
Empire State Restaurant & Tavern Association

Report From The Executive Director...Scott Wexler

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SBA Readies for Restaurant Revitalization Fund Applications - In a meeting with restaurant owners co-hosted by the Association, representatives of the US Small Business Administration (SBA) reported on their efforts to prepare for the launch of applications for the \$28.6B Restaurant Revitalization Fund. This program provides grants to independent restaurant owners for the difference between their revenue in 2020 and 2019 and can be used for expenses from February 15, 2020 – March 11, 2023.

The SBA hopes to begin accepting applications later this month or early in May. They plan to accept applications online, by phone, and through Point-Of-Sale providers to make it as easy as possible for restaurants to apply. The SBA is setting up an online “landing page” – a place with all of the information on the program – with the expectation it will be available before the application process begins. We’ve prepared answers to the frequently asked questions about this program – at least what we know now – and included them for you. We’re actively at work trying to find assistance for our members seeking funding from this program. Stay tuned for updates on our website.

Final State Budget Includes \$1B for Small Business - The State Budget was finalized earlier this month. The highlight of the budget this year is the \$800 million COVID-19 Pandemic Small Business Recovery Grant program that will be administered by the Empire State Development Corporation (ESDC). The grants can be used to cover various business costs including payroll; rent or mortgage payments; payment of local property or school taxes, insurance; utilities; personal protective equipment (PPE) necessary to protect worker and consumer health and safety; and heating, ventilation and air conditioning (HVAC) or other machinery or equipment costs necessary for compliance with COVID-19 health and safety protocols.

The grant program gives priority to microbusinesses, minority and women-owned business enterprises (MWBE), service-disabled veteran-owned businesses, veteran-owned businesses, as well as small businesses that did not qualify for federal assistance or did not receive sufficient federal assistance, as well as socially and economically disadvantaged business owners and businesses located in communities that were economically distressed prior to March 1, 2020. The budget also includes \$25 million for the NY Restaurant Resiliency Grant program as well as \$35 million in tax credits for restaurants in areas impacted by enhanced COVID-19 restrictions. We’ve initiated discussions with ESDC on the details of these programs and how you can access them. We’ll let you know as soon as we receive further guidance.

The budget includes a number of tax increases - an increase in the Article 9A corporate franchise tax rate from 6.5% to 7.25% for taxpayers with taxable income over \$5 million applicable to tax years 2021, 2022 & 2023 and the adoption of temporary high end personal income tax rates and brackets, which imposes three additional tax brackets for tax years 2021 through 2023, inclusive, and then maintains the “temporary” top rate of 8.82% through 2027.

State Legalizes Use of Cannabis But Not Permitted on Licensed Premises - New York has legalized the adult use of cannabis and begun what is expected to be an 18 month or longer process to allow the growth, production, and sale of marijuana for recreational use. The law sets up the Office of Cannabis Management and provides the framework for how the legal marijuana market will operate in New York State.

One of the key provisions of the law is the creation of on-premises consumption locations where people can purchase cannabis and consume it on site. These locations will not be allowed to serve alcohol. The only exception is a private hotel room, however, the law permits hotel operators to ban the consumption of marijuana on their property entirely.

Reports that marijuana can be consumed anywhere tobacco is consumed or that marijuana can be consumed anywhere in public are inaccurate. Cannabis consumption is prohibited anywhere that smoking is prohibited, but the reverse is not the same – you cannot smoke marijuana wherever you can smoke a cigarette. Cannabis consumption is permitted in “public” but your bar or restaurant is not “public” space. The Office of Cannabis Management has created a website (<http://cannabis.ny.gov>) with more information about the new law. Check back often as they roll out their plans.

SLA Weighs In on Split Case Fees - The Association raised objection to split case fees starting in 2017. These split case fees, which started at less than \$1.00 per case when first instituted, are supposed to compensate wholesalers for the additional cost of breaking up a case to sell the bottles individually (not including delivery which is charged separately). But the wholesalers stopped seeking approval from the Authority when they raised the fee some time ago and the SLA apparently didn’t care. The fee that started at under \$1.00 has now grown to \$30 per case or higher in some cases.

After several years of discussions with the Authority and the Legislature, we filed a complaint with the State Liquor Authority against Empire Merchants and Southern Glazer Wine & Spirits last year. Our claim was simple – these wholesalers were charging split case fees substantially higher than allowed by the Authority’s Rules and Regulations. The wholesalers took the position that the regulation in question didn’t matter because a court decision had overturned the law on which the regulation is based and the law was repealed by the Legislature.

The Liquor Authority took nearly eight months to consider our opposing positions and informed us at the end of February that they agreed that the split case fee regulation is valid. However, since the cap hasn’t been enforced in many years, the SLA is contemplating either raising the cap to reflect the current market or eliminating split case fees. They have started discussions (separately) with the wholesalers and retailer associations about how to address this question. Any change in the regulation will take several months to put in place so we’re exploring options for a more-timely solution.