



Monday, November 19, 2007

Bill Text - S06506

[Back](#) | [New York State Bill Search](#) | [Assembly Home](#)

[See Bill Summary](#)

S T A T E O F N E W Y O R K

6506

2007-2008 Regular Sessions

I N S E N A T E

October 18, 2007

Introduced by Sen. VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the tax law, in relation to the licensure of cigarette manufacturers and to require the exclusive use of encrypted counterfeit-resistant cigarette tax stamps; and to amend the state finance law, in relation to establishing a cigarette tax criminal enforcement fund

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The tax law is amended by adding a new section 480-c to
 2 read as follows:
 3 S 480-C. LICENSE OF CIGARETTE MANUFACTURERS. 1. (A) FOR THE PURPOSE OF
 4 THIS SECTION, A "MANUFACTURER" SHALL MEAN ANY PERSON WHO:
 5 (I) MANUFACTURES, FABRICATES, ASSEMBLES, PROCESSES OR LABELS CIGA-
 6 RETTES; OR
 7 (II) IMPORTS, WHETHER DIRECTLY OR INDIRECTLY, CIGARETTES INTO THE
 8 UNITED STATES FOR SALE OR DISTRIBUTION IN THIS STATE.
 9 (B) A MANUFACTURER SHALL NOT SELL ANY CIGARETTES TO AN AGENT LICENSED
 10 TO STAMP CIGARETTES FOR THE STATE OF NEW YORK IN THE STATE OF NEW YORK
 11 UNLESS HE OR SHE FIRST SECURES A LICENSE TO ENGAGE IN THAT ACTIVITY FROM
 12 THE DEPARTMENT.
 13 (C) NO LICENSE MAY BE ISSUED, MAINTAINED OR RENEWED IF THE MANUFACTUR-
 14 ER HAS:
 15 (I) IMPORTED ANY CIGARETTES INTO THE UNITED STATES IN VIOLATION OF 19
 16 U.S.C. S 1681A; OR
 17 (II) IMPORTED OR MANUFACTURED ANY CIGARETTES THAT DO NOT FULLY COMPLY
 18 WITH THE FEDERAL CIGARETTE LABELING AND ADVERTISING ACT, 15 U.S.C.
 19 SS1331 ET SEQ.
 20 2. AN APPLICATION FOR A LICENSE MUST:
 21 (A) BE MADE TO THE DEPARTMENT ON FORMS PRESCRIBED BY THE DEPARTMENT;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
 { } is old law to be omitted.

LBD14333-02-7

S. 6506

2

1 (B) INCLUDE THE NAME AND ADDRESS OF THE APPLICANT. IF THE APPLICANT IS
 2 A FIRM, ASSOCIATION OR PARTNERSHIP, THE APPLICATION MUST INCLUDE THE
 3 NAMES AND ADDRESSES OF EACH OF ITS MEMBERS. IF THE APPLICANT IS A CORPO-
 4 RATION, THE APPLICATION MUST INCLUDE THE NAMES AND ADDRESSES OF THE

5 PRESIDENT, VICE PRESIDENT, SECRETARY AND MANAGING OFFICER OR OFFICERS;

6 (C) SPECIFY THE LOCATION, BY STREET AND NUMBER, OF THE PRINCIPAL PLACE
7 OF BUSINESS OF THE APPLICANT AND OF THE PREMISES FOR WHICH THE LICENSE
8 IS SOUGHT; AND

9 (D) SPECIFY ANY OTHER INFORMATION THE DEPARTMENT MAY REQUIRE.

10 3. A CURRENT LICENSE AS MANUFACTURER AUTHORIZES THE HOLDER THEREOF TO
11 SELL CIGARETTES TO AN AGENT LICENSED TO STAMP CIGARETTES FOR THE STATE
12 OF NEW YORK.

