

4801

2013-2014 Regular Sessions

I N A S S E M B L Y

February 11, 2013

Introduced by M. of A. PERRY -- read once and referred to the Committee
on Ways and Means

AN ACT to amend the tax law, in relation to requiring vendors to establish mandatory escrow accounts for sales taxes collected, establish the mechanism for those accounts and provide the state with the authority to have immediate access to their collected taxes; and to repeal certain provisions of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph 1 of subdivision (a) of section 1132 of the tax
2 law, as amended by chapter 255 of the laws of 1998, is amended to read
3 as follows:
4 (1) (I) Every person required to collect the tax shall collect the tax
5 from the customer when collecting the price, amusement charge or rent to
6 which it applies. If the customer is given any sales slip, invoice,
7 receipt or other statement or memorandum of the price, amusement charge
8 or rent paid or payable, the tax shall be stated, charged and shown
9 separately on the first of such documents given to him. The tax shall be
10 paid to the person required to collect it as trustee for and on account
11 of the state.
12 (II) EVERY PERSON REQUIRED TO COLLECT THE TAX SHALL DEPOSIT SUCH TAX
13 UPON COLLECTION INTO A SEPARATE ACCOUNT, IN TRUST FOR AND PAYABLE TO THE
14 COMMISSIONER, AS PROVIDED BY SUBPARAGRAPHS (III) AND (IV) OF THIS PARA-
15 GRAPH AT A TIME AND IN A MANNER AS DETERMINED BY THE COMMISSIONER. ALL
16 AMOUNTS DEPOSITED IN SUCH ACCOUNT SHALL BE KEPT IN SUCH ACCOUNT UNTIL
17 PAID OVER TO THE COMMISSIONER.
18 (III) IF THE PERSON REQUIRED TO COLLECT THE TAX DOES NOT ACCEPT
19 PAYMENTS FROM CUSTOMERS THROUGH CREDIT OR DEBIT CARD BANKING TRANS-
20 ACTIONS, THE PERSON REQUIRED TO COLLECT THE TAX SHALL ESTABLISH AN
21 ACCOUNT IN ANY BANKING INSTITUTION APPROVED BY THE COMMISSIONER AND
22 LOCATED IN THIS STATE THE DEPOSITS IN WHICH ARE INSURED BY AN AGENCY OF

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 THE FEDERAL GOVERNMENT. THE ACCOUNT SHALL BE HELD IN TRUST FOR AND PAYA-
2 BLE TO THE COMMISSIONER AND THE AMOUNT OF SUCH TAX COLLECTED SHALL BE
3 KEPT IN SUCH ACCOUNT UNTIL PAYMENT OVER TO THE COMMISSIONER. THE PERSON
4 REQUIRED TO COLLECT THE TAX SHALL AUTHORIZE THE COMMISSIONER TO DEBIT
5 SUCH ACCOUNT IN A MANNER DETERMINED BY THE COMMISSIONER.

