§ 1132. Collection of tax from customer; proof required for registration of motor vehicles. (a) (1) Except as otherwise permitted in subdivision (d) of section eleven hundred thirty-three of this part, every person required to collect the tax shall collect the tax from the customer when collecting the price, amusement charge or rent to which it applies. If the customer is given any sales slip, invoice, receipt or other statement or memorandum of the price, amusement charge or rent paid or payable, the tax shall be stated, charged and shown separately on the first of such documents given to him. The tax shall be paid to the person required to collect it as trustee for and on account of the state.

(2) Notwithstanding any provision of this chapter to the contrary: (i) If a person required to collect tax demonstrates to the satisfaction of the commissioner by June first, of any year that, in any two quarterly periods, as described in subdivision (b) of section eleven hundred thirty-six of this part, within the most recent four consecutive quarterly periods, such person was a materialman within the meaning of section two of the lien law, primarily engaged in selling building materials to contractors, subcontractors or repairmen for the improvement of real property, and authorized by such law to file a mechanics lien upon such real property and improvement, then such person shall, with respect to such sales made through the quarterly period ending the succeeding May thirty-first, collect tax due on such sales, and on sales to such contractors, subcontractors or repairmen of services described in paragraph two or three of subdivision (c) of section eleven hundred five of this article to such building materials, for such purpose and made during such June first through May thirty-first period, at the time and to the extent that such person receives the receipts from, or consideration for, such sales from such contractors, subcontractors or repairmen; provided, however, that if such person receives a portion of such receipts or consideration, such person shall collect the tax due on such portion at the time such portion is received. The taxes imposed by this article on such receipts and consideration shall be deemed not to be imposed, solely for purposes of determining when such person is required to collect and pay over such taxes to the commissioner under section eleven hundred thirty-seven of this part, until such person has received payment of such receipts or

consideration in money (or money's worth) from such contractor, subcontractor or repairman. A contractor, subcontractor or repairman who purchases building materials or services from such person pursuant to this subparagraph shall, at the time such contractor, subcontractor or repairman pays any portion of the purchase price, pay to such person the tax due on the portion of the purchase price so paid.

(ii) In the event that a materialman described in subparagraph (i) of this paragraph finances any portion of the receipts or consideration from a sale described in such subparagraph (i), including any tax due thereon, directly or indirectly, with any other person (other than a contractor, subcontractor or repairman described in such subparagraph (i)), whether by assignment of the receivable or debt due, factoring, direct loan or any other means, then such materialman shall be deemed to have received payment of such receipts or consideration in money (or money's worth) from such contractor, subcontractor or repairman and shall be required to pay over tax on such sale with the next return due, with a credit against such tax for any tax already paid over with respect to such sale. Any such amount of tax paid over in accordance with the prior sentence shall be on account of the tax required to be collected on the sale to which it relates and such materialman may take a credit against any tax paid by such contractor, subcontractor or repairman in the future on such sale, to ensure that tax paid over with respect to such sale does not exceed the amount of tax imposed on such sale as if the entire purchase price had been paid at the time of sale.

(iii) A materialman described in subparagraph (i) of this paragraph, who has not collected the tax due on the full purchase price for a sale described in such subparagraph (i) from a contractor, subcontractor or repairman within one year of the date of such sale, shall be required to pay over to the commissioner the tax due on any balance of such full purchase price with such materialman's return for the period which includes the date which is one year after the date of such sale.

(iv) The commissioner may assess additional tax due with respect to a sale described in subparagraph (i) of this paragraph within three years from the date the tax is required to be paid over to the commissioner pursuant to this paragraph; provided, however, that in the case of a willfully false or fraudulent return with intent to evade the tax, or where no return has been filed as prescribed by law, the tax may be

assessed at any time.

(v) The other provisions of this article and any provision of law applicable to the taxes imposed by this article shall apply to the materialmen, contractors, subcontractors, repairmen, receipts and consideration described in this paragraph, except to the extent that any such provision is inconsistent with this paragraph.

