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

---

4942

2011-2012 Regular Sessions

I N  S E N A T E

May 2, 2011

---

Introduced by Sen. YOUNG -- 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 establishing a retail merchants voluntary compliance program for purposes of sales tax liability

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

Section 1. The tax law is amended by adding a new section 1700-a to read as follows:

S 1700-A. RETAIL MERCHANTS VOLUNTARY COMPLIANCE PROGRAM. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THERE SHALL BE ESTABLISHED A RETAIL MERCHANTS VOLUNTARY COMPLIANCE PROGRAM TO BE ADMINISTERED BY THE COMMISSIONER, FOR ALL ELIGIBLE TAXPAYERS.

2. FOR PURPOSES OF THIS SECTION, AN "ELIGIBLE TAXPAYER" IS AN INDIVIDUAL, PARTNERSHIP, ESTATE, TRUST, CORPORATION, LIMITED LIABILITY COMPANY, JOINT STOCK COMPANY, OR ANY OTHER COMPANY, TRUSTEE, RECEIVER, ASSIGNEE, REFEREE, SOCIETY, ASSOCIATION, BUSINESS OR ANY OTHER PERSON SUBJECT TO SALES TAX IMPOSED BY OR PURSUANT TO THE AUTHORITY OF THIS CHAPTER, THAT IS SUBJECT TO AN ASSESSMENT FOR OUTSTANDING SALES TAX AND HAS NOT HAD AN ASSESSMENT FOR SALES TAX WITHIN THE PREVIOUS FIVE YEARS.

3. UNDER THE RETAIL MERCHANTS VOLUNTARY COMPLIANCE PROGRAM, UPON EXECUTION OF A VOLUNTARY COMPLIANCE AGREEMENT BY THE ELIGIBLE TAXPAYER AND THE COMMISSIONER, THE COMMISSIONER SHALL WAIVE ANY APPLICABLE INTEREST AND PENALTIES. IN ADDITION, NO CRIMINAL ACTION OR PROCEEDING SHALL BE BROUGHT AGAINST AN ELIGIBLE TAXPAYER RELATING TO THE TAX LIABILITY COVERED BY THE AGREEMENT.

4. IF A TAXPAYER AND ITS TAX LIABILITY ARE ELIGIBLE UNDER THE RETAIL MERCHANTS VOLUNTARY COMPLIANCE PROGRAM, THE COMMISSIONER IS AUTHORIZED TO ENTER INTO A VOLUNTARY COMPLIANCE AGREEMENT WITH THE TAXPAYER. A VOLUNTARY COMPLIANCE AGREEMENT SHALL BE IN A FORM TO BE ESTABLISHED BY

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

LBD11112-01-1

THE COMMISSIONER AND INCLUDE SUCH TERMS AS THE COMMISSIONER MAY REASONABLY REQUIRE TO REQUIRE THE ELIGIBLE TAXPAYER TO COMPLY WITH THIS CHAPTER IN THE FUTURE INCLUDING, BUT NOT LIMITED TO THE ESTABLISHMENT OF A SEGREGATED BANK ACCOUNT FOR SALES TAX COLLECTIONS, MORE FREQUENT TAX DEPOSIT REQUIREMENTS OR USE OF CERTIFIED POINT OF SALES SYSTEMS. THE ELIGIBLE TAXPAYER SHALL PAY THE TAX THAT IS THE SUBJECT OF THE VOLUNTARY COMPLIANCE AGREEMENT WHEN THE AGREEMENT IS EXECUTED OR WITHIN THE TIME STATED ON A BILL ISSUED TO THE ELIGIBLE TAXPAYER BY THE COMMISSIONER. IN THE EVENT THE COMMISSIONER IS SATISFIED THAT THE ELIGIBLE TAXPAYER IS UNABLE TO MAKE IMMEDIATE FULL PAYMENT OF THE DISCLOSED TAX LIABILITY, THE COMMISSIONER MAY ENTER INTO AN INSTALLMENT PAYMENT PROGRAM WITH THE ELIGIBLE TAXPAYER FOR THE PAYMENT OF THE TAX DUE. THE COMMISSIONER MAY REQUIRE A FINANCIAL DISCLOSURE STATEMENT SETTING FORTH INFORMATION CONCERNING THE ELIGIBLE TAXPAYER'S CURRENT ASSETS, LIABILITIES, EARNINGS, AND OTHER FINANCIAL INFORMATION BEFORE ENTERING INTO AN INSTALLMENT PAYMENT PLAN WITH THE ELIGIBLE TAXPAYER. IN ADDITION TO ANY OTHER INFORMATION AND TERMS THAT THE COMMISSIONER DETERMINES ARE APPROPRIATE, THE VOLUNTARY COMPLIANCE AGREEMENT SHALL PROVIDE THAT, IF THE ELIGIBLE TAXPAYER COMPLIES WITH THE TERMS OF THE COMPLIANCE AGREEMENT, THE ELIGIBLE TAXPAYER WILL NOT BE SUBJECT TO ANY CRIMINAL TAX PROSECUTION IN THIS STATE FOR THE CONDUCT DISCLOSED BY THE ELIGIBLE TAXPAYER.

5. IF THE ELIGIBLE TAXPAYER INTENTIONALLY PROVIDES FALSE MATERIAL INFORMATION OR OMITS MATERIAL INFORMATION IN HIS OR HER SUBMISSIONS TO THE COMMISSIONER, OR ATTEMPTS TO INTENTIONALLY DEFEAT OR EVADE A TAX DUE PURSUANT TO THE AGREEMENT EXECUTED PURSUANT TO THIS SECTION, OR INTENTIONALLY FAILS TO COMPLY WITH THE TERMS OF THE COMPLIANCE AGREEMENT, SUCH AGREEMENT SHALL BE DEEMED RESCINDED.

6. UNLESS THE COMMISSIONER ON HIS OR HER OWN MOTION REDETERMINES THE AMOUNT OF TAX DUE, NO REFUND SHALL BE GRANTED OR CREDIT ALLOWED WITH RESPECT TO ANY TAXES, INCLUDING APPLICABLE INTEREST, PAID UNDER THIS PROGRAM.

7. THE COMMISSIONER MAY PROMULGATE REGULATIONS, ISSUE FORMS AND INSTRUCTIONS, AND TAKE ANY AND ALL OTHER ACTIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THE PROGRAM ESTABLISHED PURSUANT TO THIS SECTION. THE COMMISSIONER SHALL PUBLICIZE THE PROGRAM PROVIDED FOR IN THIS SECTION SO AS TO MAXIMIZE PUBLIC AWARENESS OF AND PARTICIPATION IN SUCH PROGRAM.

8. THE VOLUNTARY COMPLIANCE AGREEMENT, AND OTHER DOCUMENTS FILED BY AN ELIGIBLE TAXPAYER PURSUANT TO THE PROGRAM ESTABLISHED BY THIS SECTION SHALL BE DEEMED TO BE REPORTS AND RETURNS:

(A) SUBJECT TO THE SECRECY PROVISIONS OF THIS CHAPTER IN THE SAME MANNER AND TO THE SAME EXTENT AS IF SUCH DOCUMENTS WERE REFERRED TO IN ANY OF THE SECRECY PROVISIONS OF THIS CHAPTER; AND

(B) FOR PURPOSES OF THE CRIMINAL PROVISIONS OF ARTICLE THIRTY-SEVEN OF THIS CHAPTER.

S 2. This act shall take effect immediately.