# 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:**

Section 1. The tax law is amended by adding a new article 29-E to read 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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(d) "Seller" means the person selling the item in the online delivery sale.

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

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

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

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

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

(c) (1) The commissioner may refuse to issue a certificate of registration to a person, or may suspend or revoke a certificate of registration 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 surcharge 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 provision 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, has been revoked or suspended with-

in 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 certificates, the commissioner shall issue, within such time as the commissioner may prescribe, a new certificate of registration, without charge, to each registrant.

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

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

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

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

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

(b) The returns and information returns required by this section to be filed quarterly shall be filed for quarterly periods ending on the last day of February, May, August and November of each year, and each return and each information return shall be filed within twenty days after the end of the quarterly period covered thereby. The returns required by this section to be filed monthly shall be filed for monthly periods ending on the last day of each month and each return shall be filed within twenty days after the end of each prior month. The information returns required to be filed annually shall be filed for twelve month periods ending on the last day of May of each year, and each such information return shall be filed within twenty days after the end of the twelve month period covered thereby.

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

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

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

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

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

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

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

§ 1299-Z. Secrecy of returns and reports. (a) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner, any officer or employee of the department, any person engaged or retained by the department on an independent contract basis, or any person who in any manner may acquire knowledge of the contents of a return or report filed with the commissioner pursuant to this article, to divulge or make known in any manner any particulars set forth or disclosed in any such return or report. The officers charged with the custody of such returns and reports shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner in an action or proceeding under the provisions of this chapter, or in any other action or proceeding involving the collection of a surcharge due under this chapter to which the state, the commissioner or an agency that is authorized to permit or regulate the provision of any relevant transportation is a party or a claimant, or on behalf of any party to any action, proceeding or hearing under the provisions of this article, when the returns or the reports or the facts shown thereby are directly involved in such action, proceeding or hearing, in any of which events the court, or in the case of a hearing, the division of tax appeals, may require the production of, and may admit in evidence so much of said returns or reports or of the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing herein shall be construed, however, to prohibit the commissioner, in his or her discretion, from allowing the inspection or delivery of a certified copy of any return or report filed under this article, or from providing any information contained in any such return or report, by or to a duly authorized officer or employee of the comptroller; nor to prohibit the inspection or delivery of a certified copy of any return or report filed under this article, or the provision of any information contained therein, by or to the attorney general or other legal representatives of the state when an action shall have been recommended or commenced pursuant to this chapter in which such returns or reports or the facts shown thereby are directly involved; nor to prohibit the commissioner from providing or certifying to the division of budget or the comptroller the total number of returns or reports filed under this article in any reporting period and the total collections received therefrom; nor to prohibit the delivery to a person liable for the surcharge imposed by this article, or a duly authorized representative of such, a certified copy of any return or report filed by such person pursuant to this article, nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns or reports and the items thereof; nor to prohibit the disclosure, in such manner as the commissioner deems appropriate, of the names and other appropriate identifying information of those persons required to pay the surcharge imposed by this article.

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

officer of this state charged with the administration of the surcharge imposed by this article, and only if such information is to be used for purposes of tax administration only; and provided further the commissioner may furnish to the commissioner of internal revenue or such commissioner's authorized representative such returns filed under this article and other tax information, as such commissioner may consider proper, for use in court actions or proceedings under the internal revenue code, whether civil or criminal, where a written request therefor has been made to the commissioner by the secretary of the treasury of the United States or such secretary's delegate, provided the laws of the United States grant substantially similar powers to the secretary of the treasury of the United States or his or her delegate. Where the commissioner has so authorized use of returns and other information in such actions or proceedings, officers and employees of the department may testify in such actions or proceedings in respect to such returns or other information.

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

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

(d) (1) Notwithstanding the provisions of subdivision (a) of this section, upon written request from the chairperson of the committee on ways and means of the United States House of Representatives, the chairperson of the committee on finance of the United States Senate, or the chairperson of the joint committee on taxation of the United States Congress, the commissioner shall furnish such committee with any current or prior year returns specified in such request that were filed under this article by the president of the United States, vice-president of the United States, member of the United States Congress representing New York state, or any person who served in or was employed by the executive branch of the government of the United States on the executive staff of the president, in the executive office of the president, or in an acting or confirmed capacity in a position subject to confirmation by the United States Senate; or, in New York state: a statewide elected official, as defined in paragraph (a) of subdivision one of section seventy-three-a of the public officers law; a state officer or employee, as defined in subparagraph (i) of paragraph (c) of subdivision one of such section seventy-three-a; a political party chairperson, as defined in paragraph (h) of subdivision one of such section seventy-three-a; a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a person appointed, pursuant to law, to serve due to vacancy or otherwise in the position of a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a member of the state legislature; or a judge or justice of the unified court system; or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity directly or indirectly controlled by any individual listed in this paragraph, whether by contract, through ownership or control of a majority interest in such entity, or otherwise, or filed by a partnership, firm, association, corporation, joint-stock company, trust or similar entity of which any individual listed in this paragraph holds ten percent or more of the voting securities of such entity; provided however that, prior to 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-qq 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,

rehabilitation and/or repair of the freight transportation infrastructure described in subdivision four of this section. The fund described herein shall be kept separate from and shall not be commingled with any other funds established in this article or in any other provision of law.

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

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

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

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

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

§ 3. This act shall take effect on the first of January next succeeding the date upon which it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made on or before such date.