

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

(3) In addition to the grounds for revocation in ~~paragraph (1)~~ paragraphs one and two of this subdivision, where a person who holds a certificate of registration is determined to have possessed or sold illicit cannabis: ~~(1)~~ (i) such registration may be revoked for a period of up to one year for the first such possession or sale; ~~(2)~~ (ii) for a second such possession or sale within a period of five years by such person, the registration of such person may be revoked for a period of up to three years; ~~(3)~~ (iii) for a third such possession or sale within a period of up to five years by such person, the registration of such person may be revoked for a period of five years. A certificate of registration may be revoked pursuant to this paragraph immediately upon such person's receipt of written notice of revocation from the commissioner.

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

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

§ 496-c. Illicit cannabis penalty. (a) In addition to any other civil or criminal penalties that may apply, any person knowingly in possession of or knowingly having control over illicit cannabis, as defined in section four hundred ninety-two of this article, after notice and an opportunity for a hearing, shall be liable for a civil penalty of not less than ~~two~~ four hundred dollars per ounce of illicit cannabis flower, ~~five~~ ten dollars per milligram of the total weight of any illicit cannabis edible product, ~~fifty~~ one hundred dollars per gram of the total weight of any product containing illicit cannabis concentrate, and ~~five hundred~~ one thousand dollars per illicit cannabis plant, but not to exceed ~~four~~ eight hundred dollars per ounce of illicit cannabis flower, ~~ten~~ twenty dollars per milligram of the total weight of any illicit cannabis edible product, ~~one~~ two hundred dollars per gram of the total weight of any product containing illicit cannabis concentrate, and ~~one~~ two thousand dollars per illicit cannabis plant for a first violation, and for a second and subsequent violation within three years following a prior violation shall be liable for a civil penalty of not less than ~~four~~ eight hundred dollars per ounce of illicit cannabis flower, ~~ten~~ twenty dollars per milligram of the total weight of any illicit cannabis edible product, ~~one~~ two hundred dollars per gram of the total weight of any product containing illicit cannabis concentrate, and ~~one~~ two thousand dollars per illicit cannabis plant, but not to exceed ~~five hundred~~ one thousand dollars per ounce of illicit cannabis 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.