

STATE OF NEW YORK

6078

2019-2020 Regular Sessions

IN ASSEMBLY

February 27, 2019

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

AN ACT to amend the tax law, in relation to adding a surcharge on delivery transactions within the city of New York

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

Section 1. The tax law is amended by adding a new article 29-D to read as follows:

ARTICLE 29-D DELIVERY SURCHARGE

Section 1299-M. Definitions.

1299-N. Imposition of tax.

1299-O. Liability for surcharge.

1299-P. Registration.

1299-Q. Returns and payment of surcharge.

1299-R. Records to be kept.

1299-S. Secrecy of returns and reports.

1299-T. Practice and procedure.

1299-U. Deposit and disposition of revenue.

1299-V. Cooperation by regulatory agencies.

§ 1299-M. Definitions. (a) "Person" means an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals and any other form of unincorporated enterprise owned or conducted by two or more persons.

(b) "Delivery transaction" means a transaction that results in the delivery of any item purchased to the purchaser.

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

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1 (c) "Purchaser" means the person receiving the item in the delivery
2 transaction.

3 § 1299-N. Imposition of tax. In addition to any other tax or assess-
4 ment imposed by this chapter or other law, there is hereby imposed,
5 beginning on January first, two thousand twenty-one, a surcharge on all
6 delivery transactions of three dollars for each delivery transaction
7 where the delivery is made within the city of New York.

8 § 1299-O. Liability for surcharge. (a) Notwithstanding any provision
9 of law to the contrary, any person that sells by any means any item to
10 be delivered within the city of New York is subject to a surcharge
11 imposed by this article shall be liable for the surcharge imposed by
12 this article.

13 (b) Notwithstanding any law to the contrary, the surcharge imposed by
14 this article must be passed along to the purchaser and separately stated
15 on any receipt that is provided to such passenger. The passing along of
16 such surcharge shall not be construed by any court or administrative
17 body as the imposition of the surcharge on the person or entity that
18 pays for the delivery transaction.

19 § 1299-P. Registration. (a) Every person liable for the surcharge
20 imposed by this article shall file with the commissioner a properly
21 completed application for a certificate of registration, in a form
22 prescribed by the commissioner. Such application shall be accompanied by
23 a fee of one dollar and fifty cents, and shall set forth the name and
24 address of the registrant, and any other information that the commis-
25 sioner may require. Notwithstanding the foregoing, any person liable for
26 a surcharge imposed by this article that will incur such liability no
27 more than one time in any single calendar month shall not be subject to
28 the provisions of this paragraph.

29 (b) Except as otherwise provided in this section, the commissioner
30 shall issue a certificate of registration to each person that applies
31 for one for a specified term of not less than three years. Any certif-
32 icate of registration referred to in this paragraph shall be subject to
33 renewal in accordance with rules promulgated by the commissioner, and
34 upon the payment of a fee of one dollar fifty cents. Whether or not such
35 certificate of registration is issued for a specified term, it shall be
36 subject to suspension or revocation as provided for in this section.
37 Each certificate shall state the registrant and the registrant's taxpay-
38 er ID number it is applicable to. Certificates of registration issued
39 pursuant to this article shall be non-assignable and non-transferable,
40 and shall be surrendered to the commissioner immediately upon the regis-
41 trant's ceasing to do business at the address provided in its applica-
42 tion, unless the registrant amends its certificate of registration in
43 accordance with rules promulgated by the commissioner. All registrants
44 must notify the commissioner of changes to any of the information stated
45 on their certificate of registration, including vehicle changes, if any,
46 on a calendar quarterly basis, and shall amend their certificates of
47 registration accordingly.

