



New York Association of Convenience Stores

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MEMORANDUM IN SUPPORT

A.8817 by Assemblyman Magee / S.6083 by Senator Stachowski

AN ACT to amend the tax law, in relation to the registration fee for retail tobacco dealer registration

The New York Association of Convenience Stores is a private, not-for-profit trade organization representing nearly 7,000 neighborhood mini-marts and convenience stores that are licensed by the State of New York to responsibly sell tobacco to adult customers while collecting and remitting applicable taxes on those sales.

Currently, about 24,000 retail establishments pay \$100 per year to register with the state Department of Taxation and Finance as a retail tobacco dealer. In the 2009-2010 enacted state budget, however, the Legislature increased that to \$1,000, \$2,500, or \$5,000 annually, as follows:

Annual Gross Sales, All Products	Existing	Proposed	\$ Increase	% Increase
Less than \$1 million	\$ 100	\$1,000	\$ 900	900%
\$1 million to \$10 million	\$ 100	\$2,500	\$2,400	2,400%
More than \$10 million	\$ 100	\$5,000	\$4,900	4,900%

A.8817/S.6083 recognizes that a tenfold to fiftyfold increase in fees on small businesses is excessive, especially in an economic downturn, and that this proposal jeopardizes hundreds of millions of dollars in tobacco excise tax and lottery revenue. It offers a more prudent approach, as follows:

- Double the tobacco registration fee that retailers paid in 2009
- Impose, for the first time, surcharges of \$100 to \$200 for any retailer with points on its tobacco enforcement record
- Maintain a much higher level of retail registration, thus maximizing the collection of tobacco excise tax and lottery revenue to benefit the state

Loss of Lottery Aid to Education

While the Budget Division estimated the new registration fee schedule would generate an additional \$18 million this fiscal year and \$13 million annually in future years, they concede that their analysis failed to factor in a loss of lottery revenue.

Since 9,840 New York Lottery retailers are tobacco outlets, and the budget forecasts that 40 percent of tobacco outlets will be unable to afford to re-register, around 3,900 lottery retailers can be expected to drop tobacco. Without that traffic driver, significantly fewer customers will be coming through their doors. Some stores will have to close altogether.

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According to the Lottery Division, from 2002-2008 the State lost \$112 million in lottery sales due to lottery agents temporarily losing their privilege to sell tobacco. This loss resulted from only about 450 lottery retailers being suspended for six months each, the equivalent of \$1,383 for every day a lottery retailer was suspended. This illustrates that when a store stops selling lottery, not all their customers just find somewhere else to play lottery, and consequently overall lottery sales go down.

Given retail industry conditions, NYACS projects that 8 to 10 percent of the 3,900 lottery retailers that stop selling tobacco will not be able to survive the drop-off in customer traffic, and will go out of business. Based on the Lottery's past experience above, losing those 354 lottery merchants will cost the State \$44 million in lottery revenue in the 4th quarter of FY 2009-2010, and \$176 million annually thereafter.

More difficult to quantify is the additional loss of lottery revenue caused by lower customer counts in the lottery outlets that manage to stay open. However, since New York stores selling tobacco typically rely on that category for 15 to 25 percent of total merchandise sales, total customer count can be expected to drop by a minimum of 10 percent.

Even using a very conservative assumption of 5 percent fewer customers entering the store, and further assuming that half of those customers find somewhere else to buy lottery tickets, this would still cut lottery sales by 2.5 percent in the 3,582 lottery retail outlets that dropped tobacco but stayed in business. Based on an average \$407,000 in 2007-08 lottery sales per retail outlet, that would cost the State \$9.1 million in lottery revenue in the 4th quarter of FY 2009-2010, and more than \$36 million annually thereafter.

Fiscal Impact

Based on the foregoing, the enacted budget actually will reduce lottery revenue by at least \$53 million this year and \$212 million annually thereafter.

At a 31% rate of return on gross lottery revenue, this translates to net losses of \$16.6 million in lottery aid to education in the 4th quarter of FY 2009-2010, and \$66.5 million annually thereafter.

Subtract that \$16.6 million fourth-quarter loss from the \$18 million revenue increase forecast by the Division of Budget in this fiscal year from the tobacco fee increase, and the yield in this fiscal year is only \$1.4 million, as compared to the \$2.5 million in increased fee revenue that would be gained under this bill.

The impact is even more significant next fiscal year and beyond. This bill would prevent the loss of more than \$200 million a year in gross lottery revenue and \$60 million a year in aid to education derived from that lottery revenue.

In the interest of keeping small businesses viable, and preserving State tobacco tax and lottery revenue, we respectfully urge the Legislature to approve this legislation.

James S. Calvin
President, NYACS
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