

6/21/10 Tobacco Tax Increase Legislation - Bill S.8285/A.11515, PART D

Section 1. Subdivision 1 of section 471 of the tax law, as amended by section 1 of part RR-1 of chapter 57 of the laws of 2008, is amended to read as follows:

1. There is hereby imposed and shall be paid a tax on all cigarettes possessed in the state by any person for sale, except that no tax shall be imposed on cigarettes sold under such circumstances that this state is without power to impose such tax, **including sales to qualified Indians for their own use and consumption on their nations' or tribes' qualified reservation,** 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. **The tax imposed by this section is imposed on all cigarettes sold on an Indian reservation to non-members of the Indian nation or tribe and to non-Indians and evidence of such tax shall be by means of an affixed cigarette tax stamp. Indian nations or tribes may elect to participate in the Indian tax exemption coupon system established in section four hundred seventy-one-e of this article which provides a mechanism for the collection of the tax imposed by this section on cigarette sales on qualified reservations to such non-members and non-Indians and for the delivery of quantities of tax-exempt cigarettes to Indian nations or tribes for the personal use and consumption of qualified members of the Indian nation or tribe. If an Indian nation or tribe does not elect to participate in the Indian tax exemption coupon system, the prior approval system shall be the mechanism for the delivery of quantities of tax-exempt cigarettes to Indian nations or tribes for the personal use and consumption of qualified members of the Indian nation or tribe as provided for in paragraph (b) of subdivision five of this section.** Such tax on cigarettes shall be at the rate of [~~two~~ **four**] dollars and [~~seventy-five~~ **thirty-five**] cents for each twenty 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 [~~sixty-eight~~ **one dollar and eight**] and three-quarters cents for each five cigarettes or fraction thereof. Such tax is intended to be imposed upon only one sale of the same package of cigarettes. It shall be presumed that all cigarettes within the state are subject to tax until the contrary is established, and the burden of proof that any cigarettes are not taxable hereunder shall be upon the person in possession thereof.

§ 2. Subdivision 2 of section 471 of the tax law, as amended by chapter 6 of the laws of 1961, is amended to read as follows:

2. It is intended that the ultimate incidence of and liability for the tax shall be upon the consumer, and that any agent or dealer who shall pay the tax to the [~~tax commission~~ **commissioner**] shall collect the tax from the purchaser or consumer. Except as hereinafter provided, the tax shall be advanced and paid by the agent. The agent shall be liable for the collection and payment of the tax on cigarettes imposed by this article and shall pay the tax to the [~~tax commission~~ **commissioner**] by purchasing, under such regulations as [~~it~~ **he or she**] shall prescribe, adhesive stamps of such designs and denominations as [~~it~~ **he or she**] shall prescribe. The tax on cigarettes may also be paid by or through the use of metering machines if the [~~tax~~

~~commissioner~~ **commissioner** so prescribes. Agents, located within or without the state, shall purchase stamps and affix such stamps in the manner prescribed to packages of cigarettes to be sold within the state, in which case any dealer subsequently receiving such stamped packages of cigarettes will not be required to purchase and affix stamps on such packages of cigarettes. ~~[Notwithstanding any other provision of this article, the tax commission may by regulation provide that the tax on cigarettes imposed by this article shall be collected without the use of stamps]~~ **All cigarettes sold by agents and wholesalers to Indian nations or tribes or reservation cigarette sellers located on an Indian reservation must bear a tax stamp.**

§ 3. Section 471 of the tax law is amended by adding a new subdivision 5 to read as follows:

5. Prior approval system. (a) For any year that the recognized governing body of an Indian nation or tribe has not elected to participate in the Indian tax exemption coupon system established in section four hundred seventy-one-e of this article, paragraph (b) of this subdivision provides for the prior approval system to be the mechanism as to how Indian nations or tribes or reservation cigarette sellers can purchase adequate quantities of tax-exempt cigarettes for the personal use and consumption of qualified members of the Indian nation or tribe on their nations' or tribes' qualified reservation.

(b) If an Indian nation or tribe does not elect to participate in the Indian tax exemption coupon system, Indian nations or tribes or reservation cigarette sellers may purchase from New York state licensed cigarette stamping agents and wholesalers an adequate quantity of tax-exempt cigarettes based on probable demand on their nations' or tribes' qualified reservation for official nation or tribal or qualified Indian use or consumption from agents and wholesalers who have received prior approval from the department. All such pre-approved tax exempt cigarettes shall nonetheless bear a tax stamp. The department shall grant agents and wholesalers prior approval in a manner and form to be determined by the department and as may be prescribed by regulation. The department shall issue expedited refunds or credits to agents whenever the department grants such prior approvals. Probable demand shall be determined as provided by subdivision two of section four hundred seventy-one-e of this article and as may be prescribed by regulation.

§ 4. Section 471 of the tax law is amended by adding a new subdivision 6 to read as follows:

6. 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 or if an Indian nation or tribe enters into an agreement with the state that is part of a stipulation and order approved by a federal court of competent jurisdiction regarding the sale and distribution of cigarettes 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 sales to non-members of the tribe or nation and non-Indians by 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 cigarettes to the nation's or tribe's qualified reservation shall be in accordance with the provisions of such agreement.

