. The tax shall not be applicable to cigars sold at a price less than seven cents a cigar.

(c) The rate of such tax on smoking tobacco shall not exceed one cent for each twenty cents or fraction thereof of the price at which such smoking tobacco is sold.

(2) As used herein, the term "cigarette" shall mean and include (a) any roll for smoking made wholly or in part of tobacco or of any other substance wrapped in paper or in any other substance not containing tobacco, and (b) any roll for smoking made wholly or in part of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of this subdivision. However, a roll will not be considered to be a cigarette for purposes of paragraph (b) of this subdivision if it is not treated as a cigarette for federal excise tax purposes under the applicable federal statute in effect on April first, two thousand eight. The term "cigar" does not include any cigarette as defined in this subdivision.

(3) A tax imposed hereunder shall have application only within the territorial limits of any such city and shall be in addition to any and all other taxes. The method of collecting any tax imposed hereunder, either with or without adhesive or meter stamps, shall be subject to the approval of the state tax commission.

(4) Any tax imposed hereunder shall be refunded whenever any cigarettes upon which the tax has been paid have been sold and shipped

into another state for sale or use there.

(5) No tax imposed pursuant to this section shall apply to the sale of cigarettes under such circumstances that this state is without power to impose such tax or to cigarettes sold to the United States or to cigarettes 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.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted by a person liable for the tax unless the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation, shall be first deposited and an undertaking filed, in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed such person will pay all costs and charges which may accrue in the prosecution of such proceeding.

(7) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers or, in the case of a city of one million or more which has established tax appeals tribunal, such tax appeals tribunal, shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within four months after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the person liable for the tax will pay all costs and charges which may accrue in the prosecution of such

proceeding.

(8) Except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made with respect to taxes imposed hereunder after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

§ 2. Revenues resulting from the imposition of taxes authorized by this act shall be paid into the treasury of any such city and shall be credited to and deposited in the general fund of any such city, except that, after the payment of refunds with respect to such taxes, effective on and after July 2, 2002, 46.5 percent and, effective on and after April 1, 2003, 46 percent of such revenues (including taxes, interest and penalties) collected or received shall be paid to the state comptroller. The state comptroller is hereby authorized and directed to transfer all such amounts so paid to the credit of the tobacco control and insurance initiatives pool to be distributed by the commissioner of health in accordance with section 2807-v of the public health law.