STATE OF NEW YORK

9206

IN ASSEMBLY

February 16, 2024

Introduced by M. of A. SOLAGES -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to the taxation of vapor products

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

Section 1. Section 1180 of the tax law is amended by adding a new subdivision (c) to read as follows:

(c) "Vapor products distributor" means any person who imports or causes to be imported into this state any vapor products for sale, or who manufactures any vapor product in this state, and any person within or without the state who is authorized by the commissioner of taxation and finance to make returns and pay the tax on vapor products sold, shipped, or delivered by him or her to any person in the state.

§ 2. Section 1181 of the tax law, as amended by chapter 92 of the laws of 2021, is amended to read as follows:

§ 1181. Imposition of tax. **(a)** In addition to any other tax imposed by this chapter or other law, there is hereby imposed a tax of twenty percent on [~~receipts from the retail sale of vapor products sold~~] **vapor products sold by a vapor products distributor to a vapor products dealer** in this state. The tax is imposed on the purchaser and collected by the vapor products dealer as defined in subdivision (b) of section eleven hundred eighty of this article, in trust for and on account of the state. The taxes imposed under this section shall not apply to adult-use cannabis products subject to tax under article twenty-C of this chapter.

(b) The vapor products distributor shall be liable for the payment of the tax on vapor products which he or she imports or causes to be imported into the state, or which he or she manufactures in the state, and every vapor products distributor authorized by the commissioner of taxation and finance to make returns and pay the tax on tobacco products sold, shipped or delivered by him or her to any person in the state shall be liable for the payment of the tax on all vapor products so sold, shipped or delivered.

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

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(c) Every vapor products dealer shall be liable for the tax on all vapor products in his or her possession at any time, upon which tax has not been paid or assumed by a vapor products distributor appointed by the commissioner of taxation and finance, and the failure of any vapor products dealer to produce and exhibit to the commissioner of taxation and finance or his or her authorized representative upon demand, an invoice by a vapor products distributor for any vapor products in his or her possession shall be presumptive evidence that the tax thereon has not been paid, and that such dealer is liable for the tax thereon unless evidence of such invoice, payment or assumption shall later be produced.

§ 3. The tax law is amended by adding a new section 1183-a to read as follows:

§ 1183-a. Vapor products distributor license and renewal. (a) Every person who intends to be a vapor products distributor in this state must receive from the commissioner a license prior to engaging in business. In addition to the requirements of section eleven hundred eighty-three of this article, a vapor products dealer who purchases or receives vapor products from a manufacturer or out-of-state distributor shall be required to obtain a vapor products distributor license. The applicant for a vapor products distributor license must electronically submit a properly completed application for a license for each location at which the business shall be conducted in this state, on a form prescribed by the commissioner, and shall be accompanied by a non-refundable application fee of three hundred dollars.

(b) A vapor products distributor license shall be valid for the calendar year for which it is issued unless earlier suspended or revoked. Upon the expiration of the term stated on the license, such license shall be null and void. A license shall not be assignable or transferable and shall be destroyed immediately upon the vapor products distributor ceasing to do business as specified in such license or in the event that such business never commenced.

(c) Every vapor products distributor shall publicly display in his or her place of business a license from the department.

(d)(1) The commissioner shall refuse to issue a license to any applicant who does not possess a valid certificate of authority under section eleven hundred thirty-four of this chapter. In addition, the commissioner may refuse to issue a license, or suspend, cancel or revoke a license issued to any person who:

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

(B) has had a license under this article or any license or registration provided for in this chapter revoked within one year from the date on which such application was filed;

(C) has been convicted of a crime provided for in this chapter within one year from the date on which such application was filed;

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

(E) 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;

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

(G) whose place of business is at the same premises as that of a person whose vapor products distributor license has been revoked and where such revocation is still in effect, unless the applicant or vapor products distributor provides the commissioner with adequate documenta-

tion demonstrating that such applicant or vapor products distributor 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.

(2) In addition to the grounds provided in paragraph one of this subdivision, the commissioner shall refuse to issue a license and shall cancel or suspend a license as directed by an enforcement officer pursuant to article thirteen-F of the public health law. Notwithstanding any provision of law to the contrary, an applicant whose application for a license is refused or a vapor products distributor whose license is cancelled or suspended under this paragraph shall have no right to a hearing under this chapter and shall have no right to commence a court action or proceeding or to any other legal recourse against the commissioner with respect to such refusal, suspension or cancellation; provided, however, that nothing herein shall be construed to deny a vapor products distributor a hearing under article thirteen-F of the public health law or to prohibit vapor products distributors from commencing a court action or proceeding against an enforcement officer as defined in section thirteen hundred ninety-nine-aa of the public health law.

(e) If a vapor products distributor license is suspended, cancelled or revoked and such vapor products distributor distributes or sells vapor products through more than one place of business in this state, the vapor products distributor's license issued to that place of business where such violation occurred shall be suspended, revoked, or cancelled. Provided, however, upon a vapor products distributor's third suspension, cancellation, or revocation within a five-year period for any one or more businesses owned or operated by the vapor products distributor, such suspension, cancellation, or revocation of the vapor products distributor's license shall apply to all places of business where he or she distributes or sells vapor products in this state.

(f) Every holder of a license must notify the commissioner of changes to any of the information stated on the license or changes to any information contained in the application for the license. 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.

(g) Every vapor products distributor who holds a license under this article shall be required to reapply for a license for the following calendar year on or before the twentieth day of September and such reapplication shall be subject to the same requirements and conditions, including grounds for refusal, as an initial license under this article, including but not limited to the payment of the three hundred dollar application fee for each business location.

