

# STATE OF NEW YORK

7733

2023-2024 Regular Sessions

## IN SENATE

November 1, 2023

Introduced by Sen. SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the tax law and the penal law, in relation to an excise tax on the sale of firearms and ammunition; and to amend the state finance law, in relation to creating a gun violence prevention and school safety fund

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 article 19-A to read  
2 as follows:

### ARTICLE 19-A

#### EXCISE TAX ON FIREARMS AND AMMUNITION

##### Section 460. Definitions.

6 461. Imposition of tax.

7 462. Registration and renewal.

8 463. Returns and payment of tax.

9 464. Records to be kept; penalties.

10 465. Returns to be secret.

11 466. Administrative provisions.

12 467. Enforcement.

13 468. Deposit and disposition of revenue.

14 § 460. Definitions. For purposes of this article, the following defi-  
15 nitions shall apply:

16 (a) The following terms shall have the same meaning as those terms are  
17 defined in articles two hundred sixty-five and four hundred of the penal  
18 law: "seller of ammunition", "firearm", "dealer in firearms" and "major  
19 component of a firearm".

20 (b) "Firearms manufacturer" means any entity licensed to manufacture  
21 firearms pursuant to Chapter 44 (commencing with Section 921) of Title  
22 18 of the United States Code that engages in any retail sale of a  
23 firearm or major component of a firearm to a consumer in New York.

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

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1 (c) "Law enforcement agency" shall have the same meaning as set forth  
2 in section 705.00 of the criminal procedure law and shall also include  
3 any department or agency of the state or of any county, city, or other  
4 political subdivision thereof that employs any peace officer who is  
5 authorized to carry a firearm while on duty, or any department or agency  
6 of the federal government or a federally recognized Indian tribe with  
7 jurisdiction that has tribal land in New York that employs any police  
8 officer or criminal investigator authorized to carry a firearm while on  
9 duty.

10 (d) "Peace officer" shall have the same meaning as in section 2.10 of  
11 the criminal procedure law and who is authorized to carry a firearm on  
12 duty, or any police officer or criminal investigator employed by the  
13 federal government or a federally recognized Indian tribe with jurisdic-  
14 tion that has tribal land in New York, who is authorized to carry a  
15 firearm while on duty.

16 § 461. Imposition of tax. (a) Commencing July first, two thousand  
17 twenty-four, an excise tax is hereby imposed upon licensed dealers in  
18 firearms, firearms manufacturers, and sellers of ammunition, at the rate  
19 of eleven percent of the gross receipts from the retail sale in this  
20 state of any firearm, major component of a firearm, or ammunition.

21 (b) (1) The provisions of this section shall not apply to retail sales  
22 of firearms, major components of firearms or ammunition to any active or  
23 retired peace officer or any law enforcement agency employing that peace  
24 officer.

25 (2) There are exempted from the tax imposed by this article, the gross  
26 receipts from the retail sale of any firearm, major component of a  
27 firearm, or ammunition by any licensed dealer in firearms, firearms  
28 manufacturer, or seller of ammunition in any quarterly period in which  
29 the total gross receipts from the retail sales of firearms, major compo-  
30 nents of firearms, or ammunition is less than five thousand dollars.

31 § 462. Registration and renewal. (a) Every licensed dealer in  
32 firearms, firearms manufacturer, or seller of ammunition on whom tax is  
33 imposed under this article must file with the commissioner a properly  
34 completed application for a certificate of registration and obtain such  
35 certificate before engaging in business. An application for a certif-  
36 icate of registration must be submitted electronically, on a form  
37 prescribed by the commissioner, and must be accompanied by a non-refund-  
38 able application fee as set by the commissioner. A certificate of regis-  
39 tration shall not be assignable or transferable and shall be destroyed  
40 immediately upon such person ceasing to do business as specified in such  
41 certificate, or in the event that such business never commenced.

42 (b) (1) The commissioner shall refuse to issue a certificate of regis-  
43 tration to any applicant and shall revoke the certificate of registra-  
44 tion of any such person who does not possess a valid license under arti-  
45 cle four hundred of the penal law.

