

8627

2009-2010 Regular Sessions

I N A S S E M B L Y

June 1, 2009

Introduced by M. of A. FARRELL -- (at request of the Department of Taxation and Finance) -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to payment methods permitted for use by taxpayers under the electronic funds transfer programs prescribed by sections 9 and 10 of such law

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

1 Section 1. Paragraph 1 of subdivision (b) of section 9 of the tax law,  
2 as amended by chapter 166 of the laws of 1991, is amended to read as  
3 follows:  
4 (1) Subject to the requirements contained in subdivisions (c) and (d)  
5 of this section, the commissioner shall require by regulation that any  
6 payment of tax made by a taxpayer who is required, for either of the  
7 semi-annual periods ending June thirtieth or December thirty-first, to  
8 deduct and withhold an aggregate of thirty-five thousand dollars or more  
9 of withholding taxes pursuant to part V of article twenty-two of this  
10 chapter, or pursuant to an equivalent provision enacted under the  
11 authority of article thirty, thirty-A or thirty-B of this chapter, or  
12 FORMER article two-E of the general city law, shall be made, on or  
13 before the date prescribed by law, by electronic funds transfer to a  
14 bank, banking house or trust company designated by the commissioner. The  
15 commissioner shall designate only such banks, banking houses or trust  
16 companies as are or shall be designated by the comptroller as deposito-  
17 ries pursuant to section one hundred seventy-one-a of this chapter, as  
18 added by chapter sixty-nine of the laws of nineteen hundred seventy-  
19 eight. Notwithstanding any provision of law to the contrary, any such  
20 payment shall be deemed to be made on the date the payment is received  
21 by the designated depository of the department[; provided, however, that  
22 at the election of a taxpayer subject to the provisions of this subdivi-  
23 sion, mailing by the taxpayer of the applicable withholding tax return

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

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1 and a certified check for the amount of the tax liability on or before  
2 the second business day prior to the applicable due date otherwise  
3 prescribed by law shall fulfill the requirements of this section and  
4 shall be deemed to be timely payment of such tax liability and timely  
5 filing of such return].

6 S 2. Paragraph 2 of subdivision (c) of section 9 of the tax law, as  
7 added by chapter 61 of the laws of 1989, is amended to read as follows:

8 (2) All of the provisions of this section shall apply to educational  
9 organizations; provided, however, that any payment of tax which is made  
10 by an educational organization shall be made by electronic funds trans-  
11 fer on or before the third business day following the date otherwise  
12 prescribed by law[; and, provided further, that at the election of a  
13 taxpayer subject to the provisions of this subdivision, mailing by the  
14 taxpayer of the applicable withholding tax return and a certified check  
15 for the amount of the tax liability on or before the first business day  
16 following the applicable due date otherwise prescribed by law shall  
17 fulfill the requirements of this section and shall be deemed to be time-  
18 ly payment of such tax liability and timely filing of such return].

19 S 3. Subdivision (i) of section 9 of the tax law, as added by chapter  
20 61 of the laws of 1989 and as relettered by chapter 170 of the laws of  
21 1994, is amended to read as follows:

22 (i) Regulations. The commissioner shall promulgate regulations neces-  
23 sary to implement this section, which regulations shall include, but  
24 shall not be limited to, the following:

25 (1) the [different] METHOD OR methods [of] FOR effecting electronic  
26 funds [transfer messages] TRANSFERS available to taxpayers[. Such meth-  
27 ods shall include at least two methods in which the transfer can be  
28 effected without any charge to the taxpayer for the electronic funds  
29 transfer itself, and one of such methods shall not require the taxpayer  
30 to disclose financial institution account information to the depart-  
31 ment];

32 (2) the contents of an electronic funds transfer message necessary to  
33 ensure the proper receipt and crediting of a [tax] payment OF TAX;

34 (3) the means by which taxpayers will be provided acknowledgements of  
35 payments OF TAX by electronic funds transfer; and

36 (4) delineation of what shall constitute reasonable cause and absence  
37 of willful neglect for purposes of compliance with the provisions of  
38 this section, including the inability of a taxpayer, for reasons beyond  
39 the taxpayer's control, to [utilize any system of] MAKE PAYMENT OF TAX  
40 BY electronic funds transfer AS required [pursuant to] BY this section.

