



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

Testimony of James S. Calvin, President
New York Association of Convenience Stores

Submitted to

NYS SENATE COMMITTEE ON FINANCE
Hon. Catharine Young, Chair

and

NYS ASSEMBLY COMMITTEE ON WAYS AND MEANS
Hon. Helene Weinstein, Chair

concerning

FY 2019 Executive Budget – Tax Issues
February 8, 2018

NYACS is a statewide trade organization representing the interests of more than 8,500 neighborhood mini-marts, convenience stores and bodegas from Buffalo to Brooklyn. We wish to comment on several tax-related provisions of the Executive Budget.

Cigar Tax Change

Revenue Article VII, Part U

In the name of “improving cigar tax enforcement,” this provision would eliminate the established alternate method of calculating the state tobacco excise tax on cigars. This mechanism, which the Budget Division denounces as a “manipulation of the wholesale price,” is based on a policy memorandum, TSB-M-13(12)M, issued by the Tax Department in 2013. Under that policy, convenience stores carrying cigars that qualify for the reduced tax rate have been able to sell them at tax-included prices that are more competitive with those charged by tax-free purveyors who aggressively market to New York cigar consumers.

Enacting Part U would increase the retail price of such cigars at convenience stores by at least 36 percent. This would backfire by driving customers of licensed, tax-collecting convenience stores to tax-free cigar outlets in search of cheaper prices, costing us business and ultimately hurting state tax revenues. They can hop the Pennsylvania border, where there is no state excise tax on cigars; visit the nearest Native America reservation for tax-free product; or simply go online.

NYACS Position: Opposed. If the State of New York truly wishes to “improve cigar tax enforcement,” it should start with Native American enterprises that sell cigars without collecting any state excise tax or sales tax whatsoever, and online vendors who flood New York with tax-free mail-order cigars to the detriment of tax-collecting retailers, the state treasury, and public health.

Vaping Product Tax

Revenue Article VII, Part BB

This provision would introduce a new state excise tax on vaping products (mainly e-cigarettes and liquid nicotine) at a rate of 10 cents per fluid milliliter. Such products have always been subject to state and local sales tax.

According to the Tax Foundation, 57% of cigarettes consumed in New York are purchased without payment of New York taxes – from other states, Indian reservations and bootleggers – the predictable result of over-taxation by New York State. Yet here is a proposal to start down the same disastrous road with vaping products.

Twenty years ago, New York's cigarette excise tax was a modest 56 cents a pack; today it's \$4.35. While the vaping products tax proposed in Part BB is relatively modest, future legislatures would be unable to resist incrementally elevating it until it's so high it creates a vast black market rivaling that for combustible cigarettes – diverting business away from tax-collecting convenience stores, depriving the state and localities of legitimate tax revenue, and thwarting public health policy objectives.

NYACS Position: Opposed

By adding vaping products to the definition of tobacco products, Part BB would also require standalone vape shops that exclusively sell e-cigarettes and liquid nicotine to register with the state Tax Department, as retail tobacco dealers already do, so that they are subject to the same underage sale compliance checks and penalty provisions as retail tobacco dealers.

NYACS Position: Support.

Vending Machine Tax Exemption

Revenue Article VII, Part Y

Currently, certain food and beverages costing \$1.50 or less purchased from a vending machine are exempt from sales tax. Part Y would maintain this exemption for food and drink purchases from vending machines that accept only coin or currency. But it would raise the exemption to \$2.00 in vending machines that also accept credit cards, and, for the first time, subject bottled water to the exemption.

There is no justification for forcing a brick-and-mortar retailer who employs live cashiers to collect and remit the 12-cent sales tax on a \$1.50 candy bar, while allowing an absentee vending machine operator to forego that administrative burden and enjoy a 12-cent price advantage – let alone increasing that differential as proposed.

NYACS Position: Opposed. Either purchases of lower-priced food and beverage products should be subject to sales tax, or they should be exempt – across the board, regardless of how or where they are sold.

Thank you for the opportunity to comment.