

PROGRAM BILL # 42

GOVERNOR'S PROGRAM BILL

2012

MEMORANDUM

AN ACT to amend the tax law in relation to establishing a credit under articles 9- A and 22 of such law for beer produced within the state by a taxpayer that is registered as a distributor under article 18 of the tax law; to amend the alcoholic beverage control law, in relation to the exemption from the beer label registration fee; and to repeal subdivision 6 of section 424 of the tax law, relating to the exemption for beer produced and sold within the state by certain distributors under such article 18.

Purpose:

This bill would encourage the growth of so-called "craft breweries" and small breweries in New York and would create an incentive for brewers located outside New York to build production facilities and create jobs within the State.

Summary of Provisions:

Sections 1 through 4 of the bill would provide refundable corporate franchise and personal income tax credits for beer produced within the State by registered distributors that produce 60 million or fewer gallons of beer in a taxable year. For the first 500,000 gallons of beer so produced, the amount of the credit would be 14 cents per gallon. For each gallon of beer produced in New York in the taxable year in excess of 500,000 gallons, the credit would be four and one-half cents per gallon. No credit would be allowed for any beer produced in excess of 15.5 million gallons in the taxable year. If the amount of the credit exceeds the taxpayer's tax for the year, the excess credit would be credited or refunded to the taxpayer.

Section 5 of the bill would repeal the excise tax exemption in Tax Law section 424(6) for beer brewed and sold in New York State by certain brewers.

Section 6 of the bill would amend the exemption from the beer label registration fee in ABC Law § 107-a(4)(g). As amended, the exemption would apply to beer produced in small batches by both in-state and out-of-state brewers.

Section 7 of the bill provides the effective date.

Existing Law:

Until recently, Tax Law § 424(6) exempted from the excise tax on alcoholic beverages, the first 200,000 barrels of beer brewed in New York, and then sold or used in New York year by a distributor who is also a brewer and whose principal executive office is located in New York. This exemption also applied to New York City's alcoholic beverage tax. On March 28, 2012, this exemption was declared unconstitutional in *Shelton v. NYS Liquor Authority and NYS Department of Taxation and Finance* as was ABC Law section 107-a(4)(g), which exempted all beer produced in small batches in New York State from the beer label registration fee which is \$150 per brand label.

Statement in Support:

This bill would replace the State excise tax exemption (but not the New York City excise tax exemption) with a refundable credit under the corporate franchise and personal income taxes. A registered distributor that produces 60 million or fewer gallons of beer in New York would be allowed a tax credit of 14 cents per gallon (the current excise tax rate on beer) for the first 500,000 gallon of beer produced, and 4.5 cents per gallon on the remaining gallons, up to the cap of 15.5 million gallons. Unlike the former excise tax exemption, this bill would not restrict the credit to gallons produced by New York State brewers.

This bill would also extend the exemption from the beer label registration fee to all beer produced in batches of 1,500 barrels or less, regardless of where produced, to avoid discriminating against beer produced outside of New York. The exemption is particularly important to craft brewers, many of whom produce many artisanal brands in small quantities each year.

Budget Implications:

This bill is not expected to have a significant impact on the State's budget.

Effective Date:

This bill would take effect immediately and apply to taxable years beginning on or after January 1, 2012; provided, however, that Sections 5 and 6 shall be deemed to have been in full force and effect as of March 28, 2012.