



Legislation Details (With Text)

File #: Int 1544-2017 **Version:** B **Name:** Regulation of retail dealers of tobacco products and of electronic cigarettes, the establishment of price floors and minimum package sizes for tobacco products and shisha, and the establishment of a tax on tobacco products other than cigarettes.

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In control: Committee on Health

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Title: A Local Law to amend the administrative code of the city of New York, in relation to the regulation of retail dealers of tobacco products and of electronic cigarettes, the establishment of price floors and minimum package sizes for tobacco products and shisha, and the establishment of a tax on tobacco products other than cigarettes

Sponsors: Corey D. Johnson, Rosie Mendez, Helen K. Rosenthal, Brad S. Lander, Andrew Cohen, Inez D. Barron, Alan N. Maisel

Indexes: Agency Rule-making Required

Attachments: 1. Legislative History Report, 2. Summary of Int. No. 1544-B, 3. Summary of Int. No. 1544-A, 4. Summary of Int. No. 1544, 5. Int. No. 1544 - 4/5/17, 6. April 5, 2017 - Stated Meeting Agenda with Links to Files, 7. Committee Report 4/27/17, 8. Hearing Testimony 4/27/17, 9. Hearing Transcript 4/27/17, 10. Proposed Int. No. 1544-A - 6/1/17, 11. Proposed Int. No. 1544-B - 8/3/17, 12. Committee Report 8/8/17, 13. Hearing Transcript 8/8/17, 14. August 9, 2017 - Stated Meeting Agenda with Links to Files, 15. Fiscal Impact Statement, 16. Hearing Transcript - Stated Meeting 8-9-17, 17. Int. No. 1544-B (FINAL), 18. Mayor's Letter, 19. Local Law 145, 20. Minutes of the Stated Meeting - August 9, 2017

Date	Ver.	Action By	Action	Result
4/5/2017	*	City Council	Introduced by Council	
4/5/2017	*	City Council	Referred to Comm by Council	
4/27/2017	*	Committee on Health	Hearing Held by Committee	
4/27/2017	*	Committee on Health	Amendment Proposed by Comm	
4/27/2017	*	Committee on Health	Laid Over by Committee	
8/8/2017	*	Committee on Health	Hearing Held by Committee	
8/8/2017	*	Committee on Health	Amendment Proposed by Comm	
8/8/2017	*	Committee on Health	Amended by Committee	
8/8/2017	B	Committee on Health	Approved by Committee	Pass
8/9/2017	B	City Council	Approved by Council	Pass
8/9/2017	B	City Council	Sent to Mayor by Council	
8/25/2017	B	Mayor	Hearing Held by Mayor	
8/28/2017	B	Mayor	Signed Into Law by Mayor	
8/29/2017	B	City Council	Recved from Mayor by Council	

Int. No. 1544-B

By Council Members Johnson, Mendez, Rosenthal, Lander, Cohen, Barron and Maisel

A Local Law to amend the administrative code of the city of New York, in relation to the regulation of retail dealers of tobacco products and of electronic cigarettes, the establishment of price floors and minimum package sizes for tobacco products and shisha, and the establishment of a tax on tobacco products other than cigarettes

Be it enacted by the Council as follows:

Section 1. Legislative findings. The Council hereby finds that tobacco use is a leading cause of premature, preventable death in the City, killing an estimated 12,000 people in 2014. All tobacco products—including cigars, smokeless tobacco, tobacco containing shisha and others—are inherently dangerous, and contain nicotine, which is addictive. Health impacts associated with tobacco use include cancer, heart disease, lung disease, and other serious adverse health effects. While the prevalence of youth cigarette smoking in the City, 5.8% in 2015, has declined in recent years, a greater proportion of youth are using other tobacco products (OTP) like cigars, waterpipes (hookahs), and smokeless tobacco. Cigar and smokeless tobacco use increased as a proportion of youth tobacco use from 2007 to 2015. In 2015, youth cigarette smoking and cigar smoking were roughly equal at 5.8% and 5.7%, respectively. Hookah smoking and smokeless tobacco use among NYC youth have also increased in recent years. Between 2008 and 2014, the percentage of middle school students in NYC who had ever smoked hookah increased from 2.9% to 8.5%. In 2014, 16.1% of high school students in the City had smoked hookah. Smokeless tobacco use among NYC youth increased from 2.2% in 2007 to 3.1% in 2015.

According to the World Health Organization, tobacco taxes are the single most effective way to decrease consumption and encourage tobacco users to quit. Taxation reduces tobacco use by reducing youth initiation, encouraging tobacco users to quit, and reducing consumption among those who do not quit. Minimum prices that increase prices for tobacco products have a comparable impact on tobacco consumption as taxes. Given relatively high levels of taxation on cigarettes at the federal, state, and local levels, OTP is generally less expensive than cigarettes, increasing its attractiveness as a cheaper alternative.

The Council hereby declares that the enactment of this law is necessary to reduce the prevalence of OTP use, particularly among youth. The Public Housing Law authorizes the City to impose a tax on OTP of up to

10% of the purchase price, and revenue generated from the tax must support public housing. This law creates a price floor (or minimum price) for specific categories of OTP (including cigars, little cigars, smokeless tobacco, loose tobacco, and shisha) and sets the OTP tax at 10% of the price floor for each OTP category. Price floors provide a mechanism for making the OTP tax consistent for each product category, thereby facilitating the administration of the tax. Price floors also elevate prices on low-priced tobacco products, further advancing this law's public health goals. This tax will improve public health and simultaneously provide a source of revenue for the New York City Housing Authority.

§ 2. Section 11-1301 of the administrative code of the city of New York, subdivision 1 as amended by section 22 of part D of chapter 134 of the laws of 2010, subdivision 7 as amended by local law number 97 for the year 2013, subdivision 13 as amended by section 72 of chapter 808 of the laws of 1992, is amended to read as follows:

§ 11-1301 Definitions. When used in this chapter the following words shall have the meanings herein indicated:

1. "Cigarette." Any roll for smoking made wholly or in part of tobacco or any other substance, 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.

2. "Person." Any individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals.

3. "Sale or purchase." Any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever or any agreement therefor.

4. "Use." Any exercise of a 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

by a dealer.

5. "Dealer." Any wholesale dealer or retail dealer as hereinafter defined.

6. "Wholesale dealer." Any person who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale only, and any person who owns, operates or maintains one or more cigarette vending machines in, at or upon premises owned or occupied by any other person.