46 (2) The commissioner may refuse to issue a certificate of registration  
47 to any applicant where such applicant:

48 (i) has a past-due liability as that term is defined in section one  
49 hundred seventy-one-v of this chapter;

50 (ii) has had a certificate of registration under this article revoked  
51 or suspended where such revocation or suspension was in effect on the  
52 date the application was filed or ended within one year from the date on  
53 which such application was filed;

54 (iii) has been convicted of a crime provided for in this chapter with-  
55 in one year from the date on which such application was filed or the  
56 certificate was issued, as applicable;

1 (iv) willfully fails to file a report or return required by this arti-  
2 cle;

3 (v) willfully files, causes to be filed, gives or causes to be given a  
4 report, return, certificate or affidavit required by this article which  
5 is false; or

6 (vi) willfully fails to collect or truthfully account for or pay over  
7 any tax imposed by this article.

8 (3) The commissioner may revoke the certificate of registration issued  
9 to any person who:

10 (i) has had any license or registration provided for in this chapter  
11 revoked or suspended;

12 (ii) has been convicted of a crime provided for in this chapter where  
13 such conviction occurred not more than one year prior to the date of  
14 revocation;

15 (iii) willfully fails to file a report or return required by this  
16 article;

17 (iv) willfully files, causes to be filed, gives or causes to be given  
18 a report, return, certificate or affidavit required by this article  
19 which is false; or

20 (v) willfully fails to collect or truthfully account for or pay over  
21 any tax imposed by this article.

22 A person who is notified of a revocation of their certificate of  
23 registration pursuant to this paragraph shall have the right to have the  
24 revocation reviewed by the commissioner or their designee by contacting  
25 the department at a telephone number or an address to be disclosed in  
26 the notice of revocation within ten days of such person's receipt of  
27 such notification. Such person may present written evidence or argument  
28 in support of their defense to the revocation or may appear at a sched-  
29 uled conference with the commissioner or their designee to present oral  
30 arguments and written and oral evidence in support of such defense. The  
31 commissioner or their designee is authorized to delay the effective date  
32 of the revocation to enable such person to present further evidence or  
33 arguments in connection with the revocation. The commissioner or their  
34 designee shall cancel the revocation of the certificate of registration  
35 if the commissioner or their designee is not satisfied by a preponder-  
36 ance of the evidence that a basis for revocation pursuant to this para-  
37 graph exists. An order of revocation of a certificate of registration  
38 under this paragraph shall not be reviewable by the division of tax  
39 appeals but may be reviewed pursuant to article seventy-eight of the  
40 civil practice law and rules by a proceeding commenced in the supreme  
41 court within four months of the revocation petitioning that the order of  
42 revocation be enjoined or set aside. Such proceeding shall be insti-  
43 tuted in the county where the commissioner has their principal office.  
44 Upon the filing of such petition the court shall have jurisdiction to  
45 set aside such order of revocation, in whole or in part, or to dismiss  
46 the petition. The jurisdiction of the supreme court shall be exclusive  
47 and its order dismissing the petition or enjoining or setting aside such  
48 order, in whole or in part, shall be final, subject to review by the  
49 appellate division of the supreme court and the court of appeals in the  
50 same manner and form and with the same effect as provided by law for  
51 appeals from a judgment in a special proceeding. All such proceedings  
52 shall be heard and determined by the court and by any appellate court as  
53 expeditiously as possible and with lawful precedence over other civil  
54 matters. All such proceedings for review shall be heard on the petition,  
55 transcript and other papers, and on appeal shall be heard on the record,  
56 without requirement of printing.

1 (c) Where a person that does not possess a certificate of registration  
2 under this section has been determined to have possessed or sold any  
3 firearm, major component of a firearm or ammunition:

4 (1) The commissioner may revoke a certificate of authority issued to  
5 such person pursuant to section eleven hundred thirty-four of this chap-  
6 ter for a place of business where such person has been determined to  
7 have possessed for sale or to have sold firearms, major components of  
8 firearms or ammunition three or more times within a period of five years  
9 without a certificate of registration.

