

Amended Tax Law Sections 471-e and 284-e, addressing the collection of taxes on cigarettes and motor fuels sold by Indian retailers to non-Indian New Yorkers, were passed by the Legislature as part of the 2005-06 state budget and signed into law by Governor Pataki. They took effect March 1, 2006. However, Governor Pataki refused to enforce them. And now, Governor Spitzer is refusing to enforce them.

NYS Tax Law Section 471-e, Cigarette Taxes on Indian Sales

§ 471-e. Taxes imposed on qualified reservations. 1. General. (a) Notwithstanding any provision of this article to the contrary qualified Indians may purchase cigarettes for such qualified Indians' own use or consumption exempt from cigarette tax on their nations' or tribes' qualified reservations. However, such qualified Indians purchasing cigarettes off their reservations or on another nation's or tribe's reservation, and non-Indians making cigarette purchases on an Indian reservation shall not be exempt from paying the cigarette tax when purchasing cigarettes within this state. Accordingly, all cigarettes sold on an Indian reservation to non-members of the nation or tribe or to non-Indians shall be taxed, and evidence of such tax will be by means of an affixed cigarette tax stamp.

(b) In order to ensure an adequate quantity of cigarettes on Indian reservations which may be purchased by qualified Indians exempt from the cigarette tax, the department shall provide Indian nations and tribes within this state with Indian tax exemption coupons as set forth in this section. A reservation cigarette seller shall be able to present such Indian tax exemption coupons to a wholesale dealer licensed pursuant to this article in order to purchase stamped cigarettes exempt from the imposition of the cigarette tax. Qualified Indians may purchase cigarettes from a reservation cigarette seller exempt from the cigarette tax even though such cigarettes will have an affixed cigarette tax stamp.

2. Indian tax exemption coupons. (a) Indian tax exemption coupons shall be provided to the recognized governing body of each Indian nation or tribe to ensure that each Indian nation or tribe can obtain cigarettes upon which the tax will not be collected that are for the use or consumption by the nation or tribe or by the members of such nation or tribe. The Indian tax exemption coupons shall be provided to the Indian nations or tribes on a quarterly basis for each of the four quarters beginning with the first day of December, March, June, and September. It is intended that the Indian nations or tribes will retain the amount of Indian tax exemption coupons they will need each quarter to purchase cigarettes for official nation or tribal use, and will distribute the remaining Indian tax exemption coupons to reservation cigarette sellers on such nations' or tribes' qualified reservations. Only Indian nations or tribes or reservation cigarette sellers on their

qualified reservations may redeem such Indian tax exemption coupons pursuant to this section.

(b) The amount of Indian tax exemption coupons to be given to the recognized governing body of each Indian nation or tribe shall be based upon the probable demand of the qualified Indians on such nation's or tribe's qualified reservation plus the amount needed for official nation or tribal use.

(i) Probable demand shall be determined by reference to, among other data, the United States average cigarette consumption per capita, as compiled for the most recently completed calendar or fiscal year, multiplied by the number of qualified Indians for each such affected Indian nation or tribe.

(ii) In making a determination of probable demand, the department shall take into consideration any evidence submitted by such recognized governing body relating to such probable demand (e.g., a verifiable record of previous sales to qualified Indians or other statistical evidence) and/or relating to the amount needed for such nation's or tribe's official use.

(c) Each Indian tax exemption coupon shall consist of a retention portion for a wholesale dealer's recordkeeping purposes and a redemption portion for a wholesale dealer's submission to the department when

NYS Tax Law Section 284-e, Motor Fuel Taxes on Indian Sales

§ 284-e. Taxes imposed on qualified reservations. 1. General. (a) Notwithstanding any other provision of this article to the contrary qualified Indians may purchase motor fuel or Diesel motor fuel for such qualified Indians' own use or consumption exempt from the motor fuel tax or Diesel motor fuel tax on their nations' or tribes' qualified reservations. However, such qualified Indians purchasing motor fuel or Diesel motor fuel off their reservations or on another nation's or tribe's reservation, and non-Indians making motor fuel or Diesel motor fuel purchases on an Indian reservation shall not be exempt from paying the motor fuel tax or Diesel motor fuel tax when purchasing motor fuel or Diesel motor fuel within this state. Accordingly, all motor fuel and Diesel motor fuel sold on an Indian reservation to non-members of the nation or tribe or to non-Indians shall be taxed.

(b) In order to ensure an adequate quantity of motor fuel and Diesel motor fuel on Indian reservations which may be purchased by qualified Indians exempt from the motor fuel tax and Diesel motor fuel tax, the department shall provide Indian nations and tribes within this state with Indian tax exemption coupons as set forth in this section. A reservation motor fuel seller shall be able to present such Indian tax exemption coupons to a distributor licensed pursuant to this article in order to purchase motor fuel or Diesel motor fuel exempt from the imposition of the motor fuel tax or Diesel motor fuel tax. Qualified Indians may purchase motor fuel or Diesel motor fuel from a reservation motor fuel seller exempt from the motor fuel tax or Diesel motor fuel

tax even though the motor fuel tax or Diesel motor fuel tax on such motor fuel or Diesel motor fuel will have been previously paid or assumed by, or passed through to such distributor.

