

# PROGRAM BILL # 39

S. -----  
Senate  
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IN SENATE--Introduced by Sen

--read twice and ordered printed,  
and when printed to be committed  
to the Committee on

----- A.  
Assembly  
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IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the  
Committee on

**\*TAXLA\***

(Bans electronic and other devices  
used to evade state and local taxes  
and imposes criminal and civil  
penalties)

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Tax. ban certain tax evas devices

**AN ACT**

to amend the tax law, in relation to  
banning electronic and other devices  
used to evade state and local taxes  
and imposing crimes and penalties  
for their use in evading such taxes

The People of the State of New  
York, represented in Senate and  
Assembly, do enact as follows:

## IN SENATE

### Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship  
of this proposal:

s15 Addabbo	s02 Flanagan	s28 Krueger	s55 O'Brien	s51 Seward
s11 Avella	s59 Gallivan	s24 Lanza	s58 O'Mara	s09 Skelos
s40 Ball	s12 Gianaris	s39 Larkin	s21 Parker	s14 Smith
s42 Bonacic	s41 Gipson	s37 Latimer	s13 Peralta	s26 Squadron
s04 Boyle	s22 Golden	s01 LaValle	s30 Perkins	s16 Stavisky
s44 Breslin	s47 Griffo	s52 Libous	s61 Ranzenhofer	s35 Stewart- Cousins
s38 Carlucci	s60 Grisanti	s45 Little	s48 Ritchie	s46 Tkaczyk
s50 DeFrancisco	s06 Hannon	s05 Marcellino	s33 Rivera	s53 Valesky
s32 Diaz	s36 Hassell-	s43 Marchione	s56 Robach	s57 Young
s18 Dilan	Thompson	s07 Martins	s19 Sampson	s03 Zeldin
s31 Espaillat	s27 Hoylman	s62 Maziarz	s10 Sanders	s08
s49 Farley	s63 Kennedy	s25 Montgomery	s23 Savino	s20
s17 Felder	s34 Klein	s54 Nozzolio	s29 Serrano	

## IN ASSEMBLY

### Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the  
multi-sponsorship of this proposal:

a049 Abbate	a147 DiPietro	a076 Kellner	a132 Palmesano	a099 Skoufis
a092 Abinanti	a115 Duprey	a040 Kim	a002 Palumbo	a022 Solages
a084 Arroyo	a004 Englebright	a131 Kolb	a088 Paulin	a114 Stec
a035 Aubry	a109 Fahy	a105 Lalor	a141 Peoples-	a110 Steck
a120 Barclay	a071 Farrell	a013 Lavine	Stokes	a127 Stirpe
a106 Barrett	a126 Finch	a050 Lentol	a058 Perry	a011 Sweeney
a082 Benedetto	a008 Fitzpatrick	a125 Lifton	a086 Pichardo	a112 Tedisco
a117 Blankenbush	a124 Friend	a102 Lopez, P.	a089 Pretlow	a101 Tenney
a062 Borelli	a095 Galef	a123 Lupardo	a073 Quart	a001 Thiele
a026 Braunstein	a137 Gantt	a010 Lupinacci	a019 Ra	a061 Titone
a044 Brennan	a007 Garbarino	a121 Magee	a012 Raia	a031 Titus
a119 Brindisi	a148 Giglio	a129 Magnarelli	a006 Ramos	a146 Walter
a138 Bronson	a080 Gjonaj	a064 Malliotakis	a078 Rivera	a041 Weinstein
a046 Brook-Krasny	a066 Glick	a030 Markey	a128 Roberts	a020 Weisenberg
a093 Buchwald	a023 Goldfeder	a090 Mayer	a056 Robinson	a024 Weprin
a118 Butler	a150 Goodell	a108 McDonald	a068 Rodriguez	a070 Wright
a103 Cahill	a075 Gottfried	a014 McDonough	a072 Rosa	a096 Zebrowski
a043 Camara	a005 Graf	a017 McKeivitt	a067 Rosenthal	a054
a145 Ceretto	a100 Gunther	a107 McLaughlin	a025 Rozic	a055
a033 Clark	a139 Hawley	a038 Miller	a116 Russell	a059
a047 Colton	a083 Heastie	a052 Millman	a149 Ryan	a060
a032 Cook	a003 Hennessey	a015 Montesano	a009 Saladino	a077
a144 Corwin	a028 Hevesi	a136 Morelle	a111 Santabarbara	a079
a085 Crespo	a048 Hikind	a057 Mosley	a029 Scarborough	a098
a122 Crouch	a018 Hooper	a039 Moya	a016 Schimel	a113
a021 Curran	a042 Jacobs	a133 Nojay	a140 Schimminger	a134
a063 Cusick	a097 Jaffee	a037 Nolan	a087 Sepulveda	a143
a045 Cymbrowitz	a135 Johns	a130 Oaks	a065 Silver	
a053 Davila	a094 Katz	a069 O'Donnell	a027 Simanowitz	
a034 DenDekker	a074 Kavanagh	a051 Ortiz	a036 Simotas	
a081 Dinowitz	a142 Kearns	a091 Otis	a104 Skartados	

