

§ 1133. Liability for the tax. (a) Except as otherwise provided in section eleven hundred thirty-seven of this part, every person required to collect any tax imposed by this article shall be personally liable for the tax imposed, collected or required to be collected under this article. Any such person shall have the same right in respect to collecting the tax from their customer or in respect to nonpayment of the tax by the customer as if the tax were a part of the purchase price of the property or service, amusement charge or rent, as the case may be, and payable at the same time; provided, however, that the tax commission shall be joined as a party in any action or proceeding brought to collect the tax.

(b) Where any customer has failed to pay a tax imposed by this article to the person required to collect the same, then in addition to all other rights, obligations and remedies provided, such tax shall be payable by the customer directly to the tax commission and it shall be the duty of the customer to file a return with the tax commission and to pay the tax to it within twenty days of the date the tax was required to be paid.

(c) The tax commission may, whenever it deems it necessary for the proper enforcement of this article, provide by regulation that customers shall file returns and pay directly to the tax commission any tax herein imposed, at such times as returns are required to be filed and payment made by persons required to collect the tax.

(d) (1) no person required to collect any tax imposed by this article shall advertise or hold out to the public in any manner, directly or indirectly, that the tax imposed by this article is not considered as an element in the price, amusement charge or rent payable by customers. However, such person required to collect tax may advertise, hold out, or state to a retail purchaser or to the public, that such person will pay the tax imposed by section eleven hundred five of this article on behalf of a retail purchaser, subject to the following conditions:

(i) In so advertising, holding out, or stating to a retail purchaser or to the public, such person required to collect tax shall expressly state on every bill, memorandum, receipt or other statement of the price, amusement charge or rent paid or payable given to such purchaser, that such person will pay the tax imposed by section eleven hundred five of this article on behalf of such purchaser, and such person shall not

indicate or imply that the transaction is exempt or excluded from any tax imposed by this article; and

(ii) Every bill, memorandum, receipt or other statement of the price, amusement charge or rent paid or payable given to such purchaser shall separately state the amount of tax due pursuant to such section eleven hundred five and that the tax was not collected from such purchaser. Such person required to collect tax shall hold such tax as trustee for and on account of the state; and

(iii) A retail purchaser, who in good faith accepts from a person required to collect any tax imposed by this article, a bill, memorandum, receipt or other statement of the price, amusement charge or rent that indicates the amount of tax due pursuant to such section eleven hundred five and that such person required to collect tax will be paying such tax on behalf of such purchaser, shall not be liable for the tax imposed by such section eleven hundred five, or any interest or penalties thereon; provided, however that nothing in this subdivision shall exempt such purchaser from any additional tax due pursuant to section eleven hundred ten of this article.

(e) Applicability of Mobile Telecommunications Sourcing Act. The provisions of sections 119(c), 120, 121 and 122 of title 4 of the United States Code as enacted and in effect on July twenty-eighth, two thousand, to the extent relevant and to the extent required by preemption, shall apply to the provisions of this article in the same manner and with the same force and effect as if the language of such sections of such title 4 of the United States Code had been incorporated in full into this article and had expressly referred to the taxes under this article, with such modifications as may be necessary in order to adapt the language of such provisions to the taxes imposed by this article.

(f) A marketplace provider is relieved of liability under this section for failure to collect the correct amount of tax to the extent that the marketplace provider can show that the error was due to incorrect or insufficient information given to the marketplace provider by the marketplace seller. Provided, however, this subdivision shall not apply if the marketplace seller and marketplace provider are affiliated within the meaning of paragraph one of subdivision (e) of section eleven hundred one of this article.

(g) A booking service shall be relieved of liability under this section for failure to collect the correct amount of tax to the extent that such booking service can show that the error was due to incorrect or insufficient information given to the booking service by the operator. Provided, however, this subdivision shall not apply if the operator and booking service are affiliated within the meaning of paragraph ten of subdivision (c) of section eleven hundred one of this article.