

STATE OF NEW YORK

6078--B

2019-2020 Regular Sessions

IN ASSEMBLY

February 27, 2019

Introduced by M. of A. CARROLL, ARROYO, M. G. MILLER, FALL -- Multi-Sponsored by -- M. of A. COOK, SIMON -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to adding a surcharge on online delivery transactions within the city of New York

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 article 29-D to read
2 as follows:

ARTICLE 29-D

DELIVERY SURCHARGE

Section 1299-M. Definitions.

1299-N. Imposition of tax.

1299-O. Liability for surcharge.

1299-P. Registration.

1299-Q. Returns and payment of surcharge.

1299-R. Records to be kept.

1299-S. Secrecy of returns and reports.

1299-T. Practice and procedure.

1299-U. Deposit and disposition of revenue.

1299-V. Cooperation by regulatory agencies.

§ 1299-M. Definitions. (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 otherwise, any combination of individuals and

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

LBD09236-04-0

1 any other form of unincorporated enterprise owned or conducted by two or
2 more persons.

3 (b) "Delivery transaction" means a transaction that results in the
4 delivery of any item purchased online to the purchaser.

5 (c) "Purchaser" means the person receiving the item in the delivery
6 transaction.

7 § 1299-N. Imposition of tax. In addition to any other tax or assess-
8 ment imposed by this chapter or other law, there is hereby imposed,
9 beginning on January first, two thousand twenty-two, a surcharge on all
10 delivery transactions of three dollars for each delivery transaction
11 where the delivery is made within the city of New York, except for
12 deliveries of essential medical supplies or deliveries of food.

13 § 1299-O. Liability for surcharge. (a) Notwithstanding any provision
14 of law to the contrary, any person that sells by any means any item to
15 be delivered within the city of New York is subject to a surcharge
16 imposed by this article shall be liable for the surcharge imposed by
17 this article.

18 (b) Notwithstanding any law to the contrary, the surcharge imposed by
19 this article shall be passed along to the purchaser and separately stat-
20 ed on any receipt that is provided to such passenger. The passing along
21 of such surcharge shall not be construed by any court or administrative
22 body as the imposition of the surcharge on the person or entity that
23 pays for the delivery transaction.

24 (c) Notwithstanding any law to the contrary, the surcharge imposed by
25 this article shall not apply to any purchaser using the supplemental
26 nutrition assistance program, special supplemental nutrition program for
27 women, infants and children, or any successor programs as full or
28 partial payment for the items purchased where all items purchased in the
29 delivery transaction are purchasable using such programs.

30 § 1299-P. Registration. (a) Every person liable for the surcharge
31 imposed by this article shall file with the commissioner a properly
32 completed application for a certificate of registration, in a form
33 prescribed by the commissioner. Such application shall be accompanied by
34 a fee of one dollar and fifty cents, and shall set forth the name and
35 address of the registrant, and any other information that the commis-
36 sioner may require. Notwithstanding the foregoing, any person liable for
37 a surcharge imposed by this article that will incur such liability no
38 more than one time in any single calendar month shall not be subject to
39 the provisions of this paragraph.

40 (b) Except as otherwise provided in this section, the commissioner
41 shall issue a certificate of registration to each person that applies
42 for one for a specified term of not less than three years. Any certif-
43 icate of registration referred to in this paragraph shall be subject to
44 renewal in accordance with rules promulgated by the commissioner, and
45 upon the payment of a fee of one dollar fifty cents. Whether or not such
46 certificate of registration is issued for a specified term, it shall be
47 subject to suspension or revocation as provided for in this section.
48 Each certificate shall state the registrant and the registrant's taxpay-
49 er ID number it is applicable to. Certificates of registration issued
50 pursuant to this article shall be non-assignable and non-transferable,
51 and shall be surrendered to the commissioner immediately upon the regis-
52 trant's ceasing to do business at the address provided in its applica-
53 tion, unless the registrant amends its certificate of registration in
54 accordance with rules promulgated by the commissioner. All registrants
55 must notify the commissioner of changes to any of the information stated
56 on their certificate of registration, including vehicle changes, if any,

1 on a calendar quarterly basis, and shall amend their certificates of
2 registration accordingly.

3 (c) (1) The commissioner may refuse to issue a certificate of registra-
4 tion to a person, or may suspend or revoke a certificate of registra-
5 tion that was issued to a person, pursuant to this section upon finding
6 that: (i) such person failed to pay any monies that are finally deter-
7 mined to be due for any tax or imposition that is administered by the
8 commissioner; (ii) such person failed to file any report or return that
9 is due from it under this chapter; (iii) such person willfully filed a
10 false report, return or other document due under this chapter; (iv) such
11 person willfully violated any provisions of this article, or any rule or
12 regulation of the commissioner promulgated under this article; or (v) a
13 certificate of registration issued pursuant to this section to such
14 person, or to any business or entity under control of such person, or
15 that is subject to substantially the same ownership, direction or
16 control of such person, that has been revoked or suspended within one
17 year from the date on which a certificate of registration is filed.

