

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

TSB-M-85 (8)M
Miscellaneous Tax
December 20, 1985

Provisions of the Omnibus Tax Equity and
Enforcement Act, Effective November 1, 1985

For Motor Fuel Tax, Alcoholic Beverage Tax, Cigarette Tax and Highway Use Tax

Chapter 65, Laws of 1985 enacted April 16, 1985 created Article 37 which contains criminal penalties, for violations of Articles 12-A (Motor Fuel Tax), 18 (Alcoholic Beverage Tax), 20 (Cigarette Tax) and 21 (Highway Use Tax) of the Tax Law.

This law was enacted to strengthen and add to the penalty provisions of the Tax Law, thereby increasing compliance.

Felony and Misdemeanor, as used in Article 37 have the same meaning as in the Penal Law. The disposition and the sentences imposed for these offenses are the same as under Penal Law except that the maximum fine is increased from \$5,000 to \$20,000 for a misdemeanor committed by a corporation, and from \$10,000 to \$250,000 for a felony committed by a corporation. For a misdemeanor committed by an individual the maximum fine is increased from \$1,000 to \$10,000 and for a felony committed by an individual the maximum fine is set at \$50,000. These increased fines for felonies and misdemeanors apply to all of the taxes that follow.

The term person as used hereinafter includes, but is not limited to, an individual; a corporation (including a dissolved corporation); a partnership; an association; a trust; an estate; an officer, employee or agent of a corporation; a member, employee or agent of a partnership or association; an employee or agent of an individual proprietorship; an employee or agent of an estate or trust; or a fiduciary.

Violation of Article 12-A Motor Fuel Tax

Felonies

Section 1812(a) Any person who willfully attempts to evade or defeat motor fuel tax.

Section 1812(c)(1) Any person who willfully makes and subscribes to the Tax Commission or to any person a fraudulent return, report, statement or other document which he does not believe to be true and correct as to every material matter. Note that omission of any material matter with intent to deceive constitutes delivery or disclosure of a document known to be false or fraudulent.

Section 1812(d) Any owner of a filling station who willfully and knowingly has in his custody or possession, or under his control, motor fuel on which the taxes have not been included in the cost to him.

Misdemeanors

Section 1812(b) Any person who willfully fails to file a return or report, or pay tax.

Section 1812(c)(2) Any person who willfully delivers or discloses to the Tax Commission a fraudulent list, return, report, account, statement or other document known by him to be fraudulent or false as to any material matter. Note that omission of any material matter with intent to deceive constitutes delivery or disclosure of a document known to be false or fraudulent.

Section 1812(e) Any person who commits any other willful act or omission in violation of any other provision of Article 12-A.

The Criminal Procedure Law is amended to provide peace officer status to employees assigned by the Tax Commission in the enforcement of Article 12-A. Also, police officer status will permit designated employees of the Department of Taxation and Finance to apply for and execute search warrants and to seize vehicles used in the commission of a felony with respect to motor fuel tax.

Violation of Article 18-Alcoholic Beverage Tax

Felony

Section 1813(c)(1) Any person who willfully makes and subscribes a fraudulent return, report, statement, or other document which he does not believe to be true and correct as to every material matter. Note that omission of any material matter with intent to deceive constitutes delivery or disclosure of a document known to be false or fraudulent.

Misdemeanors

Section 1813(a) Any person who willfully attempts to evade or defeat the alcoholic beverage tax.

Section 1813(b) Any person who willfully fails to file a return or report, or pay tax.

Section 1813(c)(2) Any person who willfully delivers or discloses a fraudulent list, return, report, account, statement or other document. Note that omission of any material matter with intent to deceive constitutes delivery or disclosure of a document known to be false or fraudulent.

Section 1813(d) Any person who counterfeits stamps; who willfully removes, alters or knowingly permits to be removed or altered the cancellation or defacing marks on the stamps with intent to use such stamp; who willfully opens any container of alcoholic beverage without destroying the stamp; or who knowingly or willfully buys, prepares for use, uses, has in his possession or suffers to be used any washed, restored or counterfeit stamps.

Section 1813(e) Any person who willfully sells or uses any alcoholic beverages upon which tax has not been paid by the affixation of the stamps.

Section 1813(f) Any person who commits any other willful act or omission in violation of any other provision of Article 18.

Violation of Article 20-Cigarette Tax

The penalties listed do not apply to common or contract carriers or warehousemen while engaged in lawfully transporting or storing unstamped packages of cigarettes as merchandise, nor to any employee of such carrier or warehousemen acting within the scope of his employment, nor to public officers or employees in the performance of their official duties requiring possession or control of unstamped or unlawfully stamped packages of cigarettes, nor to temporary, incidental possession by employees or agents of persons lawfully entitled to possession, nor to persons whose possession is for the purpose of aiding police officers in performing their duties.

