S T A T E O F N E W Y O R K

343

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to imposing a penalty on persons failing to collect or remit sales tax

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

Section 1. Paragraph 1 of subdivision (a) of section 1132 of the tax law, as amended by chapter 255 of the laws of 1998, is amended to read as follows:

(1) Every person required to collect the tax shall collect the tax from the customer when collecting the price, amusement charge or rent to which it applies. If the customer is given any sales slip, invoice, receipt or other statement or memorandum of the price, amusement charge or rent paid or payable, the tax shall be stated, charged and shown separately on the first of such documents given to him. The tax shall be paid to the person required to collect it as trustee for and on account of the state. THE FAILURE OF ANY PERSON REQUIRED TO COLLECT THE TAX TO CLEARLY STATE, CHARGE AND SHOW THE TAX ON ANY SALES SLIP, INVOICE, RECEIPT OR OTHER STATEMENT OR MEMORANDUM OF THE PRICE SHALL BE PUNISHABLE BY A FINE OF FIVE THOUSAND DOLLARS FOR THE FIRST OFFENSE AND BY A FINE OF TEN THOUSAND DOLLARS FOR THE SECOND AND EACH SUBSEQUENT OFFENSE OCCURRING WITHIN A SINGLE CALENDAR YEAR. THERE SHALL EXIST A REBUTTABLE PRESUMPTION THAT SUCH FAILURE WAS INTENTIONAL.

S 2. Subparagraph (i) of paragraph 1 of subdivision (a) of section 1145 of the tax law, as amended by chapter 411 of the laws of 1986, is amended to read as follows:

(i) Any person failing to file a return or to pay or pay over any tax to the [tax commission] COMMISSIONER within the time required by or pursuant to this article (determined with regard to any extension of

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

LBD03480-01-9

time for filing or paying) shall be subject to a penalty of FIVE THOUSAND DOLLARS FOR THE FIRST OFFENSE AND TEN THOUSAND DOLLARS FOR THE SECOND AND EACH SUBSEQUENT OFFENSE OCCURRING WITHIN A SINGLE CALENDAR YEAR OR ten percent of the amount of tax due if such failure is for not more than one month, with an additional one percent for each additional month or fraction thereof during which such failure continues, not exceeding thirty percent in the aggregate, WHICHEVER IS GREATER. Provided, however, in the case of a failure to file such return within sixty days of the date prescribed for filing of such return by or pursuant to this article (determined with regard to any extension of time for filing), the penalty imposed by this subparagraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return. For the purpose of the preceding sentence, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return. In the case of a failure to file a return by a person required to register with the [tax commission] COMMISSIONER as provided in section eleven hundred thirty-four OF THIS PART, in no event shall the penalty for failure to file a return be less than fifty dollars.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.