

DRAFT LBDC

A BUDGET BILL submitted by the Governor
in accordance with Article VII of the Constitution

AN ACT to amend the tax law, in relation to the imposition of an
excise tax on the sale of opioids (Part __);

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 PART __

2 Section 1. The tax law is amended by adding a new article 20-D to read
3 as follows:

4 ARTICLE 20-D

5 EXCISE TAX ON SALE OF OPIOIDS

6 Section 497. Definitions.

7 498. Imposition of excise tax.

8 499. Returns to be secret.

9 § 497. Definitions. The following terms shall have the following mean-
10 ings when used in this article.

11 (a) "Opioid" shall mean an "opiate" as defined by subdivision twenty-
12 three of section thirty-three hundred two of the public health law and
13 any natural, synthetic, or semisynthetic "narcotic drug" as defined by
14 subdivision twenty-two of such section that has agonist, partial agon-
15 ist, or agonist/antagonist morphine-like activities or effects similar
16 to natural opium alkaloids, and any derivative, congener, or combination
17 thereof listed in schedules II-V of section thirty-three hundred six of
18 the public health law. The term "opioid" shall not mean buprenorphine,
19 methadone, or morphine.

1 (b) "Unit" shall mean a single finished dosage form of an opioid, such
2 as a pill, tablet, capsule, suppository, transdermal patch, buccal film,
3 milliliter of liquid, milligram of topical preparation, or any other
4 form.

5 (c) "Strength per unit" shall mean the amount of opioid in a unit, as
6 measured by weight, volume, concentration or other metric.

7 (d) "Morphine milligram equivalent conversion factor" shall mean that
8 reference standard of a particular opioid as it relates in potency to
9 morphine as determined by the commissioner of health.

10 (e) "Morphine milligram equivalent" shall mean a unit multiplied by
11 its strength per unit multiplied by the morphine milligram equivalent
12 conversion factor.

13 (f) "Registrant" shall mean any person, firm, corporation or associ-
14 ation required to be registered with the education department as a
15 wholesaler, manufacturer, or outsourcing facility pursuant to section
16 sixty-eight hundred eight or section sixty-eight hundred eight-b of the
17 education law, as well as any person, firm, corporation or association
18 that would be required to be registered with the education department as
19 a wholesaler, manufacturer, or outsourcing facility pursuant to such
20 section sixty-eight hundred eight-b but for the exception in subdivision
21 two of such section; and any person, firm, corporation or association
22 required to be registered with the health department as a manufacturer
23 or distributor of a controlled substance pursuant to section thirty-
24 three hundred ten of the public health law.

25 (g) "Wholesale acquisition cost" shall mean the manufacturer's list
26 price for an opioid unit to wholesalers or direct purchasers in the
27 United States, not including prompt pay or other discounts, rebates or
28 reductions in price, for the most recent month for which the information

1 is available, as reported in wholesale price guides or other publica-
2 tions of drug or biological pricing data.

3 (h) "Sale" shall mean any transfer of title to an opioid for a consid-
4 eration where actual or constructive possession of such opioid is trans-
5 ferred to the purchaser or its designee in this state. A sale shall not
6 include the dispensing of an opioid pursuant to a prescription to an
7 ultimate consumer.

8 § 498. Imposition of excise tax. (a) There is hereby imposed an excise
9 tax on the first sale of any opioid in the state at the following rates:
10 (1) a quarter of a cent per morphine milligram equivalent where the
11 wholesale acquisition cost is less than fifty cents, or (2) one and
12 one-half cents per morphine milligram equivalent where the wholesale
13 acquisition cost is fifty cents or more. The tax imposed by this article
14 shall be charged against and paid by the registrant making such first
15 sale, and shall accrue at the time of such sale. The economic incidence
16 of the tax imposed by this article may be passed to a purchaser. For the
17 purpose of the proper administration of this article and to prevent
18 evasion of the tax hereby imposed, it shall be presumed that any sale of
19 an opioid in this state by a registrant is the first sale of such in the
20 state until the contrary is established, and the burden of proving that
21 any sale is not the first sale in the state shall be upon the regis-
22 trant.