7. "Retail dealer." Any person, other than a wholesale dealer, engaged in selling cigarettes or tobacco products. For the purposes of this chapter, the possession or transportation at any one time of more than four hundred cigarettes or little cigars, or more than fifty cigars, or more than one pound of loose tobacco, smokeless tobacco, snus or shisha, or any combination thereof, by any person other than a manufacturer, an agent, a licensed wholesale dealer or a person delivering cigarettes or tobacco products in the regular course of business for a manufacturer, an agent or a licensed wholesale or retail dealer, shall be presumptive evidence that such person is a retail dealer.

8. "Package." The individual package, box or other container in or from which retail sales of cigarettes or tobacco products are normally made or intended to be made.

9. "Agent." Any person authorized to purchase and affix adhesive or meter stamps under this chapter who is designated as an agent by the commissioner of finance.

10. "Comptroller." The comptroller of the city.

11. "Commissioner of finance." The commissioner of finance of the city.

12. "City." The city of New York.

13. "Tax appeals tribunal." The tax appeals tribunal established by section [one hundred sixty-eight] 168 of the charter.

14. "Cigar." Any roll of tobacco for smoking that is wrapped in leaf tobacco or in any substance containing tobacco, with or without a tip or mouthpiece. Cigar does not include a little cigar as defined in this section.

15. “Little cigar.” Any roll of tobacco for smoking that is wrapped in leaf tobacco or in any substance containing tobacco and that weighs no more than four pounds per thousand or has a cellulose acetate or other integrated filter.

16. “Loose tobacco.” Any product that consists of loose leaves or pieces of tobacco that is intended for use by consumers in a pipe, roll-your-own cigarette, or similar product or device.

17. “Smokeless tobacco.” Any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.

18. “Snus.” Any smokeless tobacco product marketed and sold as snus, and sold in ready-to-use pouches or loose as a moist powder.

19. “Tobacco product.” Any product which contains tobacco that is intended for human consumption, including any component, part, or accessory of such product. Tobacco product shall include, but not be limited to, any cigar, little cigar, chewing tobacco, pipe tobacco, roll-your-own tobacco, snus, bidi, snuff, shisha, or dissolvable tobacco product. Tobacco product shall not include cigarettes or any product that has been approved by the United States food and drug administration for sale as a tobacco use cessation product or for other medical purposes and that is being marketed and sold solely for such purposes.

20. “Shisha.” Any product that contains tobacco and is smoked or intended to be smoked in a hookah or water pipe.

§ 3. Chapter 13 of title 11 of the administrative code of the city of New York is amended by adding a new section 11-1302.1 to read as follows:

§ 11-1302.1. Imposition of tax on tobacco products.

a. In accordance with section 110 of the public housing law, an excise tax on the sale of tobacco products is hereby imposed and shall be paid on all tobacco products possessed in the city for sale, except as hereinafter provided. It is intended that the ultimate incidence of and liability for the tax shall be upon the consumer. Any dealer or distributor who pays the tax to the commissioner of finance shall collect the tax from

the purchaser or consumer. Such tax shall be at the rate of ten percent of the price floor for a package of the specified category of tobacco product, exclusive of sales tax, set forth in the following table, which shall be consistent with the price floors described in subdivision d of section 17-176.1:

<u>Tobacco Product</u>	<u>Price floor (excluding OTP and sales taxes)</u>	<u>Amount of OTP tax (excluding sales tax)</u>
<u>Cigar</u>	<u>\$8.00 per cigar sold individually; for a package, number of cigars multiplied by \$1.75 plus \$6.25</u>	<u>\$0.80 per cigar; for a package, \$0.80 for first cigar, plus \$0.175 for each additional cigar</u>
<u>Little cigar</u>	<u>\$10.95 per pack of 20 little cigars</u>	<u>\$1.09 per pack</u>
<u>Smokeless tobacco</u>	<u>\$8.00 per 1.2 oz. package plus \$2.00 for each additional 0.3 oz. or any fraction thereof in excess of 1.2 oz.</u>	<u>\$0.80 per 1.2 oz. plus an additional \$0.20 for each 0.3 oz. or any fraction thereof in excess of 1.2 oz.</u>
<u>Snus</u>	<u>\$8.00 per 0.32 oz. package plus \$2.00 for each additional 0.08 oz. or any fraction thereof in excess of 0.32 oz.</u>	<u>\$0.80 per 0.32 oz. plus an additional \$0.20 for each 0.08 oz. or any fraction thereof in excess of 0.32 oz.</u>
<u>Shisha</u>	<u>\$17.00 per 3.5 oz. package plus \$3.40 for each additional 0.7 oz or any fraction thereof in excess of 3.5 oz.</u>	<u>\$1.70 per 3.5 oz. plus an additional \$0.34 for each 0.7 oz, or any fraction thereof in excess of 3.5 oz.</u>
<u>Loose tobacco</u>	<u>\$2.55 per 1.5 oz. package plus \$0.51 for each additional 0.3 oz. or any fraction thereof in excess of 1.5 oz.</u>	<u>\$0.25 per 1.5 oz. package plus an additional \$0.05 for each 0.3 oz. or any fraction thereof in excess of 1.5 oz.</u>

b. The tax imposed hereunder shall not apply to:

1. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state where it is the purchaser, user or consumer;

2. The United States of America, in so far as it is immune from taxation;

3. The United Nations or other world-wide international organizations of which the United States of America is a member;

4. Any corporation, or association, or trust, or community chest, fund or foundation, organized and

operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph; and

5. Tobacco products possessed in the city by any dealer for sale outside the city or for sale and shipment to any person in another state for use there, provided such dealer complies with the regulations relating thereto.

c. Nothing in subdivision b shall exempt sales by any shop or store operated by any college, university or other public or private institution for higher education from the taxes described in this section.

d. The tax imposed hereunder shall be in addition to any and all other taxes.

e. It shall be presumed that all sales mentioned in this section are subject to tax until the contrary is established, and the burden of proof that a sale is not taxable hereunder shall be upon the dealer or the purchaser.

f. 1. Except as hereinafter provided, the tax shall be advanced and paid by the wholesale dealer. The wholesale dealer shall be liable for the collection and payment of the tax to the commissioner of finance as required under subdivision g of this section. The commissioner may require the wholesale dealer to keep tobacco products for which the tax has not yet been paid separately from tobacco products for which the tax has been paid. For purposes of this chapter, retention by the wholesale dealer of any tobacco products beyond the time prescribed for payment under this section, without having made the requisite payment, or storing any such products in violation of any separation requirements prescribed by the commissioner, shall be presumptive evidence that such tobacco products are possessed in violation of the provisions of this chapter.