41 S 4. Subparagraph (C) of paragraph 1 of subdivision (b) of section 10  
42 of the tax law, as amended by chapter 38 of the laws of 1997, is amended  
43 to read as follows:

44 (C) more than five million dollars of the total of the tax on gasoline  
45 and similar motor fuel and the tax on petroleum businesses imposed by  
46 and pursuant to the authority of articles twelve-A and thirteen-A of  
47 this chapter, then such taxpayer shall make payments of the taxes for  
48 which such dollar threshold was met by electronic funds transfer [or  
49 certified check] in accordance with the provisions of subdivision (c) of  
50 this section.

51 S 5. Paragraph 2 of subdivision (b) of section 10 of the tax law, as  
52 added by chapter 55 of the laws of 1992, is amended to read as follows:

53 (2) Special transitional rule. Notwithstanding the provisions of para-  
54 graph one of this subdivision, for purposes of determining whether a  
55 taxpayer described in subparagraph (C) of such paragraph shall be  
56 required to initially participate in the program prescribed by this

1 section, if such taxpayer was liable for more than three million seven  
2 hundred fifty thousand dollars in total article twelve-A and thirteen-A  
3 taxes during the September first, nineteen hundred ninety through May  
4 thirty-first, nineteen hundred ninety-one period, then such taxpayer  
5 shall make payments of tax by electronic funds transfer [or certified  
6 check] in accordance with the provisions of this section.

7 S 6. Subparagraph (D) of paragraph 4 of subdivision (b) of section 10  
8 of the tax law, as added by chapter 309 of the laws of 1996, is amended  
9 to read as follows:

10 (D) If a taxpayer required to remit state and local sales and compen-  
11 sating use taxes by electronic funds transfer [or certified check]  
12 pursuant to the provisions of this section can demonstrate to the satis-  
13 faction of the commissioner that (i) such taxpayer's liability for state  
14 and local sales and compensating use taxes was less than four million  
15 dollars during the period described in paragraph one of this subdivi-  
16 sion, and (ii) in any two sales tax quarters within the most recent four  
17 consecutive sales tax quarters, such taxpayer was a materialman within  
18 the meaning of section two of the lien law, primarily engaged in  
19 furnishing building materials to contractors, subcontractors or repair-  
20 men for the improvement of real property improved or to be improved with  
21 a residential dwelling unit, and authorized by such law to file a  
22 mechanic's lien upon such real property and improvement, then such  
23 taxpayer need not remit state and local sales and compensating use taxes  
24 by electronic funds transfer [or certified check] for the remainder of  
25 the program period in accordance with the timing requirements of subdivi-  
26 sion (c) of this section, but may instead remit such taxes by elec-  
27 tronic funds transfer [or certified check] at the same time that payment  
28 is required to be made for part-quarterly and quarterly returns required  
29 to be filed under article twenty-eight and pursuant to the authority of  
30 article twenty-nine of this chapter, in the amount required under or  
31 pursuant to such articles at such time. The due date prescribed by this  
32 subparagraph shall be deemed to be the applicable due date for purposes  
33 of this section for taxpayers qualifying under this subparagraph. The  
34 provisions of this section shall apply to taxpayers qualifying under  
35 this subparagraph, except to the extent that any such provision is  
36 either inconsistent with a provision of this subparagraph or is not  
37 relevant to this subparagraph.