10 (2) The commissioner may refuse to issue a certificate of authority  
11 under section eleven hundred thirty-four of this chapter to a person  
12 upon whom tax is imposed under this article unless the applicant  
13 provides the commissioner with adequate documentation demonstrating that  
14 such applicant acquired the premises or business through an arm's length  
15 transaction as defined in paragraph (e) of subdivision one of section  
16 four hundred eighty-a of this chapter and that the sale or lease was not  
17 conducted, in whole or in part, for the purpose of permitting the  
18 original registrant to avoid the effect of the previous revocation for  
19 the same premises.

20 (d) A certificate of registration shall be valid for the period speci-  
21 fied thereon, unless earlier suspended or revoked. Upon the expiration  
22 of the term stated on a certificate of registration, such certificate  
23 shall be null and void.

24 (e) Every holder of a certificate of registration must notify the  
25 commissioner of changes to any of the information stated on the certifi-  
26 cate, or of changes to any information contained in the application for  
27 the certificate of registration. Such notification must be made on or  
28 before the last day of the month in which a change occurs and must be  
29 made electronically on a form prescribed by the commissioner.

30 (f) Every holder of a certificate of registration under this article  
31 shall be required to reapply prior to such certificate's expiration,  
32 during a reapplication period established by the commissioner. Such  
33 reapplication period shall not occur more frequently than every two  
34 years. Such reapplication shall be subject to the same requirements and  
35 conditions as an initial application, including grounds for refusal and  
36 the payment of the application fee.

37 (g) (1) The department shall notify the division of state police if,  
38 after providing notice and the opportunity for a hearing, the department  
39 has revoked the certificate of registration of a licensed firearms deal-  
40 er, seller of ammunition, or firearms manufacturer for violating any  
41 provision of this article.

42 (2) The holder of a certificate of registration that has had their  
43 certificate revoked pursuant to this article may petition the department  
44 for reinstatement of the certificate by paying the amount of unpaid  
45 excise tax determined, together with any interest and penalties, demon-  
46 strating full compliance with the provisions of this article, and paying  
47 a fee of fifty dollars to the department for reinstatement. The depart-  
48 ment shall reinstate the certificate of registration of any revoked  
49 certificate holder that has satisfactorily complied with this  
50 subsection.

51 § 463. Returns and payment of tax. (a) Every person on whom tax is  
52 imposed under this article shall, on or before the twentieth day of the  
53 month following each quarterly period ending on the last day of Febru-  
54 ary, May, August, and November, respectively, file electronically with  
55 the commissioner a return on forms to be prescribed by the commissioner,

1 showing the total amount of tax due in such quarterly period, and  
2 including such other information as the commissioner may require.

3 (b) Every person required to file a return under this section shall,  
4 at the time of filing such return, pay electronically to the commission-  
5 er the total amount of tax due for the period covered by such return. If  
6 a return is not filed when due, the tax shall be due on the day on which  
7 the return is required to be filed.

8 § 464. Records to be kept; penalties. (a) Records to be kept. Every  
9 licensed dealer in firearms, firearms manufacturer, and seller of ammu-  
10 nition, on whom tax is imposed under this article shall maintain  
11 complete and accurate records in such form as the commissioner may  
12 require. Such records must be preserved for a period of three years  
13 after the filing of the return to which such records relate and must be  
14 provided to the commissioner upon request.

15 (b) Penalties. In addition to any other penalty provided in this arti-  
16 cle or otherwise imposed by law, every person on whom tax is imposed  
17 under this article who fails to maintain or make available to the  
18 commissioner the records required by this section is subject to a penal-  
19 ty not to exceed five hundred dollars for each month or part thereof for  
20 which the failure occurs. This penalty may not be imposed more than once  
21 for failures for the same monthly period or part thereof. If the  
22 commissioner determines that a failure to maintain or make available  
23 records in any month was entirely due to reasonable cause and not to  
24 willful neglect, the commissioner must remit the penalty for that month.