2. Every retail dealer shall be liable for the tax on all tobacco products in his or her possession at any time, upon which tax has not been paid, and the failure of any retail dealer to produce and exhibit to the

commissioner of finance or such commissioner's duly authorized representatives upon demand, an invoice by a licensed wholesale dealer for any tobacco products in his or her possession, shall be presumptive evidence the tax thereon has not been paid, that such retail dealer is liable for the tax thereon, and the tobacco products are possessed in violation of this chapter, unless evidence of such invoice or payment shall later be produced.

g. 1. Each wholesale dealer shall file with the commissioner of finance a return, on a form required by such commissioner, indicating the amount of tax due pursuant to this section and any other information the commissioner may require, on a monthly basis, or on such other regular interval as such commissioner may prescribe. Each wholesale dealer shall file the return on the twentieth day of the month following the end of the month or other interval covered by the return, unless the commissioner of finance prescribes a greater number of days following the end of the month or a different reporting interval. Each wholesale dealer shall pay the amount of tax due upon filing the return unless the commissioner prescribes a different date or time for such payment.

2. The commissioner of finance may:

(A) Authorize another person, including a distributor as defined in subdivision 12 of section 470 of the tax law, who is not a wholesale dealer, to advance and pay the tax imposed under this section;

(B) Exempt wholesale dealers from the requirements of this subdivision, upon such conditions as may be imposed by such commissioner, if he or she is satisfied the tax on the tobacco products has been or is being advanced and paid by another wholesale dealer or a distributor authorized under this subdivision.

h. The amount of taxes advanced and paid by the wholesale dealer pursuant to this section shall be added to and collected as part of the sales price of the tobacco products.

§ 4. Subdivisions b, d, e and g of section 11-1303 of the administrative code of the city of New York, as amended by local law number 2 for the year 2000, paragraph 2 of subdivision b as added by local law number 2 for the year 2000, are amended to read as follows:

b. Application for license. 1. Wholesale [cigarette] tobacco license. In order to obtain a license to

engage in business as a wholesale dealer, a person shall file application with the commissioner of finance for one license for each place of business that he or she desires to have for the sale of cigarettes or tobacco products in the city. Every application for a wholesale [cigarette] tobacco license shall be made upon a form prescribed and prepared by the commissioner of finance and shall set forth such information as the commissioner shall require. The commissioner of finance may, for cause, refuse to issue a wholesale [cigarette] tobacco license. Upon approval of the application, the commissioner of finance shall grant and issue to the applicant a wholesale [cigarette] tobacco license for each place of business within the city set forth in the application. [Cigarette] Wholesale tobacco licenses shall not be assignable and shall be valid only for the persons in whose names such licenses have been issued and for the transaction of business in the places designated therein and shall at all times be conspicuously displayed at the places for which issued.

2. [Retail cigarette] Retail tobacco license. In order to obtain a license to engage in business as a retail dealer, a person shall file an application with the commissioner of consumer affairs in accordance with the provisions of section 20-202 [of the code].

d. Suspension or revocation of licenses. (1) After a hearing, the commissioner of finance may suspend or revoke a wholesale [cigarette] tobacco license and the commissioner of consumer affairs, upon notice from the commissioner of finance, may suspend or revoke a retail [cigarette] tobacco license whenever the commissioner of finance finds that the holder thereof has failed to comply with any of the provisions of this chapter or any rules of the commissioner of finance prescribed, adopted and promulgated under this chapter.

(2) The commissioner of finance may also suspend or revoke a wholesale [cigarette] tobacco license in accordance with the requirements of any other sections of this code or any rules promulgated thereunder which authorizes the suspension or revocation of a wholesale [cigarette] tobacco license.

(3) The commissioner of consumer affairs may also suspend or revoke a retail [cigarette] tobacco license in accordance with the requirements of any other section of this code or any rules promulgated thereunder [which] that authorize suspension or revocation of a retail [cigarette] tobacco license.

(4) Upon suspending or revoking any wholesale [cigarette] tobacco license, the commissioner of finance shall direct the holder thereof to surrender to the commissioner of finance immediately all wholesale [cigarette] tobacco licenses or duplicates thereof issued to such holder and the holder shall surrender promptly all such licenses to the commissioner of finance as directed. Before the commissioner of finance suspends or revokes a wholesale [cigarette] tobacco license or notifies the commissioner of consumer affairs of a finding of a violation of this chapter with respect to a retail [cigarette] tobacco license pursuant to paragraph (1) of this subdivision, [he or she] the commissioner of finance shall notify the holder and the holder shall be entitled to a hearing, if desired, if the holder, within ninety days from the date of such notification, or[,] if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 [of the code] and the taxpayer has requested a conciliation conference in accordance therewith[,] within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (A) serves a petition upon the commissioner of finance and (B) files a petition with the tax appeals tribunal for a hearing. After such hearing, the commissioner of finance, good cause appearing therefor, may suspend or revoke the wholesale [cigarette] tobacco license, and, in the case of a retail [cigarette] tobacco license, notify the commissioner of consumer affairs of a violation of this chapter or any rules promulgated thereunder. Upon such notification, the commissioner of consumer affairs may suspend or revoke a retail [cigarette] tobacco license as provided in subdivision b of section 20-206 [of the code]. The commissioner of finance may, by rule, provide for granting a similar hearing to an applicant who has been refused a wholesale [cigarette] tobacco license by the commissioner of finance.

e. Prohibited sales and purchases. No agent or dealer shall sell cigarettes or tobacco products to an unlicensed wholesale or retail dealer, or to a wholesale or retail dealer whose license has been suspended or revoked. No dealer shall purchase cigarettes or tobacco products from any person other than a manufacturer or a licensed wholesale dealer.

g. License fees; numbering and registering of licenses; term. 1. The annual fee for a wholesale

[cigarette] dealer's license shall be six hundred dollars, and the annual fee for a retail [cigarette] dealer's license shall be as provided in subdivision c of section 20-202 [of this code].

