

STATE OF NEW YORK

6078--A

2019-2020 Regular Sessions

IN ASSEMBLY

February 27, 2019

Introduced by M. of A. CARROLL, ARROYO, M. G. MILLER -- Multi-Sponsored by -- M. of A. COOK, SIMON -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

1 Section 1. The tax law is amended by adding a new article 29-D to read
2 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.

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

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

3 (c) "Purchaser" means the person receiving the item in the delivery
4 transaction.

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

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

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

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

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

51 (c) (1) The commissioner may refuse to issue a certificate of regis-
52 tration to a person, or may suspend or revoke a certificate of registra-
53 tion that was issued to a person, pursuant to this section upon finding
54 that: (i) such person failed to pay any monies that are finally deter-
55 mined to be due for any tax or imposition that is administered by the
56 commissioner; (ii) such person failed to file any report or return that

1 is due from it under this chapter; (iii) such person willfully filed a
2 false report, return or other document due under this chapter; (iv) such
3 person willfully violated any provisions of this article, or any rule or
4 regulation of the commissioner promulgated under this article; or (v) a
5 certificate of registration issued pursuant to this section to such
6 person, or to any business or entity under control of such person, or
7 that is subject to substantially the same ownership, direction or
8 control of such person, that has been revoked or suspended within one
9 year from the date on which a certificate of registration is filed.

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

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

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

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

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

1 the payment of the surcharge imposed by this article, he or she may
2 require returns to be made for shorter periods than prescribed by the
3 foregoing provisions of this section, and upon such dates as may be
4 specified. The form of returns shall be prescribed by the commissioner
5 and shall contain such information as the commissioner may deem neces-
6 sary for the proper administration of this article. The commissioner may
7 require that returns be filed electronically.

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

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

23 § 1299-R. Records to be kept. Every person liable for the surcharge
24 imposed by this article shall keep, and shall make available for review
25 upon demand by the commissioner:

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

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

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

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

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

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

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

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

55 § 1299-T. Practice and procedure. The provisions of article twenty-
56 seven of this chapter shall apply with respect to the administration of

1 and procedure with respect to the surcharge imposed by this article in
2 the same manner and with the same force and effect as if the language of
3 such article twenty-seven had been incorporated in full into this arti-
4 cle and had expressly referred to the surcharge imposed by this article,
5 except to the extent that any such provision is either inconsistent with
6 a provision of this article or is not relevant to this article.

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

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

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

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

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