

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:

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

3 § 1103-a. Prepayment of sales tax on beer to be sold at retail for
4 consumption off premises. (a)(1) Every distributor of beer shall pay, as
5 a prepayment on account of the taxes imposed by this article and pursu-
6 ant to article twenty-nine of this chapter, a tax on beer possessed for
7 sale at retail for off premises consumption or use in this state for the
8 same purposes, at the time that the distributor is required to pay the
9 excise tax on beer, or at some other time prescribed by the commission-
10 er, and the provisions of law in relation to the evidence of payment of
11 such excise tax shall be applicable to the prepayment imposed by this
12 section, except no tax shall be required to be prepaid on beer sold
13 under circumstances where this state is without power to impose such
14 prepayment, or where beer is sold to the United States or to or by a
15 voluntary unincorporated organization of the armed forces of the United
16 States operating a place for the sale of goods pursuant to regulations
17 promulgated by the appropriate executive agency of the United States, to
18 the extent provided in such regulations and written policy statements of
19 such an agency applicable to such sales.

20 (2) The tax imposed by this section shall be paid at the same time and
21 in the same manner as the excise tax imposed on distributors on beer.
22 The commissioner may, in the commissioner's discretion, permit a
23 distributor to pay the tax imposed under this section at any other time
24 and may require any such distributor to file with the department a bond
25 issued by a surety company of insurance as to solvency and responsibil-
26 ity 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.

LBD14155-01-1

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

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

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

24 (b) Except as otherwise provided in this section, the taxes required
25 to be prepaid pursuant to this section shall be administered and
26 collected in a like manner as the taxes imposed by sections eleven
27 hundred five and eleven hundred ten of this article. All the provisions
28 of this article relating to or applicable to the administration,
29 collection and disposition of the taxes imposed by such sections shall
30 apply to the tax required to be prepaid under this section so far as
31 such provisions can be made applicable to such prepayments of tax with
32 such limitations as set forth in this article and such modifications as
33 may be necessary in order to adapt such language to the tax so imposed;
34 provided, however, that the provisions of paragraph one of subdivision
35 (c) of section eleven hundred thirty-seven of this article shall not be
36 applicable to such tax required to be prepaid under this section. Such
37 provisions shall apply with the same force and effect as if the language
38 of those provisions had been set forth in full in this section except to
39 the extent that any provision is either inconsistent with a provision of
40 this section or is not relevant to the tax required to be prepaid by
41 this section. For purposes of this section, any reference in this arti-
42 cle to the tax or taxes imposed by this article shall be deemed to refer
43 to the tax required to be prepaid pursuant to this section unless a
44 different meaning is clearly required. Also for purposes of such prepay-
45 ment requirement distributor shall mean and include a non-commercial
46 distributor.

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

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

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

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

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

1 commissioner shall determine is approximately equal to the average rate
2 otherwise applicable, considering the regional average retail sales
3 prices of such fuel, the amount of the prepaid tax per package of ciga-
4 rettes in accordance with subdivision (j) of this section [~~and~~], the
5 amount of the prepaid tax on beer and, in the case of a sale at retail,
6 the ordinary price ranges for such fuel and cigarettes and beer, in lieu
7 of the regular schedule based on total receipts. Such rates shall be
8 uniform in each county but may vary as between counties, depending on
9 the general price ranges in effect in each county, but counties wholly
10 within a city shall have a uniform rate. If a political subdivision of a
11 county imposes a retail sales and use tax, separate rates may be
12 prescribed for it. Such schedules with reference to the tax required to
13 be prepaid on motor fuel and diesel motor fuel pursuant to section elev-
14 en hundred two of this article or the tax required to be prepaid on
15 cigarettes or beer under section eleven hundred three of this article
16 may fix the rate per gallon or per package of cigarettes or container of
17 beer in multiples of one-tenth of one cent, depending, in the case of
18 such fuel, on the regional average retail sales prices where such fuel
19 is, as the case may be, imported, manufactured, sold or used. Such sche-
20 dules with reference to such fuel [~~or~~], cigarettes or beer sold at
21 retail may fix the rate per gallon or per package, as the case may be,
22 in multiples of one-tenth of one cent depending on the price at which
23 such fuel or cigarettes or beer are sold. Where schedules fixing the
24 rate per gallon in multiples of one-tenth of one cent have been promul-
25 gated, the price shown on any metered pump or other dispensing device
26 from which such fuel is sold to a purchaser of such fuel, to be deliv-
27 ered directly to a vehicle propelled by any power other than muscular,
28 shall include the tax at the rate so fixed, and the commissioner may by
29 regulation prescribe the manner in which the amount of tax shall be
30 shown for the information of customers by signs or placards on the prem-
31 ises where such fuel is sold. When determining tax required to be
32 collected on the retail sale of motor fuel or diesel motor fuel or ciga-
33 rettes or beer, the receipts on which tax is computed shall not include
34 the amount of tax required to be prepaid pursuant to section eleven
35 hundred two of this article with respect to such fuel or pursuant to
36 section eleven hundred three of this article with respect to such ciga-
37 rettes or beer.