18 (2) A notice of proposed revocation, suspension or refusal to issue
19 shall be given to the person that applies for a certificate of registra-
20 tion pursuant to this section in the manner prescribed for a notice of
21 deficiency in subsection (a) of section one thousand eighty-one of this
22 chapter, and except as otherwise provided herein, all the provisions of
23 article twenty-seven of this chapter applicable to a notice of deficien-
24 cy shall apply to a notice issued pursuant to this paragraph, insofar as
25 such provisions can be made applicable to such notice, and with such
26 modifications as may be necessary in order to adapt the language of such
27 provisions to the notice authorized by this paragraph. All notices of
28 proposed revocation, suspension or refusal to issue shall contain a
29 statement advising the person to whom it is issued that the suspension,
30 revocation or refusal to issue may be challenged through a hearing proc-
31 ess and that the petition for such challenge must be filed with the
32 division of tax appeals within ninety days after the giving of such
33 notice.

34 (3) In the case of a proposed revocation or suspension, notice of
35 such must be given to a person within three years from the date of the
36 act or omission described in paragraph one of this subdivision, except
37 that in the case of acts involving falsity or fraud, such notice may be
38 issued at any time.

39 (4) In any of the foregoing instances where the commissioner may
40 suspend or revoke or refuse to issue a certificate of registration, the
41 commissioner may condition the retention or issuance of a certificate of
42 registration upon the filing of a bond or the deposit of tax in the
43 manner provided in paragraph two or three of subdivision (e) of section
44 eleven hundred thirty-seven of this chapter.

45 (d) If the commissioner considers it necessary for the proper adminis-
46 tration of the surcharge imposed by this article, he or she may require
47 every person who holds a certificate of registration issued pursuant to
48 this section to apply for a new certificate of registration in such form
49 and at such time as the commissioner may prescribe, and to surrender
50 each previously issued certificate of registration. The commissioner may
51 require such filing and such surrender not more often than once every
52 three years. Upon the filing of an application for a new certificate of
53 registration and the surrender of all previous such certificates, the
54 commissioner shall issue, within such time as the commissioner may
55 prescribe, a new certificate of registration, without charge, to each
56 registrant.

1 § 1299-Q. Returns and payment of surcharge. (a) Every person liable
2 for the surcharge imposed by this article shall file a return with the
3 commissioner on a monthly basis. Each return shall show the number of
4 delivery transactions completed subject to the surcharge imposed by this
5 article in the month for which the return is filed, along with such
6 other information as the commissioner may require. The returns required
7 by this section shall be filed within twenty days after the end of the
8 month covered thereby. If the commissioner deems it necessary to ensure
9 the payment of the surcharge imposed by this article, he or she may
10 require returns to be made for shorter periods than prescribed by the
11 foregoing provisions of this section, and upon such dates as may be
12 specified. The form of returns shall be prescribed by the commissioner
13 and shall contain such information as the commissioner may deem neces-
14 sary for the proper administration of this article. The commissioner may
15 require that returns be filed electronically.

16 (b) Every person liable for the surcharge imposed by this article
17 shall, at the time of filing such return, pay to the commissioner the
18 total amount of all surcharges due under this article. Such amount shall
19 be due and payable on the date specified for the filing of the return
20 for such period, without regard to whether a return is filed, or whether
21 the return that is filed correctly shows the correct number of delivery
22 transactions are subject to the surcharge, or the correct surcharge
23 amount due thereon. The commissioner may require that the surcharge be
24 paid electronically.

25 (c) In addition to any other penalty or interest provided for under
26 this article or other law, and unless it is shown that such failure is
27 due to reasonable cause and not due to willful neglect, any person
28 liable for the surcharge imposed by this article that fails to pay such
29 surcharge when due shall be liable for a penalty in an amount equal to
30 two hundred percent of the total surcharge amount that is due.

31 § 1299-R. Records to be kept. Every person liable for the surcharge
32 imposed by this article shall keep, and shall make available for review
33 upon demand by the commissioner:

34 (a) records of delivery transaction completed by such person, includ-
35 ing all amounts paid, charged or due thereon, in such form as the
36 commissioner may require;

37 (b) true and complete copies of any records required to be kept by any
38 applicable regulatory department or agency; and

39 (c) such other records and information as the commissioner may require
40 to perform his or her duties under this article.

