Submitted
not testifying

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Testimony of James S. Calvin, President
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Concerning the 2012-2013 Executive Budget

before the

SENATE COMMITTEE ON FINANCE
Hon. John DeFrancisco, Chairman

ASSEMBLY COMMITTEE ON WAYS & MEANS
Hon. Herman D. Farrell Jr., Chairman

February 6, 2012, Albany NY

Chairman DeFrancisco, Chairman Farrell, and Honorable Members of the Committees, thank you for the opportunity to comment on the Executive Budget.

The New York Association of Convenience Stores proudly represents 7,700 neighborhood mini marts and convenience stores statewide whose inventories include legal products that are perennially targeted for higher taxes, especially tobacco.

We respectfully urge you to reject two proposed tobacco tax changes (S.6259/A.9059 Part C) which the Memorandum in Support labels "loophole closing actions" but which, in practice, would translate to tax *increases* with the following unintended but negative consequences:

- Resulting higher prices would divert customers away from licensed, tax-collecting New York stores to easily accessible "tax free" outlets.
- New York State would lose *all* the excise tax revenue – *and* the sales tax revenue – from those diverted transactions.
- Pledges to avoid new taxes in the upcoming budget cycle would be undermined.

Excise Tax on Cigars

The current state excise tax on cigars is 75 percent of wholesale value. The Executive Budget would replace that with a new two-tier tax. It would tax cigars at 50% of *retail* value, with the wholesale distributor pre-paying a portion of that tax (20 cents per cigar) before delivery to the store, and the retailer remitting the balance.

The Executive Budget says the change "is not anticipated to have an impact on the retail price of cigars," but our analysis indicates that it would indeed drive up retail prices, shrink retail profit margins, or both.

As an example, today, a cigar with a wholesale list price of 79 cents might sell at retail for $2.77, including tax of 75% of wholesale value. Assuming the same retail markup, after the 50% retail tax is applied, that cigar would sell for $3.26. To maintain the price at $2.77, the retailer would have to forfeit 24% of his or her profit margin.

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In addition, retailers would be forced to perform yet another tax reconciliation, and file another tax return, periodically. Moreover, they would have to reprogram their cash registers to show the retail cigar tax as a separate line item on customer receipts. Meanwhile, competing stores on New York Indian reservations and in neighboring Pennsylvania would continue to sell cigars to New Yorkers *without any state tax whatsoever* and without the encumbrances of tax compliance. Cigar tax evasion is already rampant.

Other than a puzzling reference to cigar wholesalers who are also cigar retailers, the Executive Budget offers no discernable rationale for this tax increase. In the interest of preserving small business and tax revenue, it should be removed from the final budget.

Excise Tax on Loose Tobacco

The Executive Budget proposes to change the state tax rate on "loose tobacco" from 75 percent of the wholesale price to $4.53 per ounce, claiming this roughly equates to the excise tax rate of $4.35 a pack on finished cigarettes.

The stated objective is to recapture the cigarette tax revenue being lost to the new self-serve, roll-your-own cigarette craze in New York by eliminating the tax differential that is driving the proliferation of retail stores selling low-tax "pipe tobacco" to load into their on-premise roll-your-own machine.

However, legitimate retailers of *take-home* pipe tobacco and chewing tobacco would suffer collateral damage, because the dramatic spike in price – precipitated by a *tenfold* increase in tax – would chase those customers away to tax-free Indian reservations, Pennsylvania, and/or the black market.

There is a more targeted solution to the RYO phenomenon. Assembly Bill 9085, sponsored by Assemblyman Jeffrey Dinowitz, would treat roll-your-own machines in retail stores as "cigarette manufacturing," subjecting the finished cigarettes to the same federal and state taxes as prepackaged cigarettes *without* driving take-home sales of loose tobacco to the untaxed side of the street. NYACS recommends adoption of this legislation as a better alternative to the loose-tobacco tax hike.

The Lesson of Cigarette Tax Evasion

Cigarette tax evasion has become so pervasive that at least half the cigarettes consumed in New York today are purchased without payment of any state tax whatsoever. This resulted from New York State's short-sighted decisions to increase its cigarette excise tax by nearly 700 percent in the span of 10 years without closing off the well-worn pathways for dodging that tax.

The lesson? Any tax high enough to compel consumers to change their consumption of a product is equally high enough to compel them to shift their purchases to places where they can readily buy the product without paying the tax-inflated price. We sincerely hope the Legislature will apply this lesson in evaluating the proposed tobacco tax changes under Part C of budget bill S.6259/A.9059.

Thank you for keeping the views of the convenience store community in mind.