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

3885

2009-2010 Regular Sessions

I N S E N A T E

April 2, 2009

Introduced by Sens. C. JOHNSON, DIAZ, DILAN, ONORATO, SAVINO -- (at request of the Department of Taxation and Finance) -- 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 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:

Section 1. Paragraph 1 of subdivision (b) of section 9 of the tax law, as amended by chapter 166 of the laws of 1991, is amended to read as follows:

(1) Subject to the requirements contained in subdivisions (c) and (d) of this section, the commissioner shall require by regulation that any payment of tax made by a taxpayer who is required, for either of the semi-annual periods ending June thirtieth or December thirty-first, to deduct and withhold an aggregate of thirty-five thousand dollars or more of withholding taxes pursuant to part V of article twenty-two of this chapter, or pursuant to an equivalent provision enacted under the authority of article thirty, thirty-A or thirty-B of this chapter, or FORMER article two-E of the general city law, shall be made, on or before the date prescribed by law, by electronic funds transfer to a bank, banking house or trust company designated by the commissioner. The commissioner shall designate only such banks, banking houses or trust companies as are or shall be designated by the comptroller as depositories pursuant to section one hundred seventy-one-a of this chapter, as added by chapter sixty-nine of the laws of nineteen hundred seventy-eight. Notwithstanding any provision of law to the contrary, any such payment shall be deemed to be made on the date the payment is received by the designated depository of the department[; provided, however, that at the election of a taxpayer subject to the provisions of this subdivi-

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

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sion, mailing by the taxpayer of the applicable withholding tax return and a certified check for the amount of the tax liability on or before the second business day prior to the applicable due date otherwise prescribed by law shall fulfill the requirements of this section and shall be deemed to be timely payment of such tax liability and timely filing of such return].

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

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

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

(i) Regulations. The commissioner shall promulgate regulations necessary to implement this section, which regulations shall include, but shall not be limited to, the following:

(1) the [different] METHOD OR methods [of] FOR effecting electronic funds [transfer messages] TRANSFERS available to taxpayers[. Such methods shall include at least two methods in which the transfer can be effected without any charge to the taxpayer for the electronic funds transfer itself, and one of such methods shall not require the taxpayer to disclose financial institution account information to the department];

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

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

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

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

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

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

(2) Special transitional rule. Notwithstanding the provisions of paragraph one of this subdivision, for purposes of determining whether a taxpayer described in subparagraph (C) of such paragraph shall be

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

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

(D) If a taxpayer required to remit state and local sales and compensating use taxes by electronic funds transfer [or certified check] pursuant to the provisions of this section can demonstrate to the satisfaction of the commissioner that (i) such taxpayer's liability for state and local sales and compensating use taxes was less than four million dollars during the period described in paragraph one of this subdivision, and (ii) in any two sales tax quarters within the most recent four consecutive sales tax quarters, such taxpayer was a materialman within the meaning of section two of the lien law, primarily engaged in furnishing building materials to contractors, subcontractors or repairmen for the improvement of real property improved or to be improved with a residential dwelling unit, and authorized by such law to file a mechanic's lien upon such real property and improvement, then such taxpayer need not remit state and local sales and compensating use taxes by electronic funds transfer [or certified check] for the remainder of the program period in accordance with the timing requirements of subdivision (c) of this section, but may instead remit such taxes by electronic funds transfer [or certified check] at the same time that payment is required to be made for part-quarterly and quarterly returns required to be filed under article twenty-eight and pursuant to the authority of article twenty-nine of this chapter, in the amount required under or pursuant to such articles at such time. The due date prescribed by this subparagraph shall be deemed to be the applicable due date for purposes of this section for taxpayers qualifying under this subparagraph. The provisions of this section shall apply to taxpayers qualifying under this subparagraph, except to the extent that any such provision is either inconsistent with a provision of this subparagraph or is not relevant to this subparagraph.

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

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

(A) a taxpayer having liability described in subparagraph (A) of paragraph one of subdivision (b) of this section shall, notwithstanding any provision of this chapter to the contrary, remit by electronic funds transfer [or certified check]: (i) either (I) seventy-five percent of one-third of the state and local sales and compensating use taxes properly payable by such taxpayer for the comparable quarter of the preceding year; or

(II) such taxpayer's total liability for state and local sales and compensating use taxes during the period ending on such twenty-second day of the month, provided, however, that in such instance no penalty or interest shall be payable pursuant to paragraph two of subdivision (g)

of this section if such taxpayer timely remits a payment of tax in an amount not less than ninety percent of the taxes as finally determined to be due and payable for such period; and

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

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

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

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

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

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

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

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

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

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

(B) A taxpayer having liability described in subparagraph (B) of paragraph one of subdivision (b) of this section shall file the returns required under section eleven hundred two of this chapter and shall pay to the commissioner the amounts required to be paid with such returns,

less the amounts remitted by electronic funds transfer [or certified check] under this section, for each of the periods for which such returns are filed under such section.

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

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

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

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

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

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

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

of the opportunity for abatement of such penalty, and of the future penalties that may result from continued failure to enroll and failure to pay by electronic funds transfer [or certified check] or to file; provided, however, that for the program period beginning December first, nineteen hundred ninety-two through August thirty-first, nineteen hundred ninety-three, the thirty-day period referred to in this sentence shall be read as forty-five days. A taxpayer shall make its first payment of tax by electronic funds transfer [or certified check] on or before the applicable due date prescribed by subdivision (c) of this section for the month of December in nineteen hundred ninety-two, the month of September in nineteen hundred ninety-three and the month of September for any year thereafter. Unless otherwise provided by this section, such taxpayer shall continue to make payments of tax by electronic funds transfer [or certified check] in accordance with the provisions of this section through the succeeding month of August and shall continue to make such payments of tax for each succeeding September-to-August period where such taxpayer meets the criteria of subdivision (b) of this section and is properly notified by the commissioner pursuant to the enrollment provisions of this subdivision. Provided, however, that:

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

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

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

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

(B) Notwithstanding any provision of law to the contrary, if a taxpayer described in subparagraph (B) or (C) of paragraph one of subdivision (b) of this section fails to make a payment of tax by electronic funds transfer [or certified check] on or before the applicable due date prescribed by subdivision (c) of this section or fails to pay any tax required to be remitted on or before such applicable due date, as prescribed by subparagraph (A) of this paragraph, and also fails to pay or pay over to the commissioner the amounts required to be paid or paid

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

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