(h) In addition to any other penalty imposed by this chapter, any vapor products distributor who violates the provisions of this section, (1) for a first violation is liable for a civil fine not less than five thousand dollars but not to exceed twenty-five thousand dollars and such license may be suspended for a period of not more than six months; and (2) for a second or subsequent violation within three years following a prior violation of this section, is liable for a civil fine not less than ten thousand dollars but not to exceed thirty-five thousand dollars and such license may be suspended for a period of up to thirty-six months; or (3) for a third violation within a period of five years, the license issued to each place of business owned or operated by the vapor

products distributor in this state shall be revoked for a period of up to five years.

§ 4. Section 1184 of the tax law, as added by section 1 of part UU of chapter 59 of the laws of 2019, is amended to read as follows:

§ 1184. Administrative provisions. (a) [~~Except as otherwise provided for in this article, the taxes imposed by this article shall be administered and collected in a like manner as and jointly with the taxes imposed by sections eleven hundred five and eleven hundred ten of this chapter. In addition, except as otherwise provided in this article, all of the provisions of article twenty-eight of this chapter (except sections eleven hundred seven, eleven hundred eight, eleven hundred nine, and eleven hundred forty-eight) relating to or applicable to the administration, collection and review of the taxes imposed by such sections eleven hundred five and eleven hundred ten, including, but not limited to, the provisions relating to definitions, returns, exemptions, penalties, tax secrecy, personal liability for the tax, and collection of tax from the customer, shall apply to the taxes imposed by this article so far as such provisions can be made applicable to the taxes imposed by this article with such limitations as set forth in this article and such modifications as may be necessary in order to adapt such language to the taxes so imposed. Such provisions shall apply with the same force and effect as if the language of those provisions had been set forth in full in this article except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to the taxes imposed by this article.~~

~~(b) Notwithstanding the provisions of subdivision (a) of this section, the exemptions provided in paragraph ten of subdivision (a) of section eleven hundred fifteen of this chapter, and the provisions of section eleven hundred sixteen, except those provided in paragraphs one, two, three and six of subdivision (a) of such section, shall not apply to the taxes imposed by this article.~~] Every vapor products distributor shall, on or before the twentieth day of each month, file with the commissioner of taxation and finance a return on forms to be prescribed and furnished by the commissioner, showing the quantity and wholesale price of all vapor products imported or caused to be imported into the state by him or her or manufactured in the state by him or her, during the preceding calendar month. Every vapor products distributor authorized by the commissioner to make returns and pay the tax on vapor products sold, shipped, or delivered by him or her to any person in the state shall file a return showing the quantity and wholesale price of all vapor products so sold, shipped, or delivered during the preceding calendar month. Provided, however, the commissioner may, if he or she deems it necessary in order to ensure the payment of the taxes imposed by this article, require returns to be made at such times and covering such periods as he or she may deem necessary, and, by regulation, may permit the filing of returns on a quarterly, semi-annual or annual basis, or may waive the filing of returns by a vapor products distributor for such time and upon such terms as he or she may deem proper if satisfied that no tax imposed by this article is or will be payable by him or her during the time for which returns are waived. Such returns shall contain such further information as the commissioner may require.

(b) Every vapor product distributor shall pay to the commissioner with the filing of such return the tax on vapor products for such month imposed under this article.

(c) Notwithstanding the provisions of this section or section eleven hundred forty-six of this chapter, the commissioner may, in his or her

discretion, permit the commissioner of health or his or her authorized representative to inspect any return related to the tax imposed by this article and may furnish to the commissioner of health any such return or supply him or her with information concerning an item contained in any such return, or disclosed by any investigation of a liability under this article.

§ 5. The tax law is amended by adding two new sections 1184-a and 1184-b to read as follows:

§ 1184-a. 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, including a vehicle used for such business, where vapor products are distributed, placed, stored, sold, or offered for sale. 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 vapor products.

(b) To examine any vapor products and the books, papers, invoices, and other records of any place of business or vehicle where vapor products are distributed, placed, stored, sold or offered for sale. 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, facilities, 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 vapor products.

(c) If any person registered or who has obtained a license under 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 license to distribute vapor products or to sell vapor products at retail:

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

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

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

(d) The commissioner or the commissioner's duly authorized representatives shall seize any non-tax-paid vapor products found in any place of business or vehicle where vapor products are distributed, placed, stored, sold or offered for sale by any person who does not possess a license as described in section eleven hundred eighty-three-a of this article.

(e) All non-tax-paid vapor products seized pursuant to the authority of this chapter or any other law of this state shall be turned over to the department or its authorized representative. Such seized non-tax-paid vapor products shall, after notice and an opportunity for a hearing, be forfeited to the state. If the department determines the non-

tax-paid vapor products cannot be used for law enforcement purposes, it may, within a reasonable time after the forfeiture of such non-tax-paid vapor products, upon publication in the state registry, destroy such forfeited non-tax-paid vapor products.

§ 1184-b. General powers of the tax commission. The powers conferred upon the tax commission by sections one hundred seventy-one and one hundred seventy-one-b of this chapter shall, so far as applicable, be exercisable with respect to the provisions of this article. Such commission may require returns to be filed with it at such times and containing such information as it may prescribe and in such event the fact that a person's name is signed to the return shall be prima facie evidence for all purposes that the return was actually signed by such person. Notwithstanding any other provision of this article, the tax commission may enter into an agreement with any city of this state which is authorized to impose a tax similar to that imposed by this article to provide for the joint administration, in whole or in part, of such taxes.

§ 6. This act shall take effect immediately.