



Department of Taxation and Finance

Technical Memorandum
TSB-M-20(1)M, (1)S
Miscellaneous Tax
Sales Tax
September 24, 2020

Summary of Alcoholic Beverages Tax, Cigarette and Tobacco Products Tax, and Sales and Use Tax Changes Enacted in the 2020-2021 Budget Bill

The following changes were part of the 2020-2021 New York State budget and are briefly discussed in this memorandum:

Alcoholic beverages tax

[Alcoholic beverages tax on liquor containing 2% or less of alcohol by volume](#)
[Alcoholic beverages tax interdistributor exemption](#)

Cigarette and tobacco products tax

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Sales tax

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Alcoholic beverages tax

Alcoholic beverages tax on liquor containing 2% or less of alcohol by volume (Article 18)

As of June 1, 2020, the alcoholic beverages tax rate on liquor containing 2% or less of alcohol by volume is reduced to zero.

[Part J of Chapter 59 of the Laws of 2020; Tax Law § 424(1)(e)]

Alcoholic beverages tax interdistributor exemption (Article 18)

Sales of alcoholic beverages between New York State registered distributors are exempt from the alcoholic beverages tax. To receive the exemption, the purchaser and seller must complete Form TP-218, *Exemption for Alcoholic Beverages Interdistributor Transactions*, at the time of, or prior to, delivery of the alcoholic beverages. Upon completion and receipt of Form TP-218, the purchaser will be liable for the alcoholic beverage tax on such alcoholic beverages.

Example: ACB Brewery is registered with the Tax Department as a distributor of alcoholic beverages. XZY Distributor, who is also registered with the Tax Department, purchases 500 gallons of beer from ACB Brewery. Because both ACB Brewery and XZY Distributor are New York State registered distributors of alcoholic beverages, this is an interdistributor sale. ACB Brewery can sell their beer to XZY Distributor without charging the alcoholic beverages tax after which XZY Distributor will be liable for the tax. ACB Brewery and XZY Distributor must both complete Form TP-218.

[Part J of Chapter 59 of the Laws of 2020; Tax Law § 424(1)(g), effective June 1, 2020]

Cigarette and tobacco products tax

Revised definition of *wholesale price* of tobacco products (Article 20)

The tobacco products definition of *wholesale price* has been revised to be the price for which the tobacco products are sold to a distributor, before the allowance of any discount, trade allowance, rebate or other reduction, and including the federal excise taxes paid by the seller. The invoice received by a distributor for its purchase of a tobacco product is presumptive evidence of the wholesale price of the tobacco product.

This definition applies to all tobacco products possessed in this state for sale on or after October 1, 2020. No floor tax is due on inventory acquired before October 1, 2020.

[Part H of Chapter 59 of the Laws of 2020; Tax Law § 470]

Cigarette tax enforcement and licensing penalties (Articles 20 and 28)

Cigarette tax enforcement and licensing penalties have been enhanced effective September 1, 2020, and apply to the possession or sale of unstamped, or illegally stamped, cigarettes on and after that date:

- The definition of *retail dealer* is expanded to include all “persons required to collect tax” for sales tax purposes (*i.e.*, all “responsible persons”). This expanded definition applies for purposes of retail dealer certificate of registration (CoR) and vending machine registration sticker violations and for related sales tax certificate of authority (COA) suspensions or revocations.
- A definition of *affiliated persons* was also added for purposes of the cigarette and tobacco tax. Persons are *affiliated persons* with respect to each other where:
 - one of such persons has a direct or indirect ownership interest of more than five percent in the other; or
 - a direct or indirect ownership interest of more than five percent is held in each of such persons by another person, or by a group of other persons that are affiliated persons with respect to each other.

- The Commissioner of Taxation and Finance (Commissioner) may refuse to register any person as a retail dealer if such person, or a person required to collect tax with respect to such person or another person, has an unpaid fixed and final liability with respect to any tax or fee administered by the Commissioner under any law. The Commissioner may also refuse to issue a CoR for any of the existing grounds for refusal of a registration for a COA under the sales tax law.
- The CoR of a retail dealer (including a retail dealer licensed as an agent) will be revoked for one year for a first possession or sale of unstamped or unlawfully stamped cigarettes.
- The CoR of a retail dealer (including a retail dealer licensed as an agent), and the CoR of any person affiliated with the retail dealer, will be revoked for:
 - three years for a second possession or sale within five years of unstamped or unlawfully stamped cigarettes by either the retail dealer or a person affiliated with the retail dealer; and
 - five years for a third violation within five years by either the retail dealer or a person affiliated with the retail dealer.
- When a retail dealer's, or an affiliated person's, CoR has been revoked for five years for a third violation, the Commissioner is additionally authorized to refuse to issue, to suspend, or to revoke the retail dealer's COA, and the COA of any person affiliated with the retail dealer. Any such suspension or revocation of the COA continues for as long as the revocation of the CoR remains in effect.
- If unstamped or unlawfully stamped cigarettes are found in a retail dealer's warehouse, or a warehouse of any affiliated person of a retail dealer, the revocation of the retail dealer's registration applies to each retail place of business in New York State through which such retail dealer, and any affiliated person of such retail dealer, sells cigarettes.

