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 Assembly, do enact as follows:

PART __

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

ARTICLE 20-D

EXCISE TAX ON SALE OF OPIOIDS

Section 497. Definitions.

498. Imposition of excise tax.

499. Returns to be secret.

§ 497. Definitions. The following terms shall have the following meanings when used in this article.

(a) "Opioid" shall mean an "opiate" as defined by subdivision twenty-three of section thirty-three hundred two of the public health law and any natural, synthetic, or semisynthetic "narcotic drug" as defined by subdivision twenty-two of such section that has agonist, partial agonist, or agonist/antagonist morphine-like activities or effects similar to natural opium alkaloids, and any derivative, congener, or combination thereof listed in schedules II-V of section thirty-three hundred six of the public health law. The term "opioid" shall not mean buprenorphine, methadone, or morphine.
(b) "Unit" shall mean a single finished dosage form of an opioid, such as a pill, tablet, capsule, suppository, transdermal patch, buccal film, milliliter of liquid, milligram of topical preparation, or any other form.

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

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

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

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

(g) "Wholesale acquisition cost" shall mean the manufacturer's list price for an opioid unit to wholesalers or direct purchasers in the United States, not including prompt pay or other discounts, rebates or reductions in price, for the most recent month for which the information
is available, as reported in wholesale price guides or other publica-
tions of drug or biological pricing data.

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

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

(b) Every registrant liable for the tax imposed by this article shall
file with the commissioner a return on forms to be prescribed by the
commissioner showing the total morphine milligram equivalent and whole-
sale acquisition costs of such opioids that are subject to the tax
imposed by this article, the amount of tax due thereon, and such further
information as the commissioner may require. Such returns shall be filed
for quarterly periods ending on the last day of March, June, September
and December of each year. Each return shall be filed within twenty days
after the end of such quarterly period and shall cover all opioid sales
in the state made in the prior quarter, except that the first return
required to be filed pursuant to this section shall be due on January
twentieth, two thousand twenty, and shall cover all opioid sales occur-
ing in the period between the effective date of this article and Decem-
ber thirty-first, two thousand nineteen. Every registrant required to
file a return under this section shall, at the time of filing such
return, pay to the commissioner the total amount of tax due for the
period covered by such return. If a return is not filed when due, the
tax shall be due the day on which the return is required to be filed.
The commissioner may require that the returns and payments required by
this section be filed or paid electronically.

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

(d) All sales slips, invoices, receipts, or other statements or memo-
randa of sale from any sale or purchase of opioids by registrants must
be retained for a period of six years after the due date of the return
to which they relate, unless the commissioner provides for a different
retention period by rule or regulation. Such records must be sufficient
to determine the number of units transferred along with the morphine
milligram equivalent of the units transferred, and otherwise be suitable
to determine the correct amount of tax due. Such records must also
record either (1) the address from which the units are shipped or deliv-
ered, along with the address to which the units are shipped or deliv-
ered, or (2) the place at which actual physical possession of the units
is transferred. Such records shall be produced upon demand by the
commissioner.

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

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

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

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

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

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

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

(v) the name and National Drug Code of the opioid sold;
(vi) the number of containers and the strength and metric quantity of controlled substance in each container of the opioid sold;

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

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

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

§ 499. Returns to be secret. (a) Except in accordance with a proper judicial order or as otherwise provided for by law, it shall be unlawful for the commissioner, any officer or employee of the department, or any person engaged or retained by such department on an independent contract basis or any other person who in any manner may acquire knowledge of the contents of a return or report filed pursuant to this article to divulge or make known in any manner the contents or any other information relating to the business of a registrant contained in any return or report required under this article. The officers charged with the custody of such returns or reports shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the state, the state department of health, the state department of education or the commissioner in an action or proceeding under the provisions of this chapter or on behalf of the state or the commissioner in any other action or proceeding involving the collection of a tax due under this chapter to which the state or the commissioner is a party or a claimant or on behalf of any party to any action or proceeding under the provisions of this article, when the returns or the reports or the facts shown thereby are directly involved in such action or proceeding, in any of which
events the court may require the production of, and may admit in
evidence so much of said returns or reports or of the facts shown there-
by as are pertinent to the action or proceeding and no more. Nothing
herein shall be construed to prohibit the commissioner, in his or her
discretion, from allowing the inspection or delivery of a certified copy
of any return or report filed under this article, or from providing any
information contained in any such return or report, by or to a duly
authorized officer or employee of the state department of health or the
state department of education; nor to prohibit the inspection or deliv-
er of a certified copy of any return or report filed under this arti-
cle, or the provision of any information contained therein, by or to the
attorney general or other legal representatives of the state when an
action shall have been recommended or commenced pursuant to this chap-
ter in which such returns or reports or the facts shown thereby are
directly involved; nor to prohibit the commissioner from providing or
certifying to the division of budget or the comptroller the total number
of returns or reports filed under this article in any reporting period
and the total collections received therefrom; nor to prohibit the
inspection of the returns or reports required under this article by the
comptroller or duly designated officer or employee of the state depart-
ment of audit and control, for purposes of the audit of a refund of any
tax paid by a registrant or other person under this article; nor to
prohibit the delivery to a registrant, or a duly authorized represen-
tative of such registrant, a certified copy of any return or report
filed by such registrant pursuant to this article, nor to prohibit the
publication of statistics so classified as to prevent the identification
of particular returns or reports and the items thereof.
(b)(1) Any officer or employee of the state who willfully violates the provisions of subdivision (a) of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