38 S 7. Paragraph 1 of subdivision (c) of section 10 of the tax law, as  
39 added by chapter 55 of the laws of 1992, subparagraph (A) as amended by  
40 chapter 129 of the laws of 2000, and subparagraph (C) as amended by  
41 chapter 38 of the laws of 1997, are amended to read as follows:

42 (1) Payment by electronic funds transfer [or certified check]. On or  
43 before the third business day following the twenty-second day of each  
44 calendar month:

45 (A) a taxpayer having liability described in subparagraph (A) of para-  
46 graph one of subdivision (b) of this section shall, notwithstanding any  
47 provision of this chapter to the contrary, remit by electronic funds  
48 transfer [or certified check]: (i) either (I) seventy-five percent of  
49 one-third of the state and local sales and compensating use taxes prop-  
50 erly payable by such taxpayer for the comparable quarter of the preced-  
51 ing year; or

52 (II) such taxpayer's total liability for state and local sales and  
53 compensating use taxes during the period ending on such twenty-second  
54 day of the month, provided, however, that in such instance no penalty or  
55 interest shall be payable pursuant to paragraph two of subdivision (g)  
56 of this section if such taxpayer timely remits a payment of tax in an

1 amount not less than ninety percent of the taxes as finally determined  
2 to be due and payable for such period; and

3 (ii) (I) for payments of tax due in the month of January, February,  
4 April, May, July, August, October or November, such taxpayer's remaining  
5 liability, if any, for state and local sales and compensating use taxes  
6 for the immediately preceding calendar month; or

7 (II) for payments of tax due in the month of March, June, September or  
8 December, such taxpayer's remaining liability, if any, for state and  
9 local sales and compensating use taxes for the immediately preceding  
10 sales tax quarter;

11 (B) a taxpayer having liability described in subparagraph (B) of para-  
12 graph one of subdivision (b) of this section shall remit by electronic  
13 funds transfer [or certified check] either:

14 (i) three-fourths of the prepaid state and local sales and compensat-  
15 ing use taxes on motor fuel and diesel motor fuel properly payable by  
16 such taxpayer for the comparable month of the preceding year; or

17 (ii) its total liability for prepaid state and local sales and compen-  
18 sating use taxes on motor fuel and diesel motor fuel during the period  
19 ending on such twenty-second day of the month, provided, however, that  
20 in such instance no penalty or interest shall be payable pursuant to  
21 paragraph two of subdivision (g) of this section if such taxpayer timely  
22 remits a payment of tax in an amount not less than ninety percent of the  
23 taxes as finally determined to be due and payable for such period;

24 (C) a taxpayer having liability described in subparagraph (C) of para-  
25 graph one of subdivision (b) of this section shall remit by electronic  
26 funds transfer [or certified check] either:

27 (i) three-fourths of the total article twelve-A and article thirteen-A  
28 taxes properly payable by such taxpayer for the comparable month of the  
29 preceding year; or

30 (ii) its total liability for such taxes during the period ending on  
31 such twenty-second day of the month, provided, however, that in such  
32 instance no penalty or interest shall be payable pursuant to paragraph  
33 two of subdivision (g) of this section if such taxpayer timely remits a  
34 payment of tax in an amount not less than ninety percent of the taxes as  
35 finally determined to be due and payable for such period.

36 S 8. Paragraph 2 of subdivision (c) of section 10 of the tax law, as  
37 amended by chapter 129 of the laws of 2000, is amended to read as  
38 follows:

39 (2) Filing obligations and payment of remaining liabilities. (A) A  
40 taxpayer having liability described in subparagraph (A) of paragraph one  
41 of subdivision (b) of this section shall, notwithstanding any provision  
42 of this chapter to the contrary, file only the quarterly returns  
43 required under article twenty-eight and pursuant to the authority of  
44 article twenty-nine of this chapter for each of the periods for which  
45 such returns are filed under and pursuant to the authority of such arti-  
46 cles; provided, however, that for those months for which a return is not  
47 required to be filed pursuant to the provisions of this subparagraph,  
48 the making of a payment of tax by electronic funds transfer [or certi-  
49 fied check] covering any period shall be deemed to constitute the filing  
50 of a return for purposes of subdivision (b) of section eleven hundred  
51 forty-seven of this chapter with respect to such period.

52 (B) A taxpayer having liability described in subparagraph (B) of para-  
53 graph one of subdivision (b) of this section shall file the returns  
54 required under section eleven hundred two of this chapter and shall pay  
55 to the commissioner the amounts required to be paid with such returns,  
56 less the amounts remitted by electronic funds transfer [or certified

1 check] under this section, for each of the periods for which such  
2 returns are filed under such section.