2. Wholesale [cigarette] tobacco licenses shall be regularly numbered and duly registered.

3. Wholesale [cigarette] tobacco licenses shall expire on January thirty-first next succeeding the date of issuance unless sooner suspended or revoked.

§ 5. Section 11-1307 of the administrative code of the city of New York, subdivision d as amended by local law number 2 for the year 2000, is amended to read as follows:

§ 11-1307 Records to be kept; examination.

a. 1. At the time of delivering cigarettes to any person in the city, each agent or wholesale dealer [in the city] shall make a true duplicate invoice showing the date of delivery, the number of packages and the number of cigarettes contained therein in each shipment of cigarettes delivered, and the name of the purchaser to whom delivery is made, and shall retain the same for a period of three years subject to the use and inspection of the commissioner of finance. Each dealer [in the city] shall procure and retain invoices showing the number of packages and the number of cigarettes contained therein in each shipment of cigarettes received by such dealer, the date thereof, and the name of the shipper, and shall retain the same for a period of three years subject to the use and inspection of the commissioner of finance.

2. At the time of delivering tobacco products to any person in the city, each wholesale dealer shall make a true duplicate invoice showing the date of delivery, the number of packages and the number of tobacco products contained therein as well as any tobacco products not in packages in each shipment of tobacco products delivered, and the name of the purchaser to whom delivery is made and shall retain the same for a period of three years subject to the use and inspection of the commissioner of finance. Each dealer shall procure and retain invoices showing the number of packages and the number of tobacco products contained therein as well as any tobacco products not in packages in each shipment of tobacco products received by such dealer, the date thereof, and the name of the shipper, and shall retain the same for a period of three years subject to the use

and inspection of the commissioner of finance.

3. Each dealer shall retain any other records and in such form as may be required by the commissioner of finance indicating proof of the payment of the tax imposed under section 11-1302.1 of this chapter. Any failure to provide such records upon request by the commissioner of finance or such commissioner's duly authorized representatives shall be presumptive evidence that the dealer has violated the provisions of this chapter.

b. The commissioner of finance by regulation may provide that whenever cigarettes or tobacco products are shipped into the city, the railroad company, express company, trucking company, or carrier transporting any shipment thereof shall file with the commissioner of finance a copy of the freight bill within ten days after the delivery in the city of each shipment.

c. All dealers [within the city] shall maintain and keep for a period of three years such other records of cigarettes or tobacco products received[,] or sold [or delivered] within the city as may be required by the commissioner of finance. All wholesale dealers shall maintain and keep for a period of three years such other records of cigarettes or tobacco products delivered within the city.

d. Without limiting the powers granted the commissioner of consumer affairs pursuant to title [twenty of the code] 20 and any rules promulgated thereunder, the commissioner of finance or the commissioner's duly authorized representatives are hereby authorized to examine the books, papers, invoices and other records, and stock of cigarettes or tobacco products in and upon any premises where the same are placed, stored and sold, and equipment of any such agent or dealer pertaining to the sale and delivery of cigarettes or tobacco products taxable under this chapter. To verify the accuracy of the tax imposed and assessed by this chapter, each such person is hereby directed and required to give to the commissioner of finance or the commissioner's duly authorized representatives, the means, facilities and opportunity for such examinations as are herein provided for and required.

e. The commissioner of finance shall investigate any failure to pay the tax required by this chapter or

any other failure to comply with this chapter or the rules or regulations promulgated thereunder, and shall take the necessary steps to enforce compliance therewith.

§ 6. Subdivision 7 of section 11-1308 of the administrative code of the city of New York is amended to read as follows:

7. To request information from the state tax commission [or of], the treasury department of the United States or [of] the taxing officials of any other state or city [which] that imposes a similar [cigarette] tax to any tax imposed by this chapter, and to afford information to such commission, department or other [state or city] taxing official, any other provision of this chapter to the contrary notwithstanding;

§ 7. Section 11-1310 of the administrative code of the city of New York, as amended by chapter 808 of the laws of 1992, is amended to read as follows:

§ 11-1310 Determination of tax. If any person fails to pay the tax, or to file a return required by this chapter, or if a return, when filed, is insufficient and the maker fails to file a corrected or sufficient return within ten days after the same may be required by notice from the commissioner of finance, [he or she] the commissioner of finance shall determine the amount of tax due from such information as may be obtainable or on the basis of external indices, such as number of cigarettes purchased or sold, number of tobacco products purchased or sold, stock on hand, volume of sales by similar dealers and/or other factors. Notice of such determination shall be given to the person liable for the payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed shall, within ninety days of the giving of such notice, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code and the person liable for the tax has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing, or unless the commissioner of finance shall of his or her own motion redetermine such tax. Such hearing and any appeal to

the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of this charter. After such hearing the tax appeals tribunal shall give notice of its decision to the person liable for the tax and to the commissioner of finance. A decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality, unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if instituted by the person against whom the tax was assessed within four months after the giving of the notice of such tax appeals tribunal decision; provided however, that if such decision regards the tax imposed under section 11-1302.1, such proceeding must be instituted by the person against whom the tax was assessed within thirty days after the giving of the notice of such tax appeals tribunal decision. Such proceeding shall not be instituted by a person liable for the tax unless the amount of any tax sought to be reviewed with interest and penalties thereon, if any, shall have first been deposited with the commissioner of finance and an undertaking filed with the commissioner of finance in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, such person will pay all costs and charges which may accrue in the prosecution of the proceeding.

§ 8. Section 11-1311 of the administrative code of the city of New York, subdivision a as amended by chapter 586 of the laws of 2006, is amended to read as follows:

§ 11-1311 Refunds.

