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

9415

I N A S S E M B L Y

(PREFILED)

January 6, 2010

Introduced by M. of A. BENJAMIN -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to the prepayment of tax on sales of beer under article 28 of such law and pursuant to the authority of article 29 thereof

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

Section 1. The tax law is amended by adding a new section 429-a to read as follows:

S 429-A. PAYMENT OF TAX; BEER. THE COMMISSIONER IS HEREBY AUTHORIZED AND DIRECTED TO ESTABLISH A SYSTEM FOR THE CREATION AND USE OF A TAX STAMP OR OTHER MARKER TO BE AFFIXED TO BEER SOLD IN THIS STATE EVIDENCING THE PAYMENT OF TAX IMPOSED UNDER THIS ARTICLE.

S 2. The tax law is amended by adding a new section 1103-A to read as follows:

S 1103-A. PREPAYMENT OF SALES TAX ON BEER. (A)(1) EVERY BEER AGENT SHALL PAY, AS A PREPAYMENT ON ACCOUNT OF THE TAXES IMPOSED BY THIS ARTICLE AND PURSUANT TO THE AUTHORITY OF ARTICLE TWENTY-NINE OF THIS CHAPTER, A TAX ON BEER, AS DEFINED IN SUBDIVISION FIVE OF SECTION FOUR HUNDRED TWENTY OF THIS CHAPTER, POSSESSED FOR SALE OR USE IN THIS STATE. SUCH AGENT SHALL BE REQUIRED TO AFFIX A STAMP OR OTHER MARKER TO BE DETERMINED AND PRESCRIBED BY THE COMMISSIONER TO EVIDENCE PAYMENT OF THE TAX IMPOSED BY ARTICLE EIGHTEEN OF THIS CHAPTER, EXCEPT NO TAX SHALL BE REQUIRED TO BE PREPAID ON BEER SOLD UNDER CIRCUMSTANCES THAT THIS STATE IS WITHOUT POWER TO IMPOSE SUCH PREPAYMENT OR SOLD TO THE UNITED STATES OR SOLD TO OR BY A VOLUNTARY UNINCORPORATED ORGANIZATION OF THE ARMED FORCES OF THE UNITED STATES OPERATING A PLACE FOR THE SALE OF GOODS PURSUANT TO REGULATIONS PROMULGATED BY THE APPROPRIATE EXECUTIVE AGENCY OF THE UNITED STATES, TO THE EXTENT PROVIDED IN SUCH REGULATIONS AND WRITTEN POLICY STATEMENTS OF SUCH AN AGENCY APPLICABLE TO SUCH SALES.

(2) THE TAX IMPOSED BY THIS SECTION SHALL BE PAID AT THE SAME TIME AND IN THE SAME MANNER AS THE TAX IMPOSED BY ARTICLE EIGHTEEN OF THIS CHAPTER WITH RESPECT TO BEER. THE COMMISSIONER MAY, IN THE COMMISSIONER'S

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

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DISCRETION, PERMIT AN AGENT TO PAY THE TAX IMPOSED UNDER THIS SECTION AT THE SAME TIME THAT THE AGENT PAYS FOR BEER TAX STAMPS OR OTHER MARKER PRESCRIBED BY THE COMMISSIONER UNDER ARTICLE EIGHTEEN OF THIS CHAPTER AND MAY REQUIRE ANY SUCH AGENT TO FILE WITH THE DEPARTMENT A BOND ISSUED BY A SURETY COMPANY APPROVED BY THE SUPERINTENDENT OF INSURANCE AS TO SOLVENCY AND RESPONSIBILITY AND AUTHORIZED TO TRANSACT BUSINESS IN THE STATE OR OTHER SECURITY ACCEPTABLE TO THE COMMISSIONER, IN SUCH AMOUNT AS THE COMMISSIONER MAY FIX, TO SECURE THE PAYMENT OF ANY SUMS DUE FROM SUCH AGENT PURSUANT TO THIS SECTION. IF SECURITIES ARE DEPOSITED AS SECURITY UNDER THIS SUBDIVISION, SUCH SECURITIES SHALL BE KEPT IN THE CUSTODY OF THE COMMISSIONER ANY MAY BE SOLD BY THE COMMISSIONER IF IT BECOMES NECESSARY TO DO SO IN ORDER TO RECOVER ANY SUMS DUE FROM SUCH AGENT PURSUANT TO THIS SECTION, BUT NO SUCH SALE SHALL BE HAD UNTIL AFTER SUCH AGENT SHALL HAVE HAD AN OPPORTUNITY TO LITIGATE THE VALIDITY OF ANY PREPAYMENT OF TAX IF IT ELECTS TO SO. UPON ANY SUCH SALE, THE SURPLUS, IF ANY, ABOVE THE SUMS DUE UNDER THIS SECTION SHALL BE RETURNED TO SUCH AGENT.

