
Empire State Restaurant & Tavern Association

Report From The Executive Director...Scott Wexler

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SLA Reigns In Exorbitant Split Case Fees - After years of work to address outrageous fees charged by liquor wholesalers, the Members of the State Liquor Authority adopted an updated split case fee regulation at their Board Meeting on October 26th that limits split case fees to no more than \$7.39 per case (\$0.87 per bottle for a 12 bottle case). Wholesalers in New York are currently charging as much as \$36 per case (\$3.00 per bottle for a 12 bottle case) to split a case.

This action followed an extensive lobbying campaign the Association led to persuade the Authority that Empire and Southern were charging split case fees far in excess of the amount permitted in the SLA's regulation. They seemed to believe they could charge whatever they want. Previous administrations at the Authority ignored the regulation making it possible for wholesalers to get away with this, but Chairman Bradley took our concerns seriously. He convened a meeting with representatives of the retail and wholesale trade to try to sort the issue out.

Unfortunately, Empire and Southern really do think they can do what they want - they said so in meetings over more than two years and in their comments throughout this process. The Liquor Authority never questioned the concept of split case fees. They've been allowed since 1969 in order to compensate wholesalers for the cost of splitting a case. The fee was last raised by the SLA in 1981, but the wholesalers have increased them regularly over the years without the Liquor Authority's permission. By the time the Authority got involved, wholesalers were charging nearly 20 times the approved fee.

Rather than engaging in a substantive conversation about the cost of splitting a case and adjusting the regulation to account for the change, Empire and Southern lawyered up. Without the cooperation of the wholesalers in adjusting the split case fee, the Authority decided to adjust the existing fee by the increase in the Consumer Price Index (CPI) over the years since the previous adjustment (which was also done in 1981). Applying the CPI to the existing fee of \$1.92 per case resulted in the new fee of \$7.39 per case. Of note, the new \$7.39 split case fee is a maximum charge - wholesalers are permitted to charge less or to charge nothing at all. Currently, the split case fee is mandatory making it an attractive place for the wholesalers to pad their profits.

The New York City Hospitality Alliance and the New York State Restaurant Association joined us in advocating for this change. There were more than fifty letters of support for the formal regulatory proposal. There were a handful of opposing comments, including Empire Merchants and the New York State Beer Wholesalers' Association.

Now that the revised regulation has been approved, it will take effect upon filing with the Secretary of State, which will likely take 30 – 45 days. There's a good chance one or more wholesalers will bring an action against the Liquor Authority's revised regulation to strike it down, so keep alert for any updates on the status of this revised regulation.

Minimum Wage Rates Set to Increase at End of Year - The state's minimum wage rate varies depending on the region, and is increasing every year until it reaches \$15.00 per hour. New York City, Long Island, and Westchester have reached the \$15.00/hour minimum wage level – and a cash wage for tipped foodservice workers of \$10 per hour. The minimum wage rate in the rest of the state will increase from \$13.20 per hour to \$14.20 per hour. The cash wage for tipped foodservice workers will increase from \$8.80 per hour to \$9.45 per hour. These increases take effect on December 31, 2022 (not January 1). Employees working on New Year's Eve are required to be paid the new rates for the entire day.

New Year's Eve All Night Permits - Under New York State law, All Night Permits allowing establishments to stay open until 8:00 am can only be issued when New Year's Day falls on a weekday. Since January 1, 2023 does not fall on a weekday, All Night Permits cannot be issued by the Liquor Authority. Licensed establishments will be required to adhere to the approved closing hour printed on their license or the closing hour in the County in which they are located. This comes up every few years and the State Legislature chooses not to fix this problem. It's a vestige of the old Blue Laws and was designed to make sure all night celebrating didn't keep people out of church.

COVID-19 Capital Costs Tax Credit Program - Governor Kathy Hochul announced applications are now being accepted from small businesses that have successfully completed the pre-screening process to become certified for the COVID-19 Capital Costs Tax Credit Program, which supports companies that made investments to comply with emergency orders and regulations or to increase public safety in response to COVID-19.

Eligible COVID-19-related costs include, but are not limited to:

- Supplies to disinfect or protect against COVID-19 transmission
- Costs associated with expanding, or defining space to accommodate social distancing
- HVAC equipment
- Expenses related to increased outdoor activity and outdoor space expansions
- Machinery and equipment to facilitate contactless sales

Tax credits will cover 50 percent of eligible costs, up to a \$50,000, for a maximum tax credit award of \$25,000. More information is available from Empire State Development at www.esd.ny.gov/covid-19-capital-costs-tax-credit.