

STATE OF NEW YORK

7638--A

2023-2024 Regular Sessions

IN ASSEMBLY

May 25, 2023

Introduced by M. of A. CARROLL -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to establishing a tax on noise emissions from non-essential helicopter and seaplane flights in cities with a population of one million or more

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 12-B to read
2 as follows:

3 ARTICLE 12-B

4 NOISE TAX ON NON-ESSENTIAL

5 HELICOPTER AND SEAPLANE FLIGHTS

6 Section 289-g. Definitions.

7 289-h. Imposition of the noise tax on non-essential helicopter
8 and seaplane flights.

9 289-i. Liability for the tax.

10 289-j. Exemptions from the tax.

11 289-k. Payment and returns.

12 289-l. Records to be kept.

13 289-m. Secrecy of returns and reports.

14 289-n. Practice and procedure.

15 289-o. Deposit and disposition of revenue.

16 § 289-g. Definitions. For the purposes of this article, the following
17 terms shall have the following meanings:

18 1. "Helicopter" means an aircraft, the support of which in the air is
19 normally derived from airfoils mechanically rotated about an approxi-
20 mately vertical axis.

21 2. "Helicopter or seaplane operator" means a person or entity which
22 conducts non-essential helicopter or seaplane flights within a city with
23 a population of one million or more.

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

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1 3. "Seaplane" means any aircraft defined or classified as such by
2 federal law, rule or regulation.

3 4. "Non-essential flight" means a flight made by a helicopter or seap-
4 lane other than those conducted:

5 (a) for purposes of heavy-lift operations in support of construction
6 and infrastructure maintenance;

7 (b) for purposes of public health and safety, including law enforce-
8 ment, emergency response, disaster response, the provision of medical
9 services, and providing other services; or

10 (c) for the benefit of the general public, including flights carried
11 out for research or for official purposes by a news organization.

12 5. "Quiet aircraft" means a helicopter or seaplane of a model that has
13 been certified as meeting the threshold to be classified as a quiet
14 aircraft as per section two hundred eighty-nine-j of this article.

15 § 289-h. Imposition of the noise tax on non-essential helicopter and
16 seaplane flights. In addition to any other tax or assessment imposed by
17 this chapter or any other law, there is hereby imposed a noise tax on
18 non-essential seaplane and helicopter flights at the rate of fifty
19 dollars per seat ticket or two hundred dollars per flight, whichever is
20 greater.

21 § 289-i. Liability for the tax. Any non-essential helicopter or seap-
22 lane flight is subject to the tax imposed by this article. The tax
23 imposed by this section shall not be imposed on any helicopter or seap-
24 lane flights if such imposition is superseded by federal law or regu-
25 lation.

26 § 289-j. Exemptions from the tax. (A) Any non-essential helicopter or
27 seaplane flight conducted using a quiet aircraft is exempted from the
28 tax imposed by section two hundred eighty-nine-h of this article. (B)
29 The department, in consultation with the department of transportation
30 shall create a registry of models of helicopters and seaplanes that will
31 be defined as quiet aircraft for the purposes of this article. This
32 registry shall be established by January first, two thousand twenty-
33 five, and must be updated no less than every two years thereafter. (C)
34 For a helicopter or seaplane model to be considered to be a quiet
35 aircraft, the aircraft must be electric powered and, (i) for helicop-
36 ters, create at least ten decibels less of noise, as measured under the
37 procedures of Appendix H of 14 CFR part 36, as a helicopter that would
38 meet the GCNP Quiet Aircraft Technology Designation established by 14
39 CFR Appendix A to Subpart U of Part 93, or any federal limits on noise
40 from helicopters enacted that are more strict than the GCNP Quiet
41 Aircraft Technology Designation and (ii) for seaplanes, create at least
42 ten decibels less of noise, as measured under the procedures of Appendix
43 G of 14 CFR part 36, than a seaplane would make to comply with the stage
44 5 noise levels adopted under 14 CFR Parts 36 and 91, which are equal to
45 the levels established under International Civil Aviation Organization
46 (ICAO) Chapter 14 of Annex 16, Volume I, or any federal limits on noise
47 from seaplanes enacted that are more strict than the stage 5 noise
48 levels.

49 § 289-k. Payment and returns. 1. Every helicopter and seaplane opera-
50 tor shall file a return quarterly with the commissioner. Provided,
51 however, that if the commissioner in the exercise of his or her
52 discretion deems it necessary to protect the revenues to be obtained
53 under this article, he or she may give notice requiring such operator,
54 in addition to filing a quarterly return, to file either short-form or
55 long-form part-quarterly returns, as specified in such notice. For
56 purposes of this article the term "long-form, part-quarterly return"

1 shall mean a return in a form determined by the commissioner providing
2 for the calculation of the actual taxes for the preceding month. For
3 purposes of this article the term "short-form, part-quarterly return"
4 shall mean a return which shall be available for use in filing as a
5 return for the first two months of any quarter and only by a person
6 required to file a return monthly who has had at least four successive
7 quarterly tax periods immediately preceding the month for which the
8 return is to be filed and who elects such use, and is in a form deter-
9 mined by the commissioner and providing for the calculation of one-third
10 of the total taxes paid by the person to the commissioner in the compa-
11 erable quarter of the immediately preceding year under this article.