25 § 465. Returns to be secret. (a) Except in accordance with proper  
26 judicial order or as in this section or otherwise provided by law, it  
27 shall be unlawful for the commissioner, any officer or employee of the  
28 department, or any officer or person who, pursuant to this section, is  
29 permitted to inspect any return or report or to whom a copy, an abstract  
30 or a portion of any return or report is furnished, or to whom any infor-  
31 mation contained in any return or report is furnished, or any person who  
32 in any manner may acquire knowledge of the contents of a return or  
33 report filed pursuant to this article to divulge or make known in any  
34 manner the content or any other information contained in any return or  
35 report required under this article. The officers charged with the custo-  
36 dy of such returns or reports shall not be required to produce any of  
37 them or evidence of anything contained in them in any action or preced-  
38 ing in any court, except on behalf of the state or the commissioner in  
39 an action or proceeding involving the collection of tax due under this  
40 chapter to which the state or the commissioner is a party or a claimant  
41 or on behalf of any party to any action or proceeding under the  
42 provisions of this article, when the returns or the reports or the facts  
43 shown thereby are directly involved in such action or proceeding, or in  
44 an action or proceeding related to the regulation or taxation of  
45 firearms or ammunition on behalf of officers to whom information shall  
46 have been supplied as provided in this section, in any of which events  
47 the court may require the production of, and may admit in evidence so  
48 much of said returns or reports or of the facts shown thereby as are  
49 pertinent to the action or proceeding and no more. Nothing herein shall  
50 be construed to prohibit the commissioner, in his or her discretion,  
51 from allowing the inspection or delivery of a certified copy of any  
52 return or report filed under this article or of any information  
53 contained in any such return or report to the attorney general or other  
54 legal representatives of the state when an action shall have been recom-  
55 mended or commenced pursuant to this chapter in which such returns or  
56 reports or the facts shown thereby are directly involved; or the



1 inspection of the returns or reports required under this article by the  
2 comptroller or duly designated officer or employee of the state depart-  
3 ment of audit and control, for purposes of the audit of a refund of any  
4 tax paid by any person under this article; nor to prohibit the delivery  
5 to such person or a duly authorized representative of such person, a  
6 certified copy of any return or report filed by such person pursuant to  
7 this article, nor to prohibit the publication of statistics so classi-  
8 fied as to prevent the identification of particular returns or reports  
9 and the items thereof. This section shall also not be construed to  
10 prohibit the disclosure, for tax administration purposes, to the divi-  
11 sion of the budget and the office of the state comptroller, of informa-  
12 tion aggregated from the returns filed by all persons subject to the  
13 taxes imposed by the article, whether the number of such persons is one  
14 or more.

15 (b) The commissioner, in his or her discretion, may permit the appro-  
16 priate officers of any other state that regulates or taxes firearms,  
17 major components of firearms or ammunition or the duly authorized repre-  
18 sentatives of any such officers, to inspect returns or reports made  
19 pursuant to this article, or may furnish to such other officers, or  
20 their duly authorized representatives, a copy of any such return or  
21 report or an abstract of the information therein contained, or any  
22 portion thereof, or may supply any such officers or such representatives  
23 with information relating to the business of a person making returns or  
24 reports hereunder solely for purposes of tax administration. The commis-  
25 sioner may refuse to supply information pursuant to this subdivision to  
26 the officers of any other state if the statutes of the state represented  
27 by such officers do not grant substantially similar privileges to the  
28 commissioner, but such refusal shall not be mandatory. Information shall  
29 not be supplied to the officers of any state unless such officer or  
30 other representatives shall agree not to divulge or make known in any  
31 manner the information so supplied, but such officers may transmit such  
32 information to their employees or legal representatives when necessary,  
33 who in turn shall be subject to the same restrictions as those hereby  
34 imposed upon such officer or other representatives.

35 (c)(1) Any officer or employee of the state who willfully violates the  
36 provisions of subdivision (a) or (b) of this section shall be dismissed  
37 from office and be incapable of holding any public office in this state  
38 for a period of five years thereafter.

