NEW YORK STATE | Department of Taxation and Finance

Important:

The legislative summary information in this TSB-M is provided only for historical purposes, it may not reflect current law, policies or procedures.

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New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-85 (6)M
Miscellaneous Tax
October 15, 1985

PROVISIONS OF THE OMNIBUS TAX EQUITY AND ENFORCEMENT ACT EFFECTIVE JULY 16, 1985

Chapter 65, Laws of 1985 enacted April 16, 1985 amends various provisions of Articles 18 - Alcoholic Beverage, 20 - Cigarette Tax, and 21 - Highway Use Tax, as well as creating new Article 37 for criminal penalties. Chapter 765, Laws of 1985 makes certain technical corrections to Chapter 65.

Article 18 - Alcoholic Beverage Tax

Law Section	Summary
430	The Tax Commission may of its own motion redetermine the tax previously determined under this section without a hearing. In addition to the amount of tax stated or referred to in a decision and the penalties thereon, the amount of interest thereon must also be deposited with the State Tax Commission prior to the commencement of a proceeding under Article 78 CPLR to review a decision of the Tax Commission.
431-2	Warrants may be issued by the Tax Commission for interest in addition to tax and penalties. Where it is required to file a warrant with the Department of State in order to create a lien on personal property, it shall be sufficient to present a record of the issuance of such warrant to the Department of State for filing. No fee shall be required for the filing of the warrant or record with the Department of State.
431-3	The Tax Commission may request the State Liquor Authority to revoke or suspend any licenses of a distributor who fails to pay interest required under Article 18.
433-1(a)	A distributor who fails to file a return or pay any tax by the due date as determined with regard to any extension of time to file or pay, shall be subject to a penalty of 10% of the tax determined to be due for the first month or any part thereof and a penalty of 1% for each additional month or part thereof that the failure continues. The penalties shall not exceed 30% in the aggregate. These provisions are applicable to taxes that become due or returns required to be filed on or after July 16, 1985 as determined with regard to any extension of time to file or pay.

Law Section	Summary
433-1(a)(iii)	Where a person fails to file a return within 60 days of the due date as determined with regard to any extension of time, the penalties imposed shall not be less than the lesser of $100 or 100% of the tax required to be shown on the return reduced by the amount of the tax paid on or before the due date and any credit against the tax which may be claimed on the return. This provision is applicable to returns which are required to be filed on or after July 16, 1985 as determined with regard to any extension of time to file.
433-1(b)	Interest at the rate set by the Tax Commission pursuant to subdivision twenty-sixth of section 171 of the Tax Law shall be collected on any amount of tax not paid on or before the due date for payment without regard to any extension of time for payment. Interest shall not be paid where it is less than one dollar. This provision is applicable to taxes that become due or remain unpaid on or after July 16, 1985.
433-1(c)	Where it determines the failure to file or pay was due to reasonable cause and not due to willful neglect, the Tax Commission shall remit all or part of the penalties imposed under sections 433-1(a)(i), (ii) or (iii). This provision is effective July 16, 1985.
433-1(d)	Where failure to pay any tax by the due date for payment is due to fraud, in lieu of the penalties and interest set forth in section 433-1(a) and (b), the following shall be added to the tax. (1) A penalty of 50% of the tax due. (2) Interest as determined under section 433-1(b) on the unpaid tax. (3) A penalty of 50% of the interest determined under section 433-1(b) on that portion of unpaid tax attributable to fraud, computed from the due date for payment to the date payment is made or the tax is finally determined whichever is earlier. This provision is applicable to taxes which become due or returns required to be filed on or after July 16, 1985 as determined with regard to any extension of time to file or pay.