23 (b) Every registrant liable for the tax imposed by this article shall
24 file with the commissioner a return on forms to be prescribed by the
25 commissioner showing the total morphine milligram equivalent and whole-
26 sale acquisition costs of such opioids that are subject to the tax
27 imposed by this article, the amount of tax due thereon, and such further
28 information as the commissioner may require. Such returns shall be filed

1 for quarterly periods ending on the last day of March, June, September
2 and December of each year. Each return shall be filed within twenty days
3 after the end of such quarterly period and shall cover all opioid sales
4 in the state made in the prior quarter, except that the first return
5 required to be filed pursuant to this section shall be due on January
6 twentieth, two thousand twenty, and shall cover all opioid sales occur-
7 ring in the period between the effective date of this article and Decem-
8 ber thirty-first, two thousand nineteen. Every registrant required to
9 file a return under this section shall, at the time of filing such
10 return, pay to the commissioner the total amount of tax due for the
11 period covered by such return. If a return is not filed when due, the
12 tax shall be due the day on which the return is required to be filed.
13 The commissioner may require that the returns and payments required by
14 this section be filed or paid electronically.

15 (c) Where a sale of an opioid by a registrant has been cancelled by
16 the purchaser and tax under this article has previously been paid by the
17 registrant, the commissioner shall allow a credit or refund of such tax
18 on a return for a later period within the limitations period for claim-
19 ing a credit or refund as prescribed by section one thousand eighty-sev-
20 en of this chapter.

21 (d) All sales slips, invoices, receipts, or other statements or memo-
22 randa of sale from any sale or purchase of opioids by registrants must
23 be retained for a period of six years after the due date of the return
24 to which they relate, unless the commissioner provides for a different
25 retention period by rule or regulation. Such records must be sufficient
26 to determine the number of units transferred along with the morphine
27 milligram equivalent of the units transferred, and otherwise be suitable
28 to determine the correct amount of tax due. Such records must also

1 record either (1) the address from which the units are shipped or deliv-
2 ered, along with the address to which the units are shipped or deliv-
3 ered, or (2) the place at which actual physical possession of the units
4 is transferred. Such records shall be produced upon demand by the
5 commissioner.

6 (e) The provisions of article twenty-seven of this chapter shall apply
7 to the tax imposed by this article in the same manner and with the same
8 force and effect as if the language of such article had been incorpo-
9 rated in full into this article and had expressly referred to the tax
10 imposed by this article, except to the extent that any provision of such
11 article twenty-seven is either inconsistent with a provision of this
12 article or is not relevant to this article.

13 (f) The commissioners of education and health shall cooperate with the
14 commissioner in administering this tax, including sharing with the
15 commissioner pertinent information about registrants upon the request of
16 the commissioner.

17 (g) Each registrant shall provide a report to the department of health
18 detailing all opioids sold by such registrant in the state of New York.
19 Such report shall include:

20 (i) the registrant's name, address, phone number, federal Drug
21 Enforcement Agency (DEA) registration number, education department
22 registration number, and controlled substance license number issued by
23 the department of health, if applicable;

24 (ii) the name, address and DEA registration number of the entity to
25 whom the opioid was sold;

26 (iii) the date of the sale of the opioid;

27 (iv) the gross receipt total, in dollars, for each opioid sold;

28 (v) the name and National Drug Code of the opioid sold;

1 (vi) the number of containers and the strength and metric quantity of
2 controlled substance in each container of the opioid sold;

3 (vii) the total number of morphine milligram equivalents sold; and

4 (viii) any other elements as deemed necessary by the commissioner of
5 health.