6 (IV) IF THE PERSON REQUIRED TO COLLECT THE TAX ACCEPTS PAYMENTS FROM
7 CUSTOMERS USING CREDIT OR DEBIT CARDS, THE PERSON REQUIRED TO COLLECT
8 THE TAX SHALL ESTABLISH A SEPARATE ESCROW ACCOUNT THROUGH AN APPROVED
9 CREDIT CARD PROCESSING COMPANY (ACCPC) AND NOT THROUGH AN ESCROW ACCOUNT
10 OF THE TYPE DESCRIBED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH. THE
11 COMMISSIONER SHALL BY REGULATION ESTABLISH STANDARDS FOR APPROVING CRED-
12 IT CARD PROCESSING COMPANIES FOR OPENING AND ESTABLISHING ACCPC ESCROW
13 ACCOUNTS FOR PERSONS REQUIRED TO PAY THE TAX. PERSONS COLLECTING THE TAX
14 AND REQUIRED TO USE ACCPC ESCROW ACCOUNTS UNDER THIS SUBPARAGRAPH SHALL
15 MAKE DAILY DEPOSITS INTO THEIR ACCPC ESCROW ACCOUNT THAT ARE AN ESTIMATE
16 OF THE AMOUNT OF TAXES THEY COLLECTED THAT DAY FOR ALL OF THEIR TAXABLE
17 SALES, BOTH THOSE PAID IN CASH AND THOSE PAID BY CREDIT OR DEBIT CARD.
18 TO EFFECTUATE THE DEPOSIT, THE ACCPC SHALL DEDUCT THE ESTIMATED SALES
19 TAXES OWED FROM THE DAY'S CREDIT AND DEBIT CARD TRANSACTIONS BEFORE
20 PAYING OVER THE RECEIPTS FROM SUCH TRANSACTIONS TO THE PERSON REQUIRED
21 TO COLLECT THE TAX. THE AMOUNT DEDUCTED SHALL BE DETERMINED BY MULTIPLY-
22 ING THE DAY'S CREDIT AND DEBIT CARD SALES BY AN ALGORITHMIC RATE WHICH
23 SHALL BE DETERMINED WHEN THE ACCPC ESCROW ACCOUNT IS ESTABLISHED AND AT
24 LEAST ONCE A YEAR THEREAFTER. THE ALGORITHMIC RATE SHALL REPRESENT AN
25 ESTIMATED CALCULATION OF THE AMOUNT OF TAXES COLLECTED AND OWED EACH DAY
26 FOR BOTH CASH AND CREDIT AND DEBIT CARD SALES. THE CALCULATION OF THE
27 PERSON'S ALGORITHMIC RATE SHALL BE CERTIFIED BY A CERTIFIED PUBLIC
28 ACCOUNTANT LICENSED IN THIS STATE, AN ATTORNEY LICENSED IN THIS STATE OR
29 AN ENROLLED AGENT OR REGISTERED TAX RETURN PREPARER WHO HAS BEEN AUTHOR-
30 IZED BY THE DEPARTMENT TO CERTIFY THE ALGORITHMIC RATE, AS AN ACCURATE
31 ESTIMATE OF THE RATIO OF THE PERSON'S CASH TO CREDIT TRANSACTIONS AND
32 TAXABLE TO NON-TAXABLE SALES. THE COMMISSIONER SHALL PROMULGATE REGU-
33 LATIONS DEFINING HOW THE ALGORITHMIC RATE SHALL BE CALCULATED, SETTING
34 STANDARDS FOR THAT CALCULATION, AND IDENTIFYING THE PROCESS BY WHICH
35 LICENSED OR REGISTERED PROFESSIONALS MAY BE APPROVED OR DISAPPROVED BY
36 THE DEPARTMENT TO CERTIFY THE ACCURACY OF THE ALGORITHMIC RATE. AMOUNTS
37 DEPOSITED IN AN ACCPC ESCROW ACCOUNT SHALL BE HELD IN TRUST FOR AND
38 PAYABLE TO THE COMMISSIONER AND SHALL BE KEPT IN SUCH ACCOUNTS UNTIL
39 PAYMENT OVER TO THE COMMISSIONER. PERSONS COLLECTING THE TAX AND
40 REQUIRED TO USE AN ACCPC ESCROW ACCOUNT UNDER THIS SUBPARAGRAPH SHALL,
41 UPON ESTABLISHING THE ACCOUNT, AUTHORIZE THE COMMISSIONER TO DEBIT SUCH
42 ACCOUNT IN A MANNER AND FREQUENCY TO BE DETERMINED BY THE COMMISSIONER.