3 (C) A taxpayer having liability described in subparagraph (C) of para-  
4 graph one of subdivision (b) of this section shall file the returns  
5 required under and pursuant to the authority of articles twelve-A and  
6 thirteen-A of this chapter and shall pay to the commissioner the amounts  
7 required to be paid with such returns, less the amounts remitted by  
8 electronic funds transfer [or certified check] under this section, for  
9 each of the periods for which such returns are filed under and pursuant  
10 to the authority of such articles.

11 S 9. Paragraph 3 of subdivision (c) of section 10 of the tax law, as  
12 added by chapter 55 of the laws of 1992, is amended to read as follows:

13 (3) Payment date[; payment by certified check]. Payment of tax by  
14 electronic funds transfer [or certified check] shall be made to a bank,  
15 banking house or trust company designated by the commissioner. The  
16 commissioner shall designate only such banks, banking houses or trust  
17 companies as are or shall be designated by the comptroller as deposito-  
18 ries pursuant to section one hundred seventy-one-a of this chapter, as  
19 added by chapter sixty-nine of the laws of nineteen hundred seventy-  
20 eight. Notwithstanding any other provision of law to the contrary, any  
21 electronic funds transfer shall be deemed to be made on the date payment  
22 is received by the depository of the department[, provided, however,  
23 that at the election of a taxpayer subject to the provisions of this  
24 section, mailing by the taxpayer of a certified check for the amount of  
25 the tax liability on or before the second business day prior to the  
26 applicable due date prescribed by paragraph one of this subdivision  
27 shall fulfill the requirements with respect to payments of tax by elec-  
28 tronic funds transfer prescribed by this section and shall be deemed to  
29 be timely payment of such tax liability].

30 S 10. Paragraph 4 of subdivision (c) of section 10 of the tax law, as  
31 amended by chapter 38 of the laws of 1997, is amended to read as  
32 follows:

33 (4) Special payment rule. If a taxpayer is liable for payment of taxes  
34 described in two or more of subparagraphs (A), (B) and (C) of paragraph  
35 one of subdivision (b) of this section, then such taxpayer shall make  
36 separate payment by electronic funds transfer [or certified check] of  
37 the taxes described in each of such subparagraphs.

38 S 11. The opening paragraph of subdivision (d) of section 10 of the  
39 tax law, as amended by chapter 2 of the laws of 1995, is amended to read  
40 as follows:

41 Enrollment and initial payment; duration of participation. Within  
42 forty-five days after each June first, the commissioner shall notify by  
43 certified or registered mail all taxpayers required to participate in  
44 the program prescribed by this section. Such notice shall contain  
45 language advising the taxpayer of the enrollment procedure and of the  
46 consequences of failure to enroll in such program, as well as of a  
47 taxpayer's right to challenge such determination of required partic-  
48 ipation provided a hearing is requested within forty days of the mailing  
49 of such notice. If a taxpayer does not enroll within forty days of the  
50 mailing of such certified or registered notice of required participation  
51 or where a taxpayer's challenge is not sustained and the taxpayer has  
52 not enrolled within ten days of notification thereof, the commissioner  
53 shall mail another notice, in addition to making other reasonable  
54 attempts, to inform the taxpayer of the civil penalty that has been  
55 assessed pursuant to paragraph one of subdivision (g) of this section,  
56 of the opportunity for abatement of such penalty, and of the future

