

STATE OF NEW YORK

7991

IN SENATE

March 6, 2020

Introduced by Sen. RAMOS -- 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 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 any other form of unincorporated enterprise owned or conducted by two or more persons.

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

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

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

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1 § 1299-N. Imposition of tax. In addition to any other tax or assess-
2 ment imposed by this chapter or other law, there is hereby imposed,
3 beginning on January first, two thousand twenty-two, a surcharge on all
4 delivery transactions of three dollars for each delivery transaction
5 where the delivery is made within the city of New York, except for
6 deliveries of essential medical supplies or deliveries of food.

7 § 1299-O. Liability for surcharge. (a) Notwithstanding any provision
8 of law to the contrary, any person that sells by any means any item to
9 be delivered within the city of New York is subject to a surcharge
10 imposed by this article shall be liable for the surcharge imposed by
11 this article.

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

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

24 § 1299-P. Registration. (a) Every person liable for the surcharge
25 imposed by this article shall file with the commissioner a properly
26 completed application for a certificate of registration, in a form
27 prescribed by the commissioner. Such application shall be accompanied by
28 a fee of one dollar and fifty cents, and shall set forth the name and
29 address of the registrant, and any other information that the commis-
30 sioner may require. Notwithstanding the foregoing, any person liable for
31 a surcharge imposed by this article that will incur such liability no
32 more than one time in any single calendar month shall not be subject to
33 the provisions of this paragraph.

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

53 (c) (1) The commissioner may refuse to issue a certificate of regis-
54 tration to a person, or may suspend or revoke a certificate of registra-
55 tion that was issued to a person, pursuant to this section upon finding
56 that: (i) such person failed to pay any monies that are finally deter-

1 mined to be due for any tax or imposition that is administered by the
2 commissioner; (ii) such person failed to file any report or return that
3 is due from it under this chapter; (iii) such person willfully filed a
4 false report, return or other document due under this chapter; (iv) such
5 person willfully violated any provisions of this article, or any rule or
6 regulation of the commissioner promulgated under this article; or (v) a
7 certificate of registration issued pursuant to this section to such
8 person, or to any business or entity under control of such person, or
9 that is subject to substantially the same ownership, direction or
10 control of such person, that has been revoked or suspended within one
11 year from the date on which a certificate of registration is filed.

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

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

33 (4) In any of the foregoing instances where the commissioner may
34 suspend or revoke or refuse to issue a certificate of registration, the
35 commissioner may condition the retention or issuance of a certificate of
36 registration upon the filing of a bond or the deposit of tax in the
37 manner provided in paragraph two or three of subdivision (e) of section
38 eleven hundred thirty-seven of this chapter.

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

51 § 1299-Q. Returns and payment of surcharge. (a) Every person liable
52 for the surcharge imposed by this article shall file a return with the
53 commissioner on a monthly basis. Each return shall show the number of
54 delivery transactions completed subject to the surcharge imposed by this
55 article in the month for which the return is filed, along with such
56 other information as the commissioner may require. The returns required

1 by this section shall be filed within twenty days after the end of the
2 month covered thereby. If the commissioner deems it necessary to ensure
3 the payment of the surcharge imposed by this article, he or she may
4 require returns to be made for shorter periods than prescribed by the
5 foregoing provisions of this section, and upon such dates as may be
6 specified. The form of returns shall be prescribed by the commissioner
7 and shall contain such information as the commissioner may deem neces-
8 sary for the proper administration of this article. The commissioner may
9 require that returns be filed electronically.

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

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

25 § 1299-R. Records to be kept. Every person liable for the surcharge
26 imposed by this article shall keep, and shall make available for review
27 upon demand by the commissioner:

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

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

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

35 § 1299-S. Secrecy of returns and reports. (a) Except in accordance
36 with proper judicial order or as otherwise provided by law, it shall be
37 unlawful for the commissioner, any officer or employee of the depart-
38 ment, any person engaged or retained by th department on an independent
39 contract basis, or any person who in any manner may acquire knowledge of
40 the contents of a return or report filed with the commissioner pursuant
41 to this article, to divulge or make known in any manner any particulars
42 set forth or disclosed in any such return or report. The officers
43 charged with the custody of such returns and reports shall not be
44 required to produce any of them or evidence of anything contained in
45 them in any action or proceeding in any court, except on behalf of the
46 commissioner in an action or proceeding under the provisions of this
47 chapter, or in any other action or proceeding involving the collection
48 of a tax due under this chapter to which the state, the commissioner or
49 an agency that is authorized to permit or regulate the provision of any
50 relevant transportation is a party or a claimant, or on behalf of any
51 party to any action, proceeding or hearing under the provisions of this
52 article, when the returns or the reports or the facts shown thereby are
53 directly involved in such action, proceeding or hearing, in any of which
54 events the court, or in the case of a hearing, the division of tax
55 appeals, may require the production of, and may admit in evidence so
56 much of said returns or reports or of the facts shown thereby as are

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

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

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

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

1 § 1299-T. Practice and procedure. The provisions of article twenty-
2 seven of this chapter shall apply with respect to the administration of
3 and procedure with respect to the surcharge imposed by this article in
4 the same manner and with the same force and effect as if the language of
5 such article twenty-seven had been incorporated in full into this arti-
6 cle and had expressly referred to the surcharge imposed by this article,
7 except to the extent that any such provision is either inconsistent with
8 a provision of this article or is not relevant to this article.

9 § 1299-U. Deposit and disposition of revenue. Any surcharge, interest,
10 and penalties collected or received by the commissioner under this arti-
11 cle shall be daily remitted to the general transportation account of the
12 New York city transportation assistance fund established by section
13 twelve hundred seventy-i of the public authorities law for the purposes
14 of funding the operating costs of buses and subways within the city of
15 New York.

16 § 1299-V. Cooperation by regulatory agencies. All regulatory agencies
17 shall cooperate with and assist the commissioner to effectuate the
18 purposes of this article and the commissioner's responsibilities here-
19 under. Such cooperation shall also include furnishing to the commission-
20 er all written, computerized, automated or electronic records in the
21 regulatory agency's possession, or in the possession of any of its
22 agents, instrumentalities, contractors, or any other person authorized
23 or required to obtain or possess such records or information, that
24 account for any person or entity liable under this article. Such infor-
25 mation shall be provided to the commissioner without cost, and in a
26 format prescribed by the commissioner.

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