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

6738

2009-2010 Regular Sessions

I N A S S E M B L Y

March 11, 2009

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

AN ACT to amend the tax law, in relation to increasing the tax on alcohol; to amend the state finance law, in relation to creating the alcoholism and substance abuse prevention and treatment fund; and to require an annual report and a task force for the alcoholism and substance abuse prevention and treatment fund

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

Section 1. Paragraphs (a), (b), (c), (d), (e) and (f) of subdivision 1 of section 424 of the tax law, paragraph (a) as amended by section 1 of part V of chapter 63 of the laws of 2000, paragraph (b) as amended by chapter 490 of the laws of 1993, paragraphs (c) and (d) as amended by chapter 170 of the laws of 1994, paragraph (e) as amended by chapter 190 of the laws of 1990 and paragraph (f) as amended by chapter 508 of the laws of 1993, are amended and a new paragraph (h) is added to read as follows:

(a) [Eleven cents] ONE DOLLAR AND EIGHT CENTS per gallon upon beers;

(b) [Eighteen and ninety-three] TWO DOLLARS AND SIXTY-THREE AND NINETY-TWO hundredths cents per gallon upon still wines, except cider containing more than three and two-tenths per centum of alcohol by volume, upon which the tax shall be [three and seventy-nine] FIFTY-TWO AND EIGHTY-FOUR hundredths cents per gallon;

(c) [Eighteen and ninety-three] TWO DOLLARS AND SIXTY-THREE AND NINETY-TWO hundredths cents per gallon upon artificially carbonated sparkling wines, except artificially carbonated sparkling cider containing more than three and two-tenths per centum of alcohol by volume, upon which the tax shall be [three and seventy-nine] FIFTY-TWO AND EIGHTY-FOUR hundredths cents per gallon;

(d) [Eighteen and ninety-three] TWO DOLLARS AND SIXTY-THREE AND NINETY-TWO hundredths cents per gallon upon natural sparkling wines, except

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

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natural sparkling cider containing more than three and two-tenths per centum of alcohol by volume, upon which the tax shall be [three and seventy-nine] FIFTY-TWO AND EIGHTY-FOUR hundredths cents per gallon;

(e) [Sixty-seven] ONE DOLLAR AND TWENTY-THREE cents per liter upon liquors containing not more than twenty-four per centum of alcohol by volume except liquors containing not more than two per centum of alcohol by volume, upon which the tax shall be [one cent] TWO CENTS per liter; and

(f) [One dollar] TWO DOLLARS and [seventy] TWENTY-SIX cents per liter upon all other liquors; when sold or used within this state, except when sold or used under such circumstances that this state is without power to impose such tax or when sold to the United States and except beers when 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, directives and policy statements of such an agency applicable to such sales, and except when sold to professional foreign consuls-general, consuls and vice-consuls who are nationals of the state appointing them and who are assigned to foreign consulates in this state, provided that American consular officers of equal rank who are citizens of the United States and who exercise their official functions at American consulates in such foreign country are granted reciprocal exemptions; provided, however, that the commissioner may permit the sale of alcohol without tax to a holder of any industrial alcohol permit, alcohol permit or alcohol distributor's permit, issued by the state liquor authority, and by the holder of an alcohol distributor's permit, class A, issued by such authority to a holder of a distiller's license, class B, or a winery license, issued by such authority and may also permit the use of alcohol for any purpose other than the production of alcoholic beverages by such holders without tax; provided also that the commissioner may permit the sale of cider without tax by a holder of a cider producer's license issued by the state liquor authority to a holder of a cider producer's license or a cider wholesaler's license issued by such authority.

(H) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, SEVENTY PERCENT OF TAXES, INTEREST, PENALTIES AND FEES COLLECTED OR RECEIVED BY THE COMMISSIONER UNDER PARAGRAPHS (A) THROUGH (F) OF THIS SECTION SHALL BE ALLOCATED TO THE ALCOHOLISM AND SUBSTANCE ABUSE PREVENTION AND TREATMENT FUND PURSUANT TO SUBDIVISION TWO OF SECTION NINETY-SEVEN-JJJJ OF THE STATE FINANCE LAW.

S 2. Section 424 of the tax law is amended by adding a new subdivision 7 to read as follows:

7. THE TAX IMPOSED BY SUBDIVISION ONE OF THIS SECTION SHALL BE ADJUSTED EFFECTIVE JULY FIRST OF EACH YEAR BY APPLYING TO SUCH TAX AN UPWARD OR DOWNWARD ADJUSTMENT, AS THE CASE MAY BE, USING AS THE FACTOR FOR SUCH ADJUSTMENT THE PERCENTAGE AMOUNT BY WHICH THE ALL ITEMS CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS (CPI-U) AS PREPARED BY THE UNITED STATES DEPARTMENT OF LABOR FOR THE FIRST CALENDAR QUARTER OF SUCH YEAR EXCEEDS OR IS LESS THAN SUCH INDEX FOR THE FIRST CALENDAR QUARTER OF THE PROCEEDING YEAR. THE COMMISSIONER SHALL PROMULGATE REGULATIONS SPECIFYING THE METHODOLOGY TO BE USED TO DETERMINE THE GOODS AND INVENTORY TO WHICH THE INCREASE SHALL APPLY EFFECTIVE EACH JULY FIRST, EXCEPT THAT, FOR AN INCREASE IN THE TAX PURSUANT TO THIS SUBDIVISION, SUCH REGULATIONS SHALL APPLY ONLY IF SUCH INCREASE IS GREATER THAN TEN PERCENT.