12 2. The returns and information returns required by this section to be
13 filed quarterly shall be filed for quarterly periods ending on the last
14 day of February, May, August and November of each year, and each return
15 and each information return shall be filed within twenty days after the
16 end of the quarterly period covered thereby. The returns required by
17 this section to be filed monthly shall be filed for monthly periods
18 ending on the last day of each month and each return shall be filed
19 within twenty days after the end of each prior month. The information
20 returns required to be filed annually shall be filed for twelve-month
21 periods ending on the last day of May of each year, and each such infor-
22 mation return shall be filed within twenty days after the end of the
23 twelve-month period covered thereby.

24 3. The tax commission may permit or require returns to be made cover-
25 ing other periods and upon such dates as it may specify. If the tax
26 commission deems it necessary in order to ensure the payment of the
27 taxes imposed by this article, it may require returns to be made for
28 shorter periods than those prescribed pursuant to the foregoing subdivi-
29 sions of this section, and upon such dates as it may specify.

30 4. The form of returns shall be prescribed by the tax commission and
31 shall contain such information as it may deem necessary for the proper
32 administration of this article. The commission may require amended
33 returns to be filed within twenty days after notice and to contain the
34 information specified in the notice.

35 5. In addition to any other penalty or interest provided for under
36 this article or other law, and unless it is shown that such failure is
37 due to reasonable cause and not due to willful neglect, any person
38 liable for the tax imposed by this article that fails to pay such tax
39 when due shall be liable for a penalty in an amount equal to four
40 hundred percent of the total tax amount that is due.

41 § 289-l. Records to be kept. Every operator liable for the surcharge
42 imposed by this article shall keep, and shall make available for review
43 upon demand by the commissioner:

44 1. records of helicopter and seaplane flights undertaken by such oper-
45 ator;

46 2. total amount of taxes collected under this article;

47 3. any information required by the department by rule or regulation;

48 4. true and complete copies of any records required to be kept by any
49 applicable regulatory department or agency; and

50 5. such other records and information as the commissioner may require
51 to perform his or her duties under this article.

52 § 289-m. Secrecy of returns and reports. 1. Except in accordance with
53 proper judicial order or as otherwise provided by law, it shall be
54 unlawful for the commissioner, any officer or employee of the depart-
55 ment, any person engaged or retained by the department on an independent
56 contract basis, or any person who in any manner may acquire knowledge of

1 the contents of a return or report filed with the commissioner pursuant
2 to this article, to divulge or make known in any manner any particulars
3 set forth or disclosed in any such return or report. The officers
4 charged with the custody of such returns and reports shall not be
5 required to produce any of them or evidence of anything contained in
6 them in any action or proceeding in any court, except on behalf of the
7 commissioner in an action or proceeding under the provisions of this
8 chapter, or in any other action or proceeding involving the collection
9 of a surcharge due under this chapter to which the state, the commis-
10 sioner or an agency that is authorized to permit or regulate the
11 provision of any relevant transportation is a party or a claimant, or on
12 behalf of any party to any action, proceeding or hearing under the
13 provisions of this article, when the returns or the reports or the facts
14 shown thereby are directly involved in such action, proceeding or hear-
15 ing, in any of which events the court, or in the case of a hearing, the
16 division of tax appeals, may require the production of, and may admit in
17 evidence so much of said returns or reports or of the facts shown there-
18 by as are pertinent to the action or proceeding and no more. Nothing
19 herein shall be construed, however, to prohibit the commissioner, in his
20 or her discretion, from allowing the inspection or delivery of a certi-
21 fied copy of any return or report filed under this article, or from
22 providing any information contained in any such return or report, by or
23 to a duly authorized officer or employee of the comptroller; nor to
24 prohibit the inspection or delivery of a certified copy of any return or
25 report filed under this article, or the provision of any information
26 contained therein, by or to the attorney general or other legal repre-
27 sentatives of the state when an action shall have been recommended or
28 commenced pursuant to this chapter in which such returns or reports or
29 the facts shown thereby are directly involved; nor to prohibit the
30 commissioner from providing or certifying to the division of budget or
31 the comptroller the total number of returns or reports filed under this
32 article in any reporting period and the total collections received ther-
33 efrom; nor to prohibit the delivery to a person liable for the tax
34 imposed by this article, or a duly authorized representative of such, a
35 certified copy of any return or report filed by such person pursuant to
36 this article, nor to prohibit the publication of statistics so classi-
37 fied as to prevent the identification of particular returns or reports
38 and the items thereof; nor to prohibit the disclosure, in such manner as
39 the commissioner deems appropriate, of the names and other appropriate
40 identifying information of those persons required to pay the tax imposed
41 by this article.