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

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

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

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

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

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

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

10 § 1121-a. Refunds and credits with respect to beer. (a) Retail vendor.

11 (1) A distributor of beer who or which is required to collect the taxes
12 imposed by subdivision (a) of section eleven hundred five of this arti-
13 cle and any like tax imposed pursuant to the authority of article twen-
14 ty-nine of this chapter shall be allowed a refund or credit against the
15 amount of tax collected and required to be remitted to the commissioner
16 pursuant to the provisions of section eleven hundred thirty-seven of
17 this article upon the retail sale of beer or be in the amount of the tax
18 on such beer prepaid by or passed through to and included in the price
19 paid by such vendor pursuant to the provisions of section eleven hundred
20 three of this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 described in this subdivision who takes possession of or pays for busi-
2 ness assets under circumstances requiring notification by such person to
3 the commissioner pursuant to subdivision (c) of section eleven hundred
4 forty-one of this [~~chapter~~ article, (v) every person selling cigarettes
5 including persons who or which are not agents, (vi) any distributor who
6 sells beer to retailers for off premises consumption, and [~~(vii)~~] (vii)
7 every person described in subparagraph (i), (ii), (iii), (iv) [~~or~~], (v)
8 or (vi) of this paragraph or every person who is a vendor solely by
9 reason of clause (D), (E) or (F) of subparagraph (i) of paragraph eight
10 of subdivision (b) of section eleven hundred one of this article who or
11 which has had its certificate of authority revoked under paragraph four
12 of this subdivision, shall file with the commissioner a certificate of
13 registration, in a form prescribed by the commissioner, at least twenty
14 days prior to commencing business or opening a new place of business or
15 such purchasing, selling or taking of possession or payment, whichever
16 comes first. Every person who is a vendor solely by reason of clause (D)
17 of subparagraph (i) of paragraph eight of subdivision (b) of section
18 eleven hundred one of this article shall file with the commissioner a
19 certificate of registration, in a form prescribed by such commissioner,
20 within thirty days after the day on which the cumulative total number of
21 occasions that such person came into the state to deliver property or
22 services, for the immediately preceding four quarterly periods ending on
23 the last day of February, May, August and November, exceeds twelve.
24 Every person who is a vendor solely by reason of clause (E) of subpara-
25 graph (i) of paragraph eight of subdivision (b) of section eleven
26 hundred one of this article shall file with the commissioner a certif-
27 icate of registration, in a form prescribed by such commissioner, within
28 thirty days after the day on which the cumulative total, for the imme-
29 diately preceding four quarterly periods ending on the last day of
30 February, May, August and November, of such person's gross receipts from
31 sales of property delivered in this state exceeds five hundred thousand
32 dollars and number of such sales exceeds one hundred. Every person who
33 is a vendor solely by reason of clause (F) of subparagraph (i) of para-
34 graph eight of subdivision (b) of section eleven hundred one of this
35 article shall file with the commissioner a certificate of registration,
36 in a form prescribed by such commissioner, within thirty days after the
37 day on which tangible personal property in which such person retains an
38 ownership interest is brought into this state by the person to whom such
39 property is sold, where the person to whom such property is sold becomes
40 or is a resident or uses such property in any manner in carrying on in
41 this state any employment, trade, business or profession. Information
42 with respect to the notice requirements of a purchaser, transferee or
43 assignee and such person's liability pursuant to the provisions of
44 subdivision (c) of section eleven hundred forty-one of this chapter
45 shall be included in or accompany the certificate of registration form
46 furnished the applicant. The commissioner shall also include with such
47 information furnished to each applicant general information about the
48 tax imposed under this article including information on records to be
49 kept, returns and payments, notification requirements and forms. Such
50 certificate of registration may be amended in accordance with rules
51 promulgated by the commissioner.