a. In the manner provided in this subdivision the commissioner of finance shall refund, without interest, any tax, interest or penalty erroneously, illegally or unconstitutionally collected or paid. In addition, whenever any cigarettes upon which stamps have been affixed have been sold and shipped to a dealer outside the city for sale there or to any person in another state for use there, or have become unfit for use and consumption or unsalable, or have been destroyed, the dealer shall be entitled to a refund of the amount of tax paid, less the applicable commission, with respect to such cigarettes. In any event no refund shall be granted unless

application to the commissioner of finance therefor is made within two years after the stamps were affixed to such cigarettes or the tax was paid, except if a person has consented in writing to an extension of the period for assessment of additional tax pursuant to subdivision c of section 11-1315 [of this chapter], and such consent is given within the two-year period for making a refund application provided in this subdivision, the period for making a refund application shall not expire prior to six months after the expiration of the period within which an assessment could be made pursuant to such consent or any extension thereof. Whenever a refund is made or denied by the commissioner of finance, the commissioner shall state his or her reasons therefor and give notice thereof to the applicant in writing. A person shall not be entitled to a hearing in connection with such application for a refund if such person has already had a hearing or had been given the opportunity of a hearing as provided in section 11-1310 [of this chapter] or has failed to avail himself or herself of the remedies therein provided. No refund shall be made of a tax, interest or penalty paid pursuant to a determination of the commissioner of finance as provided in section 11-1310 [of this chapter], unless the tax appeals tribunal, after a hearing as in said section provided or the commissioner of finance, of his or her own motion, shall have reduced the tax or penalty, or it shall have been established in a proceeding, pursuant to article seventy-eight of the civil practice law and rules that such determination was erroneous, illegal, unconstitutional or otherwise improper, in which event a refund without interest shall be made as provided upon the determination of such proceeding. Any determination of the commissioner of finance denying a refund pursuant to this subdivision shall be final and irrevocable unless the applicant for such refund, within ninety days from the mailing of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 [of this title] and the applicant has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. Such petition for a refund made as provided in this subdivision shall be deemed an application for a revision of any tax, penalty or interest complained of.

Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter. After such hearing, the tax appeals tribunal shall give notice of its decision to the applicant and to the commissioner of finance. The applicant shall be entitled to maintain a proceeding under article seventy-eight of the civil practice law and rules to review a decision of the tax appeals tribunal sitting en banc, provided, however, that such proceeding is instituted within four months after such decision, provided however, that if such decision regards the tax imposed under section 11-1302.1, such proceeding must be instituted within thirty days after such decision, and provided, further, in the case of an application by a person liable for the tax, that a final determination of tax due was not previously made, and that an undertaking shall first be filed by such person with the commissioner of finance in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed such person will pay all costs and charges which may accrue in the prosecution of such proceeding.

b. If the commissioner of finance is satisfied that any dealer is entitled to a refund the commissioner shall issue to such dealer stamps of sufficient value to cover the refund or to make such refund.

§ 9. Subdivision b of section 11-1314 of the administrative code of the city of New York is amended to read as follows:

b. In addition to all other remedies for the collection of any taxes, penalties or interest due under the provisions of this chapter, the commissioner of finance may with respect to any tax imposed under section 11-1302 or any penalties or interest related thereto issue a warrant, directed to the city sheriff commanding the sheriff to levy upon and sell the real and personal property of the person liable for the tax which may be found within the city, for the payment of the amount thereof, with any penalties and interest and the cost of executing the warrant, and to return such warrant to the commissioner of finance and to pay to the commissioner the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall

within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the taxes, penalty and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions issued against property upon judgments of a court of record, and for services in executing the warrant the city sheriff shall be entitled to the same fees which he or she may collect in the same manner. In the discretion of the commissioner of finance a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

§ 10. Subdivision a of section 11-1317 of the administrative code of the city of New York is amended to read as follows:

a. (1) Any person failing to pay a tax payable under [this chapter] section 11-1302 when due shall be subject to a penalty of fifty per centum of the amount of tax due, but the commissioner of finance, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid and disposed of in the same manner as other revenues under this chapter. Unpaid penalties may be enforced in the same manner as the tax imposed by [this chapter] section 11-1302.

(2) Any person failing to pay a tax payable under section 11-1302.1 when due shall be subject to a penalty of three hundred per centum of the amount of tax due, but the commissioner of finance, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid and disposed of

in the same manner as other revenues from the tax imposed under section 11-1302.1. Unpaid penalties may be enforced in the same manner as the tax imposed by section 11-1302.1.

§ 11. Section 11-1318 of the administrative code of the city of New York, as amended by local law number 10 for the year 2002, is amended to read as follows:

§ 11-1318 Disposition of revenues. (a) All revenues resulting from the imposition of the tax under [this chapter] section 11-1302 shall be paid into the treasury of the city and shall be credited to and deposited in the general fund of the city, except that, after the payment of refunds with respect to such tax, effective on and after July second, two thousand two, forty-six and one-half percent and, effective on and after April first, two thousand three, forty-six percent of such revenues (including taxes, interest and penalties) collected or received shall be paid to the state comptroller.

(b) All revenues resulting from the imposition of the tax under section 11-1302.1 during a fiscal year, including any interest and penalties, shall be paid into the treasury of the city in accordance with section 112 of the public housing law, and shall be payable from the city to the New York city housing authority in such fiscal year.

§ 12. Section 11-1319 of the administrative code of the city of New York is amended to read as follows:

[This] Section 11-1302 and the provisions of this chapter related thereto shall be construed and enforced in conformity with chapter [two hundred thirty-five] 235 of the laws of [nineteen hundred fifty-two, pursuant to which it is enacted] 1952. Section 11-1302.1 and the provisions of this chapter related thereto shall be construed and enforced in conformity with subdivision e of section 110 and sections 111, 112 and 113 of the public housing law.

§ 13. Chapter 40 of title 11 of the administrative code of the city of New York is amended by adding a new section 11-4012.1 to read as follows:

11-4012.1 Tobacco products tax

(a) Attempt to evade or defeat tax. Any person who willfully attempts in any manner to evade or defeat

any tax imposed by section 11-1302.1 or the payment thereof shall, in addition to any other penalties provided by law, be guilty of a misdemeanor.

(b) Any willful act or omission with respect to the tax imposed by section 11-1302.1, with the exception of those described in subdivision (a) of this section, by any person which constitutes a violation of any provision of chapter thirteen of this title or chapter two of title twenty of the code shall constitute a misdemeanor.

§ 14. Chapter 40 of title 11 of the administrative code of the city of New York is amended by adding new sections 11-4025 and 11-4026 to read as follows:

§ 11-4025 Seizure and forfeiture of untaxed tobacco products.

(a) Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer employed by the department of finance, including but not limited to the sheriff, undersheriff or deputy sheriffs of the city designated as peace officers in subdivision two of section 2.10 of the criminal procedure law, discovers any tobacco products subject to any tax provided by chapter 13 of this title, and upon which the tax has not been paid, he or she is hereby authorized and empowered forthwith to seize and take possession of such tobacco products, together with any vending machine or receptacle in which such tobacco products are held for sale. Such tobacco products, vending machine or receptacle seized by such police officer or such peace officer shall be turned over to the commissioner of finance.