Possession or transportation by any person, other than an agent, of five thousand or more cigarettes in unstamped or unlawfully stamped packages is presumptive evidence that such cigarettes are possessed or transported for the purpose of sale and are subject to tax.

Possession of more than four hundred cigarettes in unstamped or unlawfully stamped packages by any person, other than an agent, at any one time is presumptive evidence that such cigarettes are subject to tax.

Felonies

Section 1814(a)(2) Any person who willfully attempts to evade or defeat cigarette taxes on twenty thousand or more cigarettes or who has previously been convicted two or more times under section 18IL(a)(1).

Section 1814(e) Any person, other than an agent so authorized by the Tax Commission, who willfully possesses or transports for the purpose of sale twenty thousand or more cigarettes in any unstamped or unlawfully stamped packages or who willfully sells or offers for sale twenty thousand or more cigarettes in any unstamped or unlawfully stamped packages.

Section 1814(i) Any person who falsely or fraudulently makes, alters, or counterfeits any stamp prescribed by the Tax Commission, or causes or procures to be falsely or fraudulently made, altered or counterfeited any such stamp, or knowingly and willfully utters, purchases, passes or tenders as true any such false, altered or counterfeited stamp, or knowingly and willfully possesses any cigarettes in packages bearing any such false, altered or counterfeited stamp, or who knowingly and willingly makes, causes to be made, purchases or receives any device for forging or counterfeiting any stamp, or who knowingly and willfully possesses any such device. The words "stamp prescribed by the Tax Commission" include a stamp, impression or imprint made by a metering machine, the design of which has been approved by such commission.

Misdemeanors

Section 181A(a)(1) Any person who willfully attempts to evade or defeat the cigarette tax.

Section 1814(b) Any person who willfully fails to file a return or report, or pay tax.

Section 1814(c)(1) Any person who willfully makes and subscribes a fraudulent return, report, statement or other document which he does not believe to be true and correct as to every material matter. Note that omission of any material matter with intent to deceive constitutes delivery or disclosure of a document known to be false or fraudulent.

Section 1814(c)(2) Any person who willfully delivers or discloses a fraudulent list, return, report, account, statement or other document known by him to be false or fraudulent as to any material matter. Note that omission of any material matter with intent to deceive constitutes delivery or disclosure of a document known to be false or fraudulent.

Section 1814(d) Any person, other than an agent so authorized by the Tax Commission, who possesses or transports for the purpose of sale any unstamped or unlawfully stamped packages of cigarettes or sells or offers for sale unstamped or unlawfully stamped packages of cigarettes.

Section 1814(h) Any person who commits any other willful act or omission in violation of any other provision of Article 21.

Violation of Article 21-Highway Use Tax

The provisions of old section 512 (before November 15, 1985) are incorporated in section 1815 with these changes.

The violations of this section are changed from misdemeanors to traffic infractions solely for purposes of conferring jurisdiction upon courts, police officers and judicial officers generally and upon Tax Department enforcement agents.

The Commissioner of Motor Vehicles, any hearing officer appointed by him, or any administrative tribunal authorized to hear and determine any charges or offenses which are traffic infractions shall not have jurisdiction of these traffic infractions.

The trial court or trial clerk shall within 48 hours certify the facts of any case concerning a person convicted of any violation of the provisions of Section 1815 to the Tax Commission. If any such conviction is reversed upon appeal, the person whose conviction has been so reversed may serve upon the Tax Commission a certified copy of the order of reversal.

The following is the list of unlawful acts:

Section 1815(a)(1) Any person who uses or causes or permits the operation of a motor vehicle subject to Article 21 on any public highway without a proper permit and sticker, or to so use a permit or sticker which was suspended or revoked or which was issued for another vehicle.

Section 1815(a)(2) Any person who operates, or causes or permits to be operated, on any public highway a motor vehicle having an actual gross or unloaded weight in excess of the gross or unloaded weight set forth on its permit.

Section 1815(a)(3) Any person who fails to deliver or surrender, pursuant to the provisions of Article 21 or any rule or regulation promulgated by the Tax Commission, a permit or sticker to such Commission, or any person directed by the Tax Commission to take possession thereof.

Section 1815(a)(4) Any person who fails to make any return under Article 21 or to keep records of the operations of motor vehicles as the Tax Commission prescribes.

Section 1815(a)(5) Any person who makes any false return.

Section 1815(a)(6) Any person who violates any other provision of Article 21 or any rule or regulation promulgated thereunder.

Upon the first conviction for any provision in Section 1815(a) above, the fine is \$100 to \$250, and upon the second conviction the fine is \$250 to \$500 or imprisonment for up to 10 days.