

A.3009-B, Part JJ

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BILL A.3009-B, Part JJ
SUBJECT Fee on Delivery Transactions
DATE March 31, 2023
OPPOSE

The Business Council opposes this legislation that would impose a fee on “delivery transactions.” This bill would require the development of a new state collection and enforcement mechanism and impose complex new compliance and reporting obligations on thousands of businesses, including many small businesses that only recently began using delivery services to replace activity lost during the recession.

This provision of the Assembly one-house budget would impose, effective September 1, 2023, a \$0.25 fee on every “delivery transaction,” defined as “a transaction that results in the delivery of personal tangible property from retail sale, whether purchased online or not, to the purchaser within the state.” The bill would exempt from this charge all deliveries of medicines, medical equipment, diapers, baby formula and food or food products. The bill would also exempt transactions involving deliveries “operating over a rural route and engage exclusively in the transportation of United States mail under contract” and those “owned and operated by the United States, this state or any other state or any county, city, town or municipality in this state, or any other state or by any agency or department thereof.” The fee would be imposed and collected by the entity making the retail sale, and fee receipts must be submitted to the state on a monthly basis.

The bill would also exempt transactions where the purchaser is using funds from the supplemental nutrition assistance program, special supplemental nutrition program for women, infants and children, or similar programs, but only if all the items in the transaction are purchasable using such funds.

The bill further provides that receipts based on deliveries within New York City are dedicated to the MTA, while receipts from outside NYC are dedicated to the public transportation systems operating assistance account.

There are numerous reasons to reject this proposal:

- This mechanism is proving to be cumbersome in the only jurisdiction to adopt it so far. There have been a number of articles written on the compliance challenges and customer concerns regarding a similar fee adopted in Colorado. It has been noted that Colorado legislature is already considering amendments, if not outright repeal, of their less than one year old delivery fee. Interestingly, in Colorado, localities are allowed to impose the local sales tax on this fee, and some localities have indicated their intent to do so, resulting in a tax “pyramiding” effect. It is unclear how this issue would be handled under this legislation.

- The bill requires **every** seller subject to this fee mandate to remit fees and file monthly returns with the state on a monthly basis, regardless of the amount of fees collected and remitted. This will impose an undue compliance burden on small businesses, and on businesses of any size with limited sales in New York State – and extra administrative costs on the Tax Department. In contrast, the state’s sales tax statute only requires quarterly returns from sales tax vendors with taxable receipts under \$300,000 per quarter (see Tax Law §1136(a)(1)). Further, this bill requires entities to register with the Tax Department and, oddly, pay a \$1.50 fee for each registration, while there is no fee for registration as a sales tax vendor.

- While the bill specifically labels this assessment as a fee, and creates unique criteria for its application, the bill also states that provisions of Tax Law Article 28, the sales and use tax statute, will apply “with respect to the administration of and procedure with respect to the fee imposed by this article.” The meaning of this provision is very unclear, as this statute creates administrative procedures that are totally inconsistent with provisions of Article 28.

- The bill allows the Tax Commissioner to refuse to issue a registration certificate to an entity that has any outstanding tax liability to the state (based on a final determination), has failed to file a required return, or “willfully” violated any state tax statute or regulation, with such refusal seemingly resulting also in the entity’s inability to lawfully use any delivery services related to their sale of tangible property. This is far broader authority than allowed the Commissioner with regard to the revocation of sales tax registrations.

- The bill explicitly requires that the fee be charged to the customer and separately identified and listed on any receipt provided to a purchaser, a compliance obligation that will be difficult for some retailers to accommodate within their billing systems.

In summary, this is a new, complex “fee” mechanism that will be challenging to collect and administer, will be regressive in nature as it closely resembles a sales tax, and is expected to prove very unpopular with New Yorkers.

For these reasons, The Business Council recommends against approval of A.3009-B, Part JJ.