48 (c) (1) The commissioner may refuse to issue a certificate of regis-
49 tration to a person, or may suspend or revoke a certificate of registra-
50 tion that was issued to a person, pursuant to this section upon finding
51 that: (i) such person failed to pay any monies that are finally deter-
52 mined to be due for any tax or imposition that is administered by the
53 commissioner; (ii) such person failed to file any report or return that
54 is due from it under this chapter; (iii) such person willfully filed a
55 false report, return or other document due under this chapter; (iv) such
56 person willfully violated any provisions of this article, or any rule or

1 regulation of the commissioner promulgated under this article; or (v) a
2 certificate of registration issued pursuant to this section to such
3 person, or to any business or entity under control of such person, or
4 that is subject to substantially the same ownership, direction or
5 control of such person, that has been revoked or suspended within one
6 year from the date on which a certificate of registration is filed.

7 (2) A notice of proposed revocation, suspension or refusal to issue
8 shall be given to the person that applies for a certificate of registra-
9 tion pursuant to this section in the manner prescribed for a notice of
10 deficiency in subsection (a) of section one thousand eighty-one of this
11 chapter, and except as otherwise provided herein, all the provisions of
12 article twenty-seven of this chapter applicable to a notice of deficien-
13 cy shall apply to a notice issued pursuant to this paragraph, insofar as
14 such provisions can be made applicable to such notice, and with such
15 modifications as may be necessary in order to adapt the language of such
16 provisions to the notice authorized by this paragraph. All notices of
17 proposed revocation, suspension or refusal to issue shall contain a
18 statement advising the person to whom it is issued that the suspension,
19 revocation or refusal to issue may be challenged through a hearing proc-
20 ess and that the petition for such challenge must be filed with the
21 division of tax appeals within ninety days after the giving of such
22 notice.

23 (3) In the case of a proposed revocation or suspension, notice of
24 such must be given to a person within three years from the date of the
25 act or omission described in paragraph one of this subdivision, except
26 that in the case of acts involving falsity or fraud, such notice may be
27 issued at any time.

28 (4) In any of the foregoing instances where the commissioner may
29 suspend or revoke or refuse to issue a certificate of registration, the
30 commissioner may condition the retention or issuance of a certificate of
31 registration upon the filing of a bond or the deposit of tax in the
32 manner provided in paragraph two or three of subdivision (e) of section
33 eleven hundred thirty-seven of this chapter.

34 (d) If the commissioner considers it necessary for the proper adminis-
35 tration of the surcharge imposed by this article, he or she may require
36 every person who holds a certificate of registration issued pursuant to
37 this section to apply for a new certificate of registration in such form
38 and at such time as the commissioner may prescribe, and to surrender
39 each previously issued certificate of registration. The commissioner may
40 require such filing and such surrender not more often than once every
41 three years. Upon the filing of an application for a new certificate of
42 registration and the surrender of all previous such certificates, the
43 commissioner shall issue, within such time as the commissioner may
44 prescribe, a new certificate of registration, without charge, to each
45 registrant.

46 § 1299-Q. Returns and payment of surcharge. (a) Every person liable
47 for the surcharge imposed by this article shall file a return with the
48 commissioner on a monthly basis. Each return shall show the number of
49 delivery transactions completed subject to the surcharge imposed by this
50 article in the month for which the return is filed, along with such
51 other information as the commissioner may require. The returns required
52 by this section shall be filed within twenty days after the end of the
53 month covered thereby. If the commissioner deems it necessary to ensure
54 the payment of the surcharge imposed by this article, he or she may
55 require returns to be made for shorter periods than prescribed by the
56 foregoing provisions of this section, and upon such dates as may be

1 specified. The form of returns shall be prescribed by the commissioner
2 and shall contain such information as the commissioner may deem neces-
3 sary for the proper administration of this article. The commissioner may
4 require that returns be filed electronically.

5 (b) Every person liable for the surcharge imposed by this article
6 shall, at the time of filing such return, pay to the commissioner the
7 total amount of all surcharges due under this article. Such amount shall
8 be due and payable on the date specified for the filing of the return
9 for such period, without regard to whether a return is filed, or whether
10 the return that is filed correctly shows the correct number of delivery
11 transactions are subject to the surcharge, or the correct surcharge
12 amount due thereon. The commissioner may require that the surcharge be
13 paid electronically.

