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

5852

2011-2012 Regular Sessions

I N S E N A T E

June 23, 2011

Introduced by Sen. FARLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the tax law, in relation to the refund of sales and compensating use taxes paid on certain credit card accounts determined to be worthless

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

Section 1. Section 1132 of the tax law is amended by adding a new subdivision (e-1) to read as follows:

(E-1) (1) A VENDOR IS RELIEVED FROM LIABILITY FOR SALES TAX THAT BECAME DUE AND PAYABLE, INSOFAR AS THE MEASURE OF THE TAX IS REPRESENTED BY ACCOUNTS THAT HAVE BEEN FOUND TO BE WORTHLESS AND CHARGED OFF FOR INCOME TAX PURPOSES BY THE VENDOR OR, IF THE VENDOR IS NOT REQUIRED TO FILE INCOME TAX RETURNS, CHARGED OFF IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. A VENDOR THAT HAS PREVIOUSLY PAID THE TAX MAY, UNDER RULES AND REGULATIONS PRESCRIBED BY THE DEPARTMENT, TAKE AS A DEDUCTION THE AMOUNT FOUND WORTHLESS AND CHARGED OFF BY THE VENDOR. IF SUCH ACCOUNTS ARE THEREAFTER COLLECTED, IN WHOLE OR IN PART, BY THE VENDOR, THE AMOUNT COLLECTED SHALL BE INCLUDED IN THE FIRST RETURN FILED AFTER THE COLLECTION AND THE TAX SHALL BE PAID WITH THE RETURN. FOR PURPOSES OF THIS SUBDIVISION, THE TERM "VENDOR" SHALL INCLUDE ANY ENTITY AFFILIATED WITH THE VENDOR UNDER 26 U.S.C. S1504.

(2) A VENDOR SHALL BE CONSIDERED THE VENDOR OF THE TANGIBLE PERSONAL PROPERTY OR SERVICES GIVING RISE TO A WORTHLESS ACCOUNT EVEN THOUGH THE PROPERTY OR SERVICES ARE SOLD BY A LEASED DEPARTMENT OR CONCESSION PROVIDED ALL THE FOLLOWING CONDITIONS ARE MET:

(I) THE LEASED DEPARTMENT OR CONCESSION ACCOUNTS FOR AND PAYS OVER ALL OF ITS RECEIPTS TO THE LESSOR-VENDOR;

(II) THE LESSOR-VENDOR REPORTS AND REMITS TO THE DEPARTMENT THE TAX ON ALL OF THE LEASED DEPARTMENT OR CONCESSION'S RECEIPTS; AND

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

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(III) THE TRANSFER OF ALL THE RECEIVABLES FROM THE LEASED DEPARTMENT OR CONCESSION TO THE LESSOR-VENDOR IS MADE WITHOUT ANY DISCOUNT FOR ANY CREDIT TRANSACTIONS WHICH INVOLVE THE LESSOR-VENDOR'S RECEIVABLES AND WITHOUT RECOURSE TO THE LEASED DEPARTMENT OR CONCESSION.

(3) (I) IN THE CASE OF ACCOUNTS HELD BY A LENDER, A VENDOR OR LENDER WHO MAKES PROPER ELECTION PURSUANT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH SHALL BE ENTITLED TO A DEDUCTION OR REFUND OF THE TAX THAT THE VENDOR HAS PREVIOUSLY REPORTED AND PAID IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

(A) NO DEDUCTION WAS PREVIOUSLY CLAIMED OR ALLOWED ON ANY PORTION OF THE ACCOUNTS;

(B) THE ACCOUNTS HAVE BEEN FOUND WORTHLESS AND WRITTEN OFF BY THE LENDER IN ACCORDANCE WITH THE REQUIREMENTS OF PARAGRAPH ONE OF THIS SUBDIVISION;

(C) THE CONTRACT BETWEEN THE VENDOR AND THE LENDER CONTAINS AN IRREVOCABLE RELINQUISHMENT OF ALL RIGHTS TO THE ACCOUNT FROM THE VENDOR TO THE LENDER; AND

(D) THE PARTY ELECTING TO CLAIM THE DEDUCTION OR REFUND PURSUANT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH FILES A CLAIM IN A MANNER PRESCRIBED BY THE DEPARTMENT.

