

STATE OF NEW YORK

7638

2023-2024 Regular Sessions

IN ASSEMBLY

May 25, 2023

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 establishing a tax on noise emissions from non-essential helicopter and seaplane flights in cities with a population of one million or more

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 12-B to read
2 as follows:

ARTICLE 12-B

NOISE TAX ON NON-ESSENTIAL

HELICOPTER AND SEAPLANE FLIGHTS

Section 289-g. Definitions.

7 289-h. Imposition of the noise tax on non-essential helicopter
8 and seaplane flights.

9 289-i. Liability for the tax.

10 289-j. Payment and returns.

11 289-k. Records to be kept.

12 289-l. Secrecy of returns and reports.

13 289-m. Practice and procedure.

14 289-n. Deposit and disposition of revenue.

15 § 289-g. Definitions. For the purposes of this article, the following
16 terms shall have the following meanings:

17 1. "Helicopter" means an aircraft, the support of which in the air is
18 normally derived from airfoils mechanically rotated about an approxi-
19 mately vertical axis.

20 2. "Helicopter or seaplane operator" means a person or entity which
21 conducts non-essential helicopter or seaplane flights within a city with
22 a population of one million or more.

23 3. "Seaplane" means any aircraft defined or classified as such by
24 federal law, rule or regulation.

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

LBD11397-04-3

1 4. "Non-essential flight" means a flight made by a helicopter or seap-
2 lane other than those conducted:

3 (a) for purposes of heavy-lift operations in support of construction
4 and infrastructure maintenance;

5 (b) for purposes of public health and safety, including law enforce-
6 ment, emergency response, disaster response, the provision of medical
7 services, and providing other services; or

8 (c) for the benefit of the general public, including flights carried
9 out for research or for official purposes by a news organization.

10 § 289-h. Imposition of the noise tax on non-essential helicopter and
11 seaplane flights. In addition to any other tax or assessment imposed by
12 this chapter or any other law, there is hereby imposed a noise tax on
13 non-essential seaplane and helicopter flights at the rate of fifty
14 dollar per seat ticket or two hundred dollar per flight, whichever is
15 greater.

16 § 289-i. Liability for the tax. Any non-essential helicopter or seap-
17 lane flight is subject to the tax imposed by this article. The tax
18 imposed by this section shall not be imposed on any helicopter or seap-
19 lane flights if such imposition is superseded by federal law or regu-
20 lation.

21 § 289-j. Payment and returns. 1. Every helicopter and seaplane opera-
22 tor shall file a return quarterly with the commissioner. Provided,
23 however, that if the commissioner in the exercise of his or her
24 discretion deems it necessary to protect the revenues to be obtained
25 under this article, he or she may give notice requiring such operator,
26 in addition to filing a quarterly return, to file either short-form or
27 long-form part-quarterly returns, as specified in such notice. For
28 purposes of this article the term "long-form, part-quarterly return"
29 shall mean a return in a form determined by the commissioner providing
30 for the calculation of the actual taxes for the preceding month. For
31 purposes of this article the term "short-form, part-quarterly return"
32 shall mean a return which shall be available for use in filing as a
33 return for the first two months of any quarter and only by a person
34 required to file a return monthly who has had at least four successive
35 quarterly tax periods immediately preceding the month for which the
36 return is to be filed and who elects such use, and is in a form deter-
37 mined by the commissioner and providing for the calculation of one-third
38 of the total taxes paid by the person to the commissioner in the compa-
39 rable quarter of the immediately preceding year under this article.

40 2. The returns and information returns required by this section to be
41 filed quarterly shall be filed for quarterly periods ending on the last
42 day of February, May, August and November of each year, and each return
43 and each information return shall be filed within twenty days after the
44 end of the quarterly period covered thereby. The returns required by
45 this section to be filed monthly shall be filed for monthly periods
46 ending on the last day of each month and each return shall be filed
47 within twenty days after the end of each prior month. The information
48 returns required to be filed annually shall be filed for twelve-month
49 periods ending on the last day of May of each year, and each such infor-
50 mation return shall be filed within twenty days after the end of the
51 twelve-month period covered thereby.

