



New York Association of Convenience Stores
130 Washington Avenue, Suite 300, Albany NY 12210

TELEPHONE: (800) 33-NYACS or (518) 432-1400

FAX: (518) 432-7400

MEMORANDUM IN SUPPORT

Adjusting the Retail Tobacco Dealer Registration Fee

Budget S.2811b Part U

Our stores are among 24,000 retail establishments that for years paid \$100 annually 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 fee to a staggering \$1,000, \$2,500, or \$5,000 annually depending on the store's gross sales of *all* products, not just tobacco, as follows:

Annual Gross Sales, All Products	Old	New	\$ 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%

Tax Department implementation of this new fee schedule was temporarily halted in September 2009 by a restraining order that remains in effect today pending a ruling by the Appellate Division of State Supreme Court on its constitutionality. NYACS is a co-plaintiff.

Rather than waiting for the court to pick winners and losers, S.2811b Part U acknowledges that this tenfold to fiftyfold increase in fees on any small business was excessive, especially in an economic downturn, but that a more modest increase was and still is appropriate. Our industry whole-heartedly concurs.

A fee of \$1,000 to \$5,000 would force many mom-and-pop stores to forfeit the tobacco category, which is critical to their business. Without that traffic driver, their customer counts would suffer dramatically. Not only would this weaken their business – jeopardizing jobs – but it also would cost the State revenue, because displaced cigarette customers would seek out readily available *untaxed* sources of supply and fewer people coming in the door would curtail the store's New York Lottery sales.

The alternative presented in Part U – doubling the old fee of \$100 – would maintain a higher level of retail registration, maximizing tobacco excise tax and lottery revenue to benefit the State. It also would boost fee income by at least \$3.5 million annually. Moreover, since the adjustment retroactively covers the 2010 and 2011 registration cycles, and since the 2012 fee will be due in September 2011, this would yield at least \$10.5 million in additional receipts during the 2011-2012 fiscal year.

The Budget Division this week cautioned that there is an offsetting \$10 million in refunds the Tax Department would need to make to those retailers who prematurely paid the elevated fee prior to the restraining order being issued by the court in September 2009. While this was never really the State's money, in their eyes it renders Part U virtually revenue-neutral. In response, NYACS is currently working with the Senate to modify their proposal in order to ensure a significant new revenue yield in the 2011-12 fiscal year.

James S. Calvin
President, NYACS
March 23, 2011