STATE OF NEW YORK

7654

IN SENATE

January 5, 2022

Introduced by Sen. JACKSON -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue

AN ACT to amend the tax law, the criminal procedure law and the alcoholic beverage control law, in relation to requiring the pre-payment of sales and compensating use tax on sales of beer intended for off premises consumption

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

Section 1. The tax law is amended by adding a new section 1103-a to read as follows:

§ 1103-a. Prepayment of sales tax on beer to be sold at retail for consumption off premises. (a)(1) Every distributor of beer shall pay, as a prepayment on account of the taxes imposed by this article and pursuant to article twenty-nine of this chapter, a tax on beer possessed for sale at retail for off premises consumption or use in this state for the same purposes, at the time that the distributor is required to pay the excise tax on beer, or at some other time prescribed by the commissioner, and the provisions of law in relation to the evidence of payment of such excise tax shall be applicable to the prepayment imposed by this section, except no tax shall be required to be prepaid on beer sold under circumstances where this state is without power to impose such prepayment, or where beer is sold to the United States or 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 and written policy statements of such an agency applicable to such sales.

(2) The tax imposed by this section shall be paid at the same time and in the same manner as the excise tax imposed on distributors on beer. The commissioner may, in the commissioner's discretion, permit a distributor to pay the tax imposed under this section at any other time and may require any such distributor to file with the department a bond issued by a surety company of insurance as to solvency and responsibility and authorized to transact business in the state or other security

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

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acceptable to the commissioner, in such amount as the commissioner may fix, to secure the payment of any sums due from such distributor pursuant to this section. If securities are deposited as security under this subdivision, such securities shall be kept in the custody of the commissioner and may be sold by the commissioner if it becomes necessary to do so in order to recover any sums due from such agent pursuant to this section, but no such sale shall be had until after such agent shall have had an opportunity to litigate the validity of any prepayment of tax. Upon any such sale, the surplus, if any, above the sums due under this section shall be returned to such distributor. Any bond or security required under this section shall secure payment of the sums due under any other provision relating to the tax upon beer and under this section.

(3) Every person other than a distributor who brings beer into this state to be sold at retail for off premises consumption shall prepay the tax imposed by this section at the same time and in the same manner as the use tax imposed by this chapter. The commissioner may require any compensating use tax imposed by this chapter to be paid at such time after allowing for any credit provided by subdivision (b) of section eleven hundred twenty-one of this article.

(4) The amount of the prepayment for such tax on beer imposed by this section shall be computed pursuant to the provisions of subdivision (j) of section eleven hundred eleven of this article.

(b) Except as otherwise provided in this section, the taxes required to be prepaid pursuant to this section shall be administered and collected in a like manner as the taxes imposed by sections eleven hundred five and eleven hundred ten of this article. All the provisions of this article relating to or applicable to the administration, collection and disposition of the taxes imposed by such sections shall apply to the tax required to be prepaid under this section so far as such provisions can be made applicable to such prepayments of tax with such limitations as set forth in this article and such modifications as may be necessary in order to adapt such language to the tax so imposed; provided, however, that the provisions of paragraph one of subdivision (c) of section eleven hundred thirty-seven of this article shall not be applicable to such tax required to be prepaid under this section. Such provisions shall apply with the same force and effect as if the language of those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or is not relevant to the tax required to be prepaid by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to the tax required to be prepaid pursuant to this section unless a different meaning is clearly required. Also for purposes of such prepayment requirement distributor shall mean and include a non-commercial distributor.

(c) Nothing in this article shall be construed to require the payment of the tax required to be prepaid pursuant to this section more than once upon such beer possessed for sale or used within the state. When the prepaid tax imposed pursuant to this section is paid, it shall have been so paid on account of the taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter with respect to the retail sale or the use of such beer. Nothing in this section shall modify or affect the taxes imposed by sections eleven hundred five and eleven hundred ten of this article as applied to receipts from the sale, or to the use, of such beer.

(d) (1) Consistent with sections eleven hundred forty-eight of this article and twelve hundred sixty-one of this chapter, the taxes required to be prepaid pursuant to this section and interest and penalties thereon received by the commissioner, after deducting the amount which the commissioner shall determine to be necessary for reasonable costs of the commissioner in administering, collecting, and distributing such taxes, shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the comptroller, to the credit of the comptroller. Of the total revenue collected or received under this section, the comptroller shall retain in the comptroller's hands such amount as the commissioner may determine to be necessary for refunds under this article and pursuant to the authority of article twenty-nine of this chapter.

