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:

Section 1. The tax law is amended by adding a new article 19-A to read as follows:

ARTICLE 19-A

EXCISE TAX ON FIREARMS AND AMMUNITION

Section 460. Definitions.
461. Imposition of tax.
462. Registration and renewal.
463. Returns and payment of tax.
464. Records to be kept; penalties.
465. Returns to be secret.
466. Administrative provisions.
467. Enforcement.
468. Deposit and disposition of revenue.

§ 460. Definitions. For purposes of this article, the following definitions shall apply:

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

(b) "Firearms manufacturer" means any entity licensed to manufacture firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code that engages in any retail sale of a 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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(c) "Law enforcement agency" shall have the same meaning as set forth in section 705.00 of the criminal procedure law and shall also include any department or agency of the state or of any county, city, or other political subdivision thereof that employs any peace officer who is authorized to carry a firearm while on duty, or any department or agency of the federal government or a federally recognized Indian tribe with jurisdiction that has tribal land in New York that employs any police officer or criminal investigator authorized to carry a firearm while on duty.

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

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

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

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

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

(b) (1) The commissioner shall refuse to issue a certificate of registration to any applicant and shall revoke the certificate of registration of any such person who does not possess a valid license under article four hundred of the penal law.

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

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

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

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

(iv) willfully fails to file a report or return required by this article;

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

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

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

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

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

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

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

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

A person who is notified of a revocation of their certificate of registration pursuant to this paragraph shall have the right to have the revocation reviewed by the commissioner or their designee by contacting the department at a telephone number or an address to be disclosed in the notice of revocation within ten days of such person's receipt of such notification. Such person may present written evidence or argument in support of their defense to the revocation or may appear at a scheduled conference with the commissioner or their designee to present oral arguments and written and oral evidence in support of such defense. The commissioner or their designee is authorized to delay the effective date of the revocation to enable such person to present further evidence or arguments in connection with the revocation. The commissioner or their designee shall cancel the revocation of the certificate of registration if the commissioner or their designee is not satisfied by a preponderance of the evidence that a basis for revocation pursuant to this paragraph exists. An order of revocation of a certificate of registration under this paragraph shall not be reviewable by the division of tax appeals but may be reviewed pursuant to article seventy-eight of the civil practice law and rules by a proceeding commenced in the supreme court within four months of the revocation petitioning that the order of revocation be enjoined or set aside. Such proceeding shall be instituted in the county where the commissioner has their principal office. Upon the filing of such petition the court shall have jurisdiction to set aside such order of revocation, in whole or in part, or to dismiss the petition. The jurisdiction of the supreme court shall be exclusive and its order dismissing the petition or enjoining or setting aside such order, in whole or in part, shall be final, subject to review by the appellate division of the supreme court and the court of appeals in the same manner and form and with the same effect as provided by law for appeals from a judgment in a special proceeding. All such proceedings shall be heard and determined by the court and by any appellate court as expeditiously as possible and with lawful precedence over other civil matters. All such proceedings for review shall be heard on the petition, transcript and other papers, and on appeal shall be heard on the record, without requirement of printing.

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

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

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

(d) A certificate of registration shall be valid for the period specified thereon, unless earlier suspended or revoked. Upon the expiration of the term stated on a certificate of registration, such certificate shall be null and void.

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

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

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

(2) The holder of a certificate of registration that has had their certificate revoked pursuant to this article may petition the department for reinstatement of the certificate by paying the amount of unpaid excise tax determined, together with any interest and penalties, demonstrating full compliance with the provisions of this article, and paying a fee of fifty dollars to the department for reinstatement. The department shall reinstate the certificate of registration of any revoked certificate holder that has satisfactorily complied with this subsection.

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

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

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

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

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

§ 465. Returns to be secret. (a) Except in accordance with proper judicial order or as in this section or otherwise provided by law, it shall be unlawful for the commissioner, any officer or employee of the department, or any officer or person who, pursuant to this section, is permitted to inspect any return or report or to whom a copy, an abstract or a portion of any return or report is furnished, or to whom any information contained in any return or report is furnished, or any person who in any manner may acquire knowledge of the contents of a return or report filed pursuant to this article to divulge or make known in any manner the content or any other information contained in any return or report required under this article. The officers charged with the custody of such returns or reports shall not be required to produce any of them or evidence of anything contained in them in any action or preceding in any court, except on behalf of the state or the commissioner in an action or proceeding involving the collection of tax due under this chapter to which the state or the commissioner is a party or a claimant or on behalf of any party to any action or proceeding under the provisions of this article, when the returns or the reports or the facts shown thereby are directly involved in such action or proceeding, or in an action or proceeding related to the regulation or taxation of firearms or ammunition on behalf of officers to whom information shall have been supplied as provided in this section, in any of which events the court may require the production of, and may admit in evidence so much of said returns or reports or of the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the commissioner, in his or her discretion, from allowing the inspection or delivery of a certified copy of any return or report filed under this article or of any information contained in any such return or report to the attorney general or other legal representatives of the state when an action shall have been recommended or commenced pursuant to this chapter in which such returns or reports or the facts shown thereby are directly involved; or the

inspection of the returns or reports required under this article by the comptroller or duly designated officer or employee of the state department of audit and control, for purposes of the audit of a refund of any tax paid by any person under this article; nor to prohibit the delivery to such person or a duly authorized representative of such person, a certified copy of any return or report filed by such person pursuant to this article, nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns or reports and the items thereof. This section shall also not be construed to prohibit the disclosure, for tax administration purposes, to the division of the budget and the office of the state comptroller, of information aggregated from the returns filed by all persons subject to the taxes imposed by the article, whether the number of such persons is one or more.

(b) The commissioner, in his or her discretion, may permit the appropriate officers of any other state that regulates or taxes firearms, major components of firearms or ammunition or the duly authorized representatives of any such officers, to inspect returns or reports made pursuant to this article, or may furnish to such other officers, or their duly authorized representatives, a copy of any such return or report or an abstract of the information therein contained, or any portion thereof, or may supply any such officers or such representatives with information relating to the business of a person making returns or reports hereunder solely for purposes of tax administration. The commissioner may refuse to supply information pursuant to this subdivision to the officers of any other state if the statutes of the state represented by such officers do not grant substantially similar privileges to the commissioner, but such refusal shall not be mandatory. Information shall not be supplied to the officers of any state unless such officer or other representatives shall agree not to divulge or make known in any manner the information so supplied, but such officers may transmit such information to their employees or legal representatives when necessary, who in turn shall be subject to the same restrictions as those hereby imposed upon such officer or other representatives.

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

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

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

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

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

(b) To examine any books, papers, invoices and other records of any place of business of a dealer in firearms, or seller of ammunition or major components of firearms. Any person in possession, control or occupancy of any such business is required to give to the commissioner or 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

licensee's certificate of registration or the seller's permit, as applicable.

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

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

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

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

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

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

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

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

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

(f) for gun violence research and initiatives to educate health care providers and other stakeholders about clinical tools and other interventions for preventing firearm suicide and injury; and

(g) to fund and support activities and programs focused on preventing gun violence, supporting victims of gun violence, and otherwise remediating the harmful effects of gun violence.

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

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

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