52 3. The tax commission may permit or require returns to be made cover-
53 ing other periods and upon such dates as it may specify. If the tax
54 commission deems it necessary in order to ensure the payment of the
55 taxes imposed by this article, it may require returns to be made for

1 shorter periods than those prescribed pursuant to the foregoing subdivi-
2 sions of this section, and upon such dates as it may specify.

3 4. The form of returns shall be prescribed by the tax commission and
4 shall contain such information as it may deem necessary for the proper
5 administration of this article. The commission may require amended
6 returns to be filed within twenty days after notice and to contain the
7 information specified in the notice.

8 5. In addition to any other penalty or interest provided for under
9 this article or other law, and unless it is shown that such failure is
10 due to reasonable cause and not due to willful neglect, any person
11 liable for the tax imposed by this article that fails to pay such tax
12 when due shall be liable for a penalty in an amount equal to four
13 hundred percent of the total tax amount that is due.

14 § 289-k. Records to be kept. Every operator liable for the surcharge
15 imposed by this article shall keep, and shall make available for review
16 upon demand by the commissioner:

17 1. records of helicopter and seaplane flights undertaken by such oper-
18 ator;

19 2. total amount of taxes collected under this article;

20 3. any information required by the department by rule or regulation;

21 4. true and complete copies of any records required to be kept by any
22 applicable regulatory department or agency; and

23 5. such other records and information as the commissioner may require
24 to perform his or her duties under this article.

25 § 289-l. Secrecy of returns and reports. 1. Except in accordance with
26 proper judicial order or as otherwise provided by law, it shall be
27 unlawful for the commissioner, any officer or employee of the depart-
28 ment, any person engaged or retained by the department on an independent
29 contract basis, or any person who in any manner may acquire knowledge of
30 the contents of a return or report filed with the commissioner pursuant
31 to this article, to divulge or make known in any manner any particulars
32 set forth or disclosed in any such return or report. The officers
33 charged with the custody of such returns and reports shall not be
34 required to produce any of them or evidence of anything contained in
35 them in any action or proceeding in any court, except on behalf of the
36 commissioner in an action or proceeding under the provisions of this
37 chapter, or in any other action or proceeding involving the collection
38 of a surcharge due under this chapter to which the state, the commis-
39 sioner or an agency that is authorized to permit or regulate the
40 provision of any relevant transportation is a party or a claimant, or on
41 behalf of any party to any action, proceeding or hearing under the
42 provisions of this article, when the returns or the reports or the facts
43 shown thereby are directly involved in such action, proceeding or hear-
44 ing, in any of which events the court, or in the case of a hearing, the
45 division of tax appeals, may require the production of, and may admit in
46 evidence so much of said returns or reports or of the facts shown there-
47 by as are pertinent to the action or proceeding and no more. Nothing
48 herein shall be construed, however, to prohibit the commissioner, in his
49 or her discretion, from allowing the inspection or delivery of a certi-
50 fied copy of any return or report filed under this article, or from
51 providing any information contained in any such return or report, by or
52 to a duly authorized officer or employee of the comptroller; nor to
53 prohibit the inspection or delivery of a certified copy of any return or
54 report filed under this article, or the provision of any information
55 contained therein, by or to the attorney general or other legal repre-
56 sentatives of the state when an action shall have been recommended or

1 commenced pursuant to this chapter in which such returns or reports or
2 the facts shown thereby are directly involved; nor to prohibit the
3 commissioner from providing or certifying to the division of budget or
4 the comptroller the total number of returns or reports filed under this
5 article in any reporting period and the total collections received there-
6 from; nor to prohibit the delivery to a person liable for the tax
7 imposed by this article, or a duly authorized representative of such, a
8 certified copy of any return or report filed by such person pursuant to
9 this article, nor to prohibit the publication of statistics so classi-
10 fied as to prevent the identification of particular returns or reports
11 and the items thereof; nor to prohibit the disclosure, in such manner as
12 the commissioner deems appropriate, of the names and other appropriate
13 identifying information of those persons required to pay the tax imposed
14 by this article.

