

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:

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

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

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

11 § 1181. Imposition of tax. (a) In addition to any other tax imposed
12 by this chapter or other law, there is hereby imposed a tax of twenty
13 percent on [~~receipts from the retail sale of vapor products sold~~] vapor
14 products sold by a vapor products distributor to a vapor products dealer
15 in this state. The tax is imposed on the purchaser and collected by the
16 vapor products dealer as defined in subdivision (b) of section eleven
17 hundred eighty of this article, in trust for and on account of the
18 state. The taxes imposed under this section shall not apply to adult-use
19 cannabis products subject to tax under article twenty-C of this chapter.

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

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

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

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

13 § 1183-a. Vapor products distributor license and renewal. (a) Every
14 person who intends to be a vapor products distributor in this state must
15 receive from the commissioner a license prior to engaging in business.
16 In addition to the requirements of section eleven hundred eighty-three
17 of this article, a vapor products dealer who purchases or receives vapor
18 products from a manufacturer or out-of-state distributor shall be
19 required to obtain a vapor products distributor license. The applicant
20 for a vapor products distributor license must electronically submit a
21 properly completed application for a license for each location at which
22 the business shall be conducted in this state, on a form prescribed by
23 the commissioner, and shall be accompanied by a non-refundable applica-
24 tion fee of three hundred dollars.

25 (b) A vapor products distributor license shall be valid for the calen-
26 dar year for which it is issued unless earlier suspended or revoked.
27 Upon the expiration of the term stated on the license, such license
28 shall be null and void. A license shall not be assignable or transfera-
29 ble and shall be destroyed immediately upon the vapor products distribu-
30 tor ceasing to do business as specified in such license or in the event
31 that such business never commenced.

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

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

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

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

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

46 (D) willfully fails to file a report or return required by this arti-
47 cle;

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

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

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

1 tion demonstrating that such applicant or vapor products distributor
2 acquired the premises or business through an arm's length transaction as
3 defined in paragraph (e) of subdivision one of section four hundred
4 eighty-a of this chapter.

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

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

32 (f) Every holder of a license must notify the commissioner of changes
33 to any of the information stated on the license or changes to any infor-
34 mation contained in the application for the license. Such notification
35 must be made on or before the last day of the month in which a change
36 occurs and must be made electronically on a form prescribed by the
37 commissioner.

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

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

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

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

5 § 1184. Administrative provisions. (a) [~~Except as otherwise provided~~
6 ~~for in this article, the taxes imposed by this article shall be adminis-~~
7 ~~tered and collected in a like manner as and jointly with the taxes~~
8 ~~imposed by sections eleven hundred five and eleven hundred ten of this~~
9 ~~chapter. In addition, except as otherwise provided in this article, all~~
10 ~~of the provisions of article twenty-eight of this chapter (except~~
11 ~~sections eleven hundred seven, eleven hundred eight, eleven hundred~~
12 ~~nine, and eleven hundred forty eight) relating to or applicable to the~~
13 ~~administration, collection and review of the taxes imposed by such~~
14 ~~sections eleven hundred five and eleven hundred ten, including, but not~~
15 ~~limited to, the provisions relating to definitions, returns, exemptions,~~
16 ~~penalties, tax secrecy, personal liability for the tax, and collection~~
17 ~~of tax from the customer, shall apply to the taxes imposed by this arti-~~
18 ~~cle so far as such provisions can be made applicable to the taxes~~
19 ~~imposed by this article with such limitations as set forth in this arti-~~
20 ~~cle and such modifications as may be necessary in order to adapt such~~
21 ~~language to the taxes so imposed. Such provisions shall apply with the~~
22 ~~same force and effect as if the language of those provisions had been~~
23 ~~set forth in full in this article except to the extent that any~~
24 ~~provision is either inconsistent with a provision of this article or is~~
25 ~~not relevant to the taxes imposed by this article.~~

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

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

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

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

7 § 5. The tax law is amended by adding two new sections 1184-a and
8 1184-b to read as follows:

9 § 1184-a. Enforcement. The commissioner or the commissioner's duly
10 authorized representatives are hereby authorized:

11 (a) To conduct regulatory inspections during normal business hours of
12 any place of business, including a vehicle used for such business, where
13 vapor products are distributed, placed, stored, sold, or offered for
14 sale. For the purposes of this section, "place of business" shall not
15 include a residence or other real property, or any personal vehicle on
16 or about such property, not held out as open to the public or otherwise
17 being utilized in a business or commercial manner, unless probable cause
18 exists to believe that such residence, real property or vehicle is being
19 used in such a business or commercial manner for the buying or selling
20 of vapor products.

21 (b) To examine any vapor products and the books, papers, invoices, and
22 other records of any place of business or vehicle where vapor products
23 are distributed, placed, stored, sold or offered for sale. Any person in
24 possession, control or occupancy of any such business is required to
25 give to the commissioner or the commissioner's duly authorized represen-
26 tatives, the means, facilities, and opportunity for such examinations.
27 For the purposes of this section, "place of business" shall not include
28 a residence or other real property, or any personal vehicle on or about
29 such property, not held out as open to the public or otherwise being
30 utilized in a business or commercial manner, unless probable cause
31 exists to believe that such residence, real property or vehicle is being
32 used in such a business or commercial manner for the buying or selling
33 of vapor products.

34 (c) If any person registered or who has obtained a license under this
35 article, or their agents, refuses to give the commissioner, or the
36 commissioner's duly authorized representatives, the means, facilities
37 and opportunity for the inspections and examinations required by this
38 section, the commissioner, after notice and an opportunity for a hear-
39 ing, may revoke their license to distribute vapor products or to sell
40 vapor products at retail:

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

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

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

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

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

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

5 § 1184-b. General powers of the tax commission. The powers conferred
6 upon the tax commission by sections one hundred seventy-one and one
7 hundred seventy-one-b of this chapter shall, so far as applicable, be
8 exercisable with respect to the provisions of this article. Such commis-
9 sion may require returns to be filed with it at such times and contain-
10 ing such information as it may prescribe and in such event the fact that
11 a person's name is signed to the return shall be prima facie evidence
12 for all purposes that the return was actually signed by such person.
13 Notwithstanding any other provision of this article, the tax commission
14 may enter into an agreement with any city of this state which is author-
15 ized to impose a tax similar to that imposed by this article to provide
16 for the joint administration, in whole or in part, of such taxes.

17 § 6. This act shall take effect immediately.