(b) The seized tobacco products and any vending machine or receptacle seized therewith, but not the money contained in such vending machine or receptacle, shall thereupon be forfeited to the city, unless the person from whom the seizure is made, or the owner of such seized tobacco products, vending machine or receptacle, or any other person having an interest in such property, shall within ten days of such seizure, apply to the commissioner of finance for a hearing to determine the propriety of the seizure, or unless the commissioner of finance shall on his own motion release the seized tobacco products, vending machine or receptacle. After such hearing the commissioner of finance shall give notice of his or her decision to the

petitioner. The decision of the commissioner shall be reviewable for error, illegality, unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules.

(c) The commissioner of finance may, within a reasonable time after the forfeiture to the city of such vending machine or receptacle under this section, upon publication of a notice to such effect for at least five successive days, in a newspaper published or circulated in the city, sell such forfeited vending machine or receptacle at public sale and pay the proceeds into the general fund of the city. Such seized vending machine or receptacle may be sold prior to forfeiture if the owner of the seized property consents to the sale. Tobacco products forfeited to the city under this section shall be destroyed or used for law enforcement purposes, except that tobacco products that violate, or are suspected of violating, federal trademark laws or import laws shall not be used for law enforcement purposes. If the commissioner determines the tobacco products forfeited under this section may not be used for law enforcement purposes, the commissioner of finance must, within a reasonable time after the forfeiture to the city of such cigarettes, upon publication of a notice to such effect for at least five successive days, prior to destruction, in a newspaper published or circulated in the city, destroy such forfeited tobacco products.

(d) In the alternative, the commissioner of finance, on reasonable notice by mail or otherwise, may permit the person from whom a seizure of tobacco products under this section was made, to redeem any vending machine or receptacle seized with such tobacco products, or may permit the owner of any such vending machine or receptacle to redeem the same, upon the payment of any civil penalty imposed pursuant to chapter 7 of title 17 or subchapter 1 of chapter 2 of title 20 of this code and the costs incurred in such proceeding.

§ 11-4026 Seizure and forfeiture of taxed tobacco products sold or possessed by unlicensed retail or wholesale dealers other than flavored tobacco products subject to seizure under section 11-4024.

(a) Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer employed by the department of finance, including but not limited to the sheriff, undersheriff or deputy sheriffs

of the city designated as peace officers in subdivision two of section 2.10 of the criminal procedure law, discovers any tobacco products, other than flavored tobacco products, subject to any tax provided by chapter 13 of this title, and upon which the tax has been paid, but such tobacco products are sold, offered for sale or possessed by a person in violation of section 11-1303, 17-703 or 20-202, he or she is hereby authorized and empowered forthwith to seize and take possession of such tobacco products, together with any vending machine or receptacle in which such tobacco products are held for sale. Such tobacco products, vending machine or receptacle seized by such police officer or such peace officer shall be turned over to the commissioner of finance.

(b) The seized tobacco products and any vending machine or receptacle seized therewith, but not the money contained in such vending machine or receptacle, shall thereupon be forfeited to the city, unless the person from whom the seizure is made, or the owner of such seized tobacco products, vending machine or receptacle, or any other person having an interest in such property, shall within ten days of such seizure, apply to the commissioner of finance for a hearing to determine the propriety of the seizure, or unless the commissioner of finance shall on his own motion release the seized tobacco products, vending machine or receptacle. After such hearing the commissioner of finance shall give notice of his or her decision to the petitioner. The decision of the commissioner shall be reviewable for error, illegality, unconstitutionality or any other reason whatsoever by a proceeding under article 78 of the civil practice law and rules.

(c) The commissioner of finance may, within a reasonable time after the forfeiture to the city of such vending machine or receptacle under this section, upon publication of a notice to such effect for at least five successive days, in a newspaper published or circulated in the city, sell such forfeited vending machine or receptacle at public sale and pay the proceeds into the general fund of the city. Such seized vending machine or receptacle may be sold prior to forfeiture if the owner of the seized property consents to the sale. Tobacco products forfeited to the city under this section shall be destroyed or used for law enforcement purposes, except that tobacco products that violate, or are suspected of violating, federal trademark laws or import laws shall not

be used for law enforcement purposes. If the commissioner determines the tobacco products forfeited under this section may not be used for law enforcement purposes, the commissioner of finance must, within a reasonable time after the forfeiture to the city of such tobacco products, upon publication of a notice to such effect for at least five successive days, prior to destruction, in a newspaper published or circulated in the city, destroy such forfeited tobacco products.

(d) In the alternative, the commissioner of finance, on reasonable notice by mail or otherwise, may permit the person from whom a seizure of tobacco products under this section was made, to redeem any vending machine or receptacle seized with such tobacco products, or may permit the owner of any such vending machine or receptacle to redeem the same, upon the payment of any civil penalty imposed pursuant to chapter seven of title 17 or subchapter one of chapter two of title 20 of this code and the costs incurred in such proceeding.

§ 15. Subdivisions a and d of section 17-176.1 of the administrative code of the city of New York, as added by local law number 97 for the year 2013, are amended to read as follows:

a. Definitions. For purposes of this section:

“Cigar” means any roll of tobacco for smoking that is wrapped in leaf tobacco or in any substance containing tobacco, with or without a tip or mouthpiece. Cigar does not include a little cigar as defined in this section.

“Cigarette” means any roll for smoking made wholly or in part of tobacco or any other substance, 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.

[“Cigarette price floor” means the minimum price, including all applicable taxes, for which one package of twenty cigarettes or more may be sold by a retail dealer.]

“Listed price” means the price listed for cigarettes or tobacco products on their packages or on any

related shelving, posting, advertising or display at the place where the cigarettes or tobacco products are sold or offered for sale, including all applicable taxes.

“Little cigar” means any roll of tobacco for smoking that is wrapped in leaf tobacco or in any substance containing tobacco and that weighs no more than four pounds per thousand or has a cellulose acetate or other integrated filter.

[“Little cigar price floor” means the minimum price, including all applicable taxes, for which one package of twenty little cigars or more may be sold by a retail dealer.]

“Loose tobacco” means any product that consists of loose leaves or pieces of tobacco that is intended for use by consumers in a pipe, roll-your-own cigarette, or similar product or device.

“Non-tobacco shisha” means any product that does not contain tobacco or nicotine and is smoked or intended to be smoked in a hookah or water pipe.