(2) On or before the twelfth day of each month, after reserving such amount for such refunds and such costs, the commissioner shall determine the amount of all revenues so received during the prior month as a result of the taxes, interest and penalties so imposed and, in addition, on or before the last day of June and December the commissioner shall determine in like manner the amount of such moneys received during and including the first twenty-five days of said months. The commissioner shall determine the proportion of revenues attributable to receipts for the period for which the determination is made pursuant to the preceding sentence from taxes on sales and uses of property and services and rent and amusement charges imposed by this article and pursuant to the authority of article twenty-nine of this chapter and administered by the commissioner which is payable to each jurisdiction determined without regard to this section. The amount of revenues so determined pursuant to this section shall be deposited and distributed by the comptroller in accordance with the same percentage amount to which a jurisdiction is entitled determined without regard to this section. Where the amount so determined in any distribution from such taxes (other than the tax imposed by this section) is more or less than the amount due, the amount of the overpayment or underpayment shall be determined as soon after the discovery of the overpayment or underpayment as is reasonably possible and subsequent determinations shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments as the comptroller and the commissioner shall consider reasonable in view of the amount of the overpayment or underpayment and all other pertinent facts and circumstances. The commissioner shall not be liable for any overestimate or underestimate of the amount of the distribution. Nor shall the commissioner be liable for any inaccuracy in any determination with respect to the amount of the distribution or any required adjustment with respect to the distribution, but the commissioner shall as soon as practicable after discovery of any error adjust the next determination under this section to reflect any such error.

§ 2. Subdivision (d) of section 1111 of the tax law, as amended by chapter 2 of the laws of 1995, is amended to read as follows:

(d) The commissioner is authorized and empowered to prescribe and, from time to time, to amend schedules of the amount of tax to be collected upon each gallon of motor fuel and diesel motor fuel sold at retail and upon each gallon of such fuel subject to the tax required to be prepaid pursuant to section eleven hundred two of this article or upon each package of cigarettes sold at retail and upon each package of cigarettes subject to the tax required to be prepaid under section eleven hundred three of this article, and upon each container of beer as the

commissioner shall determine is approximately equal to the average rate otherwise applicable, considering the regional average retail sales prices of such fuel, the amount of the prepaid tax per package of cigarettes in accordance with subdivision (j) of this section [~~and~~], **the amount of the prepaid tax on beer and,** in the case of a sale at retail, the ordinary price ranges for such fuel and cigarettes **and beer**, in lieu of the regular schedule based on total receipts. Such rates shall be uniform in each county but may vary as between counties, depending on the general price ranges in effect in each county, but counties wholly within a city shall have a uniform rate. If a political subdivision of a county imposes a retail sales and use tax, separate rates may be prescribed for it. Such schedules with reference to the tax required to be prepaid on motor fuel and diesel motor fuel pursuant to section eleven hundred two of this article or the tax required to be prepaid on cigarettes **or beer** under section eleven hundred three of this article may fix the rate per gallon or per package of cigarettes **or container of beer** in multiples of one-tenth of one cent, depending, in the case of such fuel, on the regional average retail sales prices where such fuel is, as the case may be, imported, manufactured, sold or used. Such schedules with reference to such fuel [~~or~~]**,** cigarettes **or beer** sold at retail may fix the rate per gallon or per package, as the case may be, in multiples of one-tenth of one cent depending on the price at which such fuel or cigarettes **or beer** are sold. Where schedules fixing the rate per gallon in multiples of one-tenth of one cent have been promulgated, the price shown on any metered pump or other dispensing device from which such fuel is sold to a purchaser of such fuel, to be delivered directly to a vehicle propelled by any power other than muscular, shall include the tax at the rate so fixed, and the commissioner may by regulation prescribe the manner in which the amount of tax shall be shown for the information of customers by signs or placards on the premises where such fuel is sold. When determining tax required to be collected on the retail sale of motor fuel or diesel motor fuel or cigarettes **or beer**, the receipts on which tax is computed shall not include the amount of tax required to be prepaid pursuant to section eleven hundred two of this article with respect to such fuel or pursuant to section eleven hundred three of this article with respect to such cigarettes **or beer**.

§ 3. Section 1111 of the tax law is amended by adding a new subdivision (j-1) to read as follows:

(j-1) The tax required to be prepaid pursuant to section eleven hundred three of this article on beer sold at retail for consumption off premises shall be computed by multiplying the base retail price as determined by the commissioner by a tax rate as determined by the commissioner to be appropriate and consistent with the sales tax rate imposed by the state and any locality as authorized in this chapter.

