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I N S E N A T E

(PREFILED)

January 6, 2016

Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to the measurement of liquor for tax purposes

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

1 Section 1. Subdivision 1 of section 421 of the tax law, as amended by
2 chapter 508 of the laws of 1993, is amended to read as follows:
3 1. General. The commissioner, upon the application of a distributor,
4 shall register such distributor in suitable books to be kept by the
5 department for that purpose, conditioned upon the obtaining of appropriate licenses pursuant to the alcoholic beverage control law, and the
6 continuance of such license shall be a continuing condition of registration as a distributor under this article. The application shall be in a
7 form and contain such data as the commissioner shall prescribe. No
8 distributor, unless so registered, shall make any sale of alcoholic
9 beverages within this state, except a sale, if any, as to which this
10 state is without power to impose such condition. No person, unless so
11 registered, shall (i) import or cause any liquors to be imported in this
12 state for sale or use within this state, (ii) purchase a warehouse
13 receipt and pursuant to such purchase then cause liquors covered by such
14 receipt to be removed from a warehouse in this state or (iii) except in
15 accordance with clause (i) or (ii) of paragraph (b) of subdivision four
16 of section four hundred twenty of this article, produce, distill, manufacture, compound, mix or ferment any such liquors within this state for
17 sale. Provided, however, that the commissioner may exclude from registration requirements any person who is a distributor of liquors solely
18 by reason of the importation into this state of no more than [ninety
19 liters] TWENTY-FOUR GALLONS of liquors during a one-year period for such
20 person's personal use and consumption to register as a distributor with
21 respect to liquor. Provided, further, that an abbreviated registration
22 in the from of a permit, without a bond, may be instituted by the

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

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1 commissioner for the purpose of authorizing the importation of up to
2 [three hundred sixty liters NINETY-FIVE GALLONS of liquors per year into
3 this state by an individual for such individual's personal use and
4 consumption in this state.

5 S 2. Paragraphs (e), (f) and the opening paragraph of paragraph (g) of
6 subdivision 1 of section 424 of the tax law, paragraph (e) as amended by
7 chapter 190 of the laws of 1990, paragraph (f) and the opening paragraph
8 of paragraph (g) as amended by chapter 508 of the laws of 1993, are
9 amended to read as follows:

10 (e) [Sixty-seven] TWO DOLLARS AND FIFTY-FOUR cents per [liter] GALLON
11 upon liquors containing not more than twenty-four per centum of alcohol
12 by volume except liquors containing not more than two per centum of
13 alcohol by volume, upon which the tax shall be [one cent] FOUR CENTS per
14 [liter] GALLON; and

15 (f) [One dollar and seventy] SIX DOLLARS AND FORTY-FOUR cents per
16 [liter] GALLON upon all other liquors; when sold or used within this
17 state, except when sold or used under such circumstances that this state
18 is without power to impose such tax or when sold to the United States
19 and except beers when sold to or by a voluntary unincorporated organiza-
20 tion of the armed forces of the United States operating a place for the
21 sale of goods pursuant to regulations promulgated by the appropriate
22 executive agency of the United States, to the extent provided in such
23 regulations, directives and policy statements of such an agency applica-
24 ble to such sales, and except when sold to professional foreign
25 consuls-general, consuls and vice-consuls who are nationals of the state
26 appointing them and who are assigned to foreign consulates in this
27 state, provided that American consular officers of equal rank who are
28 citizens of the United States and who exercise their official functions
29 at American consulates in such foreign country are granted reciprocal
30 exemptions; provided, however, that the commissioner may permit the sale
31 of alcohol without tax to a holder of any industrial alcohol permit,
32 alcohol permit or alcohol distributor's permit, issued by the state
33 liquor authority, and by the holder of an alcohol distributor's permit,
34 class A, issued by such authority to a holder of a distiller's license,
35 class B, or a winery license, issued by such authority and may also
36 permit the use of alcohol for any purpose other than the production of
37 alcoholic beverages by such holders without tax; provided also that the
38 commissioner may permit the sale of cider without tax by a holder of a
39 cider producer's license issued by the state liquor authority to a hold-
40 er of a cider producer's license or a cider wholesaler's license issued
41 by such authority.