[Part I of Chapter 59 of the Laws of 2020; Tax Law §§ 470, 480-a, and 1134]

New definition of *research tobacco product* and new information reporting requirements for research tobacco products (Article 20)

A *research tobacco product* is a tobacco product or cigarette that is:

- labeled as a research tobacco product;
- manufactured for use in research for health, scientific, or similar experimental purposes;
- exclusively used for such purposes by an accredited college, university or hospital, or a researcher affiliated with an accredited college, university or hospital; and
- not offered for sale or sold to consumers for any purpose.

An information return must be filed by every accredited college, university or hospital that receives research tobacco products. The return is due on or before the last day of January and must report all research tobacco products received within the preceding calendar year. The first required return, for calendar year 2020, is due on or before January 31, 2021. There is a penalty of up to \$1,000 for willful failure to timely file or willful failure to provide any material information required to be reported on the return.

These changes are effective December 20, 2019.

[Subpart V of Part XX of Chapter 55 of the Laws of 2020; Tax Law §§ 470 and 474]

Sales tax

Sales and use tax exemptions on certain purchases of tangible personal property and services for leased commercial office space in lower Manhattan are extended (Article 28)

The sales and use tax (sales tax) exemptions on certain purchases of tangible personal property and services related to leased commercial office space in two eligible areas in lower Manhattan (Eligible Area A and Eligible Area B) are extended for three years.

For **Eligible Area A**, the date by which a qualifying commercial lease must begin under Tax Law § 1115(ee) has been extended from September 1, 2020, to September 1, 2023. The sales tax exemptions for Eligible Area A continue to apply until December 1, 2024.

For **Eligible Area B**, the date by which the qualifying commercial lease must begin under Tax Law § 1115(ee) has been extended from September 1, 2022, to September 1, 2025. The sales tax exemptions for Eligible Area B continue to apply until December 1, 2026.

See [TSB-M-05\(12\)S, Sales and Use Tax Exemptions on Certain Purchases of Tangible Personal Property and Services for Leased Commercial Office Space in Lower Manhattan](#), for information about this exemption, including a description of Eligible Area A and Eligible Area B.

[Subpart H (Item A) of Part XXX of Chapter 58 of the Laws of 2020; Tax Law § 1115(ee)]

Alcoholic beverage licensees' exclusion from filing the annual sales tax information return updated and expanded (Article 28)

The Tax Law, as amended, expands the types of alcoholic beverage licensees who are excluded from filing annual sales tax information returns with the Tax Department. It also conforms the threshold amounts that exclude certain wineries and breweries from this filing requirement to the annual production limits for farm winery and farm brewery licenses.

Accordingly, for returns due on or after March 20, 2021, the information return filing requirement will not apply to businesses operating under:

- a farm winery license as provided in Alcohol Beverage Control Law (ABCL) § 76-a;

- a winery license, as provided in ABCL § 76, so long as its annual production does not exceed the allowable production of a farm winery;
- a farm distillery license as provided in ABCL § 61;
- a distiller's license, as provided in ABCL § 61, so long as its annual production does not exceed the allowable production of a farm distillery;
- a farm cidery license as provided in ABCL § 58-c;
- a cider producers' license, as provided in ABCL § 58, so long as its annual production does not exceed the allowable production of a farm cidery;
- a farm brewery license as provided in ABCL § 51-a;
- a brewer's license, as provided in ABCL § 51, so long as its annual production does not exceed the allowable production of a farm brewery;
- a farm meadery license as provided in ABCL § 31; or
- a mead producers' license as provided in ABCL § 30, so long as its annual production does not exceed the allowable production of a farm meadery.

However, a business operating under multiple ABCL licenses must file an annual information return if its annual production of any individual type of alcoholic beverage exceeds the annual production limit for businesses operating under a farm winery, farm cidery, farm distillery, farm brewery or farm meadery license. Also, a business holding a wholesalers' license under the ABCL is not exempt from filing an annual sales tax information return.

[Part J of Chapter 59 of the Laws of 2020; Tax Law § 1136(i)(1)(C) and (D)]

Other extensions

START-UP NY program applications (Articles 28 and 31)

The START-UP NY program provides tax benefits to approved businesses that locate in vacant space or land of approved New York State public and private colleges and universities, approved strategic state assets, and New York State incubators affiliated with private universities or colleges that are designated as tax-free NY areas. The program is administered by Empire State Development (ESD).

The application deadline for businesses that want to participate in the START-UP NY program has been extended to December 31, 2025. For more information on this program, visit ESD's website at www.esd.ny.gov and see [TSB-M-13\(7\)C, \(6\)I, \(11\)M, \(1\)MCTMT, \(7\)S, SUNY Tax-Free Areas to Revitalize and Transform Upstate New York Program](#).

[Part KKK of Chapter 58 of the Laws of 2020; Economic Development Law § 436.1]

Note: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.