14 (c) In addition to any other penalty or interest provided for under
15 this article or other law, and unless it is shown that such failure is
16 due to reasonable cause and not due to willful neglect, any person
17 liable for the surcharge imposed by this article that fails to pay such
18 surcharge when due shall be liable for a penalty in an amount equal to
19 two hundred percent of the total surcharge amount that is due.

20 § 1299-R. Records to be kept. Every person liable for the surcharge
21 imposed by this article shall keep, and shall make available for review
22 upon demand by the commissioner:

23 (a) records of delivery transaction completed by such person, includ-
24 ing all amounts paid, charged or due thereon, in such form as the
25 commissioner may require;

26 (b) true and complete copies of any records required to be kept by any
27 applicable regulatory department or agency; and

28 (c) such other records and information as the commissioner may require
29 to perform his or her duties under this article.

30 § 1299-S. Secrecy of returns and reports. (a) Except in accordance
31 with proper judicial order or as otherwise provided by law, it shall be
32 unlawful for the commissioner, any officer or employee of the depart-
33 ment, any person engaged or retained by th department on an independent
34 contract basis, or any person who in any manner may acquire knowledge of
35 the contents of a return or report filed with the commissioner pursuant
36 to this article, to divulge or make known in any manner any particulars
37 set forth or disclosed in any such return or report. The officers
38 charged with the custody of such returns and reports shall not be
39 required to produce any of them or evidence of anything contained in
40 them in any action or proceeding in any court, except on behalf of the
41 commissioner in an action or proceeding under the provisions of this
42 chapter, or in any other action or proceeding involving the collection
43 of a tax due under this chapter to which the state, the commissioner or
44 an agency that is authorized to permit or regulate the provision of any
45 relevant transportation is a party or a claimant, or on behalf of any
46 party to any action, proceeding or hearing under the provisions of this
47 article, when the returns or the reports or the facts shown thereby are
48 directly involved in such action, proceeding or hearing, in any of which
49 events the court, or in the case of a hearing, the division of tax
50 appeals, may require the production of, and may admit in evidence so
51 much of said returns or reports or of the facts shown thereby as are
52 pertinent to the action or proceeding and no more. Nothing herein shall
53 be construed, however, to prohibit the commissioner, in his or her
54 discretion, from allowing the inspection or delivery of a certified copy
55 of any return or report filed under this article, or from providing any
56 information contained in any such return or report, by or to a duly

1 authorized officer or employee of the comptroller; nor to prohibit the
2 inspection or delivery of a certified copy of any return or report filed
3 under this article, or the provision of any information contained there-
4 in, by or to the attorney general or other legal representatives of the
5 state when an action shall have been recommended or commenced pursuant
6 to this chapter in which such returns or reports or the facts shown
7 thereby are directly involved; nor to prohibit the commissioner from
8 providing or certifying to the division of budget or the comptroller the
9 total number of returns or reports filed under this article in any
10 reporting period and the total collections received therefrom; nor to
11 prohibit the delivery to a person liable for the surcharge imposed by
12 this article, or a duly authorized representative of such, a certified
13 copy of any return or report filed by such person pursuant to this arti-
14 cle, nor to prohibit the publication of statistics so classified as to
15 prevent the identification of particular returns or reports and the
16 items thereof; nor to prohibit the disclosure, in such manner as the
17 commissioner deems appropriate, of the names and other appropriate iden-
18 tifying information of those persons required to pay the surcharge
19 imposed by this article.

