

STATE OF NEW YORK

5895

2023-2024 Regular Sessions

IN SENATE

March 22, 2023

Introduced by Sen. GOUNARDES -- 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 and the state finance law, in relation to a surcharge on online delivery sales in 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-E to read
2 as follows:

ARTICLE 29-E

SURCHARGE ON ONLINE DELIVERY SALES IN THE CITY OF NEW YORK

Section 1299-T. Definitions.

1299-U. Imposition of surcharge.

1299-V. Liability for surcharge.

1299-W. Registration.

1299-X. Payment and returns.

1299-Y. Records to be kept.

1299-Z. Secrecy of returns and reports.

1299-AA. Practice and procedure.

1299-BB. Deposit and disposition of revenue.

§ 1299-T. Definitions. As used in this article: (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) "Online delivery sale" means a transaction that results in the delivery of any item purchased online from a seller to a buyer.

(c) "Buyer" means the person receiving the item in the online delivery sale.

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

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1 (d) "Seller" means the person selling the item in the online delivery
2 sale.

3 § 1299-U. Imposition of surcharge. In addition to any other tax or
4 assessment imposed by this chapter or any other law, there is hereby
5 imposed, a surcharge of twenty-five cents on every online delivery sale
6 where such delivery terminates within the city of New York.

7 § 1299-V. 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 and 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 § 1299-W. Registration. (a) Every person liable for the surcharge
19 imposed by this article shall file with the commissioner a properly
20 completed application for a certificate of registration, in a form
21 prescribed by the commissioner. Such application shall be accompanied by
22 a fee of one dollar and fifty cents, and shall set forth the name and
23 address of the registrant, and any other information that the commis-
24 sioner may require.

25 (b) Except as otherwise provided in this section, the commissioner
26 shall issue a certificate of registration to each person that applies
27 for one for a specified term of not less than three years. Any certif-
28 icate of registration referred to in this subdivision shall be subject
29 to renewal in accordance with rules promulgated by the commissioner, and
30 upon the payment of a fee of one dollar and fifty cents. Whether or not
31 such certificate of registration is issued for a specified term, it
32 shall be subject to suspension or revocation as provided for in this
33 section. Each certificate shall state the registrant and the regis-
34 trant's taxpayer ID number. Certificates of registration issued pursuant
35 to this article shall be non-assignable and non-transferable, and shall
36 be surrendered to the commissioner immediately upon the registrant's
37 ceasing to do business at the address provided in its application,
38 unless the registrant amends its certificate of registration in accord-
39 ance with rules promulgated by the commissioner. All registrants must
40 notify the commissioner of changes to any of the information stated on
41 their certificate of registration, on a calendar quarterly basis, and
42 shall amend their certificates of registration accordingly.

43 (c) (1) The commissioner may refuse to issue a certificate of regis-
44 tration to a person, or may suspend or revoke a certificate of registra-
45 tion that was issued to a person, pursuant to this section upon finding
46 that: (i) such person failed to pay any monies that are finally deter-
47 mined to be due for any surcharge or imposition that is administered by
48 the commissioner; (ii) such person failed to file any report or return
49 that is due from it under this chapter; (iii) such person willfully
50 filed a false report, return or other document due under this chapter;
51 (iv) such person willfully violated any provision of this article, or
52 any rule or regulation of the commissioner promulgated under this arti-
53 cle; or (v) a certificate of registration issued pursuant to this
54 section to such person, or to any business or entity under control of
55 such person, or that is subject to substantially the same ownership,
56 direction or control of such person, has been revoked or suspended with-

1 in one year from the date on which a certificate of registration is
2 filed.

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

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

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

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

41 § 1299-X. Payment and returns. (a) (1) Every person required to regis-
42 ter with the commissioner as provided in section twelve hundred ninety-
43 nine-W of this article whose taxable receipts total less than three
44 hundred thousand dollars, in every quarter of the preceding four quar-
45 ters, shall file a return quarterly with the commissioner. Provided,
46 however, that if the commissioner in the exercise of his or her
47 discretion deems it necessary to protect the revenues to be obtained
48 under this article, he or she may give notice requiring such person, in
49 addition to filing a quarterly return, to file either short-form or
50 long-form part quarterly returns, as specified in such notice.