6 Such information shall be reported annually in such form as defined by
7 the commissioner of health and shall not be subject to the provisions of
8 section four hundred ninety-nine of this article.

9 § 499. Returns to be secret. (a) Except in accordance with a proper
10 judicial order or as otherwise provided for by law, it shall be unlawful
11 for the commissioner, any officer or employee of the department, or any
12 person engaged or retained by such department on an independent contract
13 basis or any other person who in any manner may acquire knowledge of the
14 contents of a return or report filed pursuant to this article to divulge
15 or make known in any manner the contents or any other information
16 relating to the business of a registrant contained in any return or
17 report required under this article. The officers charged with the
18 custody of such returns or reports shall not be required to produce any
19 of them or evidence of anything contained in them in any action or
20 proceeding in any court, except on behalf of the state, the state
21 department of health, the state department of education or the commis-
22 sioner in an action or proceeding under the provisions of this chapter
23 or on behalf of the state or the commissioner in any other action or
24 proceeding involving the collection of a tax due under this chapter to
25 which the state or the commissioner is a party or a claimant or on
26 behalf of any party to any action or proceeding under the provisions of
27 this article, when the returns or the reports or the facts shown thereby
28 are directly involved in such action or proceeding, in any of which

1 events the court may require the production of, and may admit in
2 evidence so much of said returns or reports or of the facts shown there-
3 by as are pertinent to the action or proceeding and no more. Nothing
4 herein shall be construed to prohibit the commissioner, in his or her
5 discretion, from allowing the inspection or delivery of a certified copy
6 of any return or report filed under this article, or from providing any
7 information contained in any such return or report, by or to a duly
8 authorized officer or employee of the state department of health or the
9 state department of education; nor to prohibit the inspection or deliv-
10 ery of a certified copy of any return or report filed under this arti-
11 cle, or the provision of any information contained therein, by or to the
12 attorney general or other legal representatives of the state when an
13 action shall have been recommended or commenced pursuant to this chap-
14 ter in which such returns or reports or the facts shown thereby are
15 directly involved; nor to prohibit the commissioner from providing or
16 certifying to the division of budget or the comptroller the total number
17 of returns or reports filed under this article in any reporting period
18 and the total collections received therefrom; nor to prohibit the
19 inspection of the returns or reports required under this article by the
20 comptroller or duly designated officer or employee of the state depart-
21 ment of audit and control, for purposes of the audit of a refund of any
22 tax paid by a registrant or other person under this article; nor to
23 prohibit the delivery to a registrant, or a duly authorized represen-
24 tative of such registrant, a certified copy of any return or report
25 filed by such registrant pursuant to this article, nor to prohibit the
26 publication of statistics so classified as to prevent the identification
27 of particular returns or reports and the items thereof.

1 (b) (1) Any officer or employee of the state who willfully violates the
2 provisions of subdivision (a) of this section shall be dismissed from
3 office and be incapable of holding any public office in this state for a
4 period of five years thereafter.

5 (2) Cross-reference: For criminal penalties, see article thirty-seven
6 of this chapter.

7 § 2. Section 1825 of the tax law, as amended by section 3 of part NNN
8 of chapter 59 of the laws of 2018, is amended to read as follows:

9 § 1825. Violation of secrecy provisions of the tax law.--Any person
10 who violates the secrecy provisions of [subdivision (b) of section twen-
11 ty-one, subdivision one of section two hundred two, subdivision eight of
12 section two hundred eleven, subdivision (a) of section three hundred
13 fourteen, subdivision one or two of section four hundred thirty-seven,
14 section four hundred eighty-seven, subdivision one or two of section
15 five hundred fourteen, subsection (e) of section six hundred ninety-sev-
16 en, subsection (a) of section nine hundred ninety-four, subdivision (a)
17 of section eleven hundred forty-six, section twelve hundred eighty-sev-
18 en, section twelve hundred ninety-six, section twelve hundred ninety-
19 nine-F, subdivision (a) of section fourteen hundred eighteen, subdivi-
20 sion (a) of section fifteen hundred eighteen, subdivision (a) of section
21 fifteen hundred fifty-five of] this chapter[, and] or subdivision (e) of
22 section 11-1797 of the administrative code of the city of New York shall
23 be guilty of a misdemeanor.