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

41 3. (a) Any officer or employee of the state who willfully violates the
42 provisions of subdivision one of this section shall be dismissed from
43 office and be incapable of holding any public office for a period of
44 five years thereafter.

45 (b) Cross-reference: For criminal penalties, see article thirty-seven
46 of this chapter.

47 4. (a) Notwithstanding the provisions of subdivision one of this
48 section, upon written request from the chairperson of the committee on
49 ways and means of the United States House of Representatives, the chair-
50 person of the committee on finance of the United States Senate, or the
51 chairperson of the joint committee on taxation of the United States
52 Congress, the commissioner shall furnish such committee with any current
53 or prior year returns specified in such request that were filed under
54 this article by the president of the United States, vice-president of
55 the United States, member of the United States Congress representing New
56 York state, or any person who served in or was employed by the executive

1 branch of the government of the United States on the executive staff of
2 the president, in the executive office of the president, or in an acting
3 or confirmed capacity in a position subject to confirmation by the
4 United States Senate; or, in New York state: a statewide elected offi-
5 cial, as defined in paragraph (a) of subdivision one of section seven-
6 ty-three-a of the public officers law; a state officer or employee, as
7 defined in subparagraph (i) of paragraph (c) of subdivision one of such
8 section seventy-three-a; a political party chairperson, as defined in
9 paragraph (h) of subdivision one of such section seventy-three-a; a
10 local elected official, as defined in subdivisions one and two of
11 section eight hundred ten of the general municipal law; a person
12 appointed, pursuant to law, to serve due to vacancy or otherwise in the
13 position of a local elected official, as defined in subdivisions one and
14 two of section eight hundred ten of the general municipal law; a member
15 of the state legislature; or a judge or justice of the unified court
16 system; or filed by a partnership, firm, association, corporation,
17 joint-stock company, trust or similar entity directly or indirectly
18 controlled by any individual listed in this paragraph, whether by
19 contract, through ownership or control of a majority interest in such
20 entity, or otherwise, or filed by a partnership, firm, association,
21 corporation, joint-stock company, trust or similar entity of which any
22 individual listed in this paragraph holds ten percent or more of the
23 voting securities of such entity; provided however that, prior to
24 furnishing any return, the commissioner shall redact any copy of a
25 federal return (or portion thereof) attached to, or any information on a
26 federal return that is reflected on, such return, and any social securi-
27 ty numbers, account numbers and residential address information.

28 (b) No returns shall be furnished pursuant to this subdivision unless
29 the chairperson of the requesting committee certifies in writing that
30 such returns have been requested related to, and in furtherance of, a
31 legitimate task of the Congress, that the requesting committee has made
32 a written request to the United States secretary of the treasury for
33 related federal returns or reports or return or report information,
34 pursuant to 26 U.S.C. Section 6103(f), and that if such requested
35 returns are inspected by and/or submitted to another committee, to the
36 United States House of Representatives, or to the United States Senate,
37 then such inspection and/or submission shall occur in a manner consist-
38 ent with federal law as informed by the requirements and procedures
39 established in 26 U.S.C. Section 6103(f).

40 § 289-m. Practice and procedure. The provisions of article twenty-sev-
41 en of this chapter shall apply with respect to the administration of and
42 procedure with respect to the tax imposed by this article in the same
43 manner and with the same force and effect as if the language of such
44 article twenty-seven had been incorporated in full into this article and
45 had expressly referred to the surcharge imposed by this article, except
46 to the extent that any such provision is either inconsistent with a
47 provision of this article or is not relevant to this article.

48 § 289-n. Deposit and disposition of revenue. All funds collected under
49 this article shall be deposited into the environmental protection fund
50 established by section ninety-two-s of the state finance law.

51 § 2. This act shall take effect January 1, 2024. Effective immediate-
52 ly, the addition, amendment and/or repeal of any rule or regulation
53 necessary for the implementation of this act on its effective date are
54 authorized to be made and completed on or before such effective date.