(3) EVERY PERSON OTHER THAN AN AGENT SHALL PREPAY THE TAX IMPOSED BY THIS SECTION AT THE SAME TIME AND IN THE SAME MANNER AS THE USE TAX IMPOSED BY SECTION FOUR HUNDRED TWENTY-FOUR OF THIS CHAPTER.

(B) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE TAXES REQUIRED TO BE PREPAID PURSUANT TO THIS SECTION SHALL BE ADMINISTERED AND COLLECTED IN A LIKE MANNER AS THE TAXES IMPOSED BY SECTIONS ELEVEN HUNDRED FIVE AND ELEVEN HUNDRED TEN OF THIS ARTICLE. ALL THE PROVISIONS OF THIS ARTICLE RELATING TO OR APPLICABLE TO THE ADMINISTRATION, COLLECTION AND DISPOSITION OF THE TAXES IMPOSED BY SUCH SECTIONS SHALL APPLY TO THE TAX REQUIRED TO BE PREPAID UNDER THIS SECTION SO FAR AS SUCH PROVISIONS CAN BE MADE APPLICABLE TO SUCH PREPAYMENTS OF TAX WITH SUCH LIMITATIONS AS SET FORTH IN THIS ARTICLE AND SUCH MODIFICATIONS AS MAY BE NECESSARY IN ORDER TO ADAPT SUCH LANGUAGE TO THE TAX SO IMPOSED; PROVIDED, HOWEVER, THAT THE PROVISIONS OF PARAGRAPH ONE OF SUBDIVISION (C) OF SECTION ELEVEN HUNDRED THIRTY-SEVEN OF THIS ARTICLE SHALL NOT BE APPLICABLE TO SUCH TAX REQUIRED TO BE PREPAID UNDER THIS SECTION. SUCH PROVISIONS SHALL APPLY WITH THE SAME FORCE AND EFFECT AS IF THE LANGUAGE OF THOSE PROVISIONS HAD BEEN SET FORTH IN FULL IN THIS SECTION EXCEPT TO THE EXTENT THAT ANY PROVISION IS EITHER INCONSISTENT WITH A PROVISION OF THIS SECTION OR IS NOT RELEVANT TO THE TAX REQUIRED TO BE PREPAID BY THIS SECTION. FOR PURPOSES OF THIS SECTION, ANY REFERENCE IN THIS ARTICLE TO THE TAX OR TAXES IMPOSED BY THIS ARTICLE SHALL BE DEEMED TO REFER TO THE TAX REQUIRED TO BE PREPAID PURSUANT TO THIS SECTION UNLESS A DIFFERENT MEANING IS CLEARLY REQUIRED.

(C) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO REQUIRE THE PAYMENT OF THE TAX REQUIRED TO BE PREPAID PURSUANT TO THIS SECTION MORE THAN ONCE UPON BEER POSSESSED FOR SALE OR USED WITHIN THE STATE. WHEN THE PREPAID TAX IMPOSED PURSUANT TO THIS SECTION IS PAID, IT SHALL HAVE BEEN SO PAID ON ACCOUNT OF THE TAXES IMPOSED BY THIS ARTICLE AND PURSUANT TO THE AUTHORITY OF ARTICLE TWENTY-NINE OF THIS CHAPTER WITH RESPECT TO THE RETAIL SALE OR THE USE OF BEER. NOTHING IN THIS SECTION SHALL MODIFY OR AFFECT THE TAXES IMPOSED BY SECTIONS ELEVEN HUNDRED FIVE AND ELEVEN HUNDRED TEN OF THIS ARTICLE AS APPLIED TO RECEIPTS FROM THE SALE, OR TO THE USE, OF SUCH BEER.

(D) (1) CONSISTENT WITH SECTION ELEVEN HUNDRED FORTY-EIGHT OF THIS ARTICLE AND SECTION TWELVE HUNDRED SIXTY-ONE OF THIS CHAPTER, THE TAXES REQUIRED TO BE PREPAID PURSUANT TO THIS SECTION AND INTEREST AND PENALTIES THEREON RECEIVED BY THE COMMISSIONER, AFTER DEDUCTING THE AMOUNT WHICH THE COMMISSIONER SHALL DETERMINE TO BE NECESSARY FOR REASONABLE

COSTS OF THE COMMISSIONER IN ADMINISTERING, COLLECTING, AND DISTRIBUTING SUCH TAXES, SHALL BE DEPOSITED DAILY WITH SUCH RESPONSIBLE BANKS, BANKING HOUSES OR TRUST COMPANIES, AS MAY BE DESIGNATED BY THE COMPTROLLER, TO THE CREDIT OF THE COMPTROLLER. OF THE TOTAL REVENUE COLLECTED OR RECEIVED UNDER THIS SECTION, THE COMPTROLLER SHALL RETAIN IN THE COMPTROLLER'S HANDS SUCH AMOUNT AS THE COMMISSIONER MAY DETERMINE TO BE NECESSARY FOR REFUNDS UNDER THIS ARTICLE AND PURSUANT TO THE AUTHORITY OF ARTICLE TWENTY-NINE OF THIS CHAPTER.