24 § 3. Subdivision 1 of section 171-a of the tax law, as amended by
25 section 3 of part MM of chapter 59 of the laws of 2018, is amended to
26 read as follows:

27 1. All taxes, interest, penalties and fees collected or received by
28 the commissioner or the commissioner's duly authorized agent under arti-

1 cles nine (except section one hundred eighty-two-a thereof and except as
2 otherwise provided in section two hundred five thereof), nine-A,
3 twelve-A (except as otherwise provided in section two hundred eighty-
4 four-d thereof), thirteen, thirteen-A (except as otherwise provided in
5 section three hundred twelve thereof), eighteen, nineteen, twenty
6 (except as otherwise provided in section four hundred eighty-two there-
7 of), twenty-B, twenty-D, twenty-one, twenty-two, twenty-four, twenty-
8 six, twenty-eight (except as otherwise provided in section eleven
9 hundred two or eleven hundred three thereof), twenty-eight-A, twenty-
10 nine-B, thirty-one (except as otherwise provided in section fourteen
11 hundred twenty-one thereof), thirty-three and thirty-three-A of this
12 chapter shall be deposited daily in one account with such responsible
13 banks, banking houses or trust companies as may be designated by the
14 comptroller, to the credit of the comptroller. Such an account may be
15 established in one or more of such depositories. Such deposits shall be
16 kept separate and apart from all other money in the possession of the
17 comptroller. The comptroller shall require adequate security from all
18 such depositories. Of the total revenue collected or received under such
19 articles of this chapter, the comptroller shall retain in the comp-
20 troller's hands such amount as the commissioner may determine to be
21 necessary for refunds or reimbursements under such articles of this
22 chapter out of which amount the comptroller shall pay any refunds or
23 reimbursements to which taxpayers shall be entitled under the provisions
24 of such articles of this chapter. The commissioner and the comptroller
25 shall maintain a system of accounts showing the amount of revenue
26 collected or received from each of the taxes imposed by such articles.
27 The comptroller, after reserving the amount to pay such refunds or
28 reimbursements, shall, on or before the tenth day of each month, pay

1 into the state treasury to the credit of the general fund all revenue
2 deposited under this section during the preceding calendar month and
3 remaining to the comptroller's credit on the last day of such preceding
4 month, (i) except that the comptroller shall pay to the state department
5 of social services that amount of overpayments of tax imposed by article
6 twenty-two of this chapter and the interest on such amount which is
7 certified to the comptroller by the commissioner as the amount to be
8 credited against past-due support pursuant to subdivision six of section
9 one hundred seventy-one-c of this article, (ii) and except that the
10 comptroller shall pay to the New York state higher education services
11 corporation and the state university of New York or the city university
12 of New York respectively that amount of overpayments of tax imposed by
13 article twenty-two of this chapter and the interest on such amount which
14 is certified to the comptroller by the commissioner as the amount to be
15 credited against the amount of defaults in repayment of guaranteed
16 student loans and state university loans or city university loans pursu-
17 ant to subdivision five of section one hundred seventy-one-d and subdivi-
18 sion six of section one hundred seventy-one-e of this article, (iii)
19 and except further that, notwithstanding any law, the comptroller shall
20 credit to the revenue arrearage account, pursuant to section
21 ninety-one-a of the state finance law, that amount of overpayment of tax
22 imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B
23 or thirty-three of this chapter, and any interest thereon, which is
24 certified to the comptroller by the commissioner as the amount to be
25 credited against a past-due legally enforceable debt owed to a state
26 agency pursuant to paragraph (a) of subdivision six of section one
27 hundred seventy-one-f of this article, provided, however, he shall cred-
28 it to the special offset fiduciary account, pursuant to section ninety-