The calculation and publication of the base retail price so fixed by provisions of this section shall be included within the definition of "rule" as defined in paragraph (a) of subdivision two of section one hundred two of the state administrative procedure act. The base retail prices determined pursuant to this paragraph shall be rounded to the nearest one cent for each container.

§ 4. Paragraph 6 of subdivision (b) of section 1116 of the tax law, as added by chapter 2 of the laws of 1995, is amended to read as follows:

(6) purchases of cigarettes **or beer** from the tax required to be prepaid pursuant to section eleven hundred three of this article, except that no prepayment of tax shall be required on sales of cigarettes **or**

beer sold under such circumstances that this state is without power to impose such tax or sold to the United States or sold to or by a voluntary unincorporated organization of the armed forces of the United States operating a place for sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States, to the extent provided in such regulations and written policy statements of such agency applicable to such sales.

§ 5. The tax law is amended by adding a new section 1121-a to read as follows:

§ 1121-a. Refunds and credits with respect to beer. (a) Retail vendor. (1) A distributor of beer who or which is required to collect the taxes imposed by subdivision (a) of section eleven hundred five of this article and any like tax imposed pursuant to the authority of article twenty-nine of this chapter shall be allowed a refund or credit against the amount of tax collected and required to be remitted to the commissioner pursuant to the provisions of section eleven hundred thirty-seven of this article upon the retail sale of beer or be in the amount of the tax on such beer prepaid by or passed through to and included in the price paid by such vendor pursuant to the provisions of section eleven hundred three of this article.

(2) A refund or credit shall also be allowed such vendor for the tax prepaid by or passed through to and included in the price paid by such distributor upon any beer pursuant to the provisions of section eleven hundred three of this article if such beer is sold at retail by such distributor under circumstances where the taxes imposed by section eleven hundred five of this article and pursuant to the authority of article twenty-nine of this chapter are not required by the provisions of this article to be collected and remitted upon receipts from a retail sale thereof.

(b) Retail user. A person who or which is required to pay the tax imposed by section eleven hundred ten of this article and any like tax imposed pursuant to the authority of article twenty-nine of this chapter with respect to the purchase or use of such beer shall be allowed a credit against such tax required to be paid to the commissioner pursuant to such section and article in the amount of the tax prepaid by or passed through to and included in the price paid by such purchaser or user pursuant to the provisions of section eleven hundred three of this article.

(c) Self-use of beer purchased at wholesale. A refund or credit equal to the amount of tax prepaid by or passed through to and included in the price paid by a purchaser or user pursuant to the provisions of section eleven hundred three of this article with respect to a purchase of beer other than at retail shall be allowed such purchaser or user upon the use of such beer at retail if the purchase or use of such beer by the purchaser or user is exempt pursuant to section eleven hundred fifteen or section eleven hundred sixteen of this article.

(d) Export, destruction, tax paid in error. Whenever any beer, upon which the prepaid tax imposed by section eleven hundred three of this article has been paid, has been sold and shipped to another state for sale or use there or have become unfit for use or unsalable, or have been destroyed, or whenever the commissioner shall have determined that any tax required to be prepaid by such section eleven hundred three shall have been paid in error, the agent or dealer, as the case may be, shall be entitled to a refund or credit of the actual amount of prepaid tax so paid with respect to beer which will not be possessed for sale or use in this state.

(e) Refunds of the tax required to be prepaid pursuant to the provisions of section eleven hundred three of this article shall be allowed only to the extent such tax paid by or passed through to the retail vendor, or the purchaser or user, exceeds the amount of tax required to be collected from such person or required to be remitted by the provisions of this article and pursuant to the authority of article twenty-nine of this chapter.

(f) A refund or credit shall be allowed under this section only to the extent that the tax required to be prepaid pursuant to section eleven hundred three of this article has been prepaid by or passed through to such vendor, purchaser or user, but only to the extent that the tax imposed by section eleven hundred five of this article and any like tax imposed pursuant to the authority of article twenty-nine of this chapter together with the tax imposed by section eleven hundred ten of this article and any like tax imposed pursuant to the authority of article twenty-nine of this chapter required to be paid, collected and remitted has been paid, collected and remitted.

(g) Such refunds and credits shall be subject to the provisions of sections eleven hundred nineteen and eleven hundred thirty-nine of this article as if such sections were incorporated in full into this section and had expressly referred to the refunds and credits authorized by this section including the periods of limitations on payments and applications to the commissioner; provided, however, that, as provided in subdivision (e) of section eleven hundred thirty-nine of this article, no interest shall be allowed or paid upon any refund made or credit allowed pursuant to subdivisions (a), (b) and (d) of this section. The commissioner shall process applications for refunds as expeditiously as possible.

