

STATE OF NEW YORK
LIQUOR AUTHORITY

TO: All beer manufacturers, importers, wholesalers and agency staff

SUBJECT: Brand label registration fees and excise tax exemptions for beer

The resolution of a lawsuit brought by an out-of-state beer distributor against the State Liquor Authority and the Department of Taxation and Finance has resulted in a change in the way certain fees and taxes are imposed on brewers.

Section 107-a of the Alcoholic Beverage Control Law governs the process for registration and approval of brand labels. The statute also sets the fee that must be paid for each brand label registration. The fee for the registration of a beer brand label is currently \$150. However, the law provides an exemption from the fee for beer produced in small batches by New York State brewers. That exemption is found in subdivision 4, paragraph g of the statute.

Section 424 of the Tax Law provides for an excise tax on alcoholic beverages. The tax is imposed on the distributor of the product. The current excise tax on beer is fourteen cents per barrel. However, as with the brand label registration fee, the law provides an exemption for beer produced in this state. Specifically, the first 200,000 barrels of a brewer's beer that is produced, sold and used in this state is exempt from the excise tax. That exemption is found in subdivision 6 of the statute.

As part of the resolution of the lawsuit, the State Liquor Authority and the Department of Taxation and Finance conceded that that the two exemptions discussed above are unconstitutional. The agencies' decision was based on a long line of United States Supreme Court decisions that prohibit a state from giving preferential treatment to items produced in the state. These two exemptions treat beer produced in this state differently than beer imported into the state. Accordingly, a court order has been issued declaring that both exemptions are no longer in effect.

As a result of this court order, brewers licensed in this state will have to pay the same fee as out-of-state brewers for all brand label registrations submitted to the State Liquor Authority. Similarly, all beer produced by those brewers will be subject to the excise tax. The lawsuit also challenged ABCL sections 107-a(4)(c)(3) and 107-a(4)(d), which waive all registration requirements and fees for wine labels, regardless of the state of origin, if they are approved by TTB. The plaintiffs, as part of the settlement, agreed to drop those claims.