

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:

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

ARTICLE 19-A

EXCISE TAX ON FIREARMS AND AMMUNITION

Section 460. Definitions.

6 461. Imposition of tax.

7 462. Registration and renewal.

8 463. Returns and payment of tax.

9 464. Records to be kept; penalties.

10 465. Returns to be secret.

11 466. Administrative provisions.

12 467. Enforcement.

13 468. Deposit and disposition of revenue.

14 § 460. Definitions. For purposes of this article, the following defi-
15 nitions shall apply:

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

20 (b) "Firearms manufacturer" means any entity licensed to manufacture
21 firearms pursuant to Chapter 44 (commencing with Section 921) of Title
22 18 of the United States Code that engages in any retail sale of a
23 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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1 (c) "Law enforcement agency" shall have the same meaning as set forth
2 in section 705.00 of the criminal procedure law and shall also include
3 any department or agency of the state or of any county, city, or other
4 political subdivision thereof that employs any peace officer who is
5 authorized to carry a firearm while on duty, or any department or agency
6 of the federal government or a federally recognized Indian tribe with
7 jurisdiction that has tribal land in New York that employs any police
8 officer or criminal investigator authorized to carry a firearm while on
9 duty.

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

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

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

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

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

42 (b) (1) The commissioner shall refuse to issue a certificate of regis-
43 tration to any applicant and shall revoke the certificate of registra-
44 tion of any such person who does not possess a valid license under arti-
45 cle four hundred of the penal law.

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

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

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

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

1 (iv) willfully fails to file a report or return required by this arti-
2 cle;

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

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

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

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

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

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

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

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

22 A person who is notified of a revocation of their certificate of
23 registration pursuant to this paragraph shall have the right to have the
24 revocation reviewed by the commissioner or their designee by contacting
25 the department at a telephone number or an address to be disclosed in
26 the notice of revocation within ten days of such person's receipt of
27 such notification. Such person may present written evidence or argument
28 in support of their defense to the revocation or may appear at a sched-
29 uled conference with the commissioner or their designee to present oral
30 arguments and written and oral evidence in support of such defense. The
31 commissioner or their designee is authorized to delay the effective date
32 of the revocation to enable such person to present further evidence or
33 arguments in connection with the revocation. The commissioner or their
34 designee shall cancel the revocation of the certificate of registration
35 if the commissioner or their designee is not satisfied by a preponder-
36 ance of the evidence that a basis for revocation pursuant to this para-
37 graph exists. An order of revocation of a certificate of registration
38 under this paragraph shall not be reviewable by the division of tax
39 appeals but may be reviewed pursuant to article seventy-eight of the
40 civil practice law and rules by a proceeding commenced in the supreme
41 court within four months of the revocation petitioning that the order of
42 revocation be enjoined or set aside. Such proceeding shall be insti-
43 tuted in the county where the commissioner has their principal office.
44 Upon the filing of such petition the court shall have jurisdiction to
45 set aside such order of revocation, in whole or in part, or to dismiss
46 the petition. The jurisdiction of the supreme court shall be exclusive
47 and its order dismissing the petition or enjoining or setting aside such
48 order, in whole or in part, shall be final, subject to review by the
49 appellate division of the supreme court and the court of appeals in the
50 same manner and form and with the same effect as provided by law for
51 appeals from a judgment in a special proceeding. All such proceedings
52 shall be heard and determined by the court and by any appellate court as
53 expeditiously as possible and with lawful precedence over other civil
54 matters. All such proceedings for review shall be heard on the petition,
55 transcript and other papers, and on appeal shall be heard on the record,
56 without requirement of printing.

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

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

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

20 (d) A certificate of registration shall be valid for the period speci-
21 fied thereon, unless earlier suspended or revoked. Upon the expiration
22 of the term stated on a certificate of registration, such certificate
23 shall be null and void.

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

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

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

42 (2) The holder of a certificate of registration that has had their
43 certificate revoked pursuant to this article may petition the department
44 for reinstatement of the certificate by paying the amount of unpaid
45 excise tax determined, together with any interest and penalties, demon-
46 strating full compliance with the provisions of this article, and paying
47 a fee of fifty dollars to the department for reinstatement. The depart-
48 ment shall reinstate the certificate of registration of any revoked
49 certificate holder that has satisfactorily complied with this
50 subsection.

