STATE OF NEW YORK

1755

2017-2018 Regular Sessions

IN ASSEMBLY

January 13, 2017

Introduced by M. of A. RODRIGUEZ, STECK, GOTTFRIED -- Multi-Sponsored by -- M. of A. BLAKE, COOK, GLICK, SIMON -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to establishing a tax on transportation network company rides in the metropolitan commuter transportation district

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 article 29-B to read as follows:

ARTICLE 29-B

TAX ON TRANSPORTATION NETWORK COMPANY RIDES IN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT

Section 1291. Definitions.
1292. Imposition of tax.
1293. Presumption of taxability.
1294. Returns.
1295. Payment of tax.
1296. Records to be kept.
1297. Secrecy of returns and reports.
1298. Deposit and disposition of revenue.
1299. Cooperation by city.
1299-a. Practice and procedure.

§ 1291. Definitions. When used in this article, unless otherwise expressly stated, the following words and terms shall have the following meanings:

(a) "Person" means an individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or

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

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otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

(b) "MCTD" means the metropolitan commuter transportation district established by section twelve hundred sixty-two of the public authorities law.

(c) "City" means a city of a million or more located in the MCTD.

(d) "Transportation network company vehicle" means a motor vehicle carrying passengers for hire in the city that uses an online-enabled platform to connect passengers with drivers using a personal, non-commercial vehicle.

(e) "Passenger" means an individual seated in a transportation network company vehicle for travel for hire to a given destination.

§ 1292. Imposition of tax. In addition to any other tax imposed by this chapter or other law, there is hereby imposed on every transportation network company vehicle owner a tax of fifty cents per ride on every ride that originates in the city and terminates anywhere within the territorial boundaries of the MCTD.

§ 1293. Presumption of taxability. For the purpose of the proper administration of this article and to prevent evasion of the tax imposed by this article, it shall be presumed that every transportation network company vehicle ride that originates in the city is subject to the tax imposed by this article. This presumption shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

§ 1294. Returns. Every person liable for the tax imposed by this article shall file a return quarterly with the commissioner. Each return shall show the number of rides in the quarter for which the return is filed, together with such other information as the commissioner may require. The returns required by this section shall be filed for quarterly periods ending on the last day of March, June, September, and December of each year, and each return shall be filed within twenty days after the end of the quarterly period covered thereby. Every such person shall also file a return with the commissioner for the period of November and December two thousand seventeen, by January twentieth, two thousand eighteen, containing the information described above. If the commissioner deems it necessary in order to ensure the payment of the tax imposed by this article, the commissioner may require returns to be made for shorter periods than prescribed by the foregoing provisions of this section, and upon such dates as the commissioner may specify. The form of returns shall be prescribed by the commissioner and shall contain such information as the commissioner may deem necessary for the proper administration of this article. The commissioner may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice. The commissioner may require that the returns be filed electronically.

§ 1295. Payment of tax. Every person required to file a return under this article shall, at the time of filing such return, pay to the commissioner the total of all tax imposed by this article, on the correct number of rides subject to tax under this article. The amount so payable to the commissioner for the period for which a return is required to be filed shall be due and payable to the commissioner on the date limited for the filing of the return for such period, without regard to whether a return is filed or whether the return which is filed correctly shows the correct number of rides or the amount of tax due thereon. The commissioner may require that the tax be paid electronically.

§ 1296. Records to be kept. Every person required to pay any tax imposed by this article shall keep records of every ride originating in the city and of all amounts paid, charged or due thereon and of the tax payable thereon, in such form as the commissioner may require. Every such person shall also keep a true and complete copy of every contract, agreement, or arrangement concerning the lease, rental, or license to use a transportation network company vehicle for which the person is required to remit the tax on rides imposed by this article on such person. Such records shall be available for inspection and examination at any time upon demand by the commissioner or the commissioner's duly authorized agent or employee and shall be preserved for a period of three years, except that the commissioner may consent to their destruction within that period or may require that they be kept longer. Such records may be kept within the meaning of this section when reproduced on any photographic, photostatic, microfilm, micro-card, miniature photographic or other process which actually reproduces the original record. If those records are maintained in an electronic format, they must be made available and accessible to the commissioner in electronic format.

§ 1297. Secrecy of returns and reports. (a) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner, any officer or employee of the department, any person engaged or retained by the department on an independent contract basis, or any person who in any manner may acquire knowledge of the contents of a return or report filed with the commissioner pursuant to this article, to divulge or make known in any manner any particulars set forth or disclosed in any such return or report. The officers charged with the custody of such returns and reports shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner in an action or proceeding under the provisions of this chapter or in any other action or proceeding involving the collection of a tax due under this chapter to which the state or the commissioner is a party or a claimant, or on behalf of any party to any action, proceeding or hearing under the provisions of this article when the returns, reports or facts shown thereby are directly involved in such action, proceeding or hearing, in any of which events the court, or in the case of a hearing, the division of tax appeals may require the production of, and may admit into evidence, so much of said returns, reports or of the facts shown thereby, as are pertinent to the action, proceeding or hearing and no more. The commissioner or the division of tax appeals may, nevertheless, publish a copy or a summary of any decision rendered after a hearing required by this article. Nothing in this section shall be construed to prohibit the delivery to a person who has filed a return or report or to such person's duly authorized representative of a certified copy of any return or report filed in connection with such person's tax. Nor shall anything in this section be construed to prohibit the publication of statistics so classified as to prevent the identification of particular returns or reports and the items thereof, or the inspection by the attorney general or other legal representatives of the state of the return or report of any person required to pay the tax who shall bring action to review the tax based thereon, or against whom an action or proceeding under this chapter has been recommended by the commissioner or the attorney general or has been instituted, or the inspection of the returns or reports required under this article by the comptroller or duly designated officer or employee of the state department of audit and

control, for purposes of the audit of a refund of any tax paid by a person required to pay the tax under this article. Provided, further, nothing in this section shall be construed to prohibit the disclosure, in such manner as the commissioner deems appropriate, of the names and other appropriate identifying information of those persons required to pay tax under this article.