13 4. (A) ON OR BEFORE JUNE THIRTIETH, TWO THOUSAND EIGHT, EVERY MANUFAC-
14 Turer REQUIRED TO BE LICENSED UNDER THIS SECTION SHALL BE REQUIRED TO
15 PAY AN ANNUAL FEE FOR SUCH LICENSE IN AN AMOUNT ESTABLISHED PURSUANT TO
16 RULES AND REGULATIONS OF THE DEPARTMENT, PROVIDED, HOWEVER, SUCH FEE
17 SHALL NOT EXCEED FIFTEEN THOUSAND DOLLARS OR BE LESS THAN FIVE THOUSAND
18 DOLLARS AND SHALL BE BASED UPON THE MANUFACTURER'S ANNUAL SHIPMENTS OF
19 CIGARETTES INTO THE STATE FOR THE IMMEDIATELY PRECEDING CALENDAR YEAR AS
20 REQUIRED TO BE REPORTED TO THE DEPARTMENT.

21 (B) SUCH FEE SHALL BE PAID BY JUNE THIRTIETH OF EACH YEAR.

22 5. THE DEPARTMENT SHALL ADOPT REGULATIONS ESTABLISHING:

23 (A) REPORTING REQUIREMENTS FOR MANUFACTURERS; AND

24 (B) PROCEDURES FOR THE ELECTRONIC SUBMISSION OF REPORTS REQUIRED
25 PURSUANT TO ANY REPORTING REQUIREMENTS ESTABLISHED UNDER PARAGRAPH (A)
26 OF THIS SUBDIVISION.

27 6. ANY REGULATIONS ADOPTED PURSUANT TO SUBDIVISION FIVE OF THIS
28 SECTION RELATING TO REPORTING REQUIREMENTS FOR MANUFACTURERS MUST
29 PROVIDE FOR SUBMISSION TO THE DEPARTMENT PERIODIC REPORTS OF:

30 (A) THE QUANTITY OF CIGARETTE PACKAGES THAT WERE DISTRIBUTED OR
31 SHIPPED TO AN AGENT LICENSED TO STAMP CIGARETTES FOR THE STATE DURING
32 THE REPORTING PERIOD, AND THE NAME AND ADDRESS OF EACH PERSON TO WHOM
33 THOSE PRODUCTS WERE DISTRIBUTED OR SHIPPED;

34 (B) THE QUANTITY OF CIGARETTE PACKAGES THAT WERE DISTRIBUTED OR
35 SHIPPED TO ANOTHER FACILITY OF THE SAME MANUFACTURER WITHIN THE BORDERS
36 OF THIS STATE DURING THE REPORTING PERIOD; AND

37 (C) THE QUANTITY OF CIGARETTE PACKAGES THAT WERE DISTRIBUTED OR
38 SHIPPED WITHIN THE BORDERS OF THIS STATE TO INDIAN TRIBES OR INSTRUMEN-
39 TALITIES OF THE FEDERAL GOVERNMENT DURING THE REPORTING PERIOD, AND THE
40 NAME AND ADDRESS OF EACH PERSON TO WHOM THOSE PRODUCTS WERE DISTRIBUTED
41 OR SHIPPED.

42 7. MANUFACTURER SHALL MAINTAIN COPIES OF INVOICES OR EQUIVALENT
43 DOCUMENTATION FOR EACH OF ITS FACILITIES FOR EVERY TRANSACTION IN WHICH
44 THE MANUFACTURER IS THE SELLER, PURCHASER, CONSIGNOR, CONSIGNEE OR
45 RECIPIENT OF CIGARETTES. THE INVOICES OR DOCUMENTATION MUST INDICATE THE
46 NAME AND ADDRESS OF THE CONSIGNOR, SELLER, PURCHASER OR CONSIGNEE, AND
47 THE QUANTITY BY BRAND AND STYLE OF THE CIGARETTES INVOLVED IN THE TRANS-
48 ACTION.