1 one-c of the state finance law, any such amount creditable as a liabil-
2 ity as set forth in paragraph (b) of subdivision six of section one
3 hundred seventy-one-f of this article, (iv) and except further that the
4 comptroller shall pay to the city of New York that amount of overpayment
5 of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A,
6 thirty-B or thirty-three of this chapter and any interest thereon that
7 is certified to the comptroller by the commissioner as the amount to be
8 credited against city of New York tax warrant judgment debt pursuant to
9 section one hundred seventy-one-l of this article, (v) and except
10 further that the comptroller shall pay to a non-obligated spouse that
11 amount of overpayment of tax imposed by article twenty-two of this chap-
12 ter and the interest on such amount which has been credited pursuant to
13 section one hundred seventy-one-c, one hundred seventy-one-d, one
14 hundred seventy-one-e, one hundred seventy-one-f or one hundred seven-
15 ty-one-l of this article and which is certified to the comptroller by
16 the commissioner as the amount due such non-obligated spouse pursuant to
17 paragraph six of subsection (b) of section six hundred fifty-one of this
18 chapter; and (vi) the comptroller shall deduct a like amount which the
19 comptroller shall pay into the treasury to the credit of the general
20 fund from amounts subsequently payable to the department of social
21 services, the state university of New York, the city university of New
22 York, or the higher education services corporation, or the revenue
23 arrearage account or special offset fiduciary account pursuant to
24 section ninety-one-a or ninety-one-c of the state finance law, as the
25 case may be, whichever had been credited the amount originally withheld
26 from such overpayment, and (vii) with respect to amounts originally
27 withheld from such overpayment pursuant to section one hundred seventy-

1 one-1 of this article and paid to the city of New York, the comptroller
2 shall collect a like amount from the city of New York.

3 § 4. Subdivision 1 of section 171-a of the tax law, as amended by
4 section 4 of part MM of chapter 59 of the laws of 2018, is amended to
5 read as follows:

6 1. All taxes, interest, penalties and fees collected or received by
7 the commissioner or the commissioner's duly authorized agent under arti-
8 cles nine (except section one hundred eighty-two-a thereof and except as
9 otherwise provided in section two hundred five thereof), nine-A,
10 twelve-A (except as otherwise provided in section two hundred eighty-
11 four-d thereof), thirteen, thirteen-A (except as otherwise provided in
12 section three hundred twelve thereof), eighteen, nineteen, twenty
13 (except as otherwise provided in section four hundred eighty-two there-
14 of), twenty-D, twenty-one, twenty-two, twenty-four, twenty-six, twenty-
15 eight (except as otherwise provided in section eleven hundred two or
16 eleven hundred three thereof), twenty-eight-A, twenty-nine-B, thirty-one
17 (except as otherwise provided in section fourteen hundred twenty-one
18 thereof), thirty-three and thirty-three-A of this chapter shall be
19 deposited daily in one account with such responsible banks, banking
20 houses or trust companies as may be designated by the comptroller, to
21 the credit of the comptroller. Such an account may be established in one
22 or more of such depositories. Such deposits shall be kept separate and
23 apart from all other money in the possession of the comptroller. The
24 comptroller shall require adequate security from all such depositories.
25 Of the total revenue collected or received under such articles of this
26 chapter, the comptroller shall retain in the comptroller's hands such
27 amount as the commissioner may determine to be necessary for refunds or
28 reimbursements under such articles of this chapter out of which amount