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

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

§ 1825. Violation of secrecy provisions of the tax law.--Any person who violates the secrecy provisions of subdivision (b) of section twenty-one, subdivision one of section two hundred two, subdivision eight of section two hundred eleven, subdivision (a) of section three hundred fourteen, subdivision one or two of section four hundred thirty-seven, section four hundred eighty-seven, subdivision one or two of section five hundred fourteen, subsection (e) of section six hundred ninety-seven, subsection (a) of section nine hundred ninety-four, subdivision (a) of section eleven hundred forty-six, section twelve hundred eighty-seven, section twelve hundred ninety-nine-F, subdivision (a) of section fourteen hundred eighteen, subdivision (a) of section fifteen hundred eighteen, subdivision (a) of section fifteen hundred fifty-five of this chapter[, and] or subdivision (e) of section 11-1797 of the administrative code of the city of New York shall be guilty of a misdemeanor.

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

1. All taxes, interest, penalties and fees collected or received by the commissioner or the commissioner's duly authorized agent under arti-
cles nine (except section one hundred eighty-two-a thereof and except as otherwise provided in section two hundred five thereof), nine-A, twelve-A (except as otherwise provided in section two hundred eighty-four-d thereof), thirteen, thirteen-A (except as otherwise provided in section three hundred twelve thereof), eighteen, nineteen, twenty (except as otherwise provided in section four hundred eighty-two thereof), twenty-B, twenty-D, twenty-one, twenty-two, twenty-four, twenty-six, twenty-eight (except as otherwise provided in section eleven hundred two or eleven hundred three thereof), twenty-eight-A, twenty-nine-B, thirty-one (except as otherwise provided in section fourteen hundred twenty-one thereof), thirty-three and thirty-three-A of this chapter shall be deposited daily in one account with such responsible banks, banking houses or trust companies as may be designated by the comptroller, to the credit of the comptroller. Such an account may be established in one or more of such depositories. Such deposits shall be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under such articles of this chapter, the comptroller shall retain in the comptroller's hands such amount as the commissioner may determine to be necessary for refunds or reimbursements under such articles of this chapter out of which amount the comptroller shall pay any refunds or reimbursements to which taxpayers shall be entitled under the provisions of such articles of this chapter. The commissioner and the comptroller shall maintain a system of accounts showing the amount of revenue collected or received from each of the taxes imposed by such articles. The comptroller, after reserving the amount to pay such refunds or reimbursements, shall, on or before the tenth day of each month, pay
into the state treasury to the credit of the general fund all revenue

deposited under this section during the preceding calendar month and

remaining to the comptroller's credit on the last day of such preceding

month, (i) except that the comptroller shall pay to the state department

of social services that amount of overpayments of tax imposed by article

twenty-two of this chapter and the interest on such amount which is

certified to the comptroller by the commissioner as the amount to be

credited against past-due support pursuant to subdivision six of section

one hundred seventy-one-c of this article, (ii) and except that the

comptroller shall pay to the New York state higher education services

corporation and the state university of New York or the city university

of New York respectively that amount of overpayments of tax imposed by

article twenty-two of this chapter and the interest on such amount which

is certified to the comptroller by the commissioner as the amount to be

credited against the amount of defaults in repayment of guaranteed

student loans and state university loans or city university loans pursu-

ant to subdivision five of section one hundred seventy-one-d and subdi-

vision six of section one hundred seventy-one-e of this article, (iii)