49 8. ALL OF THE PROVISIONS OF SECTION FOUR HUNDRED EIGHTY OF THIS ARTI-
50 CLE RELATING TO WHOLESALE DEALERS' LICENSES, INCLUDING THE PROCEDURE FOR
51 SUSPENSION, REVOCATION, REFUSAL TO LICENSE AND FOR HEARINGS, EXCEPT FOR
52 PARAGRAPHS (A), (B), (C), (D), (E), (F) AND (G) OF SUBDIVISION ONE OF
53 SECTION FOUR HUNDRED EIGHTY OF THIS ARTICLE, SHALL BE APPLICABLE TO
54 MANUFACTURERS' LICENSES APPLIED FOR OR GRANTED PURSUANT TO THIS SECTION,
55 AS IF SUCH PROVISIONS HAD BEEN SET FORTH IN FULL IN THIS SUBDIVISION AND

S. 6506

3

1 HAD EXPRESSLY REFERRED TO THE APPLICANT FOR, OR THE HOLDER OF, A
2 MANUFACTURER'S LICENSE.

3 9. IN THE CASE OF A MANUFACTURER WHO IS A LICENSED STAMPING AGENT AS
4 OF THE EFFECTIVE DATE OF THIS SUBDIVISION, SUCH MANUFACTURER SHALL BE
5 DEEMED TO BE LICENSED UNDER THIS SECTION.

6 S 2. Subdivision 1 of section 472 of the tax law, as amended by chap-
7 ter 629 of the laws of 1996, is amended to read as follows:

8 1. The commissioner shall prescribe, prepare and furnish stamps of
9 such denominations and quantities as may be necessary for the payment of
10 the tax on cigarettes imposed by this article, and may from time to time
11 and as often as he deems advisable provide for the issuance and exclu-
12 sive use of stamps of a new design and forbid the use of stamps of any
13 other design, in the manner and with the effect provided in section two
14 hundred seventy-four of this chapter. The commissioner shall make
15 provisions for the sale of such stamps at such places and at such times

16 as he may deem necessary and may license agents for such purpose. The
17 commissioner may license dealers in cigarettes, who maintain separate
18 warehousing facilities for the purpose of receiving and distributing
19 cigarettes and conducting their business, who have received commitments
20 from at least two cigarette manufacturers whose aggregate market share
21 is at least forty percent of the New York state cigarette market, and
22 importers, exporters and manufacturers of cigarettes, and other persons
23 within or without the state as agents to buy or affix stamps to be used
24 in paying the tax herein imposed, but an agent shall at all times have
25 the right to appoint the person in his employ who is to affix the stamps
26 to any cigarettes under the agent's control. The fee for filing such
27 application for an agent's license shall be one thousand five hundred
28 dollars, unless such fee has been paid during the preceding twelve
29 months, in which case, the fee for a new license shall be one thousand
30 dollars. All of the provisions of section four hundred eighty OF THIS
31 ARTICLE relating to wholesale dealers' licenses, including the procedure
32 for suspension, revocation, refusal to license and for hearings, except
33 for paragraphs (c) and (g) of subdivision one of such section, shall be
34 applicable to agents' licenses applied for or granted pursuant to this
35 section, as if such provisions had been set forth in full in this subdivi-
36 sion and had expressly referred to the applicant for, or the holder
37 of, an agent's license.

38 (A) Whenever the commissioner shall sell and deliver to any such agent
39 any such stamps, such agent shall be entitled to receive as compensation
40 for his services and expenses as such agent in selling or affixing such
41 stamps, and to retain out of the moneys to be paid by him for such
42 stamps, a commission on the par value thereof. The commissioner is here-
43 by authorized to prescribe a schedule of commissions, not exceeding five
44 per centum, allowable to such agent for buying and affixing such stamps.
45 Such schedule shall be uniform with respect to the different types of
46 stamps used, and may be on a graduated scale with respect to the number
47 of stamps purchased. SUCH COMMISSIONS SHALL BE SET ACCORDING TO THE
48 FOLLOWING SCHEDULE:

