

# STATE OF NEW YORK

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1831

2017-2018 Regular Sessions

## IN SENATE

January 11, 2017

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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 appropri-  
6 ate licenses pursuant to the alcoholic beverage control law, and the  
7 continuance of such license shall be a continuing condition of registra-  
8 tion as a distributor under this article. The application shall be in a  
9 form and contain such data as the commissioner shall prescribe. No  
10 distributor, unless so registered, shall make any sale of alcoholic  
11 beverages within this state, except a sale, if any, as to which this  
12 state is without power to impose such condition. No person, unless so  
13 registered, shall (i) import or cause any liquors to be imported in this  
14 state for sale or use within this state, (ii) purchase a warehouse  
15 receipt and pursuant to such purchase then cause liquors covered by such  
16 receipt to be removed from a warehouse in this state or (iii) except in  
17 accordance with clause (i) or (ii) of paragraph (b) of subdivision four  
18 of section four hundred twenty of this article, produce, distill, manu-  
19 facture, compound, mix or ferment any such liquors within this state for  
20 sale. Provided, however, that the commissioner may exclude from regis-  
21 tration requirements any person who is a distributor of liquors solely  
22 by reason of the importation into this state of no more than [~~ninety~~  
23 ~~liters~~] twenty-four gallons of liquors during a one-year period for such  
24 person's personal use and consumption to register as a distributor with

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

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1 respect to liquor. Provided, further, that an abbreviated registration  
2 in the from of a permit, without a bond, may be instituted by the  
3 commissioner for the purpose of authorizing the importation of up to  
4 ~~[three hundred sixty liters ninety-five gallons of liquors per year into~~  
5 ~~this state by an individual for such individual's personal use and~~  
6 ~~consumption in this state.~~

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

12 ~~(e) [Sixty seven]~~ Two dollars and fifty-four cents per ~~[liter]~~ gallon  
13 upon liquors containing not more than twenty-four per centum of alcohol  
14 by volume except liquors containing not more than two per centum of  
15 alcohol by volume, upon which the tax shall be ~~[one-cent]~~ four cents per  
16 ~~[liter]~~ gallon; and

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

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

1 shall be such fractional part of the rate imposed by paragraphs (a)  
2 through (f).

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

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

23 § 4. Section 426 of the tax law, as amended by chapter 891 of the laws  
24 of 1986, is amended to read as follows:

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

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

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

1 the invoice required by this section and certify the entire content of  
2 such invoice.

3 (i) the size (in [~~liters~~] gallons) and number of bottles of liquors  
4 sold, and its description, by brand name and price; and

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

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

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

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

1 information as the tax commission shall require. The fact that the name  
2 of the distributor, noncommercial importer or other person is signed to  
3 a filed return shall be prima facie evidence for all purposes that the  
4 return was actually signed by such distributor, noncommercial importer  
5 or other person.

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

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

20 (b) [~~Twenty-six and four-tenths~~] Ninety-nine and nine-tenths cents per  
21 [~~liter~~] gallon on the liquors described in paragraph (f) of subdivision  
22 one of section four hundred twenty-four, when sold or used in such city.

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

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

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

51 (2) Any person who, while not registered as a distributor pursuant to  
52 the provisions of article eighteen of this chapter, knowingly and inten-  
53 tionally imports or causes to be imported into this state, for sale or  
54 use therein, more than [~~three hundred sixty liters~~] ninety-five gallons  
55 of liquors into this state in a one-year period or, except in accordance  
56 with clause (i) or (ii) of paragraph (b) of subdivision four of section



1 four hundred twenty of this chapter, knowingly and intentionally produc-  
2 es, distills, manufactures, compounds, mixes or ferments for sale more  
3 than [~~three hundred sixty liters~~] ninety-five gallons of such liquors  
4 within this state in a one-year period, or, as a purchaser of a ware-  
5 house receipt, knowingly and intentionally causes more than [~~three~~  
6 ~~hundred sixty liters~~] ninety-five gallons of liquors in a one-year peri-  
7 od to be removed from a warehouse in this state, shall be guilty of a  
8 class E felony.

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

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

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

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

53 (g) Any person, other than the distributor registered under article  
54 eighteen of this chapter which imported or caused the liquors to be  
55 imported into this state, who shall willfully and knowingly have in his  
56 custody, possession or under his control liquors with respect to which

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

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

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

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

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

54 § 11. This act shall take effect on the one hundred eightieth day  
55 after it shall have become a law.