(b) The commissioner shall by regulation prescribe a method or methods or a schedule or schedules of the amounts to be collected from customers in respect to any receipt, gallon of motor fuel or diesel motor fuel, amusement charge or rent upon which a tax is imposed by this article so as to eliminate fractions of one cent and so that the aggregate collections of taxes by a person required to collect tax shall, as far as practicable, equal four percent of the total receipts, amusement charges or rents of such person, or equal the correct rate per gallon of motor fuel or diesel motor fuel sold by such person, upon whom a tax is imposed by this article or, where a similar tax is imposed under the authority of article twenty-nine of this chapter, equal four percent, or such rate per gallon, plus the rate of tax imposed under the authority of article twenty-nine of the total receipts, amusement charges or rents of, or gallons of motor fuel or diesel motor fuel sold by, such person upon whom a tax is imposed by this article and under the authority of article twenty-nine, so that the tax rate to be applied shall be the sum of the state and local tax rates. Such schedule or schedules may provide that no tax need be collected from the customer upon receipts, amusement charges or rents below a stated sum, and may be amended from time to time so as to accomplish the purposes herein set forth. Such schedule or schedules shall provide that no tax shall be collected from the customer upon receipts from retail sales of tangible personal property which, under the rate imposed by article twenty-eight, together with the rates imposed under the authority of article twenty-nine, produce a tax of five mills or less.

(c) (1) For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all receipts for property or services of any type mentioned in subdivisions (a), (b), (c) and (d) of section eleven hundred five, all rents for occupancy of the type mentioned in subdivision (e) of said section, and all amusement charges of any type mentioned in subdivision

(f) of said section, are subject to tax until the contrary is established, and the burden of proving that any receipt, amusement charge or rent is not taxable hereunder shall be upon the person required to collect tax or the customer. Except as provided in subdivision (h) or (k) of this section, unless (i) a vendor, not later than ninety days after delivery of the property or the rendition of the service, shall have taken from the purchaser a resale or exemption certificate in such form as the commissioner may prescribe, signed by the purchaser and setting forth the purchaser's name and address and, except as otherwise provided by regulation of the commissioner, the number of the purchaser's certificate of authority, together with such other information as the commissioner may require, to the effect that the property or service was purchased for resale or for some use by reason of which the sale is exempt from tax under the provisions of section eleven hundred fifteen, and, where such resale or exemption certificate requires the inclusion of the purchaser's certificate of authority number or other identification number required by regulations of the commissioner, that the purchaser's certificate of authority has not been suspended or revoked and has not expired as provided in section eleven hundred thirty-four, or (ii) the purchaser, not later than ninety days after delivery of the property or the rendition of the service, furnishes to the vendor: any affidavit, statement or additional evidence, documentary or otherwise, which the commissioner may require demonstrating that the purchaser is an exempt organization described in section eleven hundred sixteen, the sale shall be deemed a taxable sale at retail. Where a resale or exemption certificate or an affidavit, statement or additional evidence referred to in the previous sentence is received within the time limit set forth therein, but is deficient in some material manner, and where such deficiency is thereafter removed, the receipt of such resale or exemption certificate or such affidavit, statement or additional evidence shall be deemed to have satisfied all of the requirements of the preceding sentence. Where such a resale or exemption certificate or such an affidavit, statement or additional evidence has been furnished to the vendor, the burden of proving that the receipt, amusement charge or rent is not taxable hereunder shall be solely upon the customer. The vendor shall not be required to collect tax from purchasers who furnish a resale or exemption certificate, or

such an affidavit, statement or additional evidence in proper form, unless, in the case of a resale or exemption certificate described in clause (i) of the second sentence of this paragraph whereon the purchaser's certificate of authority number, or other identification number required by regulation of the commissioner, is required to be included, such purchaser's certificate of authority is invalid because it has been suspended or revoked as provided in section eleven hundred thirty-four, and the commissioner has furnished registered vendors with information identifying those persons whose certificates of authority have been suspended or revoked, or unless such purchaser's certificate of authority is invalid because it has expired, and the commissioner has provided registered vendors with a means of determining whether such expiration has occurred. Where the vendor accepts such a resale or exemption certificate from a person identified by the commissioner as one whose certificate of authority has been suspended or revoked or from a person whose certificate of authority has been identified as having expired, the receipt, amusement charge or rent from such transaction shall be deemed to be a taxable sale at retail.