Law Section	Summary
433-1(e)	In addition to penalties, interest shall also be determined, assessed, collected and paid in the same manner as tax. Interest shall be compounded daily. This provision is applicable to taxes which become due or remain unpaid, on or after July I6, 1985.
434-1	Interest at the rate set by the Tax Commission pursuant to subdivision twenty-sixth of section 171 of the Tax Law or, where no rate is set, at 6% per annum shall be paid on refunds of tax, penalty or interest, but only where such payments were made in error. This provision is applicable to refunds made on or after July 16, 1985.
437-4	In addition to payments of tax and penalty, payments of interest may also be made to designated depository banks. This provision is applicable to payments made on or after July 16, 1985.
438-1	The Tax Commission shall prescribe interest in addition to penalties for failure to affix stamps and such rate of interest shall be the same as that provided for failure to pay taxes. This provision is effective July 16, 1985.
	Article 20 - Cigarette Tax
477	Repealed, effective July 16, 1985.
477-a	Repealed, effective July 16, 1985.
478	In addition to the amount of tax stated or referred to in a decision and the penalties thereon, the amount of interest thereon must also be deposited with the State Tax Commission prior to the commencement of a proceeding under Article 78 CPLR to review a decision of the Tax Commission.

Law Section	Summary
479	Warrants may be issued by the Tax Commission for interest in addition to tax and penalties. Where it is required to file a warrant with the Department of State in order to create a lien on personal property, it shall be sufficient to present a record of the issuance of such warrant to the Department of State for filing. No fee shall be required for the filing of the warrant or record with the Department of State.
481-1(a)(i)(A)	An agent who fails to file a return or pay any tax by the due date as determined with regard to any extension of time to file or pay, shall be subject to a penalty of 10% of the tax determined to be due for the first month or any part thereof and a penalty of 1% for each additional month or part thereof that the failure continues. The penalties shall not exceed 30% in the aggregate. These provisions are applicable to taxes that become due or returns required to be filed on or after July 16, 1985 as determined with regard to any extension of time to file or pay.
481-1(a)(i)(C)	Where a person fails to file a return within 60 days of the due date as determined with regard to any extension of time, the penalties imposed shall not be less than the lesser of $100 or 100% of the tax required to be shown on the return reduced by the amount of the tax paid on or before the due date and any credit against the tax which may be claimed on the return. This provision is applicable to returns which are required to be filed on or after July 16, 1985 as determined with regard to any extension of time for payment.
481-1(a)(ii)	Interest at the rate set by the Tax Commission pursuant to subdivision twenty-sixth of section 171 of the Tax Law shall be collected on any amount of tax not paid on or before the due date for payment without regard to any extension of time for payment. Interest shall not be paid where it is less than one dollar. This provision is applicable to taxes that become due or remain unpaid on or after July 16, 1985.

Law Section	Summary
481-1(a)(iii)	Where it determines the failure to file or pay was due to reasonable cause and not due to willful neglect, the Tax Commission shall remit all or part of the penalties imposed under section 481-1(a)(i)(A), (B) or (C). This provision is effective July 16, 1985.
481-1(a)(iv)	When failure to pay any tax by the due date for payment is due to fraud, in lieu of the penalties and interest set forth in section 481-1(a)(i) and (ii), the following shall be added to the tax. (1) A penalty of 50% of the tax due. (2) Interest as determined under section 481-](a)(ii) on the unpaid tax. (3) A penalty of 50% of the interest determined under section 481-1(a)(ii) on that portion of tax attributable to fraud computed from the due date for payment to the date payment is made or the tax is finally determined whichever is earlier. These provisions are applicable to taxes which become due and returns required to be filed on or after July 16, 1985 as determined with regard to any extensions.
481-1(a)(v)	In addition to penalties, interest shall also be determined, assessed, collected and paid in the same manner as tax. Interest shall be compounded daily.
	Article 21 - Highway Use Tax
510	The time allowed for a person assessed tax to apply to the Tax Commission for a hearing has been extended from 30 days to 90 days, from the date the Tax Commission gives notice of its determination. In addition to the amount of tax stated or referred to in a decision and the penalties thereon, the amount of interest thereon must also be deposited with the State Tax Commission prior to the commencement of a proceeding under Article 78 CPLR to review a decision of the Tax Commission.