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

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

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

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

14 (6-a) The returns of any distributor of beer shall show the amount of
15 prepaid tax assumed or paid thereon and passed through, together with
16 such additional information as the commissioner shall require. Taxable
17 receipts as used in this section with respect to beer shall include
18 taxable receipts from the sale of any beer whether or not such receipts
19 are subject to the taxes imposed by section eleven hundred two, eleven
20 hundred three, eleven hundred five or eleven hundred ten of this article
21 and regardless of whether the provisions of section eleven hundred twen-
22 ty or eleven hundred twenty-one of this article are applicable to the
23 taxes imposed in respect of such receipts.

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

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

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

48 12-a. To make such provision pursuant to rules and regulations for the
49 joint administration, in whole or in part, of the taxes imposed by this
50 article and pursuant to the authority of article twenty-nine of this
51 chapter upon the sale or use of beer for off premises consumption
52 including the reporting, assessment, collection, determination and
53 refund of such taxes, and, for that purpose, to prescribe that any of
54 the commissioner's functions under such articles, any returns, forms,
55 statements, documents or information to be submitted to the commissioner
56 under such articles, any books and taxes imposed or authorized by such

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

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

5 (x) Any person required to collect tax who sells beer for off premises
6 consumption who shall willfully and knowingly have in such person's
7 custody or possession or under such person's control any such beer on
8 which (A) the prepaid tax imposed by section eleven hundred three of
9 this article has not been assumed or paid by an agent licensed as such
10 under article twenty of this chapter, or (B) the prepaid tax imposed by
11 such section eleven hundred three was required to have been passed
12 through to such person and has not been included in the cost of such
13 beer to such person, shall be liable for a penalty in the amount of
14 twice the tax not so assumed or paid, or included. Such penalty shall be
15 determined, assessed, collected and paid in the same manner as taxes
16 imposed by this article and all the provisions of this article relating
17 thereto shall be deemed also to refer to the penalty imposed by this
18 subparagraph. Such penalty may be determined at any time within three
19 years after such beer shall have come into such person's custody or
20 possession or under such person's control. For purposes of this subpara-
21 graph, such person shall willfully and knowingly have in such person's
22 custody or possession or under such person's control beer on which (A)
23 such prepaid tax has not been assumed or paid by a wholesaler pursuant
24 to this chapter, or (B) such tax was required to have been passed
25 through to such person and has not been included in the cost of such
26 beer to such person, where such person has knowledge of the requirement
27 that such taxes be paid or assumed or so included and where, to such
28 person's knowledge, such taxes have not been so paid or assumed or so
29 included. For purposes of this subparagraph, it shall be presumptive
30 evidence that such person shall willfully and knowingly have in such
31 person's custody or possession or under such person's control, beer on
32 which (A) such tax has not been assumed or paid by a wholesaler author-
33 ized as such under such article twenty of this chapter or (B) such tax
34 was required to have been passed through to such person and has not been
35 included in the cost of such beer to such person where such person has
36 not received the certification required by subdivision (k) of section
37 eleven hundred thirty-two of this part at the time of delivery of such
38 beer or, in those circumstances where the commissioner has authorized
39 the delivery of such certification at a time after delivery of the beer,
40 at the time prescribed by the commissioner.

41 § 13. Subparagraph (i) of paragraph 3 of subdivision (a) of section
42 1145 of the tax law, as amended by section 48 of part K of chapter 61 of
43 the laws of 2011, is amended to read as follows:

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

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

3 (o) Any owner of a place of business selling beer at retail for off
4 premises consumption who shall willfully and knowingly have in such
5 owner's custody or possession or under such owner's control any beer on
6 which (1) the prepaid tax imposed by section eleven hundred three of
7 this chapter has not been assumed or (2) the prepaid tax imposed by
8 section eleven hundred three of this chapter was required to have been
9 passed through to such owner and has not been included in the cost of
10 such beer to such owner shall, in either case, be guilty of a misdemea-
11 nor. For purposes of this subdivision, such owner shall willfully and
12 knowingly have in such owner's custody or possession or under such
13 owner's control any beer on which such tax has not been assumed or paid
14 where such owner has knowledge of the requirement that such tax be
15 assumed or paid and where, to such owner's knowledge, such tax has not
16 been assumed or paid. Such owner shall willfully and knowingly have in
17 such owner's custody or possession or under such owner's control beer on
18 which such tax is required to have been passed through to such owner and
19 has not been included in the cost to such owner where such owner has
20 knowledge of the requirement that such tax be passed through and has not
21 been so included.

