# STATE OF NEW YORK

7400--A

2017-2018 Regular Sessions

# IN ASSEMBLY

April 25, 2017

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to taxes on alcoholic beverages with respect to liquors

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. Section 420 of the tax law is amended by adding a new subdivision 17 to read as follows:

**17. "Proof gallon" means one gallon of spirits that is fifty percent alcohol at sixty degrees Fahrenheit.**

§ 2. Subdivision 1 of section 421 of the tax law, as amended by chapter 508 of the laws of 1993, is amended to read as follows:

1. General. The commissioner, upon the application of a distributor, shall register such distributor in suitable books to be kept by the department for that purpose, conditioned upon the obtaining of appropriate licenses pursuant to the alcoholic beverage control law, and the continuance of such license shall be a continuing condition of registration as a distributor under this article. The application shall be in a form and contain such data as the commissioner shall prescribe. No distributor, unless so registered, shall make any sale of alcoholic beverages within this state, except a sale, if any, as to which this state is without power to impose such condition. No person, unless so registered, shall (i) import or cause any liquors to be imported in this state for sale or use within this state, (ii) purchase a warehouse receipt and pursuant to such purchase then cause liquors covered by such receipt to be removed from a warehouse in this state or (iii) except in accordance with clause (i) or (ii) of paragraph (b) of subdivision four of section four hundred twenty of this article, produce, distill, manufacture, compound, mix or ferment any such liquors within this state for sale. Provided, however, that the commissioner may exclude from regis-

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

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tration requirements any person who is a distributor of liquors solely by reason of the importation into this state of no more than [~~ninety liters~~] twenty-four proof gallons of liquors during a one-year period for such person's personal use and consumption to register as a distributor with respect to liquor. Provided, further, that an abbreviated registration in the [~~from~~] form of a permit, without a bond, may be instituted by the commissioner for the purpose of authorizing the importation of up to [~~three hundred sixty liters~~] ninety-five proof gallons of liquors per year into this state by an individual for such individual's personal use and consumption in this state.

§ 3. Paragraphs (e), (f) and (g) of subdivision 1 of section 424 of the tax law, paragraph (e) as amended by chapter 190 of the laws of 1990, paragraph (f) and the opening paragraph of paragraph (g) as amended by chapter 508 of the laws of 1993 and paragraph (g) as amended by chapter 433 of the laws of 1978, are amended to read as follows:

(e) [~~Sixty-seven~~] Two dollars and fifty-three and six-tenths cents per [~~liter~~] gallon 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~~] three and three-quarters cents per [~~liter~~] gallon; and

(f) [~~One dollar~~] Six dollars and [~~seventy~~] forty-three and one-half cents per [~~liter~~] proof gallon 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.

(g) For purposes of this chapter, it is presumed that liquors are possessed for the purpose of sale in this state if the quantity of liquors possessed in this state, imported or caused to be imported into this state or produced, distilled, manufactured, compounded, mixed or fermented in this state exceeds [~~ninety liters~~] twenty-four proof gallons. Such presumption may be rebutted by the introduction of substantial evidence to the contrary. In any case where the quantity of alcoholic beverages taxable pursuant to this article is a fractional part of one [~~liter~~] proof gallon (or one gallon in the case of beers) or

an amount greater than a whole multiple of [~~liters~~] **proof gallons** (or gallons in the case of beers), the amount of tax levied and imposed on such fractional part of one [~~liter~~] **proof gallon** (or one gallon in the case of beers), or **a** fractional part of a [~~liter~~] **proof gallon** (or gallon) in excess of a whole multiple of [~~liters~~] **proof gallons** or gallons shall be such fractional part of the rate imposed by paragraphs (a) through (f).

Notwithstanding any other provision of this article, the tax commission may permit the purchase of liquors and wines without tax by a holder of a distiller's license or a winery license, issued by the state liquor authority from another holder of a distiller's license or a winery license, issued by such authority, in which event the liquors and wines so purchased shall be subject to the taxes imposed by this article in the hands of the purchaser in the same manner and to the same extent as if such purchaser had imported or caused the same to be imported into this state or had produced, distilled, manufactured, brewed, compounded, mixed or fermented the same within this state.

