



New York Association of Convenience Stores  
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**NYS Tobacco Dealer Registration Fee  
Still Frozen at \$100 Pending Court Ruling**  
*Tax Dept. Issuing 2011 Certificates*

We continue to anxiously await a ruling by the Appellate Division of State Supreme Court on whether to nullify or reinstate the outrageous increase in retail tobacco dealer registration fees approved by Governor Paterson and the Legislature in 2009.

Until the case is decided, the fee remains frozen at \$100 per store per year. Should the court subsequently reinstate the higher fee schedule, you will be required to pay the balance at that time.

In the meantime, the Department of Taxation and Finance is issuing 2011 retail tobacco dealer registration certificates. They didn't do so in 2010, instead directing retailers to just keep their 2009 certificate on the wall pending the court decision. No one expected the ruling to take this long.

As you recall, over our vehement objections, the Governor and Legislature approved hiking the fees to \$1,000, \$2,500, or \$5,000 depending on your gross sales of all products as part of the 2009-2010 state budget. Many retailers paid these higher fees in September 2009 before we won the court order temporarily blocking them. Since then, we have been insisting that the Tax Department give those retailers a refund or credit on the excess payment, but to no avail. They maintain that because the court didn't order them to issue refunds, they're not authorized to do so.

The lawsuit was filed by NYACS and four allied retail associations. A State Supreme Court judge ruled in the spring of 2010 that we lacked "standing" to bring the action, and therefore dismissed the case. We immediately appealed that ruling to the Appellate Division, which kept the restraining order in place pending the outcome. The Appellate Division heard oral argument in September 2010 and reserved decision. The ruling could come down any day now.

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We continue to spar with the Tax Department over the definition of “gross sales” for tobacco fee purposes. In August 2009, we asked them to advise the retail community whether motor fuel should be included (we say it should not) and whether pass-through revenue such as tax receipts and 94% of lottery sales should be included (we feel they should not). Sixteen months later, the Department has yet to answer these questions.

We will continue to keep the retail community informed.