41 § 1299-S. Secrecy of returns and reports. (a) Except in accordance
42 with proper judicial order or as otherwise provided by law, it shall be
43 unlawful for the commissioner, any officer or employee of the depart-
44 ment, any person engaged or retained by th department on an independent
45 contract basis, or any person who in any manner may acquire knowledge of
46 the contents of a return or report filed with the commissioner pursuant
47 to this article, to divulge or make known in any manner any particulars
48 set forth or disclosed in any such return or report. The officers
49 charged with the custody of such returns and reports shall not be
50 required to produce any of them or evidence of anything contained in
51 them in any action or proceeding in any court, except on behalf of the
52 commissioner in an action or proceeding under the provisions of this
53 chapter, or in any other action or proceeding involving the collection
54 of a tax due under this chapter to which the state, the commissioner or
55 an agency that is authorized to permit or regulate the provision of any
56 relevant transportation is a party or a claimant, or on behalf of any

1 party to any action, proceeding or hearing under the provisions of this
2 article, when the returns or the reports or the facts shown thereby are
3 directly involved in such action, proceeding or hearing, in any of which
4 events the court, or in the case of a hearing, the division of tax
5 appeals, may require the production of, and may admit in evidence so
6 much of said returns or reports or of the facts shown thereby as are
7 pertinent to the action or proceeding and no more. Nothing herein shall
8 be construed, however, to prohibit the commissioner, in his or her
9 discretion, from allowing the inspection or delivery of a certified copy
10 of any return or report filed under this article, or from providing any
11 information contained in any such return or report, by or to a duly
12 authorized officer or employee of the comptroller; nor to prohibit the
13 inspection or delivery of a certified copy of any return or report filed
14 under this article, or the provision of any information contained there-
15 in, by or to the attorney general or other legal representatives of the
16 state when an action shall have been recommended or commenced pursuant
17 to this chapter in which such returns or reports or the facts shown
18 thereby are directly involved; nor to prohibit the commissioner from
19 providing or certifying to the division of budget or the comptroller the
20 total number of returns or reports filed under this article in any
21 reporting period and the total collections received therefrom; nor to
22 prohibit the delivery to a person liable for the surcharge imposed by
23 this article, or a duly authorized representative of such, a certified
24 copy of any return or report filed by such person pursuant to this arti-
25 cle, nor to prohibit the publication of statistics so classified as to
26 prevent the identification of particular returns or reports and the
27 items thereof; nor to prohibit the disclosure, in such manner as the
28 commissioner deems appropriate, of the names and other appropriate iden-
29 tifying information of those persons required to pay the surcharge
30 imposed by this article.

31 (b) Notwithstanding the provisions of subdivision (a) of this section,
32 the commissioner may permit the secretary of the treasury of the United
33 States or such secretary's delegate, or the authorized representative of
34 either such officer, to inspect any return filed under this article, or
35 may furnish to such officer of such officer's authorized representative
36 an abstract of any such return or supply such person with information
37 concerning an item contained in any such return, or disclosed by any
38 investigation of liability under this article, but such permission shall
39 be granted or such information furnished only if the laws of the United
40 States grant substantially similar privileges to the commissioner or
41 officer of this state charged with the administration of the surcharge
42 imposed by this article, and only if such information is to be used for
43 purposes of tax administration only; and provided further the commis-
44 sioner may furnish to the commissioner of internal revenue or such
45 commissioner's authorized representative such returns filed under this
46 article and other tax information, as such commissioner may consider
47 proper, for use in court actions or proceedings under the internal
48 revenue code, whether civil or criminal, where a written request there-
49 for has been made to the commissioner by the secretary of the treasury
50 of the United States or such secretary's delegate, provided the laws of
51 the United States grant substantially similar powers to the secretary of
52 the treasury of the United States or his or her delegate. Where the
53 commissioner has so authorized use of returns and other information in
54 such actions or proceedings, officers and employees of the department
55 may testify in such actions or proceedings in respect to such returns or
56 other information.

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

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

7 § 1299-T. Practice and procedure. The provisions of article twenty-
8 seven of this chapter shall apply with respect to the administration of
9 and procedure with respect to the surcharge imposed by this article in
10 the same manner and with the same force and effect as if the language of
11 such article twenty-seven had been incorporated in full into this arti-
12 cle and had expressly referred to the surcharge imposed by this article,
13 except to the extent that any such provision is either inconsistent with
14 a provision of this article or is not relevant to this article.

15 § 1299-U. Deposit and disposition of revenue. Any surcharge, interest,
16 and penalties collected or received by the commissioner under this arti-
17 cle shall be daily remitted to the general transportation account of the
18 New York city transportation assistance fund established by section
19 twelve hundred seventy-i of the public authorities law for the purposes
20 of funding the operating costs of buses and subways within the city of
21 New York.

22 § 1299-V. Cooperation by regulatory agencies. All regulatory agencies
23 shall cooperate with and assist the commissioner to effectuate the
24 purposes of this article and the commissioner's responsibilities here-
25 under. Such cooperation shall also include furnishing to the commission-
26 er all written, computerized, automated or electronic records in the
27 regulatory agency's possession, or in the possession of any of its
28 agents, instrumentalities, contractors, or any other person authorized
29 or required to obtain or possess such records or information, that
30 account for any person or entity liable under this article. Such infor-
31 mation shall be provided to the commissioner without cost, and in a
32 format prescribed by the commissioner.

33 § 2. This act shall take effect on the first of January next succeed-
34 ing the date upon which it shall have become a law. Effective immediate-
35 ly, the addition, amendment and/or repeal of any rule or regulation
36 necessary for the implementation of this act on its effective date are
37 authorized to be made on or before such date.