(2) ON OR BEFORE THE TWELFTH DAY OF EACH MONTH, AFTER RESERVING SUCH AMOUNT FOR SUCH REFUNDS AND SUCH COSTS, THE COMMISSIONER SHALL DETERMINE THE AMOUNT OF ALL REVENUES SO RECEIVED DURING THE PRIOR MONTH AS A RESULT OF THE TAXES, INTEREST AND PENALTIES SO IMPOSED AND, IN ADDITION, ON OR BEFORE THE LAST DAY OF JUNE AND DECEMBER THE COMMISSIONER SHALL DETERMINE IN LIKE MANNER THE AMOUNT OF SUCH MONEYS RECEIVED DURING AND INCLUDING THE FIRST TWENTY-FIVE DAYS OF SAID MONTHS. THE COMMISSIONER SHALL DETERMINE THE PROPORTION OF REVENUES ATTRIBUTABLE TO RECEIPTS FOR THE PERIOD FOR WHICH THE DETERMINATION IS MADE PURSUANT TO THE PRECEDING SENTENCE FROM TAXES ON SALES AND USES OF PROPERTY AND SERVICES AND RENT AND AMUSEMENT CHARGES IMPOSED BY THIS ARTICLE AND PURSUANT TO THE AUTHORITY OF ARTICLE TWENTY-NINE OF THIS CHAPTER AND ADMINISTERED BY THE COMMISSIONER WHICH IS PAYABLE TO EACH JURISDICTION DETERMINED WITHOUT REGARD TO THIS SECTION. THE AMOUNT OF REVENUES SO DETERMINED PURSUANT TO THIS SECTION SHALL BE DEPOSITED AND DISTRIBUTED BY THE COMPTROLLER IN ACCORDANCE WITH THE SAME PERCENTAGE AMOUNT TO WHICH A JURISDICTION IS ENTITLED DETERMINED WITHOUT REGARD TO THIS SECTION. WHERE THE AMOUNT SO DETERMINED IN ANY DISTRIBUTION FROM SUCH TAXES (OTHER THAN THE TAX IMPOSED BY THIS SECTION) IS MORE OR LESS THAN THE AMOUNT DUE, THE AMOUNT OF THE OVERPAYMENT OR UNDERPAYMENT SHALL BE DETERMINED AS SOON AFTER THE DISCOVERY OF THE OVERPAYMENT OR UNDERPAYMENT AS IS REASONABLY POSSIBLE AND SUBSEQUENT DETERMINATIONS SHALL BE ADJUSTED BY SUBTRACTING THE AMOUNT OF ANY SUCH OVERPAYMENT FROM OR BY ADDING THE AMOUNT OF ANY SUCH UNDERPAYMENT TO SUCH NUMBER OF SUBSEQUENT PAYMENTS AS THE COMPTROLLER AND THE COMMISSIONER SHALL CONSIDER REASONABLE IN VIEW OF THE AMOUNT OF THE OVERPAYMENT OR UNDERPAYMENT AND ALL OTHER PERTINENT FACTS AND CIRCUMSTANCES. THE COMMISSIONER SHALL NOT BE LIABLE FOR ANY OVERESTIMATE OR UNDERESTIMATE OF THE AMOUNT OF THE DISTRIBUTION. NOR SHALL THE COMMISSIONER BE LIABLE FOR ANY INACCURACY IN ANY DETERMINATION WITH RESPECT TO THE AMOUNT OF THE DISTRIBUTION OR ANY REQUIRED ADJUSTMENT WITH RESPECT TO THE DISTRIBUTION, BUT THE COMMISSIONER SHALL AS SOON AS PRACTICABLE AFTER DISCOVERY OF ANY ERROR ADJUST THE NEXT DETERMINATION UNDER THIS SECTION TO REFLECT ANY SUCH ERROR.

S 3. This act shall take effect September 1, 2010, and shall apply to all taxable events respecting beer as such events are described in section 1103-A of the tax law, as added by section two of this act, occurring on or after such date.