

# STATE OF NEW YORK

9452

## IN SENATE

May 29, 2022

Introduced by Sen. KRUEGER -- 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 making certain technical corrections to tax on adult-use cannabis pursuant to article 20-C of such law; to amend the cannabis law, in relation to certain penalties; and to amend the penal law, in relation to clarifying the definition of selling cannabis

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

1 Section 1. Subdivision (b) of section 494 of the tax law, as added by  
2 chapter 92 of the laws of 2021, is amended to read as follows:

3 (b) [~~1~~] The commissioner shall refuse to issue a certificate of  
4 registration to any applicant and shall revoke the certificate of regis-  
5 tration of any such person who does not possess a valid license from the  
6 office of cannabis management. (1) The commissioner may refuse to issue  
7 a certificate of registration to any applicant where such applicant:  
8 (i) has a past-due liability as that term is defined in section one  
9 hundred seventy-one-v of this chapter; (ii) has had a certificate of  
10 registration under this article, a license from the office of cannabis  
11 management, or any license or registration provided for in this chapter  
12 revoked or suspended where such revocation or suspension was in effect  
13 on the date the application was filed or ended within one year from the  
14 date on which such application was filed; (iii) has been convicted of a  
15 crime provided for in this chapter within one year from the date on  
16 which such application was filed or the certificate was issued, as  
17 applicable; (iv) willfully fails to file a report or return required by  
18 this article; (v) willfully files, causes to be filed, gives or causes  
19 to be given a report, return, certificate or affidavit required by this  
20 article which is false; or (vi) willfully fails to collect or truthfully  
21 account for or pay over any tax imposed by this article.

22 (2) The commissioner may revoke the certificate of registration issued  
23 to any person who: (i) has had a certificate of registration under this  
24 article, or any license or registration provided for in this chapter

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

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1 revoked or suspended; (ii) has been convicted of a crime provided for in  
2 this chapter; (iii) willfully fails to file a report or return required  
3 by this article; (iv) willfully files, causes to be filed, gives or  
4 causes to be given a report, return, certificate or affidavit required  
5 by this article which is false; or (v) willfully fails to collect or  
6 truthfully account for or pay over any tax imposed by this article.

7 (3) In addition to the grounds for revocation in [~~paragraph (1)~~] para-  
8 graphs one and two of this subdivision, where a person who holds a  
9 certificate of registration is determined to have possessed or sold  
10 illicit cannabis: [~~(1)~~] (i) such registration may be revoked for a peri-  
11 od of up to one year for the first such possession or sale; [~~(2)~~] (ii)  
12 for a second such possession or sale within a period of five years by  
13 such person, the registration of such person may be revoked for a period  
14 of up to three years; [~~(3)~~] (iii) for a third such possession or sale  
15 within a period of up to five years by such person, the registration of  
16 such person may be revoked for a period of five years. A certificate of  
17 registration may be revoked pursuant to this paragraph immediately upon  
18 such person's receipt of written notice of revocation from the commis-  
19 sioner.

20 (4) Where a person who has been determined to have possessed or sold  
21 illicit cannabis does not possess a certificate of registration under  
22 this section, the commissioner may revoke a certificate of authority  
23 issued to such person pursuant to section eleven hundred thirty-four of  
24 this chapter. Such certificate may be revoked: (i) for a period of up to  
25 one year for the first such possession or sale; (ii) for a second such  
26 possession or sale within a period of five years by such person, the  
27 registration of such person may be revoked for a period of up to three  
28 years; (iii) for a third such possession or sale within a period of up  
29 to five years by such person, the registration of such person may be  
30 revoked for a period of five years.

31 § 2. Section 496-c of the tax law, as added by chapter 92 of the laws  
32 of 2021, is amended to read as follows:

33 § 496-c. Illicit cannabis penalty. (a) In addition to any other civil  
34 or criminal penalties that may apply, any person knowingly in possession  
35 of or knowingly having control over illicit cannabis, as defined in  
36 section four hundred ninety-two of this article, after notice and an  
37 opportunity for a hearing, shall be liable for a civil penalty of not  
38 less than [~~two~~] four hundred dollars per ounce of illicit cannabis flow-  
39 er, [~~five~~] ten dollars per milligram of the total weight of any illicit  
40 cannabis edible product, [~~fifty~~] one hundred dollars per gram of the  
41 total weight of any product containing illicit cannabis concentrate, and  
42 [~~five hundred~~] one thousand dollars per illicit cannabis plant, but not  
43 to exceed [~~four~~] eight hundred dollars per ounce of illicit cannabis  
44 flower, [~~ten~~] twenty dollars per milligram of the total weight of any  
45 illicit cannabis edible product, [~~one~~] two hundred dollars per gram of  
46 the total weight of any product containing illicit cannabis concentrate,  
47 and [~~one~~] two thousand dollars per illicit cannabis plant for a first  
48 violation, and for a second and subsequent violation within three years  
49 following a prior violation shall be liable for a civil penalty of not  
50 less than [~~four~~] eight hundred dollars per ounce of illicit cannabis  
51 flower, [~~ten~~] twenty dollars per milligram of the total weight of any  
52 illicit cannabis edible product, [~~one~~] two hundred dollars per gram of  
53 the total weight of any product containing illicit cannabis concentrate,  
54 and [~~one~~] two thousand dollars per illicit cannabis plant, but not to  
55 exceed [~~five hundred~~] one thousand dollars per ounce of illicit cannabis  
56 flower, [~~twenty~~] forty dollars per milligram of the total weight of any

1 illicit cannabis edible product, [~~two~~] four hundred dollars per gram of  
2 the total weight of any product containing illicit cannabis concentrate,  
3 and [~~two~~] four thousand dollars per illicit cannabis plant.