42 2. Notwithstanding the provisions of subdivision one of this section,
43 the commissioner may permit the secretary of the treasury of the United
44 States or such secretary's delegate, or the authorized representative of
45 either such officer, to inspect any return filed under this article, or
46 may furnish to such officer or such officer's authorized representative
47 an abstract of any such return or supply such person with information
48 concerning an item contained in any such return, or disclosed by any
49 investigation of liability under this article, but such permission shall
50 be granted or such information furnished only if the laws of the United
51 States grant substantially similar privileges to the commissioner or
52 officer of this state charged with the administration of the tax imposed
53 by this article, and only if such information is to be used for purposes
54 of tax administration only; and provided further the commissioner may
55 furnish to the commissioner of internal revenue or such commissioner's
56 authorized representative such returns filed under this article and

1 other tax information, as such commissioner may consider proper, for use
2 in court actions or proceedings under the internal revenue code, whether
3 civil or criminal, where a written request therefor has been made to the
4 commissioner by the secretary of the treasury of the United States or
5 such secretary's delegate, provided the laws of the United States grant
6 substantially similar powers to the secretary of the treasury of the
7 United States or his or her delegate. Where the commissioner has so
8 authorized use of returns and other information in such actions or
9 proceedings, officers and employees of the department may testify in
10 such actions or proceedings in respect to such returns or other informa-
11 tion.

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

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

18 4. (a) Notwithstanding the provisions of subdivision one of this
19 section, upon written request from the chairperson of the committee on
20 ways and means of the United States House of Representatives, the chair-
21 person of the committee on finance of the United States Senate, or the
22 chairperson of the joint committee on taxation of the United States
23 Congress, the commissioner shall furnish such committee with any current
24 or prior year returns specified in such request that were filed under
25 this article by the president of the United States, vice-president of
26 the United States, member of the United States Congress representing New
27 York state, or any person who served in or was employed by the executive
28 branch of the government of the United States on the executive staff of
29 the president, in the executive office of the president, or in an acting
30 or confirmed capacity in a position subject to confirmation by the
31 United States Senate; or, in New York state: a statewide elected offi-
32 cial, as defined in paragraph (a) of subdivision one of section seven-
33 ty-three-a of the public officers law; a state officer or employee, as
34 defined in subparagraph (i) of paragraph (c) of subdivision one of such
35 section seventy-three-a; a political party chairperson, as defined in
36 paragraph (h) of subdivision one of such section seventy-three-a; a
37 local elected official, as defined in subdivisions one and two of
38 section eight hundred ten of the general municipal law; a person
39 appointed, pursuant to law, to serve due to vacancy or otherwise in the
40 position of a local elected official, as defined in subdivisions one and
41 two of section eight hundred ten of the general municipal law; a member
42 of the state legislature; or a judge or justice of the unified court
43 system; or filed by a partnership, firm, association, corporation,
44 joint-stock company, trust or similar entity directly or indirectly
45 controlled by any individual listed in this paragraph, whether by
46 contract, through ownership or control of a majority interest in such
47 entity, or otherwise, or filed by a partnership, firm, association,
48 corporation, joint-stock company, trust or similar entity of which any
49 individual listed in this paragraph holds ten percent or more of the
50 voting securities of such entity; provided however that, prior to
51 furnishing any return, the commissioner shall redact any copy of a
52 federal return (or portion thereof) attached to, or any information on a
53 federal return that is reflected on, such return, and any social securi-
54 ty numbers, account numbers and residential address information.

55 (b) No returns shall be furnished pursuant to this subdivision unless
56 the chairperson of the requesting committee certifies in writing that

1 such returns have been requested related to, and in furtherance of, a
2 legitimate task of the Congress, that the requesting committee has made
3 a written request to the United States secretary of the treasury for
4 related federal returns or reports or return or report information,
5 pursuant to 26 U.S.C. Section 6103(f), and that if such requested
6 returns are inspected by and/or submitted to another committee, to the
7 United States House of Representatives, or to the United States Senate,
8 then such inspection and/or submission shall occur in a manner consist-
9 ent with federal law as informed by the requirements and procedures
10 established in 26 U.S.C. Section 6103(f).

11 § 289-n. Practice and procedure. The provisions of article twenty-sev-
12 en of this chapter shall apply with respect to the administration of and
13 procedure with respect to the tax imposed by this article in the same
14 manner and with the same force and effect as if the language of such
15 article twenty-seven had been incorporated in full into this article and
16 had expressly referred to the surcharge imposed by this article, except
17 to the extent that any such provision is either inconsistent with a
18 provision of this article or is not relevant to this article.

19 § 289-o. Deposit and disposition of revenue. All funds collected under
20 this article shall be deposited into the environmental protection fund
21 established by section ninety-two-s of the state finance law.

22 § 2. This act shall take effect January 1, 2024. Effective immediate-
23 ly, the addition, amendment and/or repeal of any rule or regulation
24 necessary for the implementation of this act on its effective date are
25 authorized to be made and completed on or before such effective date.