51 (2) Every person required to register with the commissioner as
52 provided in section twelve hundred ninety-nine-W of this article whose
53 taxable receipts total three hundred thousand dollars or more in any
54 quarter of the preceding four quarters, shall, in addition to filing a
55 quarterly return described in paragraph one of this subdivision, file

1 either a long-form or short-form, part-quarterly return monthly with the
2 commissioner.

3 (3) For purposes of this article the term "long-form, part-quarterly
4 return" shall mean a return in a form determined by the commissioner
5 providing for the calculation of the actual surcharges for the preceding
6 month. A person filing a long-form, part-quarterly return for each of
7 the months contained in a quarter shall also be required to file a quar-
8 terly return for such quarter.

9 (4) For purposes of this article the term "short-form, part-quarterly
10 return" shall mean a return which shall be available for use in filing
11 as a return for the first two months of any quarter and only by a person
12 required to file a return monthly who has had at least four successive
13 quarterly tax periods immediately preceding the month for which the
14 return is to be filed and who elects such use, and is in a form deter-
15 mined by the commissioner and providing for the calculation of one-third
16 of the total surcharges paid by the person to the commissioner in the
17 comparable quarter of the immediately preceding year under this article.

18 (b) The returns and information returns required by this section to be
19 filed quarterly shall be filed for quarterly periods ending on the last
20 day of February, May, August and November of each year, and each return
21 and each information return shall be filed within twenty days after the
22 end of the quarterly period covered thereby. The returns required by
23 this section to be filed monthly shall be filed for monthly periods
24 ending on the last day of each month and each return shall be filed
25 within twenty days after the end of each prior month. The information
26 returns required to be filed annually shall be filed for twelve month
27 periods ending on the last day of May of each year, and each such infor-
28 mation return shall be filed within twenty days after the end of the
29 twelve month period covered thereby.

30 (c) The tax commission may permit or require returns to be made cover-
31 ing other periods and upon such dates as it may specify. If the tax
32 commission deems it necessary in order to ensure the payment of the
33 surcharges imposed by this article, it may require returns to be made
34 for shorter periods than those prescribed pursuant to the foregoing
35 subdivisions of this section, and upon such dates as it may specify.

36 (d) The form of returns shall be prescribed by the tax commission and
37 shall contain such information as it may deem necessary for the proper
38 administration of this article. The commission may require amended
39 returns to be filed within twenty days after notice and to contain the
40 information specified in the notice.

41 (e) In addition to any other penalty or interest provided for under
42 this article or other law, and unless it is shown that such failure is
43 due to reasonable cause and not due to willful neglect, any person
44 liable for the surcharge imposed by this article that fails to pay such
45 surcharge when due shall be liable for a penalty in an amount equal to
46 two hundred percent of the total surcharge amount that is due.

47 § 1299-Y. Records to be kept. Every person liable for the surcharge
48 imposed by this article shall keep, and shall make available for review
49 upon demand by the commissioner:

50 (a) records of online delivery sales completed by such person, includ-
51 ing all amounts paid, charged or due thereon, in such form as the
52 commissioner may require;

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

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

1 § 1299-Z. Secrecy of returns and reports. (a) Except in accordance
2 with proper judicial order or as otherwise provided by law, it shall be
3 unlawful for the commissioner, any officer or employee of the depart-
4 ment, any person engaged or retained by the department on an independent
5 contract basis, or any person who in any manner may acquire knowledge of
6 the contents of a return or report filed with the commissioner pursuant
7 to this article, to divulge or make known in any manner any particulars
8 set forth or disclosed in any such return or report. The officers
9 charged with the custody of such returns and reports shall not be
10 required to produce any of them or evidence of anything contained in
11 them in any action or proceeding in any court, except on behalf of the
12 commissioner in an action or proceeding under the provisions of this
13 chapter, or in any other action or proceeding involving the collection
14 of a surcharge due under this chapter to which the state, the commis-
15 sioner or an agency that is authorized to permit or regulate the
16 provision of any relevant transportation is a party or a claimant, or on
17 behalf of any party to any action, proceeding or hearing under the
18 provisions of this article, when the returns or the reports or the facts
19 shown thereby are directly involved in such action, proceeding or hear-
20 ing, in any of which events the court, or in the case of a hearing, the
21 division of tax appeals, may require the production of, and may admit in
22 evidence so much of said returns or reports or of the facts shown there-
23 by as are pertinent to the action or proceeding and no more. Nothing
24 herein shall be construed, however, to prohibit the commissioner, in his
25 or her discretion, from allowing the inspection or delivery of a certi-
26 fied copy of any return or report filed under this article, or from
27 providing any information contained in any such return or report, by or
28 to a duly authorized officer or employee of the comptroller; nor to
29 prohibit the inspection or delivery of a certified copy of any return or
30 report filed under this article, or the provision of any information
31 contained therein, by or to the attorney general or other legal repre-
32 sentatives of the state when an action shall have been recommended or
33 commenced pursuant to this chapter in which such returns or reports or
34 the facts shown thereby are directly involved; nor to prohibit the
35 commissioner from providing or certifying to the division of budget or
36 the comptroller the total number of returns or reports filed under this
37 article in any reporting period and the total collections received ther-
38 efrom; nor to prohibit the delivery to a person liable for the surcharge
39 imposed by this article, or a duly authorized representative of such, a
40 certified copy of any return or report filed by such person pursuant to
41 this article, nor to prohibit the publication of statistics so classi-
42 fied as to prevent the identification of particular returns or reports
43 and the items thereof; nor to prohibit the disclosure, in such manner as
44 the commissioner deems appropriate, of the names and other appropriate
45 identifying information of those persons required to pay the surcharge
46 imposed by this article.