49 (I) AGENTS PURCHASING THREE MILLION STAMPS OR LESS ANNUALLY SHALL BE
50 ENTITLED TO A COMMISSION EQUAL TO TWO CENTS PER STAMP;

51 (II) AGENTS PURCHASING OVER THREE MILLION STAMPS BUT NOT MORE THAN SIX
52 MILLION STAMPS ANNUALLY, SHALL BE ENTITLED TO A COMMISSION EQUAL TO ONE
53 AND ONE-HALF CENTS PER STAMP; AND

54 (III) AGENTS PURCHASING OVER SIX MILLION STAMPS ANNUALLY, SHALL BE
55 ENTITLED TO A COMMISSION EQUAL TO ONE CENT PER STAMP.

S. 6506

4

1 PROVIDED, HOWEVER, THAT TWO YEARS AFTER A CONTRACT TO MANUFACTURE THE
2 ENCRYPTED STAMP AUTHORIZED UNDER SECTION FOUR HUNDRED SEVENTY-TWO-A OF
3 THIS ARTICLE IS AWARDED, ALL AGENTS SHALL BE ENTITLED TO A COMMISSION AS
4 ESTABLISHED PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF
5 TWO THOUSAND SEVEN THAT AMENDED THIS SUBDIVISION.

6 (B) The commissioner may, in his discretion, permit an agent to pay
7 for such stamps within thirty days after the date of purchase and may
8 require any such agent to file with the department {of taxation and
9 finance} a bond issued by a surety company approved by the superinten-
10 dent of insurance as to solvency and responsibility and authorized to
11 transact business in the state or other security acceptable to the
12 commissioner, in such amount as the commissioner may fix, to secure the
13 payment of any sums due from such agent pursuant to this article. If
14 securities are deposited as security under this subdivision, such secu-
15 rities shall be kept in the custody of the commissioner and may be sold
16 by the commissioner if it becomes necessary so to do in order to recover
17 any sums due from such agent pursuant to this article, but no such sale
18 shall be had until after such agent shall have had opportunity to liti-
19 gate the validity of any tax if it elects so to do. Upon any such sale,
20 the surplus, if any, above the sums due under this article shall be
21 returned to such agent.

22 S 3. The tax law is amended by adding a new section 472-a to read as
23 follows:

24 S 472-A. ENCRYPTED COUNTERFEIT-RESISTANT CIGARETTE TAX STAMP. 1.
25 PURSUANT TO THE POWERS VESTED IN THE COMMISSIONER UNDER SECTION FOUR
26 HUNDRED SEVENTY-TWO OF THIS ARTICLE, THE COMMISSIONER SHALL PROVIDE FOR

27 THE ISSUANCE AND EXCLUSIVE USE OF ENCRYPTED CIGARETTE TAX STAMPS BY
28 STAMPING AGENTS LICENSED PURSUANT TO SECTION FOUR HUNDRED SEVENTY-TWO OF
29 THIS ARTICLE. SUCH STAMPS SHALL BE ENCRYPTED TO IDENTIFY, AT A MINIMUM:
30 (A) THE NAME AND ADDRESS OF THE LICENSED STAMPING AGENT AFFIXING THE
31 STAMP;
32 (B) THE DATE THE STAMP WAS AFFIXED TO THE CIGARETTE PRODUCT; AND
33 (C) THE DENOMINATED VALUE OF THE STAMP OR METER IMPRESSION.
34 2. SUCH STAMPS SHALL:
35 (A) BE PRODUCED IN A PROVEN SECURE FACILITY CERTIFIED IN ACCORDANCE
36 WITH THE SECURITY ASSISTANCE STANDARDS ESTABLISHED IN TWO THOUSAND FIVE
37 BY THE AMERICAN NATIONAL STANDARDS INSTITUTE AND THE NORTH AMERICAN
38 SECURITY PRODUCTS ORGANIZATION;
39 (B) INCORPORATE A MINIMUM OF FOUR LAYERS OF OVERT, SEMI-COVERT AND
40 COVERT DATA;
41 (C) BE APPLIED BY MACHINES WHEREUPON THE ENCRYPTED DATA SHALL BE
42 INSTANTANEOUSLY CAPTURED AND STORED BY AND FOR THE DEPARTMENT;
43 (D) BE READABLE AND TRACEABLE FROM STAMP PRODUCTION THROUGH DISTRIB-
44 UTION AND AT THE POINT OF SALE; AND
45 (E) BE CAPABLE OF BEING READ BY A SCANNING OR SIMILAR DEVICE THAT CAN
46 BE UTILIZED BY ENFORCEMENT AGENTS OF THE DEPARTMENT AND/OR BY LICENSED
47 CIGARETTE WHOLESALERS AND RETAILERS.
48 3. SUCH STAMPS AND THE ENCRYPTED DATA THEREIN SHALL BE PURCHASED BY
49 THE STATE AND DISTRIBUTED TO LICENSED STAMPING AGENTS. THE ENCRYPTED
50 DATA COLLECTED SHALL BE PURCHASED AND RETAINED BY THE STATE AND SHALL BE
51 HELD IN A SECURE DATA COLLECTION, MANAGEMENT AND DECISION SUPPORT
52 SYSTEM.
53 S 4. The department of taxation and finance shall issue a request for
54 proposal for the purpose of manufacturing the encrypted stamp authorized
55 under section 472-a of the tax law within 120 days of the effective date