Law Section	Summary
511-2	Warrants may be issued by the Tax Commission for interest in addition to tax and penalties. Where it is required to file a warrant with the Department of State in order to create a lien on personal property, it shall be sufficient to present a record of the issuance of such warrant to the Department of State for filing. No fee shall be required for the filing of the warrant or record with the Department of State.
512-1(a)	Any person who fails to file a return or pay any tax by the due date as determined with regard to any extension of time to file or pay shall be subject to a penalty of 10% of the tax determined to be due, for the first month or any part thereof and a penalty of 1% for each additional month or part thereof that the failure continues. The penalties shall not exceed 30% in the aggregate. Any person who fails to file a return within 60 days of the due date as determined with regard to any extension of time, the penalties imposed shall not be less than the lesser of $100 or 100% of the tax required to be shown on the return reduced by the amount of the tax paid on or before the due date and any credit against the tax which may be claimed on the return. These provisions are applicable to taxes which become due and returns required to be filed on or after July 16, 1985 as determined with regard to any extension of time to file or pay.
512-1(b)	Interest at the rate set by the Tax Commission pursuant to subdivision twenty-sixth of section 171 of the Tax Law shall be collected on any amount of tax not paid on or before the due date for payment without regard to any extension of time for payment. Interest shall not be paid where it is less than one dollar. This provision is applicable to taxes which become due or remain unpaid on or after July 16, 1985.
512-1(c)	Where it determines the failure to file or pay was due to reasonable cause and not due to willful neglect, the Tax Commission shall remit all or part of the penalties imposed under section 512-1(a). This provision is effective July 16, 1985.

Law Section	Summary
512-1(d)	Where the failure to pay any tax by the due date for payment is due to fraud, in lieu of the penalties and interest set forth in section 512-1(a) and (b), the following shall be added to the tax. (1) A penalty of 50% of the tax due. (2) Interest as determined under section 512-1(b) on the unpaid tax. (3) A penalty of 50% of the interest determined under section 512-1(b) on that portion of unpaid tax attributable to fraud, computed from the due date for payment to the date payment is made or the tax is finally determined, whichever is earlier. This provision is applicable to taxes which become due and returns required to be filed on or after July 16, 1985 as determined with regard to any extension of time to file or pay.
512-1(e)	Interest shall be compounded daily.
513	Interest shall be allowed on refund and credits of overpayments made in error at the rate set by the Tax Commission pursuant to subdivision twenty-sixth of section 171 of the Tax Law. (Not applicable to refunds or credits made under the provisions of section 503-a.) This provision is applicable to refunds or credits made on or after July 16, 1985.

ARTICLE 37
CRIMES & OTHER OFFENSES, SEIZURE AND FORFEITURES

Part VI - Seizure and Forfeitures

Law Section	Summary
1846	The provisions of repealed section 477 are incorporated in this new section with the following changes. 1. The Tax Commission must publish the notice of sale for at least 5 successive days in a newspaper published or circulated in the county where the seizure was made. 2. Where the Tax Commission concludes that any cigarettes seized under this section, when offered at public sale, will bring a price that is less than the price the Department of Correctional Services would have to pay for the purchase of cigarettes for sale to or use by inmates under the jurisdiction of the Department of Correctional Services, the Tax Commission may dispose of such cigarettes by transferring them to the Department of Correctional Services for sale to or use by inmates in such institutions. These provisions are effective July 16, 1985.
1847	The provisions of repealed section 477-a are incorporated in this new section with the following changes. 1. Where property is seized within the City of Yonkers, in addition to the cities of New York and Buffalo, the seized property shall be delivered to the custody of the police department of such city. 2. Adds the corporation counsel of the City of Yonkers to those corporation counsels in the cities of New York and Buffalo who have a duty to pursue the matter of a seizure. 3. Where forfeited property is to be sold, requires the publication of a notice of sale of forfeited property for at least five successive days before the day of sale in a newspaper published or circulated in the county where the seizure was made.

Law Section	Summary
1847 (con't)	4. In addition to the cities of New York and Buffalo, the net proceeds of the sale of forfeited property in the City of Yonkers shall be paid into the general fund of such city.

These provisions are effective July 16, 1985.