STATE OF NEW YORK

4590

2025-2026 Regular Sessions

IN ASSEMBLY

February 4, 2025

Introduced by M. of A. R. CARROLL -- 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 Assembly, do enact as follows:

Section 1. The tax law is amended by adding a new article 30-C to read as follows:

ARTICLE 30-C
DELIVERY SURCHARGE

Section 1350. Definitions.
1351. Imposition of tax.
1352. Liability for surcharge.
1353. Registration.
1354. Returns and payment of surcharge.
1355. Records to be kept.
1356. Secrecy of returns and reports.
1357. Practice and procedure.
1358. Deposit and disposition of revenue.
1359. Cooperation by regulatory agencies.

§ 1350. 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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(c) "Purchaser" means the person receiving the item in the delivery transaction.

§ 1351. Imposition of tax. In addition to any other tax or assessment imposed by this chapter or other law, there is hereby imposed, beginning on January first, two thousand twenty-seven, a surcharge on all delivery transactions of three dollars for each delivery transaction where the delivery is made within the city of New York, except for deliveries of:

(a) drugs and medicines intended for use, internally or externally, in the cure, mitigation, treatment or prevention of illnesses or disease in human beings, medical equipment, including component parts thereof, and supplies required for such use or to correct or alleviate physical incapacity, and products consumed by humans for the preservation of health but not including cosmetics or toilet articles notwithstanding the presence of medicinal ingredients therein or medical equipment, including component parts thereof, and supplies, other than such drugs and medicines, purchased at retail for use in performing medical and similar services for compensation, as such terms are defined in paragraph three of subdivision (a) of section eleven hundred fifteen of this chapter; or

(b) diapers intended for human use including, but not limited to: disposable, reusable, adult, and children's diapers, as such terms are defined in paragraph thirty-a of subdivision (a) of section eleven hundred fifteen of this chapter; or

(c) baby formula intended for feeding infants; or

(d) any food or food products.

§ 1352. 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 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.

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

§ 1353. 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. Notwithstanding the foregoing, any person liable for a surcharge imposed by this article that will incur such liability no more than one time in any single calendar month shall not be subject to the provisions of this paragraph.

(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 paragraph 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 it is applicable to. 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, including vehicle changes, if any, 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 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, they 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.

§ 1354. 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 article in the month for which the return is filed, along with such other information as the commissioner may require. The returns required by this section shall be filed within twenty days after the end of the month covered thereby. If the commissioner deems it necessary to ensure the payment of the surcharge imposed by this article, they may require returns to be made for shorter periods than prescribed by the foregoing provisions of this section, and upon such dates as may be specified. The form of returns shall be prescribed by the commissioner and shall contain such information as the commissioner may deem necessary for the proper administration of this article. The commissioner may require that returns be filed electronically.

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

(c) 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.

§ 1355. 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 delivery transaction 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 their duties under this article.

§ 1356. 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 tax 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 their 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 of 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 their 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 employer 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.

§ 1357. 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.

§ 1358. Deposit and disposition of revenue. Any surcharge, interest, and penalties collected or received by the commissioner under this article shall be daily remitted to the general transportation account of the New York city transportation assistance fund established by section twelve hundred seventy-i of the public authorities law for the purposes of funding the operating costs of buses and subways within the city of New York.

§ 1359. Cooperation by regulatory agencies. All regulatory agencies shall cooperate with and assist the commissioner to effectuate the purposes of this article and the commissioner's responsibilities hereunder. Such cooperation shall also include furnishing to the commissioner all written, computerized, automated or electronic records in the regulatory agency's possession, or in the possession of any of its agents, instrumentalities, contractors, or any other person authorized or required to obtain or possess such records or information, that account for any person or entity liable under this article. Such information shall be provided to the commissioner without cost, and in a format prescribed by the commissioner.

§ 2. 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 and completed on or before such date.