§ 6. Section 1132 of the tax law is amended by adding a new subdivision (k-1) to read as follows:

(k-1) (1) (i) No person shall purchase beer at retail for off premises consumption unless the tax required to be prepaid by subdivision (c) of section eleven hundred three of this article has been paid by a distributor and passed through by a wholesale dealer or retail dealer, authorized, licensed or registered under this chapter, in accordance with a certification under this paragraph or paid by such wholesale dealer and, is passed through to such purchaser. In addition to any other civil and criminal penalties which may apply, any person who purchases beer in violation of this subparagraph shall be jointly and severally liable to pay the tax required to be prepaid by section eleven hundred three of this article with respect to such beer.

(ii) For the purpose of the proper administration of this article and to prevent evasion of the tax on sales and uses of beer imposed by this article and pursuant to the authority of article twenty-nine of this chapter, it shall be presumed that all beer possessed by a retailer licensed to sell beer for off premises consumption by, or in the possession of, any person, is intended for sale or use in the state and subject to the tax required to be prepaid by section eleven hundred three of this article until the contrary is established and that such person is responsible for such prepayment.

(iii) Upon each sale of such beer by the distributor, the distributor must give to the purchaser and the purchaser shall receive, at the time of delivery of such beer, a certification containing such information as the commissioner shall require which shall include a statement to the effect (A) if such seller is a distributor, that such distributor has paid the amount of tax required to be prepaid by section eleven hundred

three of this article and is passing through such amount of tax, or (B) that such seller is passing through such amount of tax which was so previously assumed or paid.

(iv) If the certification required by this paragraph has been furnished to the purchaser by the distributor at delivery and accepted in good faith the burden of proving that the tax required to be paid by section eleven hundred three of this article was assumed or paid by a distributor and passed through shall be solely on the distributor.

(v) Where the certification required under this paragraph is not furnished by the seller to the purchaser at delivery of such beer, it shall be presumed that no amount of tax required to be prepaid by section eleven hundred three of this article has been paid by a distributor and that the purchaser in such case is jointly and severally liable for the tax imposed by such section eleven hundred three.

(2)(i) For the purpose of the proper administration of this article and to prevent evasion of the tax imposed under this article, it shall be presumed that all sales of beer by a distributor is subject to the tax imposed by subdivision (a) of section eleven hundred five of this article and required to be collected by this section or required to be paid by the provisions of section eleven hundred ten of this article until the contrary is established; and it shall be presumed that all beer possessed in this state, which such person cannot otherwise account for as having been sold subject to the tax imposed by subdivision (a) of section eleven hundred five of this article and required to be collected by this section or required to be paid by the provisions of section eleven hundred ten of this article, have been sold subject to the tax imposed by subdivision (a) of section eleven hundred five and required to be collected by this section or required to be paid by the provisions of section eleven hundred ten of this article.

(ii) Unless the distributor has received from the retailer a statement or certificate, in such form as the commissioner may require, that the retailer pursuant to the provisions of paragraph six of subdivision (b) of section eleven hundred sixteen of this article is not subject to the provisions of this paragraph, such sale shall be deemed a sale subject to the provisions of sections eleven hundred five and eleven hundred ten of this article notwithstanding any provision of subdivision (c) of this section.

(iii) Where any certificate or statement required under this paragraph has been furnished to the vendor and accepted in good faith, the burden of proving that the receipt is not taxable hereunder shall be solely upon the purchaser. The vendor shall not be required to collect such taxes from purchasers who furnish such certificates or statements in proper form.

§ 7. Paragraph 1 of subdivision (a) of section 1134 of the tax law, as amended by section 160 of part A of chapter 389 of the laws of 1997, subparagraph (iii) as amended by section 44 of part K of chapter 61 of the laws of 2011, subparagraph (vi) as amended by section 1 of part N of chapter 59 of the laws of 2021, is amended to read as follows:

(1) (i) Every person required to collect any tax imposed by this article, other than a person who is a vendor solely by reason of clause (D), (E) or (F) of subparagraph (i) of paragraph eight of subdivision (b) of section eleven hundred one of this article, commencing business or opening a new place of business, (ii) every person purchasing or selling tangible personal property for resale commencing business or opening a new place of business, (iii) every person selling petroleum products including persons who or which are not distributors, (iv) every person

described in this subdivision who takes possession of or pays for business assets under circumstances requiring notification by such person to the commissioner pursuant to subdivision (c) of section eleven hundred forty-one of this [~~chapter~~] **article**, (v) every person selling cigarettes including persons who or which are not agents, **(vi) any distributor who sells beer to retailers for off premises consumption,** and [~~(vi)~~] **(vii)** every person described in subparagraph (i), (ii), (iii), (iv) [~~or~~]**,** (v) **or (vi)** of this paragraph or every person who is a vendor solely by reason of clause (D), (E) or (F) of subparagraph (i) of paragraph eight of subdivision (b) of section eleven hundred one of this article who or which has had its certificate of authority revoked under paragraph four of this subdivision, shall file with the commissioner a certificate of registration, in a form prescribed by the commissioner, at least twenty days prior to commencing business or opening a new place of business or such purchasing, selling or taking of possession or payment, whichever comes first. Every person who is a vendor solely by reason of clause (D) of subparagraph (i) of paragraph eight of subdivision (b) of section eleven hundred one of this article shall file with the commissioner a certificate of registration, in a form prescribed by such commissioner, within thirty days after the day on which the cumulative total number of occasions that such person came into the state to deliver property or services, for the immediately preceding four quarterly periods ending on the last day of February, May, August and November, exceeds twelve. Every person who is a vendor solely by reason of clause (E) of subparagraph (i) of paragraph eight of subdivision (b) of section eleven hundred one of this article shall file with the commissioner a certificate of registration, in a form prescribed by such commissioner, within thirty days after the day on which the cumulative total, for the immediately preceding four quarterly periods ending on the last day of February, May, August and November, of such person's gross receipts from sales of property delivered in this state exceeds five hundred thousand dollars and number of such sales exceeds one hundred. Every person who is a vendor solely by reason of clause (F) of subparagraph (i) of paragraph eight of subdivision (b) of section eleven hundred one of this article shall file with the commissioner a certificate of registration, in a form prescribed by such commissioner, within thirty days after the day on which tangible personal property in which such person retains an ownership interest is brought into this state by the person to whom such property is sold, where the person to whom such property is sold becomes or is a resident or uses such property in any manner in carrying on in this state any employment, trade, business or profession. Information with respect to the notice requirements of a purchaser, transferee or assignee and such person's liability pursuant to the provisions of subdivision (c) of section eleven hundred forty-one of this chapter shall be included in or accompany the certificate of registration form furnished the applicant. The commissioner shall also include with such information furnished to each applicant general information about the tax imposed under this article including information on records to be kept, returns and payments, notification requirements and forms. Such certificate of registration may be amended in accordance with rules promulgated by the commissioner.

§ 8. Section 1135 of the tax law is amended by adding a new subdivision (e-1) to read as follows:

(e-1) Every distributor of beer sold for off premises consumption shall keep records for such periods and in the manner prescribed by the commissioner pursuant to rules and regulations. Such records shall show

(1) the amount of beer purchased, the price paid therefor, the person from whom such it was purchased, and the amount of tax paid by the distributor as found on his receipt pursuant to the provisions of section eleven hundred three of this article and (2) the amount of beer sold, the retailer to whom such beer is sold and the price paid by the retailer to whom such person sells the beer, and the amount of tax included in such price pursuant to the provisions of section eleven hundred three of this article or the amount of tax collected pursuant to the provisions of subdivision (a) of section eleven hundred five of this article applicable to such sale, together with such additional information as the commissioner shall require.

§ 9. Subdivision (a) of section 1136 of the tax law is amended by adding a new paragraph 6-a to read as follows:

(6-a) The returns of any distributor of beer shall show the amount of prepaid tax assumed or paid thereon and passed through, together with such additional information as the commissioner shall require. Taxable receipts as used in this section with respect to beer shall include taxable receipts from the sale of any beer whether or not such receipts are subject to the taxes imposed by section eleven hundred two, eleven hundred three, eleven hundred five or eleven hundred ten of this article and regardless of whether the provisions of section eleven hundred twenty or eleven hundred twenty-one of this article are applicable to the taxes imposed in respect of such receipts.

§ 10. Paragraph 3 of subdivision (a) of section 1138 of the tax law is amended by adding a new subparagraph (D-1) to read as follows:

(D-1) The liability of any person, as distributor who sells beer to an owner of a place of business selling beer for off premises consumption for the penalty imposed by subparagraph (viii) of paragraph one of subdivision (a) of section eleven hundred forty-five of this part and the amount of such penalty shall be determined by the commissioner. Such determination shall finally and irrevocably fix the amount of and liability for such penalty with respect to such person, unless such person, within ninety days after the giving of notice of such determination, shall apply to the division of tax appeals for a hearing. The commissioner may, nevertheless, on the commissioner's own motion, re-determine such determination. Furthermore, the commissioner may, on the commissioner's own motion, abate any part of the penalty determined to be erroneous or excessive whether or not such penalty has become finally and irrevocably fixed with respect to such person; but no claim for abatement may be filed by any such person. The provisions of this paragraph shall not be construed to limit in any manner the powers of the attorney general under subdivision (a) of section eleven hundred forty-one of this part or the powers of the commissioner to issue a warrant under subdivision (b) of such section against any person whose liability has become finally and irrevocably fixed.