(2) Notwithstanding paragraph one of this subdivision or any other law to the contrary, the commissioner may authorize a purchaser, who acquires tangible personal property or services under circumstances which make it impossible at the time of acquisition to determine the manner in which the tangible personal property or services will be used, to pay the tax directly to the commissioner and waive the collection of the tax by the vendor. Subject to such reasonable conditions as the commissioner may require, the commissioner shall authorize an omnibus carrier described in subdivision (b) of section eleven hundred nineteen to pay the tax on the purchase or use of an omnibus directly to the commissioner and waive the collection of the tax by the vendor. No such authority shall be granted or exercised except upon application to the commissioner, and the issuance by the commissioner, in the commissioner's discretion, of a direct payment permit. If a direct payment permit is granted, its use shall be subject to conditions specified by the commissioner, and the payment of tax on all acquisitions pursuant to the permit shall be made directly to the commissioner by the permit holder. The commissioner may suspend or revoke a direct payment permit where the permit holder fails to comply

with any of the provisions of this article or any rule promulgated by the commissioner with respect to this article. The notice and hearing provisions applicable to the revocation and suspension of certificates of authority under section eleven hundred thirty-four shall apply to the suspension and revocation of direct payment permits. A vendor shall not be required to collect tax from a purchaser who furnishes a direct payment permit in proper form, unless such purchaser's direct payment permit has been suspended or revoked by the commissioner and the commissioner has provided registered vendors with information identifying those persons whose direct payment permits have been suspended or revoked. Where a vendor accepts a direct payment permit from a person whose direct payment permit has been suspended or revoked, and the commissioner has provided registered vendors with information identifying those persons whose direct payment permits have been suspended or revoked, the receipt, amusement charge or rent from such transaction shall be deemed to be subject to tax.

(d) The tax commission may provide by regulation that the tax upon receipts from sales on the installment plan may be paid on the amount of each installment and upon the date when such installment is due.

(e) The commissioner may provide, by regulation, for the exclusion from taxable receipts, gallons of motor fuel or diesel motor fuel sold, amusement charges or rents of amounts representing sales where the contract of sale has been cancelled, the property returned or the receipt, charge or rent has been ascertained to be uncollectible or, in case the tax has been paid upon such receipt, gallons, charge or rent, for refund of or credit for the tax so paid. Where the commissioner provides for a credit for the tax so paid, he or she shall require an application for credit to be filed, but he or she may also allow the applicant to immediately take the credit on the return which is due coincident with or immediately subsequent to the time the applicant files his or her application for credit. However, the taking of the credit on the return shall be deemed to be part of the application for credit and shall be subject to the provisions in respect to applications for credit in section eleven hundred thirty-nine of this part as provided in subdivision (e) of such section.

(f) The commissioner of motor vehicles shall not issue a registration certificate for any motor vehicle, snowmobile, vessel or all terrain

vehicle, except in the case of a renewal of registration by the same owner, except upon proof, in a form approved by the tax commission and the commissioner of motor vehicles, that any tax imposed by section eleven hundred five or eleven hundred ten of this article with respect to the sale of the motor vehicle, snowmobile, vessel or all terrain vehicle to the registrant or his use thereof has been paid, or that no such tax is due. For purposes of this subdivision, the term motor vehicle shall include a motor vehicle as defined in section one hundred twenty-five of the vehicle and traffic law; a trailer as defined in section one hundred fifty-six of such law; a snowmobile as defined in section twenty-two hundred twenty-one of such law; a vessel as defined in section twenty-two hundred fifty of such law; and an all terrain vehicle as defined in section twenty-two hundred eighty-one of such law.

(g) (1) The clerk of each county when performing the function of registration of a motor vehicle, snowmobile, vessel or all terrain vehicle or accepting an application for a certificate of title of a motor vehicle or vessel, pursuant to the authority of the vehicle and traffic law, or the commissioner of motor vehicles, when such commissioner performs such functions, prior to performing such functions, shall act as the agent of the state tax commission to collect any retail sales tax due under this article and under a sales tax imposed pursuant to section twelve hundred ten or twelve hundred eleven upon sales of such motor vehicles, snowmobiles, vessels or all terrain vehicles by persons other than dealers registered under sections four hundred fifteen, twenty-two hundred twenty-two, twenty-two hundred fifty-seven and twenty-two hundred eighty-two of the vehicle and traffic law. Such county clerks and such commissioner shall also act as such agents to collect any compensating use tax due under section eleven hundred ten and under a compensating use tax imposed pursuant to section twelve hundred ten or twelve hundred eleven for the use of a motor vehicle, snowmobile, vessel or all terrain vehicle within this state. The commissioner of motor vehicles shall act as such agent without fee. Each such county clerk shall, after deducting his fee as provided in paragraph two of this subdivision, and such commissioner shall remit to the tax commission all funds collected pursuant to this subdivision and shall follow such procedures and keep such records as shall be prescribed by the tax commission.