S 3. The state finance law is amended by adding a new section 97-jjjj to read as follows:

S 97-JJJJ. THE ALCOHOLISM AND SUBSTANCE ABUSE PREVENTION AND TREATMENT FUND. 1. THERE IS HEREBY ESTABLISHED IN JOINT CUSTODY OF THE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE A FUND TO BE KNOWN AS THE ALCOHOLISM AND SUBSTANCE ABUSE PREVENTION AND TREATMENT FUND.

2. SUCH FUND SHALL CONSIST OF ALL MONEYS APPROPRIATED FOR THE PURPOSE OF SUCH FUND, TAXES, INTEREST, PENALTIES AND FEES COLLECTED AND RECEIVED BY THE COMMISSIONER OF TAXATION AND FINANCE PURSUANT TO PARAGRAPH (H) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED TWENTY-FOUR OF THE TAX LAW, AND ALL MONEYS REQUIRED BY THE PROVISIONS OF THIS SECTION OR ANY OTHER LAW TO THE BE PAID INTO OR CREDITED TO THIS FUND.

3. MONEYS WITHIN THE ALCOHOLISM AND SUBSTANCE ABUSE PREVENTION AND TREATMENT FUND, UPON APPROPRIATION BY THE LEGISLATURE, SHALL BE AVAILABLE TO THE COMMISSIONER OF THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES WHO SHALL DISTRIBUTE FIFTY PERCENT OF THE FUND FOR PREVENTION PROGRAMS, INCLUDING, BUT NOT LIMITED TO, LOCAL SCHOOL-BASED AND COMMUNITY PROGRAMS WHICH PROVIDE ALCOHOL AND CHEMICAL DEPENDENCE PREVENTION AND EDUCATION SERVICES, FORTY-FIVE PERCENT OF THE FUND FOR THE OPERATION OF ALCOHOL AND SUBSTANCE ABUSE TREATMENT FACILITIES, ALCOHOL AND SUBSTANCE ABUSE RESIDENTIAL TREATMENT FACILITIES, AND FIVE PERCENT OF THE FUND TO THE STATE POLICE FOR DWI LAW ENFORCEMENT PURPOSES.

4. THE MONEYS, WHEN ALLOCATED, SHALL BE PAID OUT OF THE FUND ON THE AUDIT AND WARRANT OF THE COMPTROLLER ON VOUCHERS CERTIFIED OR APPROVED BY THE COMMISSIONER OF THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, OR BY AN OFFICER OR EMPLOYEE OF THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES DESIGNATED BY SUCH COMMISSIONER.

5. THE COMMISSIONER OF THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES SHALL PROMULGATE RULES AND REGULATIONS PERTAINING TO THE ALLOCATION OF MONEYS FROM THIS FUND.

S 4. The commissioner of taxation and finance in consultation with the commissioner of the office of alcoholism and substance abuse services, shall prepare a report on the spending and allocation of funds of the alcoholism and substance abuse prevention and treatment fund. Such report shall include, but not be limited to, the entities and programs that receive monies from said fund, the amount of funding for each entity or program that is received, the purpose of said programs, and a proposed budget of said fund for the upcoming year.

S 5. 1. A task force for the alcoholism and substance abuse prevention and treatment fund is hereby established to develop eligibility guidelines and make recommendations regarding the funding of prevention and treatment programs pursuant to section ninety-seven-jjjj of the state finance law.

2. The alcoholism and substance abuse prevention and treatment task force shall consist of 15 members. The commissioner of the office of alcoholism and substance abuse services shall be the chair of such task force and a nonvoting member. The remaining 14 members shall be appointed as follows: eight members by the governor, two members by the temporary president of the senate, two members by the speaker of the assembly, one member by the minority leader of the senate, and one member by the minority leader of the assembly. All members shall be appointed only if they have demonstrated an active interest in the prevention and treatment of alcohol and substance abuse generally, with at least four of the eight members appointed by the governor, and one of the two members of the temporary president of the senate, and speaker of the assembly, being actively engaged in the prevention and treatment of people suffering from alcoholism and substance abuse. Vacancies in the

membership of such task force shall be filled in the manner provided for original appointments.

3. The members of the task force for the alcoholism and substance abuse prevention and treatment fund shall receive no compensation for their services, but may be allowed their actual and necessary expenses incurred in performing their duties pursuant to this act.

4. To the maximum extent feasible, the task force for the alcoholism and substance abuse prevention and treatment fund shall be entitled to request and receive, and shall utilize and be provided with such facilities, resources and data of any court, department, division, board, bureau, commission or agency of the state or any political subdivision thereof as it may reasonably request to properly carry out its powers and duties.

S 6. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 7. This act shall take effect April 1, 2009, provided, however, that any rules or regulations necessary to implement the provisions of this act may be promulgated and any procedures, forms, or instructions necessary for such implementation may be adopted and issued on or after the date this act shall have become a law. The commissioner of taxation and finance may take any steps necessary to implement this act prior to its effective date.