§ 11. Section 1142 of the tax law is amended by adding a new subdivision 12-a to read as follows:

12-a. To make such provision pursuant to rules and regulations for the joint administration, in whole or in part, of the taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter upon the sale or use of beer for off premises consumption including the reporting, assessment, collection, determination and refund of such taxes, and, for that purpose, to prescribe that any of the commissioner's functions under such articles, any returns, forms, statements, documents or information to be submitted to the commissioner under such articles, any books and taxes imposed or authorized by such

articles, any schedules of amounts to be collected under such articles, any registration required under such articles.

§ 12. Paragraph 1 of subdivision (a) of section 1145 of the tax law is amended by adding a new subparagraph (x) to read as follows:

(x) Any person required to collect tax who sells beer for off premises consumption who shall willfully and knowingly have in such person's custody or possession or under such person's control any such beer on which (A) the prepaid tax imposed by section eleven hundred three of this article has not been assumed or paid by an agent licensed as such under article twenty of this chapter, or (B) the prepaid tax imposed by such section eleven hundred three was required to have been passed through to such person and has not been included in the cost of such beer to such person, shall be liable for a penalty in the amount of twice the tax not so assumed or paid, or included. Such penalty shall be determined, assessed, collected and paid in the same manner as taxes imposed by this article and all the provisions of this article relating thereto shall be deemed also to refer to the penalty imposed by this subparagraph. Such penalty may be determined at any time within three years after such beer shall have come into such person's custody or possession or under such person's control. For purposes of this subparagraph, such person shall willfully and knowingly have in such person's custody or possession or under such person's control beer on which (A) such prepaid tax has not been assumed or paid by a wholesaler pursuant to this chapter, or (B) such tax was required to have been passed through to such person and has not been included in the cost of such beer to such person, where such person has knowledge of the requirement that such taxes be paid or assumed or so included and where, to such person's knowledge, such taxes have not been so paid or assumed or so included. For purposes of this subparagraph, it shall be presumptive evidence that such person shall willfully and knowingly have in such person's custody or possession or under such person's control, beer on which (A) such tax has not been assumed or paid by a wholesaler authorized as such under such article twenty of this chapter or (B) such tax was required to have been passed through to such person and has not been included in the cost of such beer to such person where such person has not received the certification required by subdivision (k) of section eleven hundred thirty-two of this part at the time of delivery of such beer or, in those circumstances where the commissioner has authorized the delivery of such certification at a time after delivery of the beer, at the time prescribed by the commissioner.

§ 13. Subparagraph (i) of paragraph 3 of subdivision (a) of section 1145 of the tax law, as amended by section 48 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(i) Any person required to obtain a certificate of authority under section eleven hundred thirty-four of this part who, without possessing a valid certificate of authority, (A) sells tangible personal property or services subject to tax, receives amusement charges or operates a hotel, (B) purchases or sells tangible personal property for resale, (C) sells petroleum products, or (D) sells cigarettes or beer shall, in addition to any other penalty imposed by this chapter, be subject to a penalty in an amount not exceeding five hundred dollars for the first day on which such sales or purchases are made, plus an amount not exceeding two hundred dollars for each subsequent day on which such sales or purchases are made, not to exceed ten thousand dollars in the aggregate.

§ 14. Section 1817 of the tax law, is amended by adding a new subdivision (o) to read as follows:

(o) Any owner of a place of business selling beer at retail for off premises consumption who shall willfully and knowingly have in such owner's custody or possession or under such owner's control any beer on which (1) the prepaid tax imposed by section eleven hundred three of this chapter has not bee assumed or (2) the prepaid tax imposed by section eleven hundred three of this chapter was required to have been passed through to such owner and has not been included in the cost of such beer to such owner shall, in either case, be guilty of a misdemeanor. For purposes of this subdivision, such owner shall willfully and knowingly have in such owner's custody or possession or under such owner's control any beer on which such tax has not been assumed or paid where such owner has knowledge of the requirement that such tax be assumed or paid and where, to such owner's knowledge, such tax has not been assumed or paid. Such owner shall willfully and knowingly have in such owner's custody or possession or under such owner's control beer on which such tax is required to have been passed through to such owner and has not been included in the cost to such owner where such owner has knowledge of the requirement that such tax be passed through and has not been so included.