39 (2) For criminal penalties, see article thirty-seven of this chapter.

40 § 466. Administrative provisions. The provisions of article twenty-  
41 seven of this chapter shall apply to the taxes imposed by section four  
42 hundred sixty-one of this article in the same manner and with the same  
43 force and effect as if the language of such article had been incorpo-  
44 rated in full into this section and had expressly referred to the tax  
45 imposed by this article, except to the extent that any provision of such  
46 article is either inconsistent with a provision of this article or is  
47 not relevant to this article.

48 § 467. Enforcement. The commissioner or the commissioner's duly  
49 authorized representatives are hereby authorized:

50 (a) To conduct regulatory inspections during normal business hours of  
51 any place of business.

52 (b) To examine any books, papers, invoices and other records of any  
53 place of business of a dealer in firearms, or seller of ammunition or  
54 major components of firearms. Any person in possession, control or occu-  
55 pancy of any such business is required to give to the commissioner or  
56 the commissioner's duly authorized representatives the means, facili-

ties, and opportunity for such examinations. For the purposes of this section, "place of business" shall not include a residence or other real property, or any personal vehicle on or about such property, not held out as open to the public or otherwise being utilized in a business or commercial manner, unless probable cause exists to believe that such residence, real property or vehicle is being used in such a business or commercial manner for the buying or selling of firearms, major components of firearms or ammunition.

(c) If any person registered under section four hundred sixty-two of this article, or their agents, refuses to give the commissioner, or the commissioner's duly authorized representatives, the means, facilities and opportunity for the inspections and examinations required by this section, the commissioner, after notice and an opportunity for a hearing, may revoke their registration to sell firearms or ammunition:

(i) for a period of one year for the first such failure;

(ii) for a period of up to three years for a second such failure within a period of three years; and

(iii) for a period of up to seven years for a third such failure within five years.

§ 468. Deposit and disposition of revenue. All taxes, interest, and penalties collected or received by the commissioner under this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter, provided that an amount equal to one hundred percent collected under this article less any amount determined by the commissioner to be reserved by the comptroller for refunds or reimbursements shall be paid by the comptroller to the credit of the gun violence prevention and school safety fund established by section ninety-nine-rr of the state finance law. Of the total revenue collected or received under this article, the comptroller shall retain such amount as the commissioner may determine to be necessary for refunds. The commissioner is authorized and directed to deduct from the registration fees under subdivision (a) of section four hundred sixty-one of this article, before deposit into the fund designated by the comptroller, a reasonable amount necessary to effectuate refunds of appropriations of the department to reimburse the department for the costs incurred to administer, collect, and distribute the taxes imposed by this article.

§ 2. The penal law is amended by adding a new section 400.04 to read as follows:

§ 400.04 Firearm and ammunition excise tax administration.

1. By no later than March thirty-first, two thousand twenty-four, and thereafter by no later than the last day of each calendar quarter, the division of state police shall provide a list, including the names and business locations of all licensed firearm dealers, firearm manufacturers, and sellers of ammunition in the statewide license and record database maintained under section 400.02 of this article to the department of taxation and finance for the purposes of administering the excise tax imposed pursuant to article nineteen-a of the tax law.

2. The division of state police may revoke any license of a seller of ammunition or firearms dealer or firearms manufacturer upon notification from the department of taxation and finance that, after providing notice and the opportunity for a hearing, the department of taxation and finance has revoked the licensee's certificate of registration, pursuant to section four hundred sixty-two of the tax law.

3. The licensing authority may reinstate a license that has been revoked if the department of taxation finance has reinstated the

1 licensee's certificate of registration or the seller's permit, as appli-  
2 cable.

3 § 3. The state finance law is amended by adding a new section 99-rr to  
4 read as follows:

5 § 99-rr. Gun violence prevention and school safety fund. 1. There is  
6 hereby established in the joint custody of the state comptroller and the  
7 commissioner of taxation and finance a special fund to be known as the  
8 gun violence prevention and school safety fund.