42 For purposes of this chapter, it is presumed that liquors are
43 possessed for the purpose of sale in this state if the quantity of
44 liquors possessed in this state, imported or caused to be imported into
45 this state or produced, distilled, manufactured, compounded, mixed or
46 fermented in this state exceeds [ninety liters] TWENTY-FOUR GALLONS.
47 Such presumption may be rebutted by the introduction of substantial
48 evidence to the contrary. In any case where the quantity of alcoholic
49 beverages taxable pursuant to this article is a fractional part of one
50 [liter (or one] gallon [in the case of beers]] or an amount greater than
51 a whole multiple of [liters (or] gallons [in the case of beers]], the
52 amount of tax levied and imposed on such fractional part of one [liter
53 (or one] gallon [in the case of beers]], or fractional part of a [liter
54 (or] gallon[] in excess of a whole multiple of [liters or] gallons
55 shall be such fractional part of the rate imposed by paragraphs (a)
56 through (f).

1 S 3. Section 425-a of the tax law, as added by chapter 508 of the laws
2 of 1993, is amended to read as follows:

3 S 425-a. Presumption of taxability. For the purpose of the proper
4 administration of the taxes imposed by this article and to prevent
5 evasion thereof, it shall be presumed with respect to this chapter that
6 all alcoholic beverages possessed or found in this state are subject to
7 the taxes imposed by this article until the contrary is established by
8 substantial evidence. Except with respect to a purchase at retail of
9 beers or wines and a purchase at retail of [ninety liters] TWENTY-FOUR
10 GALLONS or less of liquors, no person shall purchase alcoholic beverages
11 in this state unless the taxes imposed by this article with respect to
12 such beverages have been assumed by a distributor registered under this
13 article or paid by such distributor pursuant to and in accordance with
14 the manner provided herein and evidenced in accordance with the manner
15 provided herein. In the case of liquors, such taxes shall be assumed by
16 a distributor in accordance with the invoice required, and the certifi-
17 cation of tax payment included therein, under section four hundred
18 twenty-seven of this article; in the case of other alcoholic beverages,
19 the taxes shall be assumed by such distributor pursuant to and in
20 accordance with the rules or regulations of the department.

21 S 4. Section 426 of the tax law, as amended by chapter 891 of the laws
22 of 1986, is amended to read as follows:

23 S 426. Records to be kept by brand owners, distributors, owners and
24 others. Every brand owner, distributor, owner or other person shall
25 keep a complete and accurate record of all purchases and sales or other
26 dispositions of alcoholic beverages, and a complete and accurate record
27 of the number of gallons of beers produced, manufactured, brewed or
28 fermented and [liters] GALLONS of all other alcoholic beverages
29 produced, distilled, manufactured, brewed, compounded, mixed or ferment-
30 ed. Such records shall be in such form and contain such other informa-
31 tion as the tax commission shall prescribe. Said commission, by rule or
32 regulation, also may require the delivery of statements to purchasers of
33 alcoholic beverages, and prescribe the matters to be contained therein.
34 Such records and statements, unless required by the tax commission to be
35 preserved for a longer period, shall be preserved for a period of one
36 year and shall be offered for inspection at any time upon oral or writ-
37 ten demand by the commissioner [of taxation and finance] or his duly
38 authorized agents, and every such distributor, brand owner, owner or
39 other person shall make such reports to the department [of taxation and
40 finance] as may be required by the tax commission. Nothing in this
41 section contained shall be construed to require the keeping of a record
42 of the purchase or disposition of alcoholic beverages by a consumer
43 thereof, except by a person who uses the same for commercial purposes,
44 or of the sale of alcoholic beverages at retail.

45 S 5. Subdivision 1 and paragraph (i) of subdivision 2 of section 427
46 of the tax law, as added by chapter 508 of the laws of 1993, are amended
47 to read as follows:

48 1. Every sale of liquors, except a sale at retail of [ninety liters]
49 TWENTY-FOUR GALLONS or less, shall be evidenced by and recorded on an
50 individual, serially numbered invoice, and, with respect to each such
51 sale, the seller therein shall make and complete such invoice which
52 shall contain the information required by this section and give the same
53 to the purchaser at the time of delivery. The seller shall sign and date
54 the invoice required by this section and certify the entire content of
55 such invoice.