43 S 2. Paragraph 1 of subdivision (a) of section 1134 of the tax law, as
44 amended by section 160 of part A of chapter 389 of the laws of 1997,
45 subparagraph (iii) as amended by section 44 of part K of chapter 61 of
46 the laws of 2011, is amended to read as follows:

47 (1) (i) Every person required to collect any tax imposed by this arti-
48 cle, other than a person who is a vendor solely by reason of clause (D),
49 (E) or (F) of subparagraph (i) of paragraph eight of subdivision (b) of
50 section eleven hundred one of this article, commencing business or open-
51 ing a new place of business, (ii) every person purchasing or selling
52 tangible personal property for resale commencing business or opening a
53 new place of business, (iii) every person selling petroleum products
54 including persons who or which are not distributors, (iv) every person
55 described in this subdivision who takes possession of or pays for busi-
56 ness assets under circumstances requiring notification by such person to

1 the commissioner pursuant to subdivision (c) of section eleven hundred
2 forty-one of this chapter, (v) every person selling cigarettes including
3 persons who or which are not agents, and (vi) every person described in
4 subparagraph (i), (ii), (iii), (iv) or (v) of this paragraph or every
5 person who is a vendor solely by reason of clause (D), (E) or (F) of
6 subparagraph (i) of paragraph eight of subdivision (b) of section eleven
7 hundred one of this article who or which has had its certificate of
8 authority revoked under paragraph four of this subdivision, shall file
9 with the commissioner a certificate of registration, in a form
10 prescribed by the commissioner, at least twenty days prior to commencing
11 business or opening a new place of business or such purchasing, selling
12 or taking of possession or payment, whichever comes first. Every person
13 who is a vendor solely by reason of clause (D) of subparagraph (i) of
14 paragraph eight of subdivision (b) of section eleven hundred one of this
15 article shall file with the commissioner a certificate of registration,
16 in a form prescribed by such commissioner, within thirty days after the
17 day on which the cumulative total number of occasions that such person
18 came into the state to deliver property or services, for the immediately
19 preceding four quarterly periods ending on the last day of February,
20 May, August and November, exceeds twelve. Every person who is a vendor
21 solely by reason of clause (E) of subparagraph (i) of paragraph eight of
22 subdivision (b) of section eleven hundred one of this article shall file
23 with the commissioner a certificate of registration, in a form
24 prescribed by such commissioner, within thirty days after the day on
25 which the cumulative total, for the immediately preceding four quarterly
26 periods ending on the last day of February, May, August and November, of
27 such person's gross receipts from sales of property delivered in this
28 state exceeds three hundred thousand dollars and number of such sales
29 exceeds one hundred. Every person who is a vendor solely by reason of
30 clause (F) of subparagraph (i) of paragraph eight of subdivision (b) of
31 section eleven hundred one of this article shall file with the commis-
32 sioner a certificate of registration, in a form prescribed by such
33 commissioner, within thirty days after the day on which tangible
34 personal property in which such person retains an ownership interest is
35 brought into this state by the person to whom such property is sold,
36 where the person to whom such property is sold becomes or is a resident
37 or uses such property in any manner in carrying on in this state any
38 employment, trade, business or profession. A PERSON REQUIRED TO FILE A
39 CERTIFICATE OF REGISTRATION AND WHO IS REQUIRED TO COLLECT THE TAX AS
40 REQUIRED BY SUBPARAGRAPH (I) OF PARAGRAPH ONE OF SUBDIVISION (A) OF
41 SECTION ELEVEN HUNDRED THIRTY-TWO OF THIS PART SHALL, AT THE TIME SUCH
42 CERTIFICATE IS FILED, ESTABLISH AN ESCROW ACCOUNT AS REQUIRED BY SUBPAR-
43 AGRAPHS (II), (III) AND (IV) OF PARAGRAPH ONE OF SUBDIVISION (A) OF
44 SECTION ELEVEN HUNDRED THIRTY-TWO OF THIS PART. PERSONS REQUIRED TO
45 ESTABLISH AN ESCROW ACCOUNT THROUGH AN APPROVED CREDIT CARD PROCESSING
46 COMPANY PURSUANT TO SUBPARAGRAPH (IV) OF PARAGRAPH ONE OF SUBDIVISION
47 (A) OF SECTION ELEVEN HUNDRED THIRTY-TWO OF THIS PART SHALL ESTABLISH AN
48 ALGORITHMIC FORMULA FOR PAYMENT OF THE ESTIMATED COLLECTED SALES TAX AND
49 SHALL FILE, WITHIN THREE MONTHS OF FILING THEIR CERTIFICATE OF REGISTRA-
50 TION A CERTIFICATION FROM A LICENSED, REGISTERED OR APPROVED PROFES-
51 SIONAL OF THE TYPE SPECIFIED IN SUBPARAGRAPH (IV) OF PARAGRAPH ONE OF
52 SUBDIVISION (A) OF SECTION ELEVEN HUNDRED THIRTY-TWO OF THIS PART CERTI-
53 FYING TO THE ACCURACY OF THEIR METHOD OF ESTIMATING THEIR DAILY
54 COLLECTION OF SALES TAXES AS PROVIDED IN SUBPARAGRAPH (IV) OF PARAGRAPH
55 ONE OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED THIRTY-TWO OF THIS
56 PART. Information with respect to the notice requirements of a purchas-

