

# STATE OF NEW YORK

4377

2017-2018 Regular Sessions

## IN SENATE

February 10, 2017

Introduced by Sens. KRUEGER, MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to creating the offense of defrauding the government in the first degree and expanding the definition of conspiracy in the fourth degree; and to amend the tax law and the administrative code of the city of New York, in relation to expanding the definition of tax fraud acts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The penal law is amended by adding a new section 195.22 to  
2 read as follows:

3 § 195.22 Defrauding the government in the first degree.

4 A person is guilty of defrauding the government in the first degree  
5 when, he or she knowingly manufactures, sells, installs, or uses, or  
6 attempts to manufacture, sell, install or use, an automated sales  
7 suppression device for the purpose of enabling or assisting any person  
8 to evade any tax owed to the state or a political subdivision of the  
9 state or any instrumentality of the state.

10 For purposes of this section an "automated sales suppression device"  
11 is a software program that falsifies electronic records for the purpose  
12 of evading any tax owed to the state, or any political subdivision of  
13 the state, or any instrumentality of the state. An "automated sales  
14 suppression device" includes any software program that is (a) maintained  
15 on a USB memory stick or thumb drive, zipper, removable compact disc or  
16 other external device, or (b) embedded in the operating system as "phan-  
17 tom ware," or (c) otherwise accessed remotely.

18 Defrauding the government in the first degree is a class D felony.

19 § 2. Section 105.10 of the penal law is amended by adding a new subdi-  
20 vision 4 to read as follows:

21 4. the felony of defrauding the government in the first degree as  
22 defined in section 195.22 of this part (defrauding the government in the

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

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1 first degree), be performed, he or she agrees with one or more persons  
2 to engage in or cause the performance of such conduct.

3 § 3. Subparagraphs 7 and 8 of paragraph (a) of section 1801 of the tax  
4 law, as added by section 15 of subpart I of part VI of chapter 57 of the  
5 laws of 2009, are amended and a new subparagraph 9 is added to read as  
6 follows:

7 (7) with intent to evade any tax fails to pay that tax; or

8 (8) issues an exemption certificate, interdistributor sales certif-  
9 icate, resale certificate, or any other document capable of evidencing a  
10 claim that taxes do not apply to a transaction, which he or she does not  
11 believe to be true and correct as to any material matter, which omits  
12 any material information, or which is false, fraudulent, or counter-  
13 feit[-]; or

14 (9) uses an automated sales suppression device as described in section  
15 195.22 of the penal law (defrauding the government in the first degree).

16 § 4. Subparagraphs 7 and 8 of paragraph (a) of section 11-4002 of the  
17 administrative code of the city of New York, as added by chapter 201 of  
18 the laws of 2009, are amended and a new subparagraph 9 is added to read  
19 as follows:

20 (7) with intent to evade any tax imposed under any designated chapter  
21 of this title, fails to pay that tax; or

22 (8) issues an exemption certificate, interdistributor sales certif-  
23 icate, resale certificate, or any other document capable of evidencing a  
24 claim that taxes imposed under a designated chapter of this title do not  
25 apply to a transaction, which he or she does not believe to be true and  
26 correct as to any material matter, which omits any material information,  
27 or which is false, fraudulent, or counterfeit[-]; or

28 (9) uses an automated sales suppression device as described in section  
29 195.22 of the penal law (defrauding the government in the first degree).

30 § 5. This act shall take effect on the first of November next succeed-  
31 ing the date upon which it shall have become a law.