“Person” means any natural person, corporation, partnership, firm, organization or other legal entity.

“Price reduction instrument” means any coupon, voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or any other form, used for commercial purposes to receive an article, product, service, or accommodation without charge or at a discounted price.

“Retail dealer” means retail dealer as defined in section [11-1301] 20-201 of the code, and any employee or other agent of such retail dealer.

“Shisha” means any product that contains tobacco or nicotine and is smoked or intended to be smoked in a hookah or water pipe.

“Smokeless tobacco” means any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.

“Snus” means any smokeless tobacco product marketed and sold as snus, and sold in ready-to-use pouches or loose as a moist powder.

“Tobacco product” means any product which contains tobacco that is intended for human consumption,

including any component, part, or accessory of such product. Tobacco product shall include, but not be limited to, any cigar, little cigar, chewing tobacco, pipe tobacco, roll-your-own tobacco, snus, bidi, snuff, [tobacco-containing] shisha, or dissolvable tobacco product. Tobacco product shall not include cigarettes or any product that has been approved by the United States food and drug administration for sale as a tobacco use cessation product or for other medical purposes and that is being marketed and sold solely for such purposes.

d. Price [floor] floors for cigarettes and [little cigars] tobacco products. No person shall sell or offer for sale to a consumer a package of cigarettes, tobacco products, or non-tobacco shisha, as such package is described in section 17-704, for a price less than the applicable price floor described in this subdivision. Any such price floor may be modified pursuant to paragraph 9 of this subdivision.

(1) [Prohibition on the sale of cigarettes below the cigarette price floor. No person shall sell or offer for sale a package of cigarettes to a consumer for a price less than the cigarette price floor.] The cigarette price floor shall be \$[10.50]13 per package of cigarettes [, provided that the cigarette price floor may be modified pursuant to paragraph three of this subdivision], including all applicable taxes.

(2) [Prohibition on the sale of little cigars below the little cigar price floor. No person shall sell or offer for sale a package of little cigars for a price less than the little cigar price floor.] The little cigar price floor shall be [equal to the cigarette price floor] \$10.95, excluding all applicable taxes.

(3) The cigar price floor shall be \$8 for any cigar sold individually, excluding all applicable taxes. Notwithstanding subdivision c of section 17-176.1, the price floor for any package of cigars that contains more than one cigar and that has been delivered to a retail dealer in a package described by subdivision a of section 17-704 shall be computed by multiplying the number of cigars in the package by \$1.75 and adding \$6.25 to the total, excluding all applicable taxes.

(4) The smokeless tobacco price floor shall be \$8 per 1.2 ounce package, excluding all applicable taxes. The price floor for packages larger than 1.2 ounces shall be computed by adding \$2 for each 0.3 ounces or any fraction thereof in excess of 1.2 ounces, excluding all applicable taxes.

(5) The snus price floor shall be \$8 per 0.32 ounce package, excluding all applicable taxes. The price floor for packages larger than 0.32 ounces shall be computed by adding \$2 for each 0.08 ounces or any fraction thereof in excess of 0.32 ounces, excluding all applicable taxes.

(6) The shisha price floor shall be \$17 per 3.5 ounce package, excluding all applicable taxes. The price floor for packages larger than 3.5 ounces shall be computed by adding \$3.40 for each 0.7 ounces or any fraction thereof in excess of 3.5 ounces, excluding all applicable taxes.

(7) The non-tobacco shisha price floor shall be \$17 per 3.5 ounce package, excluding all applicable taxes. The price floor for packages larger than 3.5 ounces shall be computed by adding \$3.40 for each 0.7 or any fraction thereof ounces in excess of 3.5 ounces, excluding all applicable taxes.

(8) The loose tobacco price floor shall be \$2.55 per 1.5 ounce package, excluding all applicable taxes. The price floor for packages larger than 1.5 ounces shall be computed by adding \$0.51 for each 0.3 ounces or any fraction thereof in excess of 1.5 ounces, excluding all applicable taxes.

(9) The department may modify by rule the [cigarette price floor and little cigar price floor] price floors described in this subdivision to account for changes in the New York--northern New Jersey--Long Island consumer price index, adjusted for inflation, or changes in taxes for [cigarettes or little cigars] any of these products.

§ 16. Subdivision k of section 17-702 of the administrative code of the city of New York, as added by local law number 83 for the year 1992 and renumbered by local law number 69 for the year 2009, is amended to read as follows:

k. "Retail dealer" means "retail dealer" as defined in section [11-1301 of the code] 20-201, and any employee or other agent of such retail dealer.

§ 17. Section 17-704 of the administrative code of the city of New York, as amended by local law number 97 for the year 2013, is amended to read as follows:

§ 17-704 [Out-of-package sales prohibited] Minimum package sizes.

a. [All cigarettes and tobacco products sold or offered for sale by a retail dealer shall be sold or offered for sale] No retail dealer shall sell or offer for sale any cigarettes or tobacco products unless such cigarettes or tobacco products are sold in the package, box, carton or other container provided by the manufacturer, importer or packager which bears [a] any such health warning as may be required by federal statute, rule or consent order.

a-1. No retail dealer shall sell or offer for sale cigarettes unless the cigarettes are sold in a package of at least twenty cigarettes.

b. [No retail dealer shall sell or offer for sale a cigar unless the cigar is sold in a package of at least four cigars, provided that this subdivision shall not apply to the sale or distribution of an individual cigar whose listed price, as defined in section 17-176.1 of this code, is greater than three dollars.] Reserved.

c. No retail dealer shall sell or offer for sale a little cigar unless the little cigar is sold in a package of at least twenty little cigars.

d. No retail dealer shall sell or offer for sale snus unless it is sold in a package of at least 0.32 ounces, and any other smokeless tobacco unless it is sold in package of at least 1.2 ounces.

e. No retail dealer shall sell or offer for sale shisha or non-tobacco shisha unless any such shisha is sold in a package of at least 3.5 ounces.

f. No retail dealer shall sell or offer for sale loose tobacco unless the loose tobacco is sold in a package of at least 1.5 ounces.

§ 18. The administrative code of the city of New York is amended by adding a new section 17-704.1 to read as follows:

§ 17-704.1 Prohibition on delivery. a. No retail dealer shall deliver cigarettes or tobacco products by foot, bicycle or any motor vehicle to any location outside its place of business.

b. No electronic cigarette retail dealer, as defined in section 20-560, shall deliver electronic cigarettes by foot, bicycle or any motor vehicle to any location outside its place of business.