er, transferee or assignee and such person's liability pursuant to the provisions of subdivision (c) of section eleven hundred forty-one of this chapter shall be included in or accompany the certificate of registration form furnished the applicant. The commissioner shall also include with such information furnished to each applicant general information about the tax imposed under this article including information on records to be kept, returns and payments, notification requirements and forms. Such certificate of registration may be amended in accordance with rules promulgated by the commissioner.

S 3. Subparagraph (A) of paragraph 4 of subdivision (a) of section 1134 of the tax law, as amended by section 21-a of part U of chapter 61 of the laws of 2011, is amended to read as follows:

(A) Where a person who holds a certificate of authority (i) willfully fails to file a report or return required by this article, (ii) willfully files, causes to be filed, gives or causes to be given a report, return, certificate or affidavit required under this article which is false, (iii) willfully fails to comply with the provisions of paragraph two or three of subdivision (e) of section eleven hundred thirty-seven of this article, (iv) willfully fails to prepay, collect, truthfully account for or pay over any tax imposed under this article or pursuant to the authority of article twenty-nine of this chapter, (v) fails to obtain a bond pursuant to paragraph two of subdivision (e) of section eleven hundred thirty-seven of this part, or WILLFULLY fails to [comply with a notice issued by the commissioner pursuant to paragraph three of such subdivision] ESTABLISH OR PROPERLY FUND AN ESCROW ACCOUNT AS REQUIRED BY PARAGRAPH ONE OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED THIRTY-TWO OF THIS PART OR OTHERWISE WILLFULLY FAILS TO COMPLY WITH THE REQUIREMENTS OF THAT SECTION, or (vi) has been convicted of a crime provided for in this chapter, the commissioner may revoke or suspend such certificate of authority and all duplicates thereof. Provided, however, that the commissioner may revoke or suspend a certificate of authority based on the grounds set forth in clause (vi) of this subparagraph only where the conviction referred to occurred not more than one year prior to the date of revocation or suspension.

S 4. Subparagraph (A) of paragraph 4 of subdivision (a) of section 1134 of the tax law, as amended by chapter 2 of the laws of 1995, is amended to read as follows:

(A) Where a person who holds a certificate of authority (i) willfully fails to file a report or return required by this article, (ii) willfully files, causes to be filed, gives or causes to be given a report, return, certificate or affidavit required under this article which is false, (iii) willfully fails to comply with the provisions of paragraph two or three of subdivision (e) of section eleven hundred thirty-seven of this article, (iv) willfully fails to prepay, collect, truthfully account for or pay over any tax imposed under this article or pursuant to the authority of article twenty-nine of this chapter, [or] (v) WILLFULLY FAILS TO ESTABLISH OR PROPERLY FUND AN ESCROW ACCOUNT AS REQUIRED BY PARAGRAPH ONE OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED THIRTY-TWO OF THIS PART OR OTHERWISE WILLFULLY FAILS TO COMPLY WITH THE REQUIREMENTS OF THAT SECTION, OR (VI) has been convicted of a crime provided for in this chapter, the commissioner may revoke or suspend such certificate of authority and all duplicates thereof. Provided, however, that the commissioner may revoke or suspend a certificate of authority based on the grounds set forth in clause (v) of this subparagraph only where the conviction referred to occurred not more than one year prior to the date of revocation or suspension.