1 (i) the size (in [liters] GALLONS) and number of bottles of liquors
2 sold, and its description, by brand name and price; and

3 S 6. Subdivision 2 of section 428 of the tax law, as added by chapter
4 508 of the laws of 1993, is amended to read as follows:

5 2. The operator of a motor vehicle, as such term is defined in subdi-
6 vision three of section two hundred eighty-two of this chapter, or any
7 other means of transport of liquors in which more than [ninety liters]
8 TWENTY-FOUR GALLONS of liquors is being transported in this state must
9 have in his or her possession a manifest, invoice or other document
10 which shows the name and address of the person from whom such liquors
11 were received and the date and place of receipt of such liquor and the
12 name and address of every person to whom such operator is to make deliv-
13 ery of the same and the place of delivery, together with the number of
14 liters to be delivered to each person, and, if such liquor is being
15 imported into the state in such motor vehicle or such other means of
16 transport, the name of the distributor importing or causing such liquors
17 to be imported into the state and such other information as the commis-
18 sioner may require pursuant to rule or regulation. Every operator of
19 such motor vehicle or such other means of transport shall at the request
20 of a peace officer, acting pursuant to his special duties, a police
21 officer, any representative of the department or any other person
22 authorized by law to inquire into or investigate the transportation of
23 such liquors, produce such manifest, invoice or other document for
24 inspection. The person causing the operation of such motor vehicle or
25 such other means of transport shall be responsible to cause the operator
26 to keep in such operator's possession in such motor vehicle or such
27 other means of transport the manifest, invoice or other document
28 required by this section. The absence of the manifest, invoice or other
29 document required by this section shall give rise to a presumption that
30 the liquors being transported are being imported or caused to be
31 imported into this state for sale or use therein by other than a regis-
32 tered distributor. Moreover, the absence of (1) the place of delivery
33 of liquors on the manifest, invoice or other document with respect to
34 liquors being imported into the state shall give rise to a presumption
35 that such liquors are being imported into the state for sale or use in
36 the state and (2) the name of a registered distributor on the manifest,
37 invoice or other document with respect to liquors being imported into
38 the state shall give rise to a presumption that such liquors are being
39 so imported or caused to be imported into this state, for sale or use
40 therein, by other than a registered distributor. Such presumptions may
41 be rebutted by the introduction of substantial evidence to the contrary.

42 S 7. Subdivisions 1 and 2 of section 429 of the tax law, as amended by
43 chapter 433 of the laws of 1978, are amended to read as follows:

44 1. Every distributor, noncommercial importer or other person shall, on
45 or before the twentieth day of each month, file with the department [of
46 taxation and finance] a return, on forms to be prescribed by the tax
47 commission and furnished by such department, stating separately the
48 number of gallons, or lesser quantity, of beers, [and the number of
49 liters, or lesser quantity, of] wines and liquors sold or used by such
50 distributor, noncommercial importer or other person in this state during
51 the preceding calendar month, except that the tax commission may, if it
52 deems it necessary in order to insure the payment of the tax imposed by
53 this article, require returns to be made at such times and covering such
54 periods as it may deem necessary. Such return shall contain such further
55 information as the tax commission shall require. The fact that the name
56 of the distributor, noncommercial importer or other person is signed to

1 a filed return shall be prima facie evidence for all purposes that the
2 return was actually signed by such distributor, noncommercial importer
3 or other person.

4 2. Each such distributor, noncommercial importer or other person shall
5 pay to such department with the filing of such return, the tax imposed
6 by this article, on each gallon, or lesser quantity, of [beers and on
7 each liter, or lesser quantity of all other] ALL alcoholic beverages
8 sold or used by such distributor, noncommercial importer or other person
9 in this state, as so reported, during the period covered by such return,
10 except that, where a distributor has purchased alcoholic beverages prior
11 to the expiration of the period covered by the return, upon which the
12 taxes imposed by this article have been or are required to be paid by
13 another distributor, a credit shall be allowed for the amount of such
14 taxes.

15 S 8. Paragraph (b) of subdivision 1 and subdivision 2 of section 445
16 of the tax law, as amended by chapter 433 of the laws of 1978, are
17 amended to read as follows:

18 (b) [Twenty-six and four-tenths] NINETY-NINE AND NINE-TENTHS cents per
19 [liter] GALLON on the liquors described in paragraph (f) of subdivision
20 one of section four hundred twenty-four, when sold or used in such city.

