

STATE OF NEW YORK

1612

2021-2022 Regular Sessions

IN ASSEMBLY

January 11, 2021

Introduced by M. of A. CARROLL, FALL, SEAWRIGHT -- Multi-Sponsored by --
M. of A. COOK, SIMON -- read once and referred to the Committee on
Ways and Means

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 Assem-
bly, 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.

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

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

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

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

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

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

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

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

55 (c) (1) The commissioner may refuse to issue a certificate of regis-
56 tration to a person, or may suspend or revoke a certificate of registra-

tion that was issued to a person, pursuant to this section upon finding that: (i) such person failed to pay any monies that are finally determined to be due for any tax or imposition that is administered by the commissioner; (ii) such person failed to file any report or return that is due from it under this chapter; (iii) such person willfully filed a false report, return or other document due under this chapter; (iv) such person willfully violated any provisions of this article, or any rule or regulation of the commissioner promulgated under this article; or (v) a certificate of registration issued pursuant to this section to such person, or to any business or entity under control of such person, or that is subject to substantially the same ownership, direction or control of such person, that has been revoked or suspended within one year from the date on which a certificate of registration is filed.

(2) A notice of proposed revocation, suspension or refusal to issue shall be given to the person that applies for a certificate of registration pursuant to this section in the manner prescribed for a notice of deficiency in subsection (a) of section one thousand eighty-one of this chapter, and except as otherwise provided herein, all the provisions of article twenty-seven of this chapter applicable to a notice of deficiency shall apply to a notice issued pursuant to this paragraph, insofar as such provisions can be made applicable to such notice, and with such modifications as may be necessary in order to adapt the language of such provisions to the notice authorized by this paragraph. All notices of proposed revocation, suspension or refusal to issue shall contain a statement advising the person to whom it is issued that the suspension, revocation or refusal to issue may be challenged through a hearing process and that the petition for such challenge must be filed with the division of tax appeals within ninety days after the giving of such notice.

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

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

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

§ 1299-Q. Returns and payment of surcharge. (a) Every person liable for the surcharge imposed by this article shall file a return with the commissioner on a monthly basis. Each return shall show the number of delivery transactions completed subject to the surcharge imposed by this

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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