§ 15. Paragraph (q) of subdivision 34 of section 1.20 of the criminal procedure law, as amended by section 55 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(q) An employee of the department of taxation and finance (i) assigned to enforcement of the taxes imposed under or pursuant to the authority of article twelve-A of the tax law and administered by the commissioner of taxation and finance, taxes imposed under or pursuant to the authority of article eighteen of the tax law and administered by the commissioner, taxes imposed under article twenty of the tax law, or sales or compensating use taxes relating to petroleum products or cigarettes **or beer** imposed under article twenty-eight or pursuant to the authority of article twenty-nine of the tax law and administered by the commissioner or (ii) designated as a revenue crimes specialist and assigned to the enforcement of the taxes described in paragraph (c) of subdivision four of section 2.10 of this title, for the purpose of applying for and executing search warrants under article six hundred ninety of this chapter, for the purpose of acting as a claiming agent under article thirteen-A of the civil practice law and rules in connection with the enforcement of the taxes referred to above and for the purpose of executing warrants of arrest relating to the respective crimes specified in subdivision four of section 2.10 of this title.

§ 16. Paragraph (a) of subdivision 4 of section 2.10 of the criminal procedure law, as amended by section 56 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(a) to the enforcement of any of the criminal or seizure and forfeiture provisions of the tax law relating to (i) taxes imposed under or pursuant to the authority of article twelve-A of the tax law and administered by the commissioner, (ii) taxes imposed under or pursuant to the authority of article eighteen of the tax law and administered by the commissioner, (iii) taxes imposed under article twenty of the tax law, or (iv) sales or compensating use taxes relating to petroleum products or cigarettes **or beer** imposed under article twenty-eight or pursuant to the authority of article twenty-nine of the tax law and administered by the commissioner or

§ 17. The alcoholic beverage control law is amended by adding a new section 53-b to read as follows:

§ 53-b. Manner of posting and changing beer prices to wholesalers and retail licensees in cities of one million or more.

1. It is hereby declared as the policy of the state that the sale and distribution of beer shall be subject to certain restrictions, prohibitions and regulations which tend to maintain an orderly market and prevent destructive competition. The necessity of the provisions of this section is therefore declared as a matter of legislative necessity.

2. As used in this section, the following words shall have the following meanings:

a. "Beer wholesaler" or "wholesaler" means the holder of a wholesaler's license, pursuant to section fifty-three of this article, who purchases, offers to sell, markets, promotes, warehouses or physically distributes beer sold by a brewer.

b. "Brewer/wholesaler" means the holder of a wholesaler's license, pursuant to section fifty-three of this article, who purchases, offers to sell, markets, promotes, warehouses, or physically distributes beer predominantly brewed by the licensee.

c. "Case", "draft package" or "special package" means a package produced by a brewer and sold to a beer wholesaler.

d. "COD" means cash, check or electronic payment at the time of delivery.

e. "Forklift" means any mechanical system able to unload pallets off a delivery vehicle.

f. "Loading dock" means a platform where trucks, semi-trucks, and sea or rail containers are unloaded by forklifts.

g. "Non-contracted wholesaler" means the holder of a wholesaler's license issued or renewed prior to July first, nineteen hundred sixty, and thereafter renewed or transferred who (1) purchases products from a beer wholesaler and (2) is not subject to any agreement with a brewer or beer wholesaler pursuant to section fifty-five-c of this article and (3) is located in a city of one million or more.

h. "Pallet" means a quantity of cases, draft packages or special packages produced by a brewer and stacked on a device movable by a forklift or other mechanical method.

i. "Truckload" means a quantity of pallets containing cases, draft packages or special packages of not less than the maximum quantity fitting type of vehicle or legal weight limit.

3. Beer wholesalers and brewer/wholesalers shall post with the authority the price per case, draft package or special package of beer sold to retail licensees every one hundred eighty days. The posted price on such case, draft package or special package to retail licensees must be a minimum of:

a. two and one-half percent above the posted price to non-contracted wholesalers if purchased by the case, draft package or special package;

b. five percent above the posted case, draft package or special package price to non-contracted wholesalers if purchased by the pallet;

c. seven and one-half percent above the posted case, draft package or special package price to non-contracted wholesalers if purchased by the truckload;

d. ten percent above the posted case, draft package or special package price to non-contracted wholesalers if purchased by the trailerload; and

e. if a forklift and/or a loading dock is used to unload the pallets from the delivery vehicle, a minimum of an additional two and one-half percent shall be deducted from the case, draft package or special pack-

age price. If the non-contracted wholesaler pays COD for the purchase a minimum of two and one-half percent shall be deducted from the price per case, draft package or special package. Furthermore, nothing in this section shall require a non-contracted wholesaler to post pricing. The price per case, draft package or special package of beer sold to non-contracted wholesalers or retail licensees on the first day of the month following the effective date of this subdivision shall be deemed the base price, to or from which price increases or decreases may be made in accordance with the provisions of this section.

