

STATE OF NEW YORK

757

2019-2020 Regular Sessions

IN SENATE

(Prefiled)

January 9, 2019

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

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

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

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

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

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

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

1 ~~(or)~~ gallon~~(s)~~ in excess of a whole multiple of [~~liters~~ ~~or~~] gallons
2 shall be such fractional part of the rate imposed by paragraphs (a)
3 through (f) of this subdivision.

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

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

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

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

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

51 1. Every sale of liquors, except a sale at retail of [~~ninety liters~~]
52 twenty-four gallons or less, shall be evidenced by and recorded on an
53 individual, serially numbered invoice, and, with respect to each such
54 sale, the seller therein shall make and complete such invoice which
55 shall contain the information required by this section and give the same
56 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~~] gallons to be delivered to each person, and, if such liquor is
17 being imported into the state in such motor vehicle or such other means
18 of transport, the name of the distributor importing or causing such
19 liquors to be imported into the state and such other information as the
20 commissioner may require pursuant to rule or regulation. Every operator
21 of such motor vehicle or such other means of transport shall at the
22 request of a peace officer, acting pursuant to his special duties, a
23 police 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 of this article, when sold or
23 used in such city.

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

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

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

52 (2) Any person who, while not registered as a distributor pursuant to
53 the provisions of article eighteen of this chapter, knowingly and inten-
54 tionally imports or causes to be imported into this state, for sale or
55 use therein, more than [~~three hundred sixty liters~~] ninety-five gallons
56 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 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 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 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.

(f) Person not registered as a distributor for city purposes. (1) Any person required to be registered as a distributor for city purposes pursuant to the provisions of section four hundred forty-five of article eighteen of this chapter who, while not so registered, knowingly imports or causes to be imported into such city, for sale or use therein, any liquors or, who, 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 produces, distills, manufactures, compounds, mixes or ferments in such city any such liquors for sale, or who, as a purchaser of a warehouse receipt, causes liquors covered by such receipt to be removed from a warehouse in this state, shall be guilty of a class A misdemeanor. Provided, however, that any person who has twice been convicted under this section within the preceding five years shall be guilty of a class E felony for any subsequent violation of this paragraph.

(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 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 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 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 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

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

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

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

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

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

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