

STATE OF NEW YORK

5723--A

2025-2026 Regular Sessions

IN ASSEMBLY

February 20, 2025

Introduced by M. of A. R. 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 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 of tangible personal property purchased online from a seller to a buyer.

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

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

3 (d) "Seller" means the person selling the item in the online delivery
4 sale.

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

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

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

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

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

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

1 such person, or that is subject to substantially the same ownership,
2 direction, or control of such person, has been revoked or suspended
3 within one year from the date on which a certificate of registration is
4 filed.

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

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

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

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

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

54 (2) Every person required to register with the commissioner as
55 provided in section twelve hundred ninety-nine-W of this article whose
56 taxable receipts total three hundred thousand dollars or more in any

1 quarter of the preceding four quarters, shall, in addition to filing a
2 quarterly return described in paragraph one of this subdivision, file
3 either a long-form or short-form, part-quarterly return monthly with the
4 commissioner.

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

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

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

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

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

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

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

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

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

1 (c) such other records and information as the commissioner may require
2 to perform their duties under this article.

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

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

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

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

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

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

1 voting securities of such entity; provided however that, prior to
2 furnishing any return, the commissioner shall redact any copy of a
3 federal return (or portion thereof) attached to, or any information on a
4 federal return that is reflected on, such return, and any social securi-
5 ty numbers, account numbers, and residential address information.

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

18 § 1299-AA. Practice and procedure. The provisions of article twenty-
19 seven of this chapter shall apply with respect to the administration of
20 and procedure with respect to the surcharge imposed by this article in
21 the same manner and with the same force and effect as if the language of
22 such article twenty-seven had been incorporated in full into this arti-
23 cle and had expressly referred to the surcharge imposed by this article,
24 except to the extent that any such provision is either inconsistent with
25 a provision of this article or is not relevant to this article.

26 § 1299-BB. Deposit and disposition of revenue. All revenue from
27 surcharges, interest, and penalties collected or received by the commis-
28 sioner under this article shall be deposited in the special New York
29 city capital infrastructure fund established pursuant to section nine-
30 ty-nine-ss of the state finance law.

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

33 § 99-ss. Special New York city capital infrastructure fund. 1. As
34 used in this section, the following terms shall have the following mean-
35 ings:

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

37 (b) "Freight transportation infrastructure" shall mean the infrastruc-
38 ture used to support the commercial transportation of goods, commod-
39 ities, and merchandise by any means.

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

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

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

52 2. (a) There is hereby established a special New York city capital
53 infrastructure fund to be jointly administered by the city and the
54 state. The revenues of such fund may be used to borrow money, to issue
55 negotiable notes, bonds, or other obligations and to provide for the
56 rights of the holders thereof, and to finance or refinance any and all

1 costs to the city and/or state for the planning, design, acquisition,
2 construction, installation, improvement, reconstruction, renovation,
3 rehabilitation, and/or repair of the freight transportation infrastruc-
4 ture described in subdivision four of this section. The fund described
5 herein shall be kept separate from and shall not be commingled with any
6 other funds established in this article or in any other provision of
7 law.

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

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

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

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

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

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