(2) Each such county clerk shall retain, from the state and local sales and compensating use taxes which he collects, the sum of one dollar for each of the first five thousand motor vehicles or all terrain vehicles in respect to which he has issued a certificate setting forth the proof required by subdivision (f) of this section and subdivision (d) of section twelve hundred fourteen of this chapter during each annual period commencing on the first day of September and ending on the next succeeding thirty-first day of August and the sum of seventy-five cents for each motor vehicle or all terrain vehicle in excess of five thousand for which he has issued such a certificate during such annual period. Each such county clerk shall also retain, from the state and local sales and compensating use taxes he collects, the sum of fifty cents for each snowmobile and vessel in respect to which he has issued a certificate setting forth the proof required by subdivision (f) of this section and subdivision (d) of section twelve hundred fourteen of this chapter. Such fees shall be payable even though the certificate issued shows that no tax is due. Such fees shall belong to the county and be paid into the county treasury monthly on or before the tenth day of the month pursuant to section two hundred one of the county law. The county shall pay all expenses occasioned by the duties of the county clerk under this subdivision, including any expenses for hire of extra clerks.

(h) (1) (i) No person shall purchase motor fuel in this state, excluding a purchase at retail, unless the tax required to be prepaid by subdivision (a) of section eleven hundred two of this article has been assumed by a distributor registered under article twelve-A of this chapter in accordance with a certification under this paragraph or paid by such distributor, and, in each of such instances, is passed through to such purchaser. In addition to any other civil and criminal penalties which may apply, any person who purchases motor fuel in violation of this subparagraph shall be jointly and severally liable to pay the tax required to be prepaid by section eleven hundred two of this article with respect to such motor fuel.

(ii) For the purpose of the proper administration of this article and to prevent evasion of the tax on motor fuel imposed by and pursuant to this article, it shall be presumed that all motor fuel imported, manufactured or sold, received or possessed in the state is intended for use, distribution, storage or sale in the state and subject to the tax

required to be prepaid by section eleven hundred two of this article until the contrary is established. It shall be further presumed that all motor fuel so imported, manufactured, sold, received or possessed in the state by any person, other than motor fuel delivered into the ordinary fuel tank connected with the engine of a means of conveyance in order to propel it, or in small drums or similar containers, which such person cannot otherwise account for, is subject to the tax required to be prepaid under section eleven hundred two of this article and such person is responsible for such prepayment. Provided, however, a distributor of motor fuel who imports, manufactures or sells and stores in the state or who purchases and stores motor fuel in the state on which he has prepaid the tax required to be prepaid pursuant to section eleven hundred two of this article shall be allowed an adjustment in arriving at the gallons subject to the taxes imposed by such section on account of the gallons the distributor establishes were lost due to shrinkage, evaporation and handling; provided, however, such allowance shall not exceed two percent of the fuel stored. Provided, further, that in arriving at the gallons of motor fuel subject to the tax required to be prepaid pursuant to section eleven hundred two of this article, there shall be allowed an adjustment on account of gallons lost or destroyed due to an accident, such as fire, and at the time of such loss or destruction were being held or transported for sale other than at retail. The burden of proving that any motor fuel is not so subject shall be upon the person so responsible for such prepayment with respect to such fuel.

(iii) Upon each sale of motor fuel, other than a sale at retail, the seller must give to the purchaser and the purchaser shall receive, at the time of delivery of such motor fuel, a certification containing such information as the tax commission shall require which shall include a statement to the effect (A) if such seller is a distributor registered under article twelve-A of this chapter, that he has assumed the payment of or paid the tax required to be prepaid by section eleven hundred two of this article and, in each case, is passing through such tax or (B) that such seller is passing through such tax which was so previously assumed or paid by an identified distributor registered under article twelve-A of this chapter, and passed through to him.

(iv) If the certification required by this paragraph has been furnished to the purchaser by the seller at delivery and accepted in

good faith, the burden of proving that the tax required to be paid by section eleven hundred two of this article was assumed or paid by a distributor registered as such under article twelve-A of this chapter and passed through shall be solely on the seller.