21 2. Every local law imposing taxes pursuant to the authority of subdivi-
22 sion one shall also impose upon each person, other than a distributor
23 within the meaning of such local law, who, on the date the taxes imposed
24 pursuant to the authority of such subdivision become effective, owns and
25 possesses for the purposes of sale beer, or other alcoholic beverages
26 described in subdivision one, a floor tax at the rates applicable under
27 subdivision one upon such beer OR OTHER ALCOHOLIC BEVERAGES in excess of
28 one hundred gallons [and upon such other alcoholic beverages in excess
29 of four hundred liters]. Such floor tax shall be due and payable on the
30 twentieth day of the month succeeding the month in which the taxes
31 become effective.

32 S 9. Subdivisions (e), (f) and (g) of section 1813 of the tax law, as
33 amended by section 27 of subpart I of part V-1 of chapter 57 of the laws
34 of 2009, are amended to read as follows:

35 (e) Person not registered as a distributor. (1) Any person required to
36 be registered as a distributor pursuant to the provisions of article
37 eighteen of this chapter who, while not so registered, knowingly imports
38 or causes to be imported into the state, for sale or use therein, any
39 liquors or, who, except in accordance with clause (i) or (ii) of para-
40 graph (b) of subdivision four of section four hundred twenty of this
41 chapter, knowingly produces, distills, manufactures, compounds, mixes or
42 ferments in this state any such liquors for sale, or who, as a purchaser
43 of a warehouse receipt, knowingly causes liquors covered by such receipt
44 to be removed from a warehouse in this state, shall be guilty of a class
45 A misdemeanor. Provided, however, that any person who has twice been
46 convicted under this section within the preceding five years, shall be
47 guilty of a class E felony for any subsequent violation of this para-
48 graph.

49 (2) Any person who, while not registered as a distributor pursuant to
50 the provisions of article eighteen of this chapter, knowingly and inten-
51 tionally imports or causes to be imported into this state, for sale or
52 use therein, more than [three hundred sixty liters] NINETY-FIVE GALLONS
53 of liquors into this state in a one-year period or, except in accordance
54 with clause (i) or (ii) of paragraph (b) of subdivision four of section
55 four hundred twenty of this chapter, knowingly and intentionally produc-
56 es, distills, manufactures, compounds, mixes or ferments for sale more

1 than [three hundred sixty liters] NINETY-FIVE GALLONS of such liquors
2 within this state in a one-year period, or, as a purchaser of a ware-
3 house receipt, knowingly and intentionally causes more than [three
4 hundred sixty liters] NINETY-FIVE GALLONS of liquors in a one-year peri-
5 od to be removed from a warehouse in this state, shall be guilty of a
6 class E felony.

7 (3) For purposes of this subdivision, it shall be presumed that the
8 importation or the causing to be imported into this state or the
9 production, distillation, manufacture, compounding, mixing or fermenting
10 in this state of more than [ninety liters] TWENTY-FOUR GALLONS of such
11 liquors by any person in a one-year period is for purposes of sale. Such
12 presumption may be rebutted by the introduction of substantial evidence
13 to the contrary.

14 (f) Person not registered as a distributor for city purposes. (1) Any
15 person required to be registered as a distributor for city purposes
16 pursuant to the provisions of section four hundred forty-five of article
17 eighteen of this chapter who, while not so registered, knowingly imports
18 or causes to be imported into such city, for sale or use therein, any
19 liquors or, who, except in accordance with clause (i) or (ii) of para-
20 graph (b) of subdivision four of section four hundred twenty of this
21 chapter as incorporated into such section four hundred forty-five, know-
22 ingly produces, distills, manufactures, compounds, mixes or ferments in
23 such city any such liquors for sale, or who, as a purchaser of a ware-
24 house receipt, causes liquors covered by such receipt to be removed from
25 a warehouse in this state, shall be guilty of a class A misdemeanor.
26 Provided, however, that any person who has twice been convicted under
27 this section within the preceding five years shall be guilty of a class
28 E felony for any subsequent violation of this paragraph.

29 (2) Any person who, while not registered as a distributor for city
30 purposes pursuant to the provisions of section four hundred forty-five
31 of article eighteen of this chapter, knowingly and intentionally imports
32 or causes to be imported into such city, for sale or use therein, more
33 than [three hundred sixty liters] NINETY-FIVE GALLONS of liquors into
34 such city in a one-year period or, except in accordance with clause (i)
35 or (ii) of paragraph (b) of subdivision four of section four hundred
36 twenty of this chapter as incorporated into such section four hundred
37 forty-five, knowingly and intentionally produces, distills, manufac-
38 tures, compounds, mixes or ferments for sale more than [three hundred
39 sixty liters] NINETY-FIVE GALLONS of such liquors within such city in a
40 one-year period, or, as a purchaser of a warehouse receipt, knowingly
41 and intentionally causes more than [three hundred sixty liters] NINETY-
42 FIVE GALLONS of liquors in a one-year period to be removed from a ware-
43 house in this state, shall be guilty of a class E felony.