(b) Notwithstanding the provisions of subdivision (a) of this section, the commissioner may, in his or her discretion, permit the proper officer of a city that regulates transportation network company vehicles or the duly authorized representative of such officer, to inspect any return filed under this article, or may furnish to such officer or such officer's authorized representative an abstract of any such return or supply such person with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this article; but such permission shall be granted or such information furnished only if such city shall have furnished the commissioner with all information requested by the commissioner pursuant to this article and shall have permitted the commissioner or the commissioner's authorized representative to make any inspection of any records or reports concerning transportation network company vehicles and their owners or operators filed with or possessed by such city which the commissioner may have requested from such city.

(c) Notwithstanding the provisions of subdivision (a) of this section, the commissioner, in his or her discretion, may require or permit any or all persons liable for any tax imposed by this article, to make payment to banks, banking houses or trust companies designated by the commissioner and to file returns with such banks, banking houses or trust companies as agents of the commissioner, in lieu of paying any such tax directly to the commissioner. However, the commissioner shall designate only such banks, banking houses or trust companies as are already designated by the comptroller as depositories pursuant to section twelve hundred eighty-eight of this chapter.

(d) Notwithstanding the provisions of subdivision (a) of this section, the commissioner may permit the secretary of the treasury of the United States or such secretary's delegate, or the authorized representative of either such officer, to inspect any return filed under this article, or may furnish to such officer or such officer's authorized representative an abstract of any such return or supply such person with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this article, but such permission shall be granted or such information furnished only if the laws of the United States grant substantially similar privileges to the commissioner or officer of this state charged with the administration of the tax imposed by this article, and only if such information is to be used for tax purposes only; and provided further the commissioner may furnish to the commissioner of internal revenue or such commissioner's authorized representative such returns filed under this article and other tax information, as such commissioner may consider proper, for use in court actions or proceedings under the internal revenue code, whether civil or criminal, where a written request therefor has been made to the commissioner by the secretary of the treasury of the United States or such secretary's delegate, provided the laws of the United States grant substantially similar powers to the secretary of the treasury of the United States or his or her delegate. Where the commissioner has so authorized use of returns and other information in such actions or proceedings, officers and employees of the department may testify in

such actions or proceedings in respect to such returns or other information.

(e) Returns and reports filed under this article shall be preserved for three years and thereafter until the commissioner orders them to be destroyed.

(f) (1) Any officer or employee of the state who willfully violates the provisions of subdivision (a) of this section shall be dismissed from office and be incapable of holding any public office for a period of five years thereafter.

(2) Cross-reference: For criminal penalties, see article thirty-seven of this chapter.

§ 1298. Deposit and disposition of revenue. Notwithstanding any provision of law to the contrary: (a) All taxes, interest and penalties collected or received by the commissioner pursuant to this article shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the comptroller, to the credit of the comptroller. Such an account may be established in one or more of such depositories. Such deposits shall be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under this section, the comptroller shall retain in the comptroller's hands such amount as the commissioner may determine to be necessary for refunds under this article. The commissioner is authorized and directed to deduct from such amounts collected or received under this article, before deposit into the accounts specified by the comptroller, a reasonable amount necessary to effectuate refunds of appropriations of the department to reimburse the department for the costs to administer, collect and distribute the taxes imposed by this article.

(b) On or before the twelfth day following the end of each month, after reserving such amount for such refunds and such costs, the commissioner shall certify to the comptroller the amount of all revenues so received pursuant to this article during the prior month as a result of the taxes, interest and penalties so imposed.

(c) The comptroller shall pay over the amount of revenues so certified by the commissioner to the metropolitan transportation authority aid trust account of the metropolitan transportation authority financial assistance fund established by section ninety-two-ff of the state finance law for deposit, subject to appropriation, in the corporate transportation account of the metropolitan transportation authority special assistance fund established by section twelve hundred seventy-a of the public authorities law to be applied as provided in paragraph (e) of subdivision four of such section twelve hundred seventy-a. Any money collected pursuant to this article that is deposited by the comptroller in the metropolitan transportation authority aid trust account of the metropolitan transportation authority financial assistance fund shall be held in such fund free and clear of any claim by any person or entity paying the tax pursuant to this article, including, without limiting the generality of the foregoing, any right or claim against the metropolitan transportation authority, any of its bondholders, or any subsidiary or affiliate of the metropolitan transportation authority.

§ 1299. Cooperation by city. The city shall cooperate with and assist the commissioner to effect the purposes of this article and the commissioner's responsibilities under this article. Such cooperation shall include furnishing the names, addresses and all other information concerning every owner, operator and driver of transportation network

company vehicles in the city, together with any other information the commissioner requests, all without cost to the commissioner.

§ 1299-a. Practice and procedure. The provisions of article twenty-seven of this chapter shall apply with respect to the administration of and procedure with respect to the tax imposed by this article in the same manner and with the same force and effect as if the language of such article twenty-seven had been incorporated in full into this article and had expressly referred to the tax under this article, except to the extent that any such provision is either inconsistent with a provision of this article or is not relevant to this article.

§ 2. This act shall take effect immediately.