

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-85(11.2)S
Sales Tax
September 20, 1985

Chapter 65 of the Laws of 1985

Omnibus Tax Equity and Enforcement Act of 1985

In addition to the amendments reported in TSB-Ms 85(11) S and 85(11.1) S, dated August 12, 1985 and August 26, 1985 respectively, the following sections have also been amended by Chapter 65 of the Laws of 1985.

Effective November 1, 1985

Section 1143(c) - Repealed.

Section 1143(d) - Relettered subdivision (c).

Section 1145(b) - Repealed. A new subdivision (b) is added to read as follows:

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

Section 1145(d) - Repealed.

Section 1146(f)(1) - provides that any officer or employee of the State who willfully violates the secrecy 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.

Section 1146(f)(2) - provides a cross-reference to Article 37 for criminal penalties.

Section 1817(a) - provides that any person required under Article 28 to make a report or return (other than a compensating use tax return) who willfully fails to make such report or return at the required time, shall be guilty of a misdemeanor.

Section 1817(b)(1) - provides that any person who willfully makes and subscribes any return, report, statement or other document required under the provisions of Article 28 of the Tax Law, which he does not believe to be true and correct as to every material matter, shall be guilty of a misdemeanor.

Section 1817(b)(2) - provides that any person who willfully delivers or discloses to the Tax Commission or to any person, pursuant to the provisions of Article 28 of the Tax Law, any list, return, report, account, statement or other document known by him to be fraudulent or false as to any material matter shall be guilty of a misdemeanor.

Section 1817(b)(3) - provides that for purposes of this section, the omission by any person of any material matter with intent to deceive shall constitute the delivery or disclosure of a document known by him to be fraudulent or false as to any material matter.

Section 1817(c)(1) - provides that any person required under Article 28 to collect any tax imposed by such article who willfully fails to collect such tax shall, in addition to the other penalties provided by law, be guilty of a misdemeanor.

Section 1817(c)(2) - provides that it is a class E felony when a person fails to collect a sales tax required to be collected by Article 28 of the Tax Law:

- (a) with intent to defraud the state or a political subdivision thereof and thereby deprives either, or both, of ten thousand dollars or more, or
- (b) with intent to defraud the state or a political subdivision thereof through a common scheme or plan consisting of ten or more failures to collect the required tax on sales in the amount of one hundred dollars or more each.

Section 1817(d) - provides that any person required to obtain a Certificate of Authority who willfully (1) sells taxable tangible personal property or services, receives amusement charges or operates a hotel, (2) purchases or sells tangible personal property for resale, or (3) sells automotive fuel without possessing a valid Certificate of Authority is guilty of a misdemeanor. It also provides that any person who fails to surrender a Certificate of Authority as required by the Tax Law is guilty of a misdemeanor.

Section 1817(e) - provides that any person required to obtain a Certificate of Authority who (1) sells taxable tangible personal property or services, receives amusement charges or operates a hotel, (2) purchases or sells tangible personal property for resale, or (3) sells automotive fuel within five years after a final determination by the Tax Commission to suspend, revoke or refuse to issue a Certificate of Authority, shall be guilty of a misdemeanor.

It also provides that any person who performed the acts described in this subdivision without knowledge of the Tax Commission's determination shall have an affirmative defense.

It further provides that any person convicted of violating a provision of this subdivision shall be subject to a fine in any amount authorized by Article 37, but never less than \$500. This is in addition to any other penalty provided by law.

Section 1817(f) - provides that any person who willfully fails to file a notice of a show, as required by Article 28, or who willfully rents, leases or grants a license to use space for a show or operates a show without obtaining a permit pursuant to section 1134(b)(2) of the Tax Law shall be guilty of a misdemeanor.

Section 1817(g) - provides that any persons required to collect tax (as such persons are defined in the Tax Law) shall be guilty of a misdemeanor if they:

- (1) willfully fail to state, charge and show separately the sales tax on the first sales slip, invoice, receipt, or other statement or memorandum of the price, amusement charge or rent paid or payable, as required by section 1132(a), or
- (2) willfully advertise or hold out to the public in any manner, directly or indirectly, that the sales tax is not considered an element in the price, amusement charge or rent payable by customers.

Section 1817(h) - provides that any person willfully failing to file a bond or deposit taxes in any banking institution where such filing or deposit is required pursuant to section 1137(e)(2) or (3) shall be guilty of a misdemeanor.