S. 6506

5

1 of this act. Any contract issued pursuant to this section shall be
2 completed within 180 days of the issuance of such contract.
3 S 5. The state finance law is amended by adding a new section 97-iiii
4 to read as follows:
5 S 97-III. CIGARETTE TAX CRIMINAL ENFORCEMENT FUND. 1. THERE IS HEREBY
6 ESTABLISHED IN THE JOINT CUSTODY OF THE COMPTROLLER AND THE COMMISSIONER
7 OF TAXATION AND FINANCE A SPECIAL FUND TO BE KNOWN AS THE CIGARETTE TAX
8 CRIMINAL ENFORCEMENT FUND.
9 2. SUCH FUND SHALL CONSIST ANNUALLY OF FIVE PERCENT OF THE RECEIPTS
10 FROM THE IMPOSITION OF CIGARETTE AND TOBACCO TAXES PURSUANT TO ARTICLE
11 TWENTY OF THE TAX LAW, LESS SUCH AMOUNTS TO BE DEPOSITED IN THE TOBACCO
12 CONTROL AND INSURANCE INITIATIVES POOL PURSUANT TO SECTION FOUR HUNDRED
13 EIGHTY-TWO OF SUCH ARTICLE AND LESS SUCH AMOUNTS AS THE COMMISSIONER OF
14 TAXATION AND FINANCE MAY DETERMINE TO BE NECESSARY FOR REFUNDS. THE
15 CIGARETTE TAX CRIMINAL ENFORCEMENT FUND SHALL BE USED SOLELY FOR THE
16 PURPOSES OF CRIMINAL ENFORCEMENT AND NECESSARY AUDITS OF CIGARETTE AND
17 TOBACCO TAXES. ANY INTEREST RECEIVED BY THE COMPTROLLER ON MONEYS ON
18 DEPOSIT IN SUCH FUND SHALL BE RETAINED IN AND BECOME PART OF SUCH FUND.
19 3. THE MONIES IN SUCH FUND, FOLLOWING APPROPRIATION BY THE LEGISLATURE
20 AND ALLOCATION BY THE DIRECTOR OF THE BUDGET, SHALL BE AVAILABLE FOR THE
21 DEPARTMENT OF TAXATION AND FINANCE FOR THE CRIMINAL ENFORCEMENT AND
22 NECESSARY AUDITS OF ARTICLE TWENTY OF THE TAX LAW.
23 S 6. This act shall take effect immediately; provided, however that
24 section two of this act shall take effect 180 days following the award-
25 ing of the contract pursuant to the provisions of section four of this
26 act.

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