44 (3) For purposes of this subdivision, it shall be presumed that the
45 importation or the causing to be imported into such city or the
46 production, distillation, manufacture, compounding, mixing or fermenting
47 in such city of more than [ninety liters] TWENTY-FOUR GALLONS of liquors
48 by any person in a one-year period is for purposes of sale. Such
49 presumption may be rebutted by the introduction of substantial evidence
50 to the contrary.

51 (g) Any person, other than the distributor registered under article
52 eighteen of this chapter which imported or caused the liquors to be
53 imported into this state, who shall willfully and knowingly have in his
54 custody, possession or under his control liquors with respect to which
55 the taxes imposed by or pursuant to the authority of article eighteen of
56 this chapter have not been assumed or paid by a distributor registered

1 as such under such article, shall be guilty of a class B misdemeanor; if
2 such person shall willfully and knowingly have more than [ninety liters]
3 TWENTY-FOUR GALLONS of such liquors in his custody or possession or
4 under his control, such person shall be guilty of a class A misdemeanor;
5 or if such person shall knowingly and intentionally have more than
6 [three hundred sixty liters] NINETY-FIVE GALLONS of such liquors in his
7 custody or possession or under his control, such person shall be guilty
8 of a class E felony. For purposes of this subdivision, such person shall
9 willfully and knowingly have in his custody, possession or under his
10 control any liquors with respect to which such taxes have not been
11 assumed or paid by a distributor registered as such where such person
12 has knowledge of the requirement of such taxes and where, to his know-
13 ledge, such taxes have not been assumed or paid by a registered distrib-
14 utor with respect to such liquors.

15 S 10. Subdivisions (a), (k) and (l) of section 1845 of the tax law, as
16 added by chapter 508 of the laws of 1993, are amended to read as
17 follows:

18 (a) Temporary seizure. Whenever a police officer designated in section
19 1.20 of the criminal procedure law or a peace officer designated in
20 subdivision four of section 2.10 of such law, acting pursuant to his
21 special duties, shall discover more than [ninety liters] TWENTY-FOUR
22 GALLONS of liquors which are being imported for sale or use in the
23 state, where the person importing or causing such liquors to be imported
24 is not registered as a distributor under section four hundred twenty-one
25 of this chapter, such police officer or peace officer is hereby author-
26 ized to seize and take possession of such liquors, and to seize and take
27 possession of the vehicle or other means of transportation used to
28 transport such liquors.

29 (k) An additional ground for seizure and forfeiture under this section
30 shall be where such police officer or peace officer shall discover more
31 than [ninety liters] TWENTY-FOUR GALLONS of liquors in this state, with
32 respect to which the taxes imposed by or pursuant to article eighteen of
33 this chapter have not been paid or assumed by a person registered as a
34 distributor pursuant to such article, which are in the course of
35 distribution in this state or which are being sold in this state. All
36 the foregoing subdivisions of this section shall apply to the seizure
37 and forfeiture of liquors referred to in this subdivision and the vehi-
38 cle transporting the same as if such foregoing subdivisions specifically
39 referred to such grounds and as if such grounds set forth in this subdivi-
40 sion were set forth as grounds for seizure in subdivision (a) hereof.
41 Provided that in the forfeiture action with respect to the liquors or
42 vehicle referred to in this subdivision, the department shall be
43 required to show that such liquors were found within the state and that
44 they were in the course of distribution in this state or were being sold
45 in this state.

46 (l) This section shall also apply to a forfeiture action with respect
47 to the importation of more than [ninety liters] TWENTY-FOUR GALLONS of
48 liquors into a city imposing a tax pursuant to the authority of section
49 four hundred forty-five of this chapter by a person not registered as a
50 distributor for purposes of such tax or, in addition, with respect to
51 the distribution or sale of untaxed liquors in such city.

52 S 11. This act shall take effect on the one hundred eightieth day
53 after it shall have become a law.