§ 4. Subdivision 4 of section 424 of the tax law, as amended by chapter 433 of the laws of 1978, is amended to read as follows:

4. [~~(a)~~] Notwithstanding any other provision of this article, there shall be exempt from the taxes imposed under this article, per month, one-quart of alcoholic beverages (or one gallon of such beverages in the case of a person arriving directly or indirectly from American Samoa, Guam or the Virgin Islands of the United States not more than one-quart of which shall have been acquired elsewhere than in such insular possessions):

[~~(i)~~] **(a)** purchased outside this state as an incident to a journey from which the purchaser is returning and

[~~(ii)~~] **(b)** not to be offered for sale or used for any commercial purpose, provided such alcoholic beverages accompany such person on his return to this state and provided, further, that in the case of a person arriving in this state from other than a state of the United States (including the district of Columbia), the Virgin Islands of the United States or a contiguous country maintaining a free zone or free port, such person shall have remained beyond the territorial limits of the United States for a period of not less than forty-eight hours.

[~~(b) Provided, however, where the amounts purchased outside this state or brought in exceed the amounts specified in paragraph (a) of this subdivision but are not in excess of one liter in the case of the references to one-quart or four liters in the case of the reference to one gallon, and where no duty is required by the laws of the United States to be paid on such amounts, such metric standards of fill shall be substituted for one-quart and one gallon, respectively, and such amounts shall be exempt from tax under the conditions provided for in paragraph (a) of this subdivision.~~]

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

§ 425-a. Presumption of taxability. For the purpose of the proper administration of the taxes imposed by this article and to prevent evasion thereof, it shall be presumed with respect to this chapter that all alcoholic beverages possessed or found in this state are subject to the taxes imposed by this article until the contrary is established by substantial evidence. Except with respect to a purchase at retail of beers or wines and a purchase at retail of [~~ninety liters~~] **twenty-four proof gallons** or less of liquors, no person shall purchase alcoholic beverages in this state unless the taxes imposed by this article with

respect to such beverages have been assumed by a distributor registered under this article or paid by such distributor pursuant to and in accordance with the manner provided herein and evidenced in accordance with the manner provided herein. In the case of liquors, such taxes shall be assumed by a distributor in accordance with the invoice required, and the certification of tax payment included therein, under section four hundred twenty-seven of this article; in the case of other alcoholic beverages, the taxes shall be assumed by such distributor pursuant to and in accordance with the rules or regulations of the department.

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

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

(i) the [~~size (in liters)~~] **volume per bottle** and number of bottles of liquors sold, and its description, by brand name and price; and

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

2. The operator of a motor vehicle, as such term is defined in subdivision three of section two hundred eighty-two of this chapter, or any other means of transport of liquors in which more than [~~ninety liters~~] **twenty-four proof gallons** of liquors is being transported in this state must have in his or her possession a manifest, invoice or other document which shows the name and address of the person from whom such liquors were received and the date and place of receipt of such liquor and the name and address of every person to whom such operator is to make delivery of the same and the place of delivery, together with the number of [~~liters~~] **bottles and volume per bottle** to be delivered to each person, and, if such liquor is being imported into the state in such motor vehicle or such other means of transport, the name of the distributor importing or causing such liquors to be imported into the state and such other information as the commissioner may require pursuant to rule or regulation. Every operator of such motor vehicle or such other means of transport shall at the request of a peace officer, acting pursuant to his special duties, a police officer, any representative of the department or any other person authorized by law to inquire into or investigate the transportation of such liquors, produce such manifest, invoice or other document for inspection. The person causing the operation of such motor vehicle or such other means of transport shall be responsible to cause the operator to keep in such operator's possession in such motor vehicle or such other means of transport the manifest, invoice or other document required by this section. The absence of the manifest, invoice or other document required by this section shall give rise to a presumption that the liquors being transported are being imported or caused to be imported into this state for sale or use therein by other than a registered distributor. Moreover, the absence of (1) the place of delivery of liquors on the manifest, invoice or other document with respect to liquors being imported into the state shall give rise to a presumption that such liquors are being imported into the state for sale

or use in the state and (2) the name of a registered distributor on the manifest, invoice or other document with respect to liquors being imported into the state shall give rise to a presumption that such liquors are being so imported or caused to be imported into this state, for sale or use therein, by other than a registered distributor. Such presumptions may be rebutted by the introduction of substantial evidence to the contrary.