§ 5. Section 471-a of the tax law, as amended by section 2 of part RR-1 of chapter 57 of the laws of 2008, is amended to read as follows:

§ 471-a. Use tax on cigarettes. There is hereby imposed and shall be paid a tax on all cigarettes used in the state by any person, except that no tax shall be imposed (1) if the tax provided in section four hundred seventy-one of this article is paid, (2) on the use of cigarettes which are exempt from the tax imposed by said section, or (3) on the use of four hundred or less cigarettes, brought into the state on, or in the possession of, any person. Such tax on cigarettes shall be at the rate of [~~two~~] four dollars and [~~seventy-five~~] thirty-five cents for each twenty 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 [~~sixty-eight~~] one dollar and eight and three-quarters cents for each five cigarettes or fraction thereof. Within twenty-four hours after liability for the tax accrues, each such person shall file with the commissioner a return in such form as the commissioner may prescribe together with a remittance of the tax shown to be due thereon. For purposes of this article, the word "use" means the exercise of any right or power actual or constructive and shall include but is not limited to the receipt, storage or any keeping or retention for any length of time, but shall not include possession for sale. All other provisions of this article if not inconsistent shall apply to the administration and enforcement of the tax imposed by this section in the same manner as if the language of said provisions had been incorporated in full into this section.

§ 6. Subdivision 1 of section 471-e of the tax law, as added by section 2 of part K of chapter 61 of the laws of 2005, is amended to read as follows:

1. [~~General~~] Indian tax exemption coupon system. (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 recognized governing body of an Indian nation or tribe may annually elect to participate in the Indian tax exemption coupon system for that year. If the recognized governing body of an Indian nation or tribe elects within the time specified by the department to participate in the Indian tax exemption coupon system for that year, the department shall provide the Indian [~~nations and tribes within this state~~] nation or tribe with Indian tax exemption coupons as set forth in this section. [~~A~~] If the recognized governing body of an Indian nation or tribe does not elect to participate in the Indian tax exemption coupon system for that year or does not make this election for that year within the time specified by the department, no Indian tax exemption coupons will be provided to that Indian nation or tribe for that year. Instead, for that year, the prior approval system set forth in paragraph (b) of subdivision five of section four

hundred seventy-one of this article shall be used. When the recognized governing body of an Indian nation or tribe elects to use the Indian tax exemption coupon system for a year, an Indian nation or tribe and 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.

§ 7. Paragraph (a) of subdivision 2 of section 471-e of the tax law, as added by section 2 of part K of chapter 61 of the laws of 2005, is amended to read as follows:

(a) **If the recognized governing body of an Indian nation or tribe timely elects to participate in the Indian tax exemption coupon system for that year,** Indian tax exemption coupons shall be provided to the recognized governing body of ~~[each]~~ **such** Indian nation or tribe to ensure that ~~[each]~~ **such** 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]~~ **such** 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 **of that year**. 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.

§ 8. Paragraph (d) of subdivision 3 of section 471-e of the tax law, as added by section 2 of part K of chapter 61 of the laws of 2005, is amended to read as follows:

(d) ~~[A wholesale dealer]~~ **Wholesale dealers** shall **sell only tax-stamped cigarettes to Indian nations and tribes, reservation cigarette sellers and all other purchasers, but shall** not collect the cigarette tax from any purchaser to the extent the purchaser gives such wholesale dealer Indian tax exemption coupons entitling the purchaser to purchase such quantities of cigarettes as allowed for on each such Indian tax exemption coupon without paying the cigarette tax.

§ 9. Section 471-e of the tax law is amended by adding a new subdivision 6 to read as follows:

6. The failure of the department to establish, issue and provide Indian tax exemption coupons, pursuant to subdivisions one and two of this section, or to promulgate any rules, regulations or directives necessary to implement the provisions of this section, shall not relieve wholesale dealers of the obligation to sell only tax-stamped cigarettes to Indian nations and tribes, and to reservation cigarette sellers.

§ 10. Section 482 of the tax law, as amended by section 125-b of part C of chapter 58 of the laws of 2009, is amended as follows:

§ 482. Deposit and disposition of revenue. (a) All taxes, fees, interest and penalties collected or received by the commissioner under this article and article twenty-A of this chapter shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter. (b) From the taxes, interest and penalties collected or received by the commissioner under sections four hundred seventy-one and four hundred seventy-one-a of this article, effective on and after March first, two thousand, forty-nine and fifty-five hundredths, and effective on and after February first, two thousand two, forty-three and seventy hundredths; and effective on and after May first, two thousand two, sixty-four and fifty-five hundredths; and effective on and after April first, two thousand three, sixty-one and twenty-two hundredths percent; and effective on and after June third, two thousand eight, seventy and sixty-three hundredths percent; **and effective on and after July first, two thousand ten, seventy-six percent** collected or received under those sections must be deposited to the credit of the tobacco control and insurance initiatives pool to be established and distributed by the commissioner of health in accordance with section twenty-eight hundred seven-v of the public health law. (c) From the fees collected or received by the commissioner under subdivision two of section four hundred eighty-a of this article, effective on or after September first, two thousand nine, any monies collected or received under that section in excess of three million dollars must be deposited to the credit of the tobacco control and insurance initiatives pool to be distributed by the commissioner of health in accordance with section twenty-eight hundred seven-v of the public health law.

