STATE OF NEW YORK

159

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

Introduced by Sens. KRUEGER, HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to making certain technical corrections to tax on adult-use cannabis pursuant to article 20-C of such law; to amend the cannabis law, in relation to certain penalties; and to amend the penal law, in relation to clarifying the definition of selling cannabis

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

Section 1. Subdivision (b) of section 494 of the tax law, as added by chapter 92 of the laws of 2021, is amended to read as follows:

(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 from the office of cannabis management. **(1)** 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, a license from the office of cannabis management, or any license or registration provided for in this chapter 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

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

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

(2) **The commissioner may revoke the certificate of registration issued to any person who: (i) has had a certificate of registration under this article, or any license or registration provided for in this chapter revoked or suspended; (ii) has been convicted of a crime provided for in this chapter; (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.**

(3) In addition to the grounds for revocation in [~~paragraph (1)~~] **paragraphs one and two** of this subdivision, where a person who holds a certificate of registration is determined to have possessed or sold illicit cannabis: [~~(1)~~] **(i)** such registration may be revoked for a period of up to one year for the first such possession or sale; [~~(2)~~] **(ii)** for a second such possession or sale within a period of five years by such person, the registration of such person may be revoked for a period of up to three years; [~~(3)~~] **(iii)** for a third such possession or sale within a period of up to five years by such person, the registration of such person may be revoked for a period of five years. A certificate of registration may be revoked pursuant to this paragraph immediately upon such person's receipt of written notice of revocation from the commissioner.

(4) Where a person who has been determined to have possessed or sold illicit cannabis does not possess a certificate of registration under this section, the commissioner may revoke a certificate of authority issued to such person pursuant to section eleven hundred thirty-four of this chapter. Such certificate may be revoked: (i) for a period of up to one year for the first such possession or sale; (ii) for a second such possession or sale within a period of five years by such person, the registration of such person may be revoked for a period of up to three years; (iii) for a third such possession or sale within a period of up to five years by such person, the registration of such person may be revoked for a period of five years.

§ 2. Section 496-c of the tax law, as added by chapter 92 of the laws of 2021, is amended to read as follows:

§ 496-c. Illicit cannabis penalty. (a) In addition to any other civil or criminal penalties that may apply, any person knowingly in possession of or knowingly having control over illicit cannabis, as defined in section four hundred ninety-two of this article, after notice and an opportunity for a hearing, shall be liable for a civil penalty of not less than [~~two~~] **four** hundred dollars per ounce of illicit cannabis flower, [~~five~~] **ten** dollars per milligram of the total weight of any illicit cannabis edible product, [~~fifty~~] **one hundred** dollars per gram of the total weight of any product containing illicit cannabis concentrate, and [~~five hundred~~] **one thousand** dollars per illicit cannabis plant, but not to exceed [~~four~~] **eight** hundred dollars per ounce of illicit cannabis flower, [~~ten~~] **twenty** dollars per milligram of the total weight of any illicit cannabis edible product, [~~one~~] **two** hundred dollars per gram of the total weight of any product containing illicit cannabis concentrate, and [~~one~~] **two** thousand dollars per illicit cannabis plant for a first violation, and for a second and subsequent violation within three years following a prior violation shall be liable for a civil penalty of not less than [~~four~~] **eight** hundred dollars per ounce of illicit cannabis flower, [~~ten~~] **twenty** dollars per milligram of the total weight of any

illicit cannabis edible product, [~~one~~] two hundred dollars per gram of the total weight of any product containing illicit cannabis concentrate, and [~~one~~] two thousand dollars per illicit cannabis plant, but not to exceed [~~five hundred~~] one thousand dollars per ounce of illicit cannabis flower, [~~twenty~~] forty dollars per milligram of the total weight of any illicit cannabis edible product, [~~two~~] four hundred dollars per gram of the total weight of any product containing illicit cannabis concentrate, and [~~two~~] four thousand dollars per illicit cannabis plant.

(b) No enforcement action taken under this section shall be construed to limit any other criminal or civil liability of anyone in possession of illicit cannabis.

(c) The penalty imposed by this section shall not apply to persons lawfully in possession of less than two ounces of adult-use cannabis or ten grams of concentrated cannabis in accordance with the cannabis law or penal law.

(d) The commissioner or his or her duly authorized representatives, or the duly authorized representatives of the office of cannabis management, shall seize any illicit cannabis found on any person engaged in the cultivation, processing, distribution or sale of adult-use cannabis products; or in any premises or vehicle where adult-use cannabis products are cultivated, processed, distributed, placed, stored, sold or offered for sale; or on any person in possession, control or occupancy of such premises or vehicle.

§ 3. The tax law is amended by adding a new section 496-d to read as follows:

§ 496-d. Enforcement. For purposes of the efficient administration of the taxes imposed by this article, it is the intent of the legislature that the cultivation, processing, distribution and sale of adult-use cannabis products be deemed a heavily regulated industry, subject to supervision by the commissioner and the office of cannabis management. The commissioner or his or her duly authorized representatives, and the duly authorized representatives of the office of cannabis management are hereby authorized: (1) to conduct regulatory inspections in the same manner as a regulatory inspection pursuant to article twenty of this chapter of any person engaged in the cultivation, processing, distribution or sale of adult-use cannabis products, any premises or vehicle where adult-use cannabis is cultivated, processed, distributed, placed, stored, sold or offered for sale, and any person in possession, control or occupancy of such premises or vehicle; (2) to examine the books, papers, invoices and other records of any person engaged in the cultivation, processing, distribution or sale of adult-use cannabis products, any premises or vehicle where adult-use cannabis products are cultivated, processed, distributed, placed, stored, sold or offered for sale and any person in possession, control or occupancy of any premises where adult-use cannabis products are placed, stored, sold or offered for sale. Each such person is hereby directed and required upon demand to give to the commissioner or his or her duly authorized representatives, or the duly authorized representatives of the office of cannabis management, the means, facilities and opportunity for such examinations.

§ 4. The tax law is amended by adding a new section 1814-b to read as follows:

§ 1814-b. Penalties. Any person required to be registered pursuant to article twenty-C of this chapter as a distributor of adult-use cannabis products, or as a retail seller of adult-use cannabis products, who sells adult-use cannabis products while not so registered, shall be guilty of a class A misdemeanor. Any person who violates the provision

of this section after having previously been convicted of a violation of this section within the preceding five years shall be guilty of a class E felony. For purposes of this section, the terms "adult-use cannabis product" and "sale" shall have the same meaning as such terms are defined in article twenty-C of this chapter.

§ 5. Subdivision 1 of section 16 of the cannabis law is amended to read as follows:

1. Any person who violates, disobeys or disregards any term or provision of this chapter or of any lawful notice, order or regulation pursuant thereto for which a civil or criminal penalty is not otherwise expressly prescribed by law, shall be liable to the people of the state for a civil penalty of [~~not to exceed five~~] up to fifty thousand dollars for every such violation.

§ 6. Subdivision 3 of section 222.00 of the penal law, as added by chapter 92 of the laws of 2021, is amended to read as follows:

3. For the purposes of this article, "sell" shall mean to sell, transfer title or possess or both, exchange or barter any commodity, object or any thing of any type, rent, lease or license to use or consume conditional or otherwise, in any manner or by any means whatsoever for a consideration or any agreement therefor, or dispose of for compensation, including through a membership program or through some other indirect means. "Sell" shall not include the transfer of cannabis or concentrated cannabis between persons twenty-one years of age or older without compensation in the quantities authorized in paragraph (b) of subdivision one of section 222.05 of this article.

§ 7. This act shall take effect immediately.