1 S 5. Paragraph 1 of subdivision (a) of section 1136 of the tax law is
2 REPEALED.

3 S 6. Subdivision (c) of section 1136 of the tax law, as added by chap-
4 ter 93 of the laws of 1965, is amended to read as follows:

5 (c) The [tax commission] COMMISSIONER may permit or require returns to
6 be made covering other periods and upon such dates as it may specify. If
7 the tax commission deems it necessary in order to insure the payment of
8 the taxes imposed by this article, it may require returns to be made for
9 shorter periods than those prescribed pursuant to the foregoing subdivi-
10 sions of this section, and upon such dates as it may specify. IF THE
11 COMMISSIONER DETERMINES THAT THE PERSON REQUIRED TO COLLECT AND PAY THE
12 TAX HAS ESTABLISHED AN ESCROW ACCOUNT AS PROVIDED BY SUBPARAGRAPHS (II),
13 (III) AND (IV) OF PARAGRAPH ONE OF SUBDIVISION (A) OF SECTION ELEVEN
14 HUNDRED THIRTY-TWO OF THIS PART AND THAT THE AMOUNT DEPOSITED IN THAT
15 ESCROW ACCOUNT HAS EQUALED OR EXCEEDED NINETY-FIVE PERCENT OF THE TAXES
16 OWED FOR FOUR CONSECUTIVE QUARTERS, THE COMMISSIONER SHALL PERMIT THE
17 PERSON TO FILE AN ANNUAL RETURN IN LIEU OF THE RETURNS REQUIRED BY
18 SUBDIVISION (A) OF THIS SECTION. THE ANNUAL RETURN SHALL RECONCILE THE
19 AMOUNTS WITHHELD AND PAID THROUGH THE ESCROW ACCOUNT WITH THE PERSON'S
20 ANNUAL TAXABLE SALES AND THE RETURN SHALL BE CERTIFIED AS ACCURATE BY A
21 LICENSED, REGISTERED OR APPROVED PROFESSIONAL OF THE TYPE IDENTIFIED IN
22 SUBPARAGRAPH (IV) OF PARAGRAPH ONE OF SUBDIVISION (A) OF SECTION ELEVEN
23 HUNDRED THIRTY-TWO OF THIS PART AND SHALL INCLUDE A CERTIFICATION AS
24 PRESCRIBED BY THE COMMISSIONER. THE FORM OF THE ANNUAL RETURN SHALL BE
25 PRESCRIBED BY THE COMMISSIONER AND SHALL CONTAIN SUCH INFORMATION AS THE
26 COMMISSIONER MAY DEEM NECESSARY FOR THE PROPER ADMINISTRATION OF THIS
27 ARTICLE. THE ANNUAL RETURN SHALL BE FILED ON OR BEFORE JANUARY
28 THIRTY-FIRST OF THE YEAR FOLLOWING THE CALENDAR YEAR COVERED BY THE
29 RETURN.

30 S 7. The opening paragraphs of subdivisions (a) and (b) and subdivi-
31 sion (c) of section 1137 of the tax law, the opening paragraphs of
32 subdivisions (a) and (b) as amended by section 2-f of part M-1 of chap-
33 ter 109 of the laws of 2006 and subdivision (c) as amended by chapter
34 155 of the laws of 1982, are amended to read as follows:

35 Every person required to file a return under the preceding section
36 whose total taxable receipts (as "taxable receipts" are described in
37 subdivision (a) of such section), amusement charges and rents are
38 subject to the tax imposed pursuant to subdivisions (a), (c), (d), (e)
39 and (f) of section eleven hundred five of this article shall, at the
40 time of filing such return, pay to the commissioner the total of the
41 following, LESS ANY AMOUNTS ALREADY DEPOSITED INTO THE PERSON'S ESCROW
42 ACCOUNT AND COLLECTED BY OR AVAILABLE FOR COLLECTION BY THE
43 COMMISSIONER:

44 Every person required to file a return under the preceding section and
45 not subject to the provisions of subdivision (a) of this section shall,
46 at the time of filing such return, pay to the commissioner the taxes
47 imposed by this article and pursuant to article twenty-nine of this
48 chapter as well as all other moneys collected by such person acting or
49 purporting to act under the provisions of this article or of any local
50 law, ordinance or resolution adopted pursuant to such article twenty-
51 nine; provided, however, that if the commissioner shall have fixed an
52 effective rate of tax applicable to any or all of his or her receipts,
53 amusement charges and rents as provided in subdivision (d) of this
54 section, any such person may elect, with reference to such receipts,
55 amusement charges and rents and subject to approval by the commissioner
56 and to such regulations as the commissioner may promulgate, to pay to

1 the commissioner at the time of filing his or her return the total of
2 the following, LESS ANY AMOUNTS ALREADY DEPOSITED INTO THE PERSON'S
3 ESCROW ACCOUNT AND COLLECTED BY OR AVAILABLE FOR COLLECTION BY THE
4 COMMISSIONER:

5 (c) [(1)] The provisions of subdivisions (a) and (b) of this section
6 shall not be applicable to[: (i)] a person filing a short-form, part-
7 quarterly return as defined in paragraph [(ii)] (2) of subdivision (a)
8 of section eleven hundred thirty-six hereof who, at the time of such
9 filing shall pay to the tax commission one-third of the total state and
10 local sales and compensating use taxes payable by the person to the tax
11 commission in the comparable quarter of the immediately preceding year
12 under this article and as taxes imposed pursuant to the authority of
13 article twenty-nine with respect to all receipts, amusement charges and
14 rents[, or (ii) a person filing a March estimated return as described in
15 paragraph (ii) of subdivision (c) of section eleven hundred thirty-sev-
16 en-A hereof who, at the time of such filing shall pay to the tax commis-
17 sion one-third of the sales and compensating use taxes payable by such
18 person to the tax commission in the comparable quarter of the immediate-
19 ly preceding year under this article. Notwithstanding the preceding
20 sentence, for the purposes of subparagraph (ii) of this paragraph, the
21 sales and compensating use taxes payable in the comparable quarter of
22 the immediately preceding year shall not include taxes imposed by
23 section eleven hundred seven or eleven hundred eight of this article or
24 pursuant to the authority of article twenty-nine of this chapter.

25 (2) The provisions of subdivisions (a) and (b) of this section, howev-
26 er, shall apply to a person filing a March estimated return as described
27 in paragraph (i) of subdivision (c) of section eleven hundred thirty-
28 seven-A hereof who, at the time of such filing shall pay to the tax
29 commission the sales and compensating use taxes, that are estimated to
30 be payable by such person for such month of March. Notwithstanding the
31 preceding sentence, for the purposes of this paragraph, the sales and
32 compensating use taxes that are estimated to be payable by such person
33 for such month of March shall not include taxes imposed by section elev-
34 en hundred seven or eleven hundred eight of this article or pursuant to
35 the authority of article twenty-nine of this chapter].

36 S 8. Paragraph 3 of subdivision (e) of section 1137 of the tax law is
37 REPEALED.

38 S 9. Paragraphs 1 and 2 of subdivision (f) of section 1137 of the tax
39 law, paragraph 1 as amended by section 1 of part X of chapter 57 of the
40 laws of 2010 and paragraph 2 as amended by section 1 of part H of chap-
41 ter 62 of the laws of 2006, are amended to read as follows:

42 (1) Except as otherwise provided in this subdivision, a person
43 required to collect tax who files a return required to be filed under
44 section eleven hundred thirty-six of this part for a quarterly or longer
45 period shall be allowed a credit against the taxes and fees required to
46 be reported on, and paid with, such return, in an amount as determined
47 in paragraph two of this subdivision, but only where such person files
48 the return on or before the filing due date and pays or pays over with
49 such return the total amount shown on such return (determined with
50 regard to this subdivision) AND FURTHER ONLY WHERE THE AMOUNTS DEPOSITED
51 BY THE PERSON INTO THE PERSON'S ESCROW ACCOUNT DURING THE PERIOD COVERED
52 BY THE FILING ARE EQUAL TO AT LEAST NINETY-FIVE PERCENT OF THE TOTAL TAX
53 DUE; provided, however, that no credit pursuant to this subdivision
54 shall be allowed for any person who files or is required to file a
55 return pursuant to paragraph two of subdivision (a) of section eleven

1 hundred thirty-six of this part or any person who pays or is required to
2 pay tax pursuant to section ten of this chapter.