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

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

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

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

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

25 § 465. Returns to be secret. (a) Except in accordance with proper
26 judicial order or as in this section or otherwise provided by law, it
27 shall be unlawful for the commissioner, any officer or employee of the
28 department, or any officer or person who, pursuant to this section, is
29 permitted to inspect any return or report or to whom a copy, an abstract
30 or a portion of any return or report is furnished, or to whom any infor-
31 mation contained in any return or report is furnished, or any person who
32 in any manner may acquire knowledge of the contents of a return or
33 report filed pursuant to this article to divulge or make known in any
34 manner the content or any other information contained in any return or
35 report required under this article. The officers charged with the custo-
36 dy of such returns or reports shall not be required to produce any of
37 them or evidence of anything contained in them in any action or preced-
38 ing in any court, except on behalf of the state or the commissioner in
39 an action or proceeding involving the collection of tax due under this
40 chapter to which the state or the commissioner is a party or a claimant
41 or on behalf of any party to any action or proceeding under the
42 provisions of this article, when the returns or the reports or the facts
43 shown thereby are directly involved in such action or proceeding, or in
44 an action or proceeding related to the regulation or taxation of
45 firearms or ammunition on behalf of officers to whom information shall
46 have been supplied as provided in this section, in any of which events
47 the court may require the production of, and may admit in evidence so
48 much of said returns or reports or of the facts shown thereby as are
49 pertinent to the action or proceeding and no more. Nothing herein shall
50 be construed to prohibit the commissioner, in his or her discretion,
51 from allowing the inspection or delivery of a certified copy of any
52 return or report filed under this article or of any information
53 contained in any such return or report to the attorney general or other
54 legal representatives of the state when an action shall have been recom-
55 mended or commenced pursuant to this chapter in which such returns or
56 reports or the facts shown thereby are directly involved; or the

1 inspection of the returns or reports required under this article by the
2 comptroller or duly designated officer or employee of the state depart-
3 ment of audit and control, for purposes of the audit of a refund of any
4 tax paid by any person under this article; nor to prohibit the delivery
5 to such person or a duly authorized representative of such person, a
6 certified copy of any return or report filed by such person pursuant to
7 this article, nor to prohibit the publication of statistics so classi-
8 fied as to prevent the identification of particular returns or reports
9 and the items thereof. This section shall also not be construed to
10 prohibit the disclosure, for tax administration purposes, to the divi-
11 sion of the budget and the office of the state comptroller, of informa-
12 tion aggregated from the returns filed by all persons subject to the
13 taxes imposed by the article, whether the number of such persons is one
14 or more.

15 (b) The commissioner, in his or her discretion, may permit the appro-
16 priate officers of any other state that regulates or taxes firearms,
17 major components of firearms or ammunition or the duly authorized repre-
18 sentatives of any such officers, to inspect returns or reports made
19 pursuant to this article, or may furnish to such other officers, or
20 their duly authorized representatives, a copy of any such return or
21 report or an abstract of the information therein contained, or any
22 portion thereof, or may supply any such officers or such representatives
23 with information relating to the business of a person making returns or
24 reports hereunder solely for purposes of tax administration. The commis-
25 sioner may refuse to supply information pursuant to this subdivision to
26 the officers of any other state if the statutes of the state represented
27 by such officers do not grant substantially similar privileges to the
28 commissioner, but such refusal shall not be mandatory. Information shall
29 not be supplied to the officers of any state unless such officer or
30 other representatives shall agree not to divulge or make known in any
31 manner the information so supplied, but such officers may transmit such
32 information to their employees or legal representatives when necessary,
33 who in turn shall be subject to the same restrictions as those hereby
34 imposed upon such officer or other representatives.

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

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

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

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

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

52 (b) To examine any books, papers, invoices and other records of any
53 place of business of a dealer in firearms, or seller of ammunition or
54 major components of firearms. Any person in possession, control or occu-
55 pancy of any such business is required to give to the commissioner or
56 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

1 licensee's certificate of registration or the seller's permit, as appli-
2 cable.

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

5 § 99-rr. Gun violence prevention and school safety fund. 1. There is
6 hereby established in the joint custody of the state comptroller and the
7 commissioner of taxation and finance a special fund to be known as the
8 gun violence prevention and school safety fund.

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

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

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

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

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

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

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

1 (f) for gun violence research and initiatives to educate health care
2 providers and other stakeholders about clinical tools and other inter-
3 ventions for preventing firearm suicide and injury; and

4 (g) to fund and support activities and programs focused on preventing
5 gun violence, supporting victims of gun violence, and otherwise remedi-
6 ating the harmful effects of gun violence.

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

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

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