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I N S E N A T E

June 15, 2012

Introduced by Sens. MARCELLINO, KRUEGER -- 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 prohibiting the use of automated sales suppression devices, zappers or phantom-ware

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

1 Section 1. The tax law is amended by adding a new section 1816 to read
2 as follows:
3 S 1816. AUTOMATED SALES SUPPRESSION. (A) DEFINITIONS. AS USED IN THIS
4 SECTION:
5 (1) "AUTOMATED SALES SUPPRESSION DEVICE" OR "ZAPPER" MEANS A SOFTWARE
6 PROGRAM, CARRIED ON A MEMORY STICK OR REMOVABLE COMPACT DISC, ACCESSED
7 THROUGH AN INTERNET LINK, OR ACCESSED THROUGH ANY OTHER MEANS, THAT
8 FALSIFIES THE ELECTRONIC RECORDS OF ELECTRONIC CASH REGISTERS AND OTHER
9 POINT-OF-SALE SYSTEMS, INCLUDING, BUT NOT LIMITED TO, TRANSACTION DATA
10 AND TRANSACTION REPORTS.
11 (2) "ELECTRONIC CASH REGISTER" MEANS A DEVICE THAT KEEPS A REGISTER OR
12 SUPPORTING DOCUMENTS THROUGH THE MEANS OF AN ELECTRONIC DEVICE OR
13 COMPUTER SYSTEM DESIGNED TO RECORD TRANSACTION DATA FOR THE PURPOSE OF
14 COMPUTING, COMPILING, OR PROCESSING TRANSACTION DATA.
15 (3) "PHANTOM-WARE" MEANS A HIDDEN, PREINSTALLED, OR INSTALLED AT A
16 LATER TIME PROGRAMMING OPTION EMBEDDED IN THE OPERATING SYSTEM OF AN
17 ELECTRONIC CASH REGISTER OR HARDWIRED INTO THE ELECTRONIC CASH REGISTER
18 THAT WITH INTENT OR BY SPECIFIC DESIGN IS USED TO CREATE A VIRTUAL
19 SECOND TILL OR MAY ELIMINATE OR MANIPULATE TRANSACTION RECORDS THAT MAY
20 OR MAY NOT BE PRESERVED IN DIGITAL FORMATS TO REPRESENT THE TRUE OR
21 MANIPULATED RECORD OF TRANSACTIONS IN THE ELECTRONIC CASH REGISTER.
22 (4) "TRANSACTION DATA" MEANS DATA ASSOCIATED WITH ITEMS PURCHASED BY A
23 CUSTOMER, THE PRICE FOR EACH ITEM, A TAXABILITY DETERMINATION FOR EACH
24 ITEM, A SEGREGATED TAX AMOUNT FOR EACH OF THE TAXED ITEMS, THE AMOUNT OF
25 CASH OR CREDIT TENDERED, THE NET AMOUNT RETURNED TO THE CUSTOMER IN
26 CHANGE, THE DATE AND TIME OF THE PURCHASE, THE NAME, ADDRESS, AND IDENTIFICATION
27 NUMBER OF THE VENDOR, AND THE RECEIPT, SEQUENCE OR INVOICE
28 NUMBER OF THE TRANSACTION.

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

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1 (5) "TRANSACTION REPORT" MEANS A REPORT DOCUMENTING DATA, INCLUDING,
2 BUT NOT LIMITED TO, DATA ASSOCIATED WITH SALES, TAXES COLLECTED, MEDIA
3 TOTALS, AND DISCOUNT VOIDS AT AN ELECTRONIC CASH REGISTER THAT IS PRINT-
4 ED ON CASH REGISTER TAPE AT THE END OF A DAY OR SHIFT, OR A REPORT DOCU-
5 MENTING EVERY ACTION AT AN ELECTRONIC CASH REGISTER THAT IS STORED ELEC-
6 TRONICALLY.

7 (6) "PERSON" SHALL HAVE THE SAME DEFINITION AS IN SUBDIVISION (A) OF
8 SECTION ELEVEN HUNDRED ONE OF THIS CHAPTER.

9 (B) PROHIBITIONS. (1) IT IS AN OFFENSE FOR A PERSON TO KNOWINGLY
10 PURCHASE, POSSESS, INSTALL, UPDATE, MAINTAIN, UPGRADE, TRANSFER OR USE
11 ANY AUTOMATED SALES SUPPRESSION DEVICE, ZAPPER OR PHANTOM-WARE. IT IS
12 ALSO AN OFFENSE TO TRANSMIT DATA WITH THE INTENT OF DATA MANIPULATION.

13 (2) A VIOLATION OF PARAGRAPH ONE OF THIS SUBDIVISION IS A CLASS E
14 FELONY PUNISHABLE BY A FINE OF NOT LESS THAN FIVE THOUSAND DOLLARS BUT
15 NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS AND, FOR A SECOND OFFENSE
16 WITHIN FIVE YEARS, BY A FINE OF NOT LESS THAN TWENTY-FIVE THOUSAND
17 DOLLARS BUT NOT MORE THAN ONE HUNDRED THOUSAND DOLLARS AND, FOR A THIRD
18 OR SUBSEQUENT OFFENSE WITHIN TEN YEARS, BY A FINE OF NOT LESS THAN ONE
19 HUNDRED THOUSAND DOLLARS BUT NOT MORE THAN FIVE HUNDRED THOUSAND
20 DOLLARS.

21 (3) IT IS AN OFFENSE FOR A PERSON TO KNOWINGLY SELL ANY AUTOMATED
22 SALES SUPPRESSION DEVICE, ZAPPER OR PHANTOM-WARE.

23 (4) A VIOLATION OF PARAGRAPH THREE OF THIS SUBDIVISION IS A CLASS E
24 FELONY PUNISHABLE BY A FINE OF TWENTY-FIVE THOUSAND DOLLARS PER INCI-
25 DENT.

26 (5) THE OFFENSES CREATED BY THIS SECTION SHALL BE IN ADDITION TO AND
27 CONSIDERED A SEPARATE OFFENSE FROM ANY OFFENSE OF SECTION EIGHTEEN
28 HUNDRED SEVENTEEN OF THIS PART.

29 S 2. This act shall take effect January 1, 2013.