§ 11. Within 60 days after the effective date of this section, the department of taxation and finance shall promulgate any rules and regulations and take any other actions necessary to fully implement the provisions of section 471-e of the tax law, including, but not limited to, the establishment, issuance and provision of Indian tax exemption coupons, pursuant to subdivisions one and two of such section. Furthermore, within 90 days after the effective date of this section, the commissioner of taxation and finance shall submit a written report to the legislature explaining all actions taken by the department of taxation and finance to comply with the provisions of this section.

§ 12. Any Indian nation or tribe, distributor, dealer, or interested party may commence a cause of action for injunctive relief ordering the department of taxation and finance to comply with the provisions of section eleven of this act.

§ 13. Notwithstanding any other provision of law to the contrary, the tax due on cigarettes possessed in New York state as of the close of business on June 30, 2010 by any person for sale solely attributable to the increase imposed by the amendments to section 471 of the tax law, as amended by section one of this act, shall be paid by September 20, 2010, subject to such terms and conditions as the commissioner of taxation and finance shall prescribe.

§ 14. Subdivision 1 of section 470 of the tax law, as amended by section 1 of part MM-1 of chapter 57 of the laws of 2008, is amended to read as follows:

1. "Cigarette." [~~(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], irrespective of size or shape 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.~~

§ 15. Subdivision 2 of section 470 of the tax law, as amended by section 1 of part MM-1 of chapter 57 of the laws of 2008, is amended to read as follows:

2. "Tobacco products." Any cigar, including a little cigar, or tobacco, other than cigarettes, intended for consumption by smoking, chewing, or as snuff.

§ 16. Section 470 of the tax law is amended by adding a new subdivision 2-b to read as follows:

2-b. "Little cigar." Any roll for smoking made wholly or in part of tobacco if such product is wrapped in any substance containing tobacco, other than natural leaf tobacco wrapper, and weighing not more than four pounds per thousand.

§ 17. Subdivision 19 of section 470 of the tax law, as added by section 1 of part MM-1 of chapter 57 of the laws of 2008, is amended to read as follows:

19. "Cigar." Any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco that is a cigarette as defined in subdivision one of this section). [~~However, a roll will not be considered to be a cigar for purposes of this subdivision if it is not treated as a cigar for federal excise tax purposes under the applicable federal statute in effect on April first, two thousand eight.~~] "Cigar" shall include, except where expressly excluded, any little cigar.

§ 18. Paragraphs (a) and (b) of subdivision 1 of section 471-b of the tax law, paragraph (a) as amended by section 1 of part I-1 of chapter 57 of the laws of 2009, and paragraph (b) as added by section 2 of part QQ-1 of chapter 57 of the laws of 2008, are amended to read as follows:

(a) Such tax on tobacco products other than snuff and little cigars shall be at the rate of [~~forty-six~~] seventy-five percent of the wholesale price, and is intended to be imposed only once upon the sale of any tobacco products other than snuff and little cigars.

(b) Such tax on snuff shall be at the rate of [~~ninety-six cents~~] two dollars 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 snuff.

§ 19. Subdivision 1 of section 471-b of the tax law is amended by adding a new paragraph (c) to read as follows:

(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.

§ 20. Paragraphs (i) and (ii) of subdivision (a) of section 471-c of the tax law, as amended by section 2 of part I-1 of chapter 57 of the laws of 2009, are amended to read as follows:

(i) Such tax on tobacco products other than snuff **and little cigars** shall be at the rate of ~~[forty-six]~~ **seventy-five** percent of the wholesale price.

(ii) Such tax on snuff shall be at the rate of ~~[ninety-six cents]~~ **two dollars** 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.

§ 21. Subdivision (a) of section 471-c of the tax law is amended by adding a new paragraph (iii) to read as follows:

(iii) 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.

§ 22. Subdivision 1 of section 11-1301 of the administrative code of the city of New York, as amended by section 3 of part MM-1 of chapter 57 of the laws of 2008, is amended to read as follows:

1. "Cigarette." ~~[(a)]~~ Any roll for smoking made wholly or in part of tobacco or 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 which, 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],~~ **irrespective of size or shape 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.**

§ 23. Subdivision b of section 20-201 of the administrative code of the city of New York, as amended by section 4 of part MM-1 of chapter 57 of the laws of 2008, is amended to read as follows:

b. "Cigarette" shall mean ~~[(1)] any roll for smoking made wholly or in part of tobacco or any other substance [wrapped in paper or in any other substance not containing tobacco, and (2) 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 one of this subdivision. However, a roll will not be considered to be a cigarette for purposes of paragraph two 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]~~, irrespective of size or shape 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.

§ 24. Subdivision 2 of section 1 of chapter 235 of the laws of 1952 relating to enabling 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, as amended by section 5 of part MM-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(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]~~, irrespective of size or shape 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.