

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:

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

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

18 S 2. Subparagraph (i) of paragraph 1 of subdivision (a) of section  
19 1145 of the tax law, as amended by chapter 411 of the laws of 1986, is  
20 amended to read as follows:

21 (i) Any person failing to file a return or to pay or pay over any tax  
22 to the [tax commission] COMMISSIONER within the time required by or  
23 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.

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

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