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

25 (q) An employee of the department of taxation and finance (i) assigned
26 to enforcement of the taxes imposed under or pursuant to the authority
27 of article twelve-A of the tax law and administered by the commissioner
28 of taxation and finance, taxes imposed under or pursuant to the authori-
29 ty of article eighteen of the tax law and administered by the commis-
30 sioner, taxes imposed under article twenty of the tax law, or sales or
31 compensating use taxes relating to petroleum products or cigarettes or
32 beer imposed under article twenty-eight or pursuant to the authority of
33 article twenty-nine of the tax law and administered by the commissioner
34 or (ii) designated as a revenue crimes specialist and assigned to the
35 enforcement of the taxes described in paragraph (c) of subdivision four
36 of section 2.10 of this title, for the purpose of applying for and
37 executing search warrants under article six hundred ninety of this chap-
38 ter, for the purpose of acting as a claiming agent under article thir-
39 teen-A of the civil practice law and rules in connection with the
40 enforcement of the taxes referred to above and for the purpose of
41 executing warrants of arrest relating to the respective crimes specified
42 in subdivision four of section 2.10 of this title.

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

46 (a) to the enforcement of any of the criminal or seizure and forfei-
47 ture provisions of the tax law relating to (i) taxes imposed under or
48 pursuant to the authority of article twelve-A of the tax law and admin-
49 istered by the commissioner, (ii) taxes imposed under or pursuant to the
50 authority of article eighteen of the tax law and administered by the
51 commissioner, (iii) taxes imposed under article twenty of the tax law,
52 or (iv) sales or compensating use taxes relating to petroleum products
53 or cigarettes or beer imposed under article twenty-eight or pursuant to
54 the authority of article twenty-nine of the tax law and administered by
55 the commissioner or

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

3 § 53-b. Manner of posting and changing beer prices to wholesalers and
4 retail licensees in cities of one million or more.

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

10 2. As used in this section, the following words shall have the follow-
11 ing meanings:

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

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

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

22 d. "COD" means cash, check or electronic payment at the time of deliv-
23 ery.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 d. Requiring beer wholesalers and brewer/wholesalers to register with
29 the authority each contract and agreement, including the names of brew-
30 ers and importers with which such wholesaler has contracts or agree-
31 ments, and requiring wholesalers to maintain forms, records and memoran-
32 da prescribed by the authority.

33 5. For the purpose of defraying the expenses incurred in the adminis-
34 tration of this section, there shall be paid to the authority by each
35 person hereafter applying for a license as a beer wholesaler the follow-
36 ing sums: beer wholesaler, five thousand dollars; for each contract or
37 agreement entered into by a beer wholesaler, five thousand dollars; a
38 non-contracted wholesaler, five thousand dollars; a like sum shall be
39 paid by each person hereafter applying for the issuance or renewal of
40 any such license and/or for each contract or agreement, and such sum
41 shall accompany the application and the license fee prescribed by this
42 chapter for such license or renewal thereof, as the case may be. The
43 sums prescribed by this subdivision shall not be prorated for any
44 portion of the license fee and shall have no refund value.

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

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

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

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

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

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

12 (d) All the provisions of section 1103 of the tax law and all of the
13 provisions of article 28 appertaining thereto, including, but not limit-
14 ed to, provisions relating to administration, collection, review,
15 payment, definitions, personal liability for the tax, exemptions, cred-
16 iting, enforcement, deposit and disposition, and the provisions of arti-
17 cle 37 of such law applicable to such section 1103 shall be applicable
18 to the tax imposed by this section with such modifications as may be
19 necessary in order to adapt such language to the tax so imposed. Such
20 provisions shall apply with the same force and effect as if the language
21 of such provisions had been set forth in full in this section except to
22 the extent that any provision is either inconsistent with a provision of
23 this section or is not relevant to the tax imposed by this section.

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

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

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

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