47 (b) Notwithstanding the provisions of subdivision (a) of this section,
48 the commissioner may permit the secretary of the treasury of the United
49 States or such secretary's delegate, or the authorized representative of
50 either such officer, to inspect any return filed under this article, or
51 may furnish to such officer or such officer's authorized representative
52 an abstract of any such return or supply such person with information
53 concerning an item contained in any such return, or disclosed by any
54 investigation of liability under this article, but such permission shall
55 be granted or such information furnished only if the laws of the United
56 States grant substantially similar privileges to the commissioner or

1 officer of this state charged with the administration of the surcharge
2 imposed by this article, and only if such information is to be used for
3 purposes of tax administration only; and provided further the commis-
4 sioner may furnish to the commissioner of internal revenue or such
5 commissioner's authorized representative such returns filed under this
6 article and other tax information, as such commissioner may consider
7 proper, for use in court actions or proceedings under the internal
8 revenue code, whether civil or criminal, where a written request there-
9 for has been made to the commissioner by the secretary of the treasury
10 of the United States or such secretary's delegate, provided the laws of
11 the United States grant substantially similar powers to the secretary of
12 the treasury of the United States or his or her delegate. Where the
13 commissioner has so authorized use of returns and other information in
14 such actions or proceedings, officers and employees of the department
15 may testify in such actions or proceedings in respect to such returns or
16 other information.

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

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

23 (d) (1) Notwithstanding the provisions of subdivision (a) of this
24 section, upon written request from the chairperson of the committee on
25 ways and means of the United States House of Representatives, the chair-
26 person of the committee on finance of the United States Senate, or the
27 chairperson of the joint committee on taxation of the United States
28 Congress, the commissioner shall furnish such committee with any current
29 or prior year returns specified in such request that were filed under
30 this article by the president of the United States, vice-president of
31 the United States, member of the United States Congress representing New
32 York state, or any person who served in or was employed by the executive
33 branch of the government of the United States on the executive staff of
34 the president, in the executive office of the president, or in an acting
35 or confirmed capacity in a position subject to confirmation by the
36 United States Senate; or, in New York state: a statewide elected offi-
37 cial, as defined in paragraph (a) of subdivision one of section seven-
38 ty-three-a of the public officers law; a state officer or employee, as
39 defined in subparagraph (i) of paragraph (c) of subdivision one of such
40 section seventy-three-a; a political party chairperson, as defined in
41 paragraph (h) of subdivision one of such section seventy-three-a; a
42 local elected official, as defined in subdivisions one and two of
43 section eight hundred ten of the general municipal law; a person
44 appointed, pursuant to law, to serve due to vacancy or otherwise in the
45 position of a local elected official, as defined in subdivisions one and
46 two of section eight hundred ten of the general municipal law; a member
47 of the state legislature; or a judge or justice of the unified court
48 system; or filed by a partnership, firm, association, corporation,
49 joint-stock company, trust or similar entity directly or indirectly
50 controlled by any individual listed in this paragraph, whether by
51 contract, through ownership or control of a majority interest in such
52 entity, or otherwise, or filed by a partnership, firm, association,
53 corporation, joint-stock company, trust or similar entity of which any
54 individual listed in this paragraph holds ten percent or more of the
55 voting securities of such entity; provided however that, prior to
56 furnishing any return, the commissioner shall redact any copy of a

federal return (or portion thereof) attached to, or any information on a federal return that is reflected on, such return, and any social security numbers, account numbers and residential address information.