(v) Where the certification required under this paragraph is not furnished by the seller at delivery of motor fuel, it shall be presumed that the tax required to be prepaid by section eleven hundred two of this article has not been assumed or paid by a distributor registered as such under article twelve-A of this chapter and that the purchaser in such case is jointly and severally liable for the tax.

(vi) If, due to the circumstances of delivery, it is not possible to issue a certification required under this paragraph at the time of delivery of motor fuel, the tax commission may authorize the delivery of the certification required under this paragraph at a time after the delivery of the motor fuel which is the subject of the sale under the limited circumstances it shall prescribe and upon such terms and conditions it shall deem necessary to ensure collection of the tax imposed by section eleven hundred two of this article and the motor fuel taxes imposed by article twelve-A of this chapter.

(2) (i) Except with respect to the exemptions from the prepaid tax on Diesel motor fuel set forth in paragraph two of subdivision (a) of section eleven hundred two of this article, no person shall purchase Diesel motor fuel in this state unless the prepaid tax has been assumed by a registered distributor of Diesel motor fuel in accordance with a certification under this paragraph or paid by such distributor and, in each of such instances, except in the case of a purchase at retail, are passed through to such purchaser. In addition to any other civil and criminal penalties which may apply, any person who purchases Diesel motor fuel without having received a certification from the seller in accordance with this paragraph shall be jointly and severally liable to pay the tax required to be prepaid by section eleven hundred two of this article with respect to such Diesel motor fuel.

(ii) For purposes of the proper administration of this article and to prevent evasion of the taxes imposed on Diesel motor fuel by this article, it shall be presumed that all Diesel motor fuel sold, received or possessed in the state is subject to the taxes imposed by this article until the contrary is established. It shall be further presumed

that any person so selling, receiving or possessing such Diesel motor fuel is responsible for payment of the excise taxes on such fuel.

(iii) The exemption from the tax required to be prepaid by section eleven hundred two of this article provided for in paragraph two of subdivision (a) of section eleven hundred two of this article shall be established by means of an interdistributor sale certificate. If such exemption is applicable, such certificate shall be provided by the purchaser to the seller at the time of or prior to delivery of the Diesel motor fuel. Such certificate shall set forth the name and address of the purchaser, the purchaser's registration number, an affirmation by such purchaser that the purchaser is registered as a distributor of Diesel motor fuel and that such registration has not been suspended or cancelled and shall be signed by such purchaser and by the seller. Such certificate shall be in such form and contain such other information as the commissioner of taxation and finance shall require. Where a proper and complete interdistributor sale certificate has been furnished and accepted by the seller in good faith, such certificate under such circumstance shall relieve the seller of the burden of proving that the Diesel motor fuel covered by such certificate is exempt from the tax required to be prepaid by section eleven hundred two of this article by reason of paragraph two of subdivision (a) of section eleven hundred two of this article. For purposes of this subparagraph, a seller shall not have accepted such certificate in good faith if the purchaser's registration is invalid because it has been suspended or cancelled, or if the purchaser is not registered, and the commissioner of taxation and finance has furnished registered distributors with information identifying all those persons then validly registered as distributors of Diesel motor fuel and those persons whose registrations have been suspended or cancelled. Any purchaser who furnishes to his seller a false or fraudulent interdistributor sale certificate for the purpose of establishing an exemption from the tax required to be prepaid by section eleven hundred two of this article shall be jointly and severally liable for the tax imposed by such section.

(iv) (A) Upon each sale, other than a retail sale at a filling station, the seller must give to the purchaser and the purchaser shall receive at the time of delivery of such Diesel motor fuel, a certification containing such information as the commissioner of

taxation and finance shall require which, unless otherwise provided in this paragraph, shall include a statement to the effect: (i) if such seller is a distributor registered under article twelve-A of this chapter, that he has assumed the payment of or paid the taxes imposed by this article and, in each case, is passing through such taxes; (ii) that such seller is passing through such taxes which were so previously assumed or paid by an identified distributor registered under article twelve-A of this chapter, and passed through to him; or (iii) if such seller is making a retail sale to a purchaser, that such taxes are not being passed through on the retail sale of Diesel motor fuel, in accordance with subparagraph (i) of this paragraph. In the case of a sale of Diesel motor fuel described in paragraph two of subdivision (a) of section eleven hundred two of this article which is exempt from the tax required to be prepaid by section eleven hundred two, the certificate, in lieu of the foregoing statements, shall state that, based upon good faith reliance on the interdistributor sales certificate, such Diesel motor fuel is being sold under the circumstances described in such paragraph two of subdivision (a) of section eleven hundred two and that the tax imposed by section eleven hundred two of this article is not applicable.