20 (b) Notwithstanding the provisions of subdivision (a) of this section,
21 the commissioner may permit the secretary of the treasury of the United
22 States or such secretary's delegate, or the authorized representative of
23 either such officer, to inspect any return filed under this article, or
24 may furnish to such officer of such officer's authorized representative
25 an abstract of any such return or supply such person with information
26 concerning an item contained in any such return, or disclosed by any
27 investigation of liability under this article, but such permission shall
28 be granted or such information furnished only if the laws of the United
29 States grant substantially similar privileges to the commissioner or
30 officer of this state charged with the administration of the surcharge
31 imposed by this article, and only if such information is to be used for
32 purposes of tax administration only; and provided further the commis-
33 sioner may furnish to the commissioner of internal revenue or such
34 commissioner's authorized representative such returns filed under this
35 article and other tax information, as such commissioner may consider
36 proper, for use in court actions or proceedings under the internal
37 revenue code, whether civil or criminal, where a written request there-
38 for has been made to the commissioner by the secretary of the treasury
39 of the United States or such secretary's delegate, provided the laws of
40 the United States grant substantially similar powers to the secretary of
41 the treasury of the United States or his or her delegate. Where the
42 commissioner has so authorized use of returns and other information in
43 such actions or proceedings, officers and employees of the department
44 may testify in such actions or proceedings in respect to such returns or
45 other information.

46 (c)(1) Any officer or employer of the sate who willfully violates the
47 provisions of subdivision (a) of this section shall be dismissed from
48 office and be incapable of holding any public office for a period of
49 five years thereafter.

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

52 § 1299-T. Practice and procedure. The provisions of article twenty-
53 seven of this chapter shall apply with respect to the administration of
54 and procedure with respect to the surcharge imposed by this article in
55 the same manner and with the same force and effect as if the language of
56 such article twenty-seven had been incorporated in full into this arti-

1 cle and had expressly referred to the surcharge imposed by this article,
2 except to the extent that any such provision is either inconsistent with
3 a provision of this article or is not relevant to this article.

4 § 1299-U. Deposit and disposition of revenue. Any surcharge, interest,
5 and penalties collected or received by the commissioner under this arti-
6 cle shall be daily remitted to the metropolitan transportation authority
7 finance fund established by section twelve hundred seventy-h of the
8 public authorities law.

9 § 1299-V. Cooperation by regulatory agencies. All regulatory agencies
10 shall cooperate with and assist the commissioner to effectuate the
11 purposes of this article and the commissioner's responsibilities here-
12 under. Such cooperation shall also include furnishing to the commission-
13 er all written, computerized, automated or electronic records in the
14 regulatory agency's possession, or in the possession of any of its
15 agents, instrumentalities, contractors, or any other person authorized
16 or required to obtain or possess such records or information, that
17 account for any person or entity liable under this article. Such infor-
18 mation shall be provided to the commissioner without cost, and in a
19 format prescribed by the commissioner.

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

22 § 1825. Violation of secrecy provisions of the tax law.--Any person
23 who violates the provisions of subdivision (b) of section twenty-one,
24 subdivision one of section two hundred two, subdivision eight of section
25 two hundred eleven, subdivision (a) of section three hundred fourteen,
26 subdivision one or two of section four hundred thirty-seven, section
27 four hundred eighty-seven, subdivision one or two of section five
28 hundred fourteen, subsection (e) of section six hundred ninety-seven,
29 subsection (a) of section nine hundred ninety-four, subdivision (a) of
30 section eleven hundred forty-six, section twelve hundred eighty-seven,
31 section twelve hundred ninety-six, section twelve hundred ninety-nine-F,
32 section twelve hundred ninety-nine-S, subdivision (a) of section four-
33 teen hundred eighteen, subdivision (a) of section fifteen hundred eigh-
34 teen, subdivision (a) of section fifteen hundred fifty-five of this
35 chapter, and subdivision (e) of section 11-1797 of the administrative
36 code of the city of New York shall be guilty of a misdemeanor.

37 § 3. This act shall take effect on the first of January next succeed-
38 ing the date upon which it shall have become a law. Effective immediate-
39 ly, the addition, amendment and/or repeal of any rule or regulation
40 necessary for the implementation of this act on its effective date are
41 authorized to be made on or before such date.