and except further that, notwithstanding any law, the comptroller shall

credit to the revenue arrearage account, pursuant to section

ninety-one-a of the state finance law, that amount of overpayment of tax

imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B

or thirty-three of this chapter, and any interest thereon, which is

certified to the comptroller by the commissioner as the amount to be

credited against a past-due legally enforceable debt owed to a state

agency pursuant to paragraph (a) of subdivision six of section one

hundred seventy-one-f of this article, provided, however, he shall cred-

it to the special offset fiduciary account, pursuant to section ninety-
one-c of the state finance law, any such amount creditable as a liability as set forth in paragraph (b) of subdivision six of section one hundred seventy-one-f of this article, (iv) and except further that the comptroller shall pay to the city of New York that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B or thirty-three of this chapter and any interest thereon that is certified to the comptroller by the commissioner as the amount to be credited against city of New York tax warrant judgment debt pursuant to section one hundred seventy-one-l of this article, (v) and except further that the comptroller shall pay to a non-obligated spouse that amount of overpayment of tax imposed by article twenty-two of this chapter and the interest on such amount which has been credited pursuant to section one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f or one hundred seventy-one-l of this article and which is certified to the comptroller by the commissioner as the amount due such non-obligated spouse pursuant to paragraph six of subsection (b) of section six hundred fifty-one of this chapter; and (vi) the comptroller shall deduct a like amount which the comptroller shall pay into the treasury to the credit of the general fund from amounts subsequently payable to the department of social services, the state university of New York, the city university of New York, or the higher education services corporation, or the revenue arrearage account or special offset fiduciary account pursuant to section ninety-one-a or ninety-one-c of the state finance law, as the case may be, whichever had been credited the amount originally withheld from such overpayment, and (vii) with respect to amounts originally withheld from such overpayment pursuant to section one hundred seventy-
one of this article and paid to the city of New York, the comptroller shall collect a like amount from the city of New York.

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

1. All taxes, interest, penalties and fees collected or received by the commissioner or the commissioner's duly authorized agent under articles nine (except section one hundred eighty-two-a thereof and except as otherwise provided in section two hundred five thereof), nine-A, twelve-A (except as otherwise provided in section two hundred eighty-four-d thereof), thirteen, thirteen-A (except as otherwise provided in section three hundred twelve thereof), eighteen, nineteen, twenty (except as otherwise provided in section four hundred eighty-two thereof), twenty-D, twenty-one, twenty-two, twenty-four, twenty-six, twenty-eight (except as otherwise provided in section eleven hundred two or eleven hundred three thereof), twenty-eight-A, twenty-nine-B, thirty-one (except as otherwise provided in section fourteen hundred twenty-one thereof), thirty-three and thirty-three-A of this chapter shall be deposited daily in one account with such responsible banks, banking houses or trust companies as may be designated by the comptroller, to the credit of the comptroller. Such an account may be established in one or more of such depositories. Such deposits shall be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under such articles of this chapter, the comptroller shall retain in the comptroller's hands such amount as the commissioner may determine to be necessary for refunds or reimbursements under such articles of this chapter out of which amount
the comptroller shall pay any refunds or reimbursements to which taxpay-
ers shall be entitled under the provisions of such articles of this chapter. The commissioner and the comptroller shall maintain a system of accounts showing the amount of revenue collected or received from each of the taxes imposed by such articles. The comptroller, after reserving the amount to pay such refunds or reimbursements, shall, on or before the tenth day of each month, pay into the state treasury to the credit of the general fund all revenue deposited under this section during the preceding calendar month and remaining to the comptroller's credit on the last day of such preceding month, (i) except that the comptroller shall pay to the state department of social services that amount of overpayments of tax imposed by article twenty-two of this chapter and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against past-due support pursuant to subdivision six of section one hundred seventy-one-c of this article, (ii) and except that the comptroller shall pay to the New York state higher education services corporation and the state university of New York or the city university of New York respectively that amount of overpayments of tax imposed by article twenty-two of this chapter and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against the amount of defaults in repayment of guaranteed student loans and state university loans or city university loans pursuant to subdivision five of section one hundred seventy-one-d and subdivision six of section one hundred seventy-one-e of this article, (iii) and except further that, notwithstanding any law, the comptroller shall credit to the revenue arrearage account, pursuant to section ninety-one-a of the state finance law, that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thir-
ty, thirty-A, thirty-B or thirty-three of this chapter, and any interest thereon, which is certified to the comptroller by the commissioner as the amount to be credited against a past-due legally enforceable debt owed to a state agency pursuant to paragraph (a) of subdivision six of section one hundred seventy-one-f of this article, provided, however, he shall credit to the special offset fiduciary account, pursuant to section ninety-one-c of the state finance law, any such amount creditable as a liability as set forth in paragraph (b) of subdivision six of section one hundred seventy-one-f of this article, (iv) and except further that the comptroller shall pay to the city of New York that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B or thirty-three of this chapter and any interest thereon that is certified to the comptroller by the commissioner as the amount to be credited against city of New York tax warrant judgment debt pursuant to section one hundred seventy-one-l of this article, (v) and except further that the comptroller shall pay to a non-obligated spouse that amount of overpayment of tax imposed by article twenty-two of this chapter and the interest on such amount which has been credited pursuant to section one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f or one hundred seventy-one-l of this article and which is certified to the comptroller by the commissioner as the amount due such non-obligated spouse pursuant to paragraph six of subsection (b) of section six hundred fifty-one of this chapter; and (vi) the comptroller shall deduct a like amount which the comptroller shall pay into the treasury to the credit of the general fund from amounts subsequently payable to the department of social services, the state university of New York, the city university of New York, or the higher education services corpo-
ration, or the revenue arrearage account or special offset fiduciary
account pursuant to section ninety-one-a or ninety-one-c of the state
finance law, as the case may be, whichever had been credited the amount
originally withheld from such overpayment, and (vii) with respect to
amounts originally withheld from such overpayment pursuant to section
one hundred seventy-one-l of this article and paid to the city of New
York, the comptroller shall collect a like amount from the city of New
York.

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