(B) In the case of a sale of Diesel motor fuel subject to the tax required to be prepaid by section eleven hundred two of this article and in all cases where such tax is required to be passed through, if the certification required by this subparagraph has been furnished to the purchaser at the time of delivery of such fuel and accepted in good faith, the burden of proving that the tax required to be prepaid by section eleven hundred two of this article was assumed or paid by a distributor registered as such under article twelve-A of this chapter and passed through shall be solely on the seller.

(C) Where the certification required under this subdivision is not furnished by the seller at the time of delivery of the Diesel motor fuel, it shall be presumed that the tax required to be prepaid by section eleven hundred two of this article is due and owing and has not been assumed or paid by a distributor registered as such under article twelve-A of this chapter and that the purchaser in such case is jointly and severally liable for the tax.

(D) If, due to the circumstances of delivery, it is not possible to

issue a certification required under this subdivision at the time of delivery of Diesel motor fuel, the commissioner of taxation and finance may authorize the delivery of the certification required under this subdivision at a time after the delivery of the Diesel motor fuel which is the subject of the sale under the limited circumstances he shall prescribe and upon such terms and conditions he shall deem necessary to ensure collection of the tax imposed by section eleven hundred two of this article and the Diesel motor fuel taxes imposed by article twelve-A of this chapter.

(3) (i) For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all retail sales of motor fuel or diesel motor fuel are subject to the tax required to be collected by subdivision (a) of section eleven hundred five of this article or paid by the provisions of section eleven hundred ten of this article until the contrary is established, and it shall be presumed that all motor fuel or diesel motor fuel imported, manufactured, sold, received or possessed by any person in this state, which such person cannot otherwise account for as having been sold subject to the tax required to be collected by subdivision (a) of section eleven hundred five or paid by the provisions of section eleven hundred ten of this article, has been sold subject to the tax required to be collected by subdivision (a) of section eleven hundred five or paid by the provisions of section eleven hundred ten except that no such presumption shall apply with respect to motor fuel or diesel motor fuel in the fuel tank of a motor vehicle used to propel such vehicle or to motor fuel in small drums or similar containers. The burden of proving that any sale is not so subject shall be upon the person required to collect such tax and the purchaser of such fuel.

(ii) Unless the vendor has received from the purchaser a statement or certificate in such form as the commissioner may require, that the purchaser pursuant to the provisions of subdivision (a) of section eleven hundred five-A, subdivision (j) of section eleven hundred fifteen or subdivision (b) of section eleven hundred sixteen of this article is not subject to the provisions of this paragraph, such sale shall be deemed a sale subject to the provisions of sections eleven hundred five and eleven hundred ten of this article notwithstanding any provision of subdivision (c) of this section.

(iii) Where any certificate or statement required under this paragraph has been furnished to the vendor and accepted in good faith, the burden of proving that the receipt is not taxable hereunder shall be solely upon the purchaser. The vendor shall not be required to collect such taxes from purchasers who furnish such certificates or statements in proper form.

(i) The commissioner shall, by regulation, provide for a certificate which must be furnished by a purchaser of a large volume of motor fuel or diesel motor fuel who or which is commonly referred to as a commercial account where such purchase is for consumption by such purchaser and is not resold in order for the sales tax on such sale to be based on the actual receipts therefor.

(k) (1) (i) No person shall purchase cigarettes in this state, other than in a purchase at retail, unless the tax required to be prepaid by subdivision (a) of section eleven hundred three of this article has been paid by an agent and passed through by such agent and by a wholesale dealer or retail dealer, authorized, licensed or registered under article twenty of this chapter, in accordance with a certification under this paragraph or paid by such agent, wholesale dealer or retail dealer, and, in each of such instances, is passed through to such purchaser. In addition to any other civil and criminal penalties which may apply, any person who purchases cigarettes in violation of this subparagraph shall be jointly and severally liable to pay the tax required to be prepaid by section eleven hundred three of this article with respect to such cigarettes.