(2) No returns shall be furnished pursuant to this subdivision unless the chairperson of the requesting committee certifies in writing that such returns have been requested related to, and in furtherance of, a legitimate task of the Congress, that the requesting committee has made a written request to the United States secretary of the treasury for related federal returns or reports or return or report information, pursuant to 26 U.S.C. Section 6103(f), and that if such requested returns are inspected by and/or submitted to another committee, to the United States House of Representatives, or to the United States Senate, then such inspection and/or submission shall occur in a manner consistent with federal law as informed by the requirements and procedures established in 26 U.S.C. Section 6103(f).

§ 1299-AA. 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 surcharge 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 surcharge imposed by 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.

§ 1299-BB. Deposit and disposition of revenue. All revenue from surcharges, interest, and penalties collected or received by the commissioner under this article shall be deposited in the special New York city capital infrastructure fund established pursuant to section ninety-nine-gg of the state finance law.

§ 2. The state finance law is amended by adding a new section 99-qq to read as follows:

§ 99-qq. Special New York city capital infrastructure fund. 1. As used in this section, the following terms shall have the following meanings:

(a) "City" shall mean the city of New York.

(b) "Freight transportation infrastructure" shall mean the infrastructure used to support the commercial transportation of goods, commodities, and merchandise by any means.

(c) "Fund" shall mean the special New York city capital infrastructure fund created in this section.

(d) "Marine terminal" shall mean wharves, bulkheads, quays, piers, docks, and other berthing locations and adjacent storage or adjacent areas and structures associated with the primary movement of cargo and goods from vessel to shore, or shore to vessel, including structures which are devoted to receiving, handling, holding, consolidating, and loading or delivery of waterborne shipments or passengers, including areas devoted to the maintenance of the terminal or equipment.

(e) "Urban consolidation center" shall mean a storage facility in which smaller shipments of freight goods are combined into larger truckloads bound for a similar destination.

2. (a) There is hereby established a special New York city capital infrastructure fund to be jointly administered by the city and the state. The revenues of such fund may be used to borrow money, to issue negotiable notes, bonds, or other obligations and to provide for the rights of the holders thereof, and to finance or refinance any and all costs to the city and/or state for the planning, design, acquisition, construction, installation, improvement, reconstruction, renovation,

1 rehabilitation and/or repair of the freight transportation infrastruc-
2 ture described in subdivision four of this section. The fund described
3 herein shall be kept separate from and shall not be commingled with any
4 other funds established in this article or in any other provision of
5 law.

6 (b) The city and state may refund any debts, or any portion or combi-
7 nation thereof, of the fund in order that the state shall achieve a debt
8 service savings on a present value basis as a result of the refunding
9 transaction and in accordance with the provisions of section thirteen of
10 article VII of the state constitution.

11 3. Revenues from the online delivery sale surcharge created in article
12 twenty-nine-E of the tax law shall be dedicated towards the special New
13 York city capital infrastructure fund. Such revenues may be used to
14 contract indebtedness as authorized in section nine of article VII of
15 the state constitution and described in subdivision two of this section.

16 4. The fund shall be expended exclusively to support freight transpor-
17 tation infrastructure in the city of New York, which shall include the
18 repair of interstate route two hundred seventy-eight in Kings county,
19 otherwise known as the Brooklyn Queens Expressway, as well as the plan-
20 ning, design, acquisition, construction, installation, improvement,
21 reconstruction, renovation, rehabilitation, and/or repair of ferry
22 docks, marine terminals, piers, freight rail lines and facilities, urban
23 consolidation centers, and other related infrastructure.

24 5. No person executing the notes, bonds or other obligations
25 shall be liable personally on the notes, bonds or other obligations
26 or be subject to any personal liability or accountability by reason of
27 the issuance thereof.

28 6. The city and state shall produce an annual report to be delivered
29 to the temporary president of the senate, the speaker of the assembly,
30 and the speaker of the city council and posted publicly and conspicuous-
31 ly online regarding the special New York city capital infrastructure
32 fund and detailing all revenues and expenditures thereof. The city shall
33 clearly describe how the revenues from such fund have been expended to
34 support the infrastructure projects described in subdivision four of
35 this section in such report.

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