1 penalties that may result from continued failure to enroll and failure  
2 to pay by electronic funds transfer [or certified check] or to file;  
3 provided, however, that for the program period beginning December first,  
4 nineteen hundred ninety-two through August thirty-first, nineteen  
5 hundred ninety-three, the thirty-day period referred to in this sentence  
6 shall be read as forty-five days. A taxpayer shall make its first  
7 payment of tax by electronic funds transfer [or certified check] on or  
8 before the applicable due date prescribed by subdivision (c) of this  
9 section for the month of December in nineteen hundred ninety-two, the  
10 month of September in nineteen hundred ninety-three and the month of  
11 September for any year thereafter. Unless otherwise provided by this  
12 section, such taxpayer shall continue to make payments of tax by elec-  
13 tronic funds transfer [or certified check] in accordance with the  
14 provisions of this section through the succeeding month of August and  
15 shall continue to make such payments of tax for each succeeding Septem-  
16 ber-to-August period where such taxpayer meets the criteria of subdivi-  
17 sion (b) of this section and is properly notified by the commissioner  
18 pursuant to the enrollment provisions of this subdivision. Provided,  
19 however, that:

20 S 12. Subdivision (e) of section 10 of the tax law, as amended by  
21 chapter 38 of the laws of 1997, is amended to read as follows:

22 (e) Voluntary participation. A taxpayer who is not required to partic-  
23 ipate in the program prescribed by this section but who is required to  
24 remit any of the taxes specified in subparagraph (A), (B) or (C) of  
25 paragraph one of subdivision (b) of this section may file a request with  
26 the commissioner to remit any of such taxes by electronic funds transfer  
27 [or certified check] in accordance with the provisions of this section.  
28 Such request shall be in a form as the commissioner shall require and  
29 shall be granted under such conditions as the commissioner in his or her  
30 discretion shall deem necessary.

31 S 13. Paragraph 2 of subdivision (g) of section 10 of the tax law, as  
32 amended by chapter 129 of the laws of 2000, is amended to read as  
33 follows:

34 (2) Failure to pay or late payment. (A) A taxpayer required or  
35 approved to participate in the program prescribed by this section who  
36 fails to make a payment of tax by electronic funds transfer [or certi-  
37 fied check] on or before the applicable due date prescribed by subdivi-  
38 sion (c) of this section, or who fails to pay any tax required to be  
39 remitted on or before such applicable due date shall, in the case of the  
40 taxes imposed pursuant to article twenty-eight and pursuant to the  
41 authority of article twenty-nine of this chapter, be liable for penalty  
42 and interest as prescribed by subparagraphs (i) and (ii) of paragraph  
43 one of subdivision (a) of section eleven hundred forty-five of this  
44 chapter, and in the case of the taxes imposed by and pursuant to the  
45 authority of articles twelve-A and thirteen-A of this chapter, be liable  
46 for penalty and interest as prescribed by paragraphs (a) and (b) of  
47 subdivision one of section two hundred eighty-nine-b of this chapter.

48 (B) Notwithstanding any provision of law to the contrary, if a taxpay-  
49 er described in subparagraph (B) or (C) of paragraph one of subdivision  
50 (b) of this section fails to make a payment of tax by electronic funds  
51 transfer [or certified check] on or before the applicable due date  
52 prescribed by subdivision (c) of this section or fails to pay any tax  
53 required to be remitted on or before such applicable due date, as  
54 prescribed by subparagraph (A) of this paragraph, and also fails to pay  
55 or pay over to the commissioner the amounts required to be paid or paid  
56 over with the applicable return described in paragraph two of subdivi-

1 sion (c) of this section due the twentieth day of the following month,  
2 then penalty and interest for such additional failure, as provided by  
3 subparagraphs (i) and (ii) of paragraph one of subdivision (a) of  
4 section eleven hundred forty-five of this chapter or paragraphs (a) and  
5 (b) of subdivision one of section two hundred eighty-nine-b of this  
6 chapter, as the case may be, shall be computed on the amount equal to  
7 the difference between the total of the amount of tax due or determined  
8 to be due with such return and the total of the amount of tax required  
9 to be paid by electronic funds transfer [or certified check] on or  
10 before the applicable due date prescribed by subdivision (c) of this  
11 section for the preceding month.

12 S 14. This act shall take effect immediately and apply to payments of  
13 tax required to be made on or after the thirtieth day following the date  
14 on which this bill shall have become a law; provided, however, that the  
15 commissioner of taxation and finance may promulgate any rules or regu-  
16 lations necessary for implementation of this act on an emergency basis.