(ii) For the purpose of the proper administration of this article and to prevent evasion of the tax on sales and uses of cigarettes imposed by this article and pursuant to the authority of article twenty-nine of this chapter, it shall be presumed that all cigarettes possessed in this state, other than four hundred or fewer cigarettes brought into the state by, or in the possession of, any person, are intended for sale or use in the state and subject to the tax required to be prepaid by section eleven hundred three of this article until the contrary is established and that such person is responsible for such prepayment.

(iii) Upon each sale of cigarettes, other than a sale at retail, the seller must give to the purchaser and the purchaser shall receive, at the time of delivery of such cigarettes, a certification containing such

information as the commissioner shall require which shall include a statement to the effect (A) if such seller is an agent under article twenty of this chapter, that such agent has paid the amount of tax required to be prepaid by section eleven hundred three of this article and is passing through such amount of tax, or (B) that such seller is passing through such amount of tax which was so previously assumed or paid by an agent under article twenty of this chapter identified on such certification, and passed through to such seller.

(iv) If the certification required by this paragraph has been furnished to the purchaser by the seller at delivery and accepted in good faith on cigarettes bearing a cigarette tax stamp under article twenty of this chapter and this article of an issue currently in effect, the burden of proving that the tax required to be paid by section eleven hundred three of this article was assumed or paid by an agent licensed as such under article twenty of this chapter and passed through shall be solely on the seller.

(v) Where the certification required under this paragraph is not furnished by the seller to the purchaser at delivery of cigarettes, it shall be presumed that no amount of tax required to be prepaid by section eleven hundred three of this article has been paid by an agent authorized as such under article twenty of this chapter and that the purchaser in such case is jointly and severally liable for the tax imposed by such section eleven hundred three.

(2) (i) For the purpose of the proper administration of this article and to prevent evasion of the tax imposed under this article, it shall be presumed that all retail sales of cigarettes are subject to the tax imposed by subdivision (a) of section eleven hundred five and required to be collected by section eleven hundred thirty-two of this article or required to be paid by the provisions of section eleven hundred ten of this article until the contrary is established; and it shall be presumed that all cigarettes possessed in this state, which such person cannot otherwise account for as having been sold subject to the tax imposed by subdivision (a) of section eleven hundred five and required to be collected by section eleven hundred thirty-two or required to be paid by the provisions of section eleven hundred ten of this article, have been sold subject to the tax imposed by subdivision (a) of section eleven hundred five and required to be collected by section eleven hundred

thirty-two or required to be paid by the provisions of section eleven hundred ten, except that no such presumption shall apply with respect to four hundred or fewer cigarettes brought into the state by, or in the possession of, any person. The burden of proving that any sale is not so subject to tax shall be upon the person required to collect such tax and the purchaser or user of such cigarettes.

(ii) Unless the vendor has received from the purchaser a statement or certificate, in such form as the commissioner may require, that the purchaser pursuant to the provisions of paragraph six of subdivision (b) of section eleven hundred sixteen of this article is not subject to the provisions of this paragraph, such sale shall be deemed a sale subject to the provisions of sections eleven hundred five and eleven hundred ten of this article notwithstanding any provision of subdivision (c) of this section.

(iii) Where any certificate or statement required under this paragraph has been furnished to the vendor and accepted in good faith, the burden of proving that the receipt is not taxable hereunder shall be solely upon the purchaser. The vendor shall not be required to collect such taxes from purchasers who furnish such certificates or statements in proper form.

(l)(1) A marketplace provider with respect to a sale of tangible personal property it facilitates: (A) shall have all the obligations and rights of a vendor under this article and article twenty-nine of this chapter and under any regulations adopted pursuant thereto, including, but not limited to, the duty to obtain a certificate of authority, to collect tax, file returns, remit tax, and the right to accept a certificate or other documentation from a customer substantiating an exemption or exclusion from tax, the right to receive the refund authorized by subdivision (e) of this section and the credit allowed by subdivision (f) of section eleven hundred thirty-seven of this part subject to the provisions of such subdivisions; and (B) shall keep such records and information and cooperate with the commissioner to ensure the proper collection and remittance of tax imposed, collected or required to be collected under this article and article twenty-nine of this chapter.