(II) IF THE VENDOR OR THE LENDER THEREAFTER COLLECTS, IN WHOLE OR IN PART, ANY ACCOUNTS, ONE OF THE FOLLOWING SHALL APPLY:

(A) IF THE VENDOR IS ENTITLED TO THE DEDUCTION OR REFUND UNDER THE ELECTION SPECIFIED PURSUANT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH, THE VENDOR SHALL INCLUDE THE AMOUNT COLLECTED IN ITS FIRST RETURN FILED AFTER THE COLLECTION AND PAY TAX ON THAT AMOUNT WITH THE RETURN; OR

(B) IF THE LENDER IS ENTITLED TO THE DEDUCTION OR REFUND UNDER THE ELECTION SPECIFIED PURSUANT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH, THE LENDER SHALL PAY THE TAX TO THE DEPARTMENT;

(III) (A) FOR PURPOSES OF THIS SUBDIVISION, THE TERM "LENDER" SHALL MEAN ANY OF THE FOLLOWING:

(I) ANY PERSON WHO HOLDS A PRIVATE LABEL CREDIT CARD ACCOUNT WHICH THAT PERSON PURCHASED DIRECTLY FROM A VENDOR WHO REPORTED THE TAX;

(II) ANY PERSON WHO HOLDS A PRIVATE LABEL CREDIT CARD ACCOUNT PURSUANT TO THAT PERSON'S CONTRACT DIRECTLY WITH THE VENDOR WHO REPORTED THE TAX; OR

(III) ANY PERSON WHO IS EITHER AN AFFILIATED ENTITY, UNDER 26 U.S.C. S1504, OF A PERSON DESCRIBED IN ITEM (I) OR (II) OF THIS CLAUSE, OR AN ASSIGNEE OF A PERSON DESCRIBED IN SUCH ITEM (I) OR (II).

(B) FOR PURPOSES OF THIS SUBDIVISION, THE TERM "PRIVATE LABEL CREDIT CARD" MEANS ANY CHARGE CARD OR CREDIT CARD THAT CARRIES, REFERS TO OR IS BRANDED WITH THE NAME OR LOGO OF A VENDOR AND THAT CAN BE USED FOR PURCHASES FROM THE VENDOR (OR ANY SUBSIDIARIES OR AFFILIATES THEREOF) WHOSE NAME OR LOGO APPEARS ON THE CARD. THE RECEIPTS OF SUCH PURCHASES FROM THE VENDOR WHOSE NAME OR LOGO APPEARS ON THE CREDIT CARD MUST BE SEPARATELY STATED AND IDENTIFIABLE.

(IV) THE LENDER AND THE VENDOR SHALL FILE A JOINT ELECTION WITH THE DEPARTMENT, SIGNED BY BOTH PARTIES, DESIGNATING WHICH PARTY IS ENTITLED TO CLAIM THE DEDUCTION OR REFUND. THIS ELECTION SHALL NOT BE AMENDED OR REVOKED UNLESS A NEW ELECTION, SIGNED BY BOTH PARTIES, IS FILED WITH THE DEPARTMENT.

(V) A LENDER MAY HAVE ITS DEDUCTION OR REFUND FOR BAD DEBTS CLAIMED ON A RETURN FILED BY A MEMBER OF AN AFFILIATED GROUP AS DEFINED UNDER 26 U.S.C. S1504.

(4) A VENDOR OR LENDER WHOSE VOLUME AND CHARACTER OF UNCOLLECTIBLE ACCOUNTS WARRANTS AN ALTERNATIVE METHOD OF SUBSTANTIATING THE DEDUCTION OR REFUND MAY:

(I) MAINTAIN RECORDS OTHER THAN THE RECORDS REQUIRED BY THE DEPARTMENT IF THE RECORDS FAIRLY AND EQUITABLY APPORTION TAXABLE AND NONTAXABLE ELEMENTS AND NEW YORK AND NON-NEW YORK ELEMENTS OF A BAD DEBT AND COMPUTE THE AMOUNT OF SALES TAX IMPOSED AND REMITTED WITH RESPECT TO THE NEW YORK TAXABLE CHARGES REMAINING UNPAID ON THE DEBT; OR

(II) IMPLEMENT A SYSTEM TO REPORT ITS FUTURE TAX RESPONSIBILITIES BASED ON A HISTORICAL PERCENTAGE CALCULATED FROM A SAMPLE OF TRANSACTIONS IF THE SYSTEM UTILIZES RECORDS PROVIDED BY THE VENDOR OR LENDER CLAIMING THE DEDUCTION OR REFUND.

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.