3 (2) The amount of the credit authorized by paragraph one of this
4 subdivision shall be five percent of the amount of taxes and fees (but
5 not including any penalty or interest thereon) required to be reported
6 on, and paid or paid over with, the return but only if the return is
7 filed on or before the filing due date, but not more than [two] FIVE
8 hundred dollars, for each quarterly or longer period[, except that, with
9 respect to returns required to be filed for quarterly or longer periods
10 ending on or before the last day of February, two thousand seven, the
11 amount of the credit shall be not more than one hundred seventy-five
12 dollars for each such quarterly or longer period].

13 S 10. Section 1137-A of the tax law is REPEALED.

14 S 11. Section 1145 of the tax law is amended by adding a new subdivi-
15 sion (l) to read as follows:

16 (L)(1) IN ADDITION TO ANY OTHER PENALTY PROVIDED BY THIS ARTICLE OR
17 ANY OTHER LAW, ANY PERSON FAILING TO ESTABLISH OR PROPERLY FUND AN
18 ESCROW ACCOUNT REQUIRED BY SUBPARAGRAPH (I), (II), (III) OR (IV) OF
19 PARAGRAPH ONE OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED THIRTY-TWO OF
20 THIS PART SHALL BE SUBJECT TO AN ADDITIONAL PENALTY OF TEN PERCENT OF
21 THE AMOUNT OF TAX DUE IF SUCH FAILURE IS FOR NOT MORE THAN ONE MONTH,
22 WITH AN ADDITIONAL ONE PERCENT FOR EACH ADDITIONAL MONTH OR FRACTION
23 THEREOF DURING WHICH SUCH FAILURE CONTINUES, NOT EXCEEDING THIRTY
24 PERCENT IN THE AGGREGATE.

25 (2) IF THE AMOUNT PAID BY THE PERSON REQUIRED TO COLLECT THE TAX INTO
26 THEIR ESCROW ACCOUNT IS LESS THAN NINETY PERCENT THAN THE AMOUNT OF
27 TAXES OWED, AS SHOWN IN THE PERSON'S QUARTERLY, PART-QUARTERLY OR ANNUAL
28 RETURN, THE PERSON SHALL OWE A PENALTY EQUAL TO FIFTY PERCENT OF THE
29 DELINQUENCY. IN ADDITION, IF THE ESCROW ACCOUNT MAINTAINED BY THE PERSON
30 IS AN ACCPC ESCROW ACCOUNT, THE COMMISSIONER MAY ISSUE A NOTICE REQUIR-
31 ING THE PERSON TO INCREASE THE PERSON'S ALGORITHMIC RATE BY AN AMOUNT
32 NOT EXCEEDING TWICE THE AMOUNT OF THE DEFICIENCY AND THIS INCREASED
33 ALGORITHMIC RATE SHALL CONTINUE AS LONG AS THE COMMISSIONER DETERMINES
34 THAT SUCH INCREASED RATE IS NECESSARY.

35 S 12. This act shall take effect September 1, 2012; provided that the
36 amendments to subparagraph (A) of paragraph 4 of subdivision (a) of
37 section 1134 of the tax law made by section three of this act shall be
38 subject to the expiration and reversion of such subparagraph pursuant to
39 section 23 of part U of chapter 61 of the laws of 2011, as amended, when
40 upon such date the provisions of section four of this act shall take
41 effect; provided further that the commissioner of taxation and finance
42 shall promulgate all rules and regulations necessary to implement the
43 provisions of this act on or before its effective date.