(2) A marketplace seller who is a vendor is relieved from the duty to collect tax in regard to a particular sale of tangible personal property

subject to tax under subdivision (a) of section eleven hundred five of this article and shall not include the receipts from such sale in its taxable receipts for purposes of section eleven hundred thirty-six of this part if, in regard to such sale: (A) the marketplace seller can show that such sale was facilitated by a marketplace provider from whom such seller has received in good faith a properly completed certificate of collection in a form prescribed by the commissioner, certifying that the marketplace provider is registered to collect sales tax and will collect sales tax on all taxable sales of tangible personal property by the marketplace seller facilitated by the marketplace provider, and with such other information as the commissioner may prescribe; and (B) any failure of the marketplace provider to collect the proper amount of tax in regard to such sale was not the result of such marketplace seller providing the marketplace provider with incorrect information. This provision shall be administered in a manner consistent with subparagraph (i) of paragraph one of subdivision (c) of this section as if a certificate of collection were a resale or exemption certificate for purposes of such subparagraph, including with regard to the completeness of such certificate of collection and the timing of its acceptance by the marketplace seller. Provided that, with regard to any sales of tangible personal property by a marketplace seller that are facilitated by a marketplace provider who is affiliated with such marketplace seller within the meaning of paragraph one of subdivision (e) of section eleven hundred one of this article, the marketplace seller shall be deemed liable as a person under a duty to act for such marketplace provider for purposes of subdivision one of section eleven hundred thirty-one of this part.

(3) The commissioner may, in his or her discretion: (A) develop a standard provision, or approve a provision developed by a marketplace provider, in which the marketplace provider obligates itself to collect the tax on behalf of all the marketplace sellers for whom the marketplace provider facilitates sales of tangible personal property, with respect to all sales that it facilitates for such sellers where delivery occurs in the state; and (B) provide by regulation or otherwise that the inclusion of such provision in the publicly-available agreement between the marketplace provider and marketplace seller will have the same effect as a marketplace seller's acceptance of a certificate of

collection from such marketplace provider under paragraph two of this subdivision.

(m) (1) A booking service with respect to a sale for every occupancy of a short term rental unit it facilitates: (A) shall have all the obligations and rights of a vendor under this article and article twenty-nine of this chapter and under any regulations adopted pursuant thereto, including, but not limited to, the duty to obtain a certificate of authority, to collect tax, file returns, remit tax, and the right to accept a certificate or other documentation from a customer substantiating an exemption or exclusion from tax, the right to receive the refund authorized by subdivision (e) of this section and the credit allowed by subdivision (f) of section eleven hundred thirty-seven of this part subject to the provisions of such subdivisions; and (B) shall keep such records and information and cooperate with the commissioner to ensure the proper collection and remittance of tax imposed, collected, or required to be collected under this article and article twenty-nine of this chapter.

(2) An operator is relieved from the duty to collect tax in regard to a particular rent for the occupancy of a short term rental unit subject to tax under subdivision (e) of section eleven hundred five of this article and shall not include the rent from such occupancy in its taxable sales for purposes of section eleven hundred thirty-six of this part if in regard to such occupancy:

(A) the operator of the short term rental can show that such occupancy was facilitated by a booking service from whom such operator has received in good faith a properly completed certificate of collection in a form prescribed by the commissioner certifying that the booking service is registered to collect sales tax and will collect sales tax on all taxable sales of occupancy of a short term rental unit by the operator facilitated by the booking service, and with such other information as the commissioner may prescribe; and

(B) any failure of the booking service to collect the proper amount of tax in regard to such sale was not the result of such operator providing the booking service with incorrect information.

This provision shall be administered in a manner consistent with subparagraph (i) of paragraph one of subdivision (c) of this section as

if a certificate of collection were a resale or exemption certificate for purposes of such subparagraph, including with regard to the completeness of such certificate of collection and the timing of its acceptance by the operator. Provided that with regard to any sales of occupancy of a short term rental unit by an operator that are facilitated by a booking service who is affiliated with such operator within the meaning of paragraph ten of subdivision (c) of section eleven hundred one of this article, the operator shall be deemed liable as a person under a duty to act for such booking service for purposes of subdivision one of section eleven hundred thirty-one of this part.

(3) The commissioner may, at their discretion: (A) develop a standard provision, or approve a provision developed by a booking service, in which the booking service obligates itself to collect the tax on behalf of all operators for whom the booking service facilitates sales of occupancy of a short term rental unit, with respect to all sales that it facilitates for such operators where the rental occurs in the state; and (B) provide by regulation or otherwise that the inclusion of such provision in the publicly-available agreement between the booking service and operator will have the same effect as an operator's acceptance of a certificate of collection from such booking service under paragraph two of this subdivision.