Section 1817(i) - provides that any owner of a filling station (other than a registered motor fuel distributor under Article 12-A of the Tax Law) shall be guilty of a class E felony if he willfully and knowingly has in his custody, possession or under his control any motor fuel on which taxes required to have been paid pursuant to Articles 28 and 29 have not been paid.

For purposes of section 1817(i), such owner shall willfully and knowingly have in his custody, possession or under his control motor fuel on which such taxes are required to have been paid but have not been paid, where such owner has knowledge of the requirement that such taxes be paid but, to his knowledge such taxes have not been paid.

Section 1817(j) - provides that any person who willfully fails to keep any records required by Article 28 of the Tax Law shall be guilty of a misdemeanor.

Section 1817(k) - provides that the penalties pursuant to this section shall not preclude prosecution pursuant to the penal law with respect to the willful failure of any person to pay over to the State any sales tax imposed by the Tax Law which such person has been required to collect and has, in fact, collected. In any such prosecution under the penal law, a person who has been required to collect and has collected any such tax shall be deemed to have acted in a fiduciary character with respect to the state or a political subdivision thereof, and the tax collected shall be deemed to have been entrusted to such person by the state or a political subdivision thereof.

Section 1817(l) - provides that any person who willfully fails to pay sales or compensating use tax, or fails to file a compensating use tax return, with respect to the purchase or use of automotive fuel, shall be guilty of a misdemeanor.

Section 1817(m) - provides that any person who willfully issues a false or fraudulent resale certificate or other exemption certificate or document with intent to evade tax shall be guilty of a misdemeanor.

Section 1817(n) - provides that any person who, being duly subpoenaed pursuant to the provisions of the Tax Law or civil practice law and rules to attend as a witness or to produce books, accounts, records, memoranda, documents or other papers relative to a matter arising under Article 28 of the Tax Law shall be guilty of a misdemeanor if (1) he fails or refuses to attend without lawful excuse, (2) refuses to be sworn, (3) refuses to answer any material and proper question, or (4) refuses, after reasonable notice, to produce books, accounts, records, memoranda, documents or other papers in his possession or under his control which constitute material and proper evidence.

Section 1817(o) - provides that all of the provisions of section 1817 shall apply for purposes of any taxes imposed by Article 29 of the Tax Law and administered by the Tax Commission.

Section 1825 - provides that any person who violates the secrecy provisions in section 1146(a) shall be guilty of a misdemeanor.

Section 1826(a) - provides that any person, firm, corporation, or association, or agent or employee thereof, who mails or delivers or causes to be mailed or delivered, any notice, circular, pamphlet, card, hand-bill, printed or written notice of any kind other than that which is authorized or required by law with a statement of moneys due New York State or any of its political subdivisions, or with a tax bill or notification of a tax to be assessed or levied by New York State or any of its political subdivisions, is guilty of a misdemeanor.

Section 1826(b) - provides that despite the provisions of section 1826(a), it shall be lawful for the governing body of any political subdivision, by resolution unanimously passed, to designate a particular written or printed notice relating to water rates, sewer rentals, permit fees and other fees and charges payable to the political subdivision to be included with said tax bill or notification of a tax to be assessed or levied.

Section 1827 - provides that the comptroller or any person employed in his office, or the commissioner of taxation and finance or any person employed in his office, who shall be directly or indirectly interested in any tax sale made by such comptroller or commissioner, or in the title acquired by such sale, or in any money paid or to be paid for the redemption of any lands sold for taxes or on the cancellation of any tax sale is guilty of a misdemeanor. Additionally, any person who shall pay or give to the state comptroller or to any employee of his office, or to the commissioner of taxation and finance or to any employee of his office, any compensation, reward or promise thereof for any service or services performed in regard to such sale, redemption, cancellation or such tax title is guilty of a misdemeanor. A sale in violation of this section is void.

Section 1838 - provides that for purposes of prosecuting offenses under the provisions of the Tax Law, reports, returns, statements, lists, accounts, other documents or other information required to be filed with or delivered to the Tax Commission shall include such items which under the Tax Law or any related statute are required to be recorded or filed with, served upon or delivered

to another person including, but not limited to, a court, appraiser, recording officer of any county within the state, county clerk, surrogate's assistant, surrogate's clerk, county treasurer, any other governmental agency or entity, securities exchange, clearing corporation or other entity in its capacity as an agent of the Tax Commission.

Section 1839 - provides that all fines levied under Article 37 of the Tax Law shall be paid into the State treasury to the credit of the general fund.