

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 Assem-
bly, do enact as follows:

1 Section 1. Subdivision (b) of section 494 of the tax law, as added by
2 chapter 92 of the laws of 2021, is amended to read as follows:
3 (b) [~~1~~] The commissioner shall refuse to issue a certificate of
4 registration to any applicant and shall revoke the certificate of regis-
5 tration of any such person who does not possess a valid license from the
6 office of cannabis management. (1) The commissioner may refuse to issue
7 a certificate of registration to any applicant where such applicant:
8 (i) has a past-due liability as that term is defined in section one
9 hundred seventy-one-v of this chapter; (ii) has had a certificate of
10 registration under this article, a license from the office of cannabis
11 management, or any license or registration provided for in this chapter
12 revoked or suspended where such revocation or suspension was in effect
13 on the date the application was filed or ended within one year from the
14 date on which such application was filed; (iii) has been convicted of a
15 crime provided for in this chapter within one year from the date on
16 which such application was filed or the certificate was issued, as
17 applicable; (iv) willfully fails to file a report or return required by
18 this article; (v) willfully files, causes to be filed, gives or causes
19 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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1 article which is false; or (vi) willfully fails to collect or truthfully
2 account for or pay over any tax imposed by this article.

3 (2) The commissioner may revoke the certificate of registration issued
4 to any person who: (i) has had a certificate of registration under this
5 article, or any license or registration provided for in this chapter
6 revoked or suspended; (ii) has been convicted of a crime provided for in
7 this chapter; (iii) willfully fails to file a report or return required
8 by this article; (iv) willfully files, causes to be filed, gives or
9 causes to be given a report, return, certificate or affidavit required
10 by this article which is false; or (v) willfully fails to collect or
11 truthfully account for or pay over any tax imposed by this article.

12 (3) In addition to the grounds for revocation in [~~paragraph (1)~~] para-
13 graphs one and two of this subdivision, where a person who holds a
14 certificate of registration is determined to have possessed or sold
15 illicit cannabis: [~~(1)~~] (i) such registration may be revoked for a peri-
16 od of up to one year for the first such possession or sale; [~~(2)~~] (ii)
17 for a second such possession or sale within a period of five years by
18 such person, the registration of such person may be revoked for a period
19 of up to three years; [~~(3)~~] (iii) for a third such possession or sale
20 within a period of up to five years by such person, the registration of
21 such person may be revoked for a period of five years. A certificate of
22 registration may be revoked pursuant to this paragraph immediately upon
23 such person's receipt of written notice of revocation from the commis-
24 sioner.

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

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

38 § 496-c. Illicit cannabis penalty. (a) In addition to any other civil
39 or criminal penalties that may apply, any person knowingly in possession
40 of or knowingly having control over illicit cannabis, as defined in
41 section four hundred ninety-two of this article, after notice and an
42 opportunity for a hearing, shall be liable for a civil penalty of not
43 less than [~~two~~] four hundred dollars per ounce of illicit cannabis flow-
44 er, [~~five~~] ten dollars per milligram of the total weight of any illicit
45 cannabis edible product, [~~fifty~~] one hundred dollars per gram of the
46 total weight of any product containing illicit cannabis concentrate, and
47 [~~five—hundred~~] one thousand dollars per illicit cannabis plant, but not
48 to exceed [~~four~~] eight hundred dollars per ounce of illicit cannabis
49 flower, [~~ten~~] twenty dollars per milligram of the total weight of any
50 illicit cannabis edible product, [~~one~~] two hundred dollars per gram of
51 the total weight of any product containing illicit cannabis concentrate,
52 and [~~one~~] two thousand dollars per illicit cannabis plant for a first
53 violation, and for a second and subsequent violation within three years
54 following a prior violation shall be liable for a civil penalty of not
55 less than [~~four~~] eight hundred dollars per ounce of illicit cannabis
56 flower, [~~ten~~] twenty dollars per milligram of the total weight of any

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

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

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

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

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

26 § 496-d. Enforcement. For purposes of the efficient administration of
27 the taxes imposed by this article, it is the intent of the legislature
28 that the cultivation, processing, distribution and sale of adult-use
29 cannabis products be deemed a heavily regulated industry, subject to
30 supervision by the commissioner and the office of cannabis management.
31 The commissioner or his or her duly authorized representatives, and the
32 duly authorized representatives of the office of cannabis management are
33 hereby authorized: (1) to conduct regulatory inspections in the same
34 manner as a regulatory inspection pursuant to article twenty of this
35 chapter of any person engaged in the cultivation, processing, distrib-
36 ution or sale of adult-use cannabis products, any premises or vehicle
37 where adult-use cannabis is cultivated, processed, distributed, placed,
38 stored, sold or offered for sale, and any person in possession, control
39 or occupancy of such premises or vehicle; (2) to examine the books,
40 papers, invoices and other records of any person engaged in the culti-
41 vation, processing, distribution or sale of adult-use cannabis products,
42 any premises or vehicle where adult-use cannabis products are culti-
43 vated, processed, distributed, placed, stored, sold or offered for sale
44 and any person in possession, control or occupancy of any premises where
45 adult-use cannabis products are placed, stored, sold or offered for
46 sale. Each such person is hereby directed and required upon demand to
47 give to the commissioner or his or her duly authorized representatives,
48 or the duly authorized representatives of the office of cannabis manage-
49 ment, the means, facilities and opportunity for such examinations.

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

52 § 1814-b. Penalties. Any person required to be registered pursuant to
53 article twenty-C of this chapter as a distributor of adult-use cannabis
54 products, or as a retail seller of adult-use cannabis products, who
55 sells adult-use cannabis products while not so registered, shall be
56 guilty of a class A misdemeanor. Any person who violates the provision

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

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

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

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

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

26 § 7. This act shall take effect immediately.