1 the comptroller shall pay any refunds or reimbursements to which taxpay-
2 ers shall be entitled under the provisions of such articles of this
3 chapter. The commissioner and the comptroller shall maintain a system of
4 accounts showing the amount of revenue collected or received from each
5 of the taxes imposed by such articles. The comptroller, after reserving
6 the amount to pay such refunds or reimbursements, shall, on or before
7 the tenth day of each month, pay into the state treasury to the credit
8 of the general fund all revenue deposited under this section during the
9 preceding calendar month and remaining to the comptroller's credit on
10 the last day of such preceding month, (i) except that the comptroller
11 shall pay to the state department of social services that amount of
12 overpayments of tax imposed by article twenty-two of this chapter and
13 the interest on such amount which is certified to the comptroller by the
14 commissioner as the amount to be credited against past-due support
15 pursuant to subdivision six of section one hundred seventy-one-c of this
16 article, (ii) and except that the comptroller shall pay to the New York
17 state higher education services corporation and the state university of
18 New York or the city university of New York respectively that amount of
19 overpayments of tax imposed by article twenty-two of this chapter and
20 the interest on such amount which is certified to the comptroller by the
21 commissioner as the amount to be credited against the amount of defaults
22 in repayment of guaranteed student loans and state university loans or
23 city university loans pursuant to subdivision five of section one
24 hundred seventy-one-d and subdivision six of section one hundred seven-
25 ty-one-e of this article, (iii) and except further that, notwithstanding
26 any law, the comptroller shall credit to the revenue arrearage account,
27 pursuant to section ninety-one-a of the state finance law, that amount
28 of overpayment of tax imposed by article nine, nine-A, twenty-two, thir-

1 ty, thirty-A, thirty-B or thirty-three of this chapter, and any interest
2 thereon, which is certified to the comptroller by the commissioner as
3 the amount to be credited against a past-due legally enforceable debt
4 owed to a state agency pursuant to paragraph (a) of subdivision six of
5 section one hundred seventy-one-f of this article, provided, however, he
6 shall credit to the special offset fiduciary account, pursuant to
7 section ninety-one-c of the state finance law, any such amount credita-
8 ble as a liability as set forth in paragraph (b) of subdivision six of
9 section one hundred seventy-one-f of this article, (iv) and except
10 further that the comptroller shall pay to the city of New York that
11 amount of overpayment of tax imposed by article nine, nine-A, twenty-
12 two, thirty, thirty-A, thirty-B or thirty-three of this chapter and any
13 interest thereon that is certified to the comptroller by the commission-
14 er as the amount to be credited against city of New York warrant
15 judgment debt pursuant to section one hundred seventy-one-l of this
16 article, (v) and except further that the comptroller shall pay to a
17 non-obligated spouse that amount of overpayment of tax imposed by arti-
18 cle twenty-two of this chapter and the interest on such amount which has
19 been credited pursuant to section one hundred seventy-one-c, one hundred
20 seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f or
21 one hundred seventy-one-l of this article and which is certified to the
22 comptroller by the commissioner as the amount due such non-obligated
23 spouse pursuant to paragraph six of subsection (b) of section six
24 hundred fifty-one of this chapter; and (vi) the comptroller shall deduct
25 a like amount which the comptroller shall pay into the treasury to the
26 credit of the general fund from amounts subsequently payable to the
27 department of social services, the state university of New York, the
28 city university of New York, or the higher education services corpo-

1 ration, or the revenue arrearage account or special offset fiduciary
2 account pursuant to section ninety-one-a or ninety-one-c of the state
3 finance law, as the case may be, whichever had been credited the amount
4 originally withheld from such overpayment, and (vii) with respect to
5 amounts originally withheld from such overpayment pursuant to section
6 one hundred seventy-one-1 of this article and paid to the city of New
7 York, the comptroller shall collect a like amount from the city of New
8 York.

9 § 5. This act shall take effect July 1, 2019; provided, however, that
10 the amendments to subdivision 1 of section 171-a of the tax law made by
11 section three of this act shall not affect the expiration of such subdi-
12 vision and shall expire therewith, when upon such date the provisions of
13 section four of this act shall take effect.