§ 19. Section 17-709 of the administrative code of the city of New York, as amended by local law number 97 for the year 2013, is amended to read as follows:

§ 17-709 Enforcement. The department of health and mental hygiene and the department of finance shall enforce the provisions of this subchapter. The department of consumer affairs shall enforce sections 17-703, 17-703.1, 17-704, 17-704.1, 17-705 and 17-706 [of this subchapter]. In addition, designated enforcement employees of any authorizing agency shall have the power to enforce the provisions of this subchapter.

§ 20. Paragraph 4 of subdivision a of section 17-710 of the administrative code of the city of New York, as amended by local law number 97 for the year 2013, is amended to read as follows:

(4) Any person found to be in violation of section 17-704, 17-704.1, 17-705 or subdivision a or b of section 17-706 shall be liable for a civil penalty of not more than one thousand dollars for the first violation, and not more than one thousand dollars for each additional violation found on that day; and not more than two thousand dollars for the second violation and each subsequent violation at the same place of business within a three-year period. Any person found to be in violation of subdivision c of section 17-706 shall be liable for a civil penalty of not more than five hundred dollars in any single day.

§ 21. Paragraph 5 of subdivision a of section 17-710 of the administrative code of the city of New York, as amended by local law number 97 for the year 2013, is amended to read as follows:

(5) In addition, for a second violation of any of [sections] section 17-703, section 17-703.2, subdivision a of section 17-704, subdivision a of section 17-704.1, section 17-705 or subdivision a or b of section 17-706 occurring on a different day and any subsequent violations occurring on different days at the same place of business within a three-year period, any person who engages in business as a retail dealer shall be subject to the mandatory revocation of [his or her cigarette] such dealer's retail tobacco dealer license for such place of business. Any violation of section 17-703, section 17-703.2, subdivision a of section 17-704, subdivision a of section 17-704.1, section 17-705 or subdivision a or b of section 17-706 by any license holder at a place of business shall be included in determining the number of violations by such license holder and by any

subsequent license holder at the same place of business unless the subsequent license holder provides the commissioner of the department that has commenced the proceeding to recover a civil penalty pursuant to subdivision b of this section with adequate documentation demonstrating that the subsequent license holder acquired the premises or business through an arm's length transaction as defined in subdivision e of this section and that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original licensee to avoid the effect of violations on the premises. A [cigarette] retail tobacco dealer license shall be revoked at the same hearing at which a retail dealer is found liable for a second violation or subsequent violations at the same place of business within a three-year period.

§ 22. Subdivisions b and g of section 17-710 of the administrative code of the city of New York, subdivision b as amended, and subdivision g as added, by local law number 97 for the year 2013, is amended to read as follows:

b. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivision a of this section for a violation of section 17-703, 17-703.1, 17-703.2, 17-704, 17-704.1, 17-705 or 17-706 [of this subchapter] shall be commenced by the service of a notice of violation which shall be returnable to the [health tribunal at the] office of administrative trials and hearings acting pursuant to section 558 and subdivision 2 of section 1048 of the charter where the department of health and mental hygiene issues such notice, the [adjudication division of the department of consumer affairs] office of administrative trials and hearings acting pursuant to section 2203 and subdivision 2 of section 1048 of the charter where [that] the department of consumer affairs or a designated employee of any authorizing agency issues such notice, or an adjudication division of the department of finance or the administrative tribunal selected by the commissioner of finance where the department of finance issues such notice. Such notice shall contain a statement that any hearing for a second violation or subsequent violation of any of [such sections] the provisions described in paragraph (5) of subdivision a of this section at the same place of business within a three-year period shall also constitute a hearing for the revocation of a retail dealer's [cigarette] tobacco license where the retail dealer is found to be in

violation of any such sections. The department of health and mental hygiene, the department of consumer affairs and the department of finance shall notify each other within thirty days of a final determination that a retail dealer has been found to be in violation of section 17-703, [17-703.1,] 17-703.2, 17-704, 17-704.1, 17-705 or subdivision a or b of section 17-706 [of this subchapter]. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivision a of this section for a violation of section 17-708 shall be returnable to the [health tribunal at the] office of administrative trials and hearings acting pursuant to section 558 and subdivision 2 of section 1048 of the charter. Such tribunal shall have the power to impose the civil penalties prescribed by subdivision a of this section. The [adjudication division of the department of consumer affairs, the health tribunal at the] office of administrative trials and hearings acting pursuant to section 558 or section 2203 of the charter, in addition to subdivision 2 of section 1048 of the charter and an adjudication division of the department of finance or the administrative tribunal selected by the commissioner of finance shall have the power to impose the civil penalties prescribed by subdivision a of this section for a violation of section 17-703, 17-703.1, 17-703.2, 17-704, 17-704.1, 17-705 or 17-706 [of this subchapter].

g. Any retail dealer who fails to pay (1) any civil penalty imposed under chapter thirteen of title eleven of the code for the violation of any provision thereunder, or (2) any civil penalty imposed under this chapter for any violation thereof or under section 17-176.1 or section 17-177 of this title for any violation of such sections, shall be subject to suspension of his or her retail dealer license for the place of business where the violation occurred until such retail dealer pays all such civil penalties. Such retail dealer license shall not be renewed until such retail dealer pays all such civil penalties. A proceeding to suspend a retail dealer license pursuant to this subdivision may be commenced by the department to which payment of the penalty is due, in the same manner as a proceeding pursuant to subdivision b of this section to recover a civil penalty. The [adjudication division of the department of consumer affairs] office of administrative trials and hearings acting pursuant to section 2203 and subdivision 2 of section 1048 of the charter, the [health tribunal at the] office of administrative trials and hearings acting pursuant to section 558 and subdivision 2 of section 1048 of the

charter and an adjudication division of the department of finance or the administrative tribunal selected by the commissioner of finance shall have the power to suspend a retail dealer's license pursuant to this subdivision.

§ 23. This local law takes effect on the first day of the calendar month next following the 270th day after it becomes law, provided that subdivision b of section 17-704.1 of the administrative code of the city of New York, as added by section eighteen of this local law, takes effect 150 days after it becomes law, except that the department of finance, the department of health and mental hygiene and the department of consumer affairs may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, prior to such date.

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