2. Indian tax exemption coupons. (a) Indian tax exemption coupons shall be provided to the recognized governing body of each Indian nation or tribe to ensure that each Indian nation or tribe can obtain motor fuel and Diesel motor fuel upon which the tax shall not be collected that is for the use or consumption by the nation or tribe or by the members of such nation or tribe. The Indian tax exemption coupons shall be provided to the Indian nations or tribes on a quarterly basis for each of the four quarters beginning with the first day of December, March, June, and September. It is intended that the Indian nations or tribes will retain the amount of Indian tax exemption coupons they will need each quarter to purchase motor fuel and Diesel motor fuel for official nation or tribal use, and will distribute the remaining Indian tax exemption coupons to reservation motor fuel sellers on such nations' or tribes' qualified reservations. Only Indian nations or tribes or reservation motor fuel sellers on their qualified reservations may redeem such Indian tax exemption coupons pursuant to this section.

(b) The amount of Indian tax exemption coupons to be given to the recognized governing body of each Indian nation or tribe shall be based upon the probable demand of the qualified Indians on such nation's or tribe's qualified reservation plus the amount needed for official nation or tribal use.

(i) Probable demand shall be determined by reference to, among other data, the United States average motor fuel and Diesel motor fuel consumption per capita, as compiled for the most recently completed calendar or fiscal year, multiplied by the number of qualified Indians for each such affected Indian nation or tribe.

(ii) In making a determination of probable demand, the department shall take into consideration any evidence submitted by such recognized governing body relating to such probable demand (e.g., a verified record of previous sales to qualified Indians or other statistical evidence) and/or relating to the amount needed for such nation's or tribe's official use.

(c) Each Indian tax exemption coupon shall consist of a retention portion for a distributor's recordkeeping purposes and a redemption portion for a distributor's submission to the department when claiming a refund as set forth in paragraph (a) of subdivision four of this section, and shall contain the following information:

(i) the identity of the Indian nation or tribe to which it is issued;

(ii) the identity and the quantity of the product for which it is issued;

(iii) the date of issuance and the date of expiration; and

(iv) any other information as the commissioner may deem appropriate.

3. Tax exempt purchases. (a) An Indian nation or tribe may purchase motor fuel and Diesel motor fuel for its own official use or consumption from a distributor registered pursuant to this article without payment of the motor fuel tax or Diesel motor fuel tax to the extent that the Indian nation or tribe provides such distributor with Indian tax exemption coupons entitling the Indian nation or tribe to purchase such

quantities of motor fuel and Diesel motor fuel as allowed for on each Indian tax exemption coupon without paying the motor fuel tax or Diesel motor fuel tax.

(b) A qualified Indian may purchase motor fuel and Diesel motor fuel for his or her own use or consumption without payment of the motor fuel tax or Diesel motor fuel tax, provided that the qualified Indian makes such purchase at a qualified reservation.

(c) A reservation motor fuel seller may purchase motor fuel and Diesel motor fuel for resale without payment of the motor fuel tax or Diesel motor fuel tax from a distributor registered pursuant to this article:

(i) provided that such reservation motor fuel seller brings such motor fuel or Diesel motor fuel or causes it to be delivered onto a qualified reservation for resale on such reservation; and

(ii) to the extent that such reservation motor fuel seller provides such distributor with Indian tax exemption coupons entitling the reservation motor fuel seller to purchase such quantities of motor fuel and Diesel motor fuel as allowed for on each Indian tax exemption coupon without paying the motor fuel tax or Diesel motor fuel tax.

(d) A distributor shall not collect or pass through, as the case may be, the motor fuel tax or Diesel motor fuel tax from any purchaser to the extent the purchaser gives such distributor Indian tax exemption coupons entitling the purchaser to purchase such quantities of motor fuel or Diesel motor fuel as allowed for on each such Indian tax exemption coupon without paying the motor fuel tax or Diesel motor fuel tax.

4. Refunds and credits. (a) A distributor registered pursuant to this article who has one or more Indian tax exemption coupons may file a claim for refund or credit as provided for in section two hundred eighty-nine-c of this article with respect to any motor fuel tax or Diesel motor fuel tax it previously paid, assumed, or has had passed through to it on motor fuel or Diesel motor fuel it sold without passing through the tax because it accepted an Indian tax exemption coupon from its purchaser.

(b) A distributor of motor fuel or Diesel motor fuel shall report motor fuel or Diesel motor fuel sold to an Indian nation or tribe or a reservation motor fuel seller in its monthly return of tax on motor fuel or Diesel motor fuel and may deduct the quantity so sold in arriving at the net taxable gallonage to the extent such fuel was sold without passing through to such purchasers the motor fuel tax or Diesel motor fuel tax.

5. Tax agreements with Indian nations or tribes. If an Indian nation or tribe enters into an agreement with the state and the legislature approves such agreement regarding the sale and distribution of motor fuel or Diesel motor fuel on the nation's or tribe's qualified reservation, the terms of such agreement shall take precedence over the provisions of this article and exempt such nation from such taxes to the extent that such taxes are specifically referred to in the agreement, and the sale or distribution, including transportation, of any motor fuel or Diesel motor fuel to the nation's or tribe's qualified reservation shall be in accordance with the provisions of such agreement.