4. The authority is authorized and empowered to do such acts, prescribe such forms and adopt rules and regulations as it may deem necessary or proper to carry into effect the purpose and provisions of this section and to prevent circumvention or evasion thereof.

Without limiting the generality of the foregoing, and in addition to its other powers, the authority may, in its discretion, adopt rules or regulations:

a. Particularizing the standards of packaging which constitute a case, special package and draft package of beer.

b. Defining the guidelines relating to "price" within the purview of this section which guidelines may provide, without limitation thereto, posting of price on the authority's website.

c. Requiring licensees to file with the authority reports certifying their prices of beer, the dates of any changes in the price of any item of beer, and such other matters as the authority may determine from time to time to be necessary to disclose accurately the price of beer during the previous twelve months and requiring licensees to keep forms, records and memoranda prescribed by the authority.

d. Requiring beer wholesalers and brewer/wholesalers to register with the authority each contract and agreement, including the names of brewers and importers with which such wholesaler has contracts or agreements, and requiring wholesalers to maintain forms, records and memoranda prescribed by the authority.

5. For the purpose of defraying the expenses incurred in the administration of this section, there shall be paid to the authority by each person hereafter applying for a license as a beer wholesaler the following sums: beer wholesaler, five thousand dollars; for each contract or agreement entered into by a beer wholesaler, five thousand dollars; a non-contracted wholesaler, five thousand dollars; a like sum shall be paid by each person hereafter applying for the issuance or renewal of any such license and/or for each contract or agreement, and such sum shall accompany the application and the license fee prescribed by this chapter for such license or renewal thereof, as the case may be. The sums prescribed by this subdivision shall not be prorated for any portion of the license fee and shall have no refund value.

6. For any violation of any provision of this section or of any rule or regulation duly promulgated under this section the authority may revoke, cancel or suspend a license or recover, as provided in section one hundred twelve of this chapter, the penal sum of the bond filed by the licensee.

§ 18. (a) In order to ensure collection of the prepaid sales tax on beer for off premises consumption imposed under section 1103 of the tax law, as of the date such prepayment becomes applicable, there is hereby imposed and shall be paid, as a prepayment on account of the sales and compensating use taxes administered by the commissioner of taxation and finance and imposed by article 28 and pursuant to the authority of article 29 of the tax law, a special floor tax on all such beer possessed

for sale in the state on June 1, 2022, by any person. The amount of such prepayment shall be computed as provided in subdivision (b) of this section.

(b)(1) All persons possessing beer subject to the tax imposed by this section on such date shall compute the floor tax amount required to be prepaid by multiplying the base retail price of such beer in effect on such date by a tax rate of eight percent.

(2) For purposes of this section, the "base retail price of such beer" shall be in an amount as determined by the commissioner.

(c) The tax imposed by this section shall be due and payable to the commissioner of taxation and finance on or before June 20, 2022.

(d) All the provisions of section 1103 of the tax law and all of the provisions of article 28 appertaining thereto, including, but not limited to, provisions relating to administration, collection, review, payment, definitions, personal liability for the tax, exemptions, crediting, enforcement, deposit and disposition, and the provisions of article 37 of such law applicable to such section 1103 shall be applicable to the tax imposed by this section with such modifications as may be necessary in order to adapt such language to the tax so imposed. Such provisions shall apply with the same force and effect as if the language of such provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or is not relevant to the tax imposed by this section.

(e) The commissioner of taxation and finance is hereby authorized to promulgate such regulations and require such reports as the commissioner deems necessary to effectuate the provisions of this section.

(f) The provisions of this section notwithstanding, the commissioner of taxation and finance shall have the authority, in the commissioner's sole discretion, to require that the inventory necessary to account for the tax imposed by this section be taken on a date determined by the commissioner of taxation and finance no more than seven days prior to the date required pursuant to subdivision (a) of this section.

§ 19. Severability. If any clause, sentence, paragraph, section or part of this act shall for any reason be finally adjudged by a court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

§ 20. This act shall take effect on the first day of the sales tax quarter which commences not less than ninety days after this act shall have become a law.