9 2. Such fund shall consist of all revenues received by the department  
10 of taxation and finance, pursuant to the provisions of article nine-  
11 teen-a of the tax law and all other moneys credited or transferred ther-  
12 eto from any other fund or source pursuant to law. Nothing contained in  
13 this section shall prevent the state from receiving grants, gifts or  
14 bequests for the purposes of the fund as defined in this section and  
15 depositing them into the fund according to law.

16 3. The moneys in such fund shall be expended for the following  
17 purposes:

18 (a) to the department of education to enhance school safety by  
19 addressing risk factors for gun violence affecting pupils in kindergar-  
20 ten through grade twelve, through the funding of related measures,  
21 including, physical security improvements, physical safety assessments,  
22 school-based or school-linked mental health and behavioral services,  
23 including training for teachers and employees, and before school and  
24 after school programs for at-risk pupils;

25 (b) to support a court-based firearm relinquishment grant program to  
26 ensure the prompt, consistent, and safe removal of firearms by state and  
27 local law enforcement agencies from individuals who become prohibited  
28 from owning or possessing firearms and ammunition pursuant to a criminal  
29 conviction or other criminal or civil court order, including, but not  
30 limited to, criminal protective orders, domestic violence restraining  
31 orders, gun violence restraining orders, civil harassment restraining  
32 orders, and workplace violence restraining orders;

33 (c) to fund a victims of gun violence grant program to support  
34 evidence-based activities to equitably improve investigations and clear-  
35 ance rates in firearm homicide and firearm assault investigations in  
36 communities disproportionately impacted by firearm homicides and firearm  
37 assaults which may include hiring and training detectives dedicated to  
38 investigating these offenses, hiring and training personnel or other  
39 partners to coordinate with victims and witnesses or to collect, proc-  
40 ess, and test relevant evidence, improving data analysis, forensics, and  
41 technological capacities, and promoting recurring and trauma-informed  
42 engagement with victims, witnesses, and other impacted community members  
43 in a manner that builds trust, safety, and collaboration;

44 (d) to support activities to inform firearm and ammunition purchasers  
45 and firearm owners about gun safety laws and responsibilities, such as  
46 safe firearm storage, and to promote implementation and coordination of  
47 gun violence prevention efforts through activities such as technical  
48 assistance, training, capacity building, and local gun violence data and  
49 problem analysis support for local governments, law enforcement agen-  
50 cies, community-based service providers, and other stakeholders;

51 (e) to provide counseling and trauma-informed support services to  
52 direct and secondary victims of mass shootings and other gun homicides  
53 and to individuals who have experienced chronic exposure to community  
54 gun violence;



1 (f) for gun violence research and initiatives to educate health care  
2 providers and other stakeholders about clinical tools and other inter-  
3 ventions for preventing firearm suicide and injury; and

4 (g) to fund and support activities and programs focused on preventing  
5 gun violence, supporting victims of gun violence, and otherwise remedi-  
6 ating the harmful effects of gun violence.

7 4. Moneys in the firearm violence research fund may be invested by the  
8 comptroller pursuant to section ninety-eight-a of this article, and any  
9 income received by the comptroller shall be used for the purposes of  
10 such fund.

11 § 4. Severability. If any clause, sentence, paragraph, subdivision,  
12 section or part of this act shall be adjudged by any court of competent  
13 jurisdiction to be invalid, such judgment shall not affect, impair, or  
14 invalidate the remainder thereof, but shall be confined in its operation  
15 to the clause, sentence, paragraph, subdivision, section or part there-  
16 of directly involved in the controversy in which such judgment shall  
17 have been rendered. It is hereby declared to be the intent of the legis-  
18 lature that this act would have been enacted even if such invalid  
19 provisions had not been included herein.

20 § 5. This act shall take effect immediately, provided that sections  
21 one and three of this act shall take effect January 1, 2025. Effective  
22 immediately, the addition, amendment and/or repeal of any rule or regu-  
23 lation necessary for the implementation of this act on its effective  
24 date are authorized to be made and completed on or before such effective  
25 date.