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

1. Every distributor, noncommercial importer or other person shall, on or before the twentieth day of each month, file with the department of taxation and finance a return, on forms to be prescribed by the tax commission and furnished by such department, stating separately the number of gallons **or proof gallons**, or lesser quantity, of beers, [~~and the number of liters, or lesser quantity, of~~] wines and liquors sold or used by such distributor, noncommercial importer or other person in this state during the preceding calendar month, except that the tax commission may, if it deems it necessary in order to insure the payment of the tax imposed by this article, require returns to be made at such times and covering such periods as it may deem necessary. Such return shall contain such further information as the tax commission shall require. The fact that the name of the distributor, noncommercial importer or other person is signed to a filed return shall be prima facie evidence for all purposes that the return was actually signed by such distributor, noncommercial importer or other person.

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

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

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

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

§ 10. Paragraphs 2 and 3 of subdivision (e), paragraphs 2 and 3 of subdivision (f) and subdivision (g) of section 1813 of the tax law, as

amended by section 27 of subpart I of part V-1 of chapter 57 of the laws of 2009, are amended to read as follows:

(2) Any person who, while not registered as a distributor pursuant to the provisions of article eighteen of this chapter, knowingly and intentionally imports or causes to be imported into this state, for sale or use therein, more than [~~three hundred sixty liters~~] **ninety-five proof gallons** of liquors into this state in a one-year period or, except in accordance with clause (i) or (ii) of paragraph (b) of subdivision four of section four hundred twenty of this chapter, knowingly and intentionally produces, distills, manufactures, compounds, mixes or ferments for sale more than [~~three hundred sixty liters~~] **ninety-five proof gallons** of such liquors within this state in a one-year period, or, as a purchaser of a warehouse receipt, knowingly and intentionally causes more than [~~three hundred sixty liters~~] **ninety-five proof gallons** of liquors in a one-year period to be removed from a warehouse in this state, shall be guilty of a class E felony.

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

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

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

(g) Any person, other than the distributor registered under article eighteen of this chapter which imported or caused the liquors to be imported into this state, who shall willfully and knowingly have in his custody, possession or under his control liquors with respect to which the taxes imposed by or pursuant to the authority of article eighteen of this chapter have not been assumed or paid by a distributor registered as such under such article, shall be guilty of a class B misdemeanor; if such person shall willfully and knowingly have more than [~~ninety liters~~] **twenty-four proof gallons** of such liquors in his custody or possession or under his control, such person shall be guilty of a class A misdemeanor; or if such person shall knowingly and intentionally have more than

[~~three hundred sixty liters~~] **ninety-five proof gallons** of such liquors in his custody or possession or under his control, such person shall be guilty of a class E felony. For purposes of this subdivision, such person shall willfully and knowingly have in his custody, possession or under his control any liquors with respect to which such taxes have not been assumed or paid by a distributor registered as such where such person has knowledge of the requirement of such taxes and where, to his knowledge, such taxes have not been assumed or paid by a registered distributor with respect to such liquors.

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

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

(k) An additional ground for seizure and forfeiture under this section shall be where such police officer or peace officer shall discover more than [~~ninety liters~~] **twenty-four proof gallons** of liquors in this state, with respect to which the taxes imposed by or pursuant to article eighteen of this chapter have not been paid or assumed by a person registered as a distributor pursuant to such article, which are in the course of distribution in this state or which are being sold in this state. All the foregoing subdivisions of this section shall apply to the seizure and forfeiture of liquors referred to in this subdivision and the vehicle transporting the same as if such foregoing subdivisions specifically referred to such grounds and as if such grounds set forth in this subdivision were set forth as grounds for seizure in subdivision (a) hereof. Provided that in the forfeiture action with respect to the liquors or vehicle referred to in this subdivision, the department shall be required to show that such liquors were found within the state and that they were in the course of distribution in this state or were being sold in this state.

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

§ 12. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such date.