4 (b) No enforcement action taken under this section shall be construed  
5 to limit any other criminal or civil liability of anyone in possession  
6 of illicit cannabis.

7 (c) The penalty imposed by this section shall not apply to persons  
8 lawfully in possession of less than two ounces of adult-use cannabis or  
9 ten grams of concentrated cannabis in accordance with the cannabis law  
10 or penal law.

11 (d) The commissioner or his or her duly authorized representatives, or  
12 the duly authorized representatives of the office of cannabis manage-  
13 ment, shall seize any illicit cannabis found on any person engaged in  
14 the cultivation, processing, distribution or sale of adult-use cannabis  
15 products; or in any premises or vehicle where adult-use cannabis  
16 products are cultivated, processed, distributed, placed, stored, sold or  
17 offered for sale; or on any person in possession, control or occupancy  
18 of such premises or vehicle.

19 § 3. The tax law is amended by adding a new section 496-d to read as  
20 follows:

21 § 496-d. Enforcement. For purposes of the efficient administration of  
22 the taxes imposed by this article, it is the intent of the legislature  
23 that the cultivation, processing, distribution and sale of adult-use  
24 cannabis products be deemed a heavily regulated industry, subject to  
25 supervision by the commissioner and the office of cannabis management.  
26 The commissioner or his or her duly authorized representatives, and the  
27 duly authorized representatives of the office of cannabis management are  
28 hereby authorized: (1) to conduct regulatory inspections in the same  
29 manner as a regulatory inspection pursuant to article twenty of this  
30 chapter of any person engaged in the cultivation, processing, distrib-  
31 ution or sale of adult-use cannabis products, any premises or vehicle  
32 where adult-use cannabis is cultivated, processed, distributed, placed,  
33 stored, sold or offered for sale, and any person in possession, control  
34 or occupancy of such premises or vehicle; (2) to examine the books,  
35 papers, invoices and other records of any person engaged in the culti-  
36 vation, processing, distribution or sale of adult-use cannabis products,  
37 any premises or vehicle where adult-use cannabis products are culti-  
38 vated, processed, distributed, placed, stored, sold or offered for sale  
39 and any person in possession, control or occupancy of any premises where  
40 adult-use cannabis products are placed, stored, sold or offered for  
41 sale. Each such person is hereby directed and required upon demand to  
42 give to the commissioner or his or her duly authorized representatives,  
43 or the duly authorized representatives of the office of cannabis manage-  
44 ment, the means, facilities and opportunity for such examinations.

45 § 4. The tax law is amended by adding a new section 1814-b to read as  
46 follows:

47 § 1814-b. Penalties. Any person required to be registered pursuant to  
48 article twenty-C of this chapter as a distributor of adult-use cannabis  
49 products, or as a retail seller of adult-use cannabis products, who  
50 sells adult-use cannabis products while not so registered, shall be  
51 guilty of a class A misdemeanor. Any person who violates the provision  
52 of this section after having previously been convicted of a violation of  
53 this section within the preceding five years shall be guilty of a class  
54 E felony. For purposes of this section, the terms "adult-use cannabis  
55 product" and "sale" shall have the same meaning as such terms are  
56 defined in article twenty-C of this chapter.

1 § 5. Subdivision 1 of section 16 of the cannabis law is amended to  
2 read as follows:  
3 1. Any person who violates, disobeys or disregards any term or  
4 provision of this chapter or of any lawful notice, order or regulation  
5 pursuant thereto for which a civil or criminal penalty is not otherwise  
6 expressly prescribed by law, shall be liable to the people of the state  
7 for a civil penalty of [~~not to exceed five~~] up to fifty thousand dollars  
8 for every such violation.  
9 § 6. Subdivision 3 of section 222.00 of the penal law, as added by  
10 chapter 92 of the laws of 2021, is amended to read as follows:  
11 3. For the purposes of this article, "sell" shall mean to sell, trans-  
12 fer title or possess or both, exchange or barter any commodity, object  
13 or any thing of any type, rent, lease or license to use or consume  
14 conditional or otherwise, in any manner or by any means whatsoever for a  
15 consideration or any agreement therefor, or dispose of for compensation,  
16 including through a membership program or through some other indirect  
17 means. "Sell" shall not include the transfer of cannabis or concen-  
18 trated cannabis between persons twenty-one years of age or older without  
19 compensation in the quantities authorized in paragraph (b) of subdivi-  
20 sion one of section 222.05 of this article.  
21 § 7. This act shall take effect immediately.