1) Single House Bill (introduced and printed separately in either or  
both houses). Uni-Bill (introduced simultaneously in both houses and printed  
as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2  
signed copies of bill and 4 copies of memorandum in support (single house);  
or 4 signed copies of bill and 8 copies of memorandum  
in support (uni-bill).

1 Section 1. The tax law is amended by adding a new section 1822 to read  
2 as follows:

3 § 1822. Devices and software used to evade tax. (a) Ban. The design,  
4 engineering, creation, sale, lease, license to use, offer to sell or  
5 lease or license, transport, purchase, installation, offer to purchase,  
6 possession, updating, maintaining, servicing, repair, or use of a device  
7 or software that falsifies, deletes, conceals, secretes, suppresses,  
8 hides, or distorts sales or other transaction data in, from, or by a  
9 point of sale device, or that creates, manipulates, maintains, or that  
10 stores an additional false or incorrect set of records or reports, in  
11 order to evade any tax imposed by this chapter or a related statute or  
12 to evade the payment or payment over of any moneys collected purportedly  
13 as tax is hereby prohibited.

14 (b) Crimes. (1) Any person who violates any prohibition in subdivision  
15 (a) of this section or who causes another person to violate any prohibi-  
16 tion in subdivision (a) of this section shall be guilty of criminal use  
17 of an illegal tax device or software in the fifth degree. Criminal use  
18 of an illegal tax device or software in the fifth degree is a class A  
19 misdemeanor.

20 (2) Any person who violates any prohibition in subdivision (a) of this  
21 section or who causes another person to violate any prohibition in  
22 subdivision (a) of this section shall be guilty of criminal use of an  
23 illegal tax device or software in the fourth degree where the aggregate  
24 tax liability paid the state or a political subdivision of the state  
25 (whether by means of underpayment or receipt of refund or both) as a  
26 result of the use of such device or software is at least three thousand  
27 dollars less than the tax liability that is due. Criminal use of an  
28 illegal tax device or software in the fourth degree is a class E felony.

1 (3) Any person who violates any prohibition in subdivision (a) of this  
2 section or who causes another person to violate any prohibition in  
3 subdivision (a) of this section shall be guilty of criminal use of an  
4 illegal tax device or software in the third degree where the aggregate  
5 tax liability paid the state or a political subdivision of the state  
6 (whether by means of underpayment or receipt of refund or both) as a  
7 result of the use of such device or software is at least ten thousand  
8 dollars less than the tax liability that is due. Criminal use of an  
9 illegal tax device or software in the third degree is a class D felony.

10 (4) Any person who violates any prohibition in subdivision (a) of this  
11 section or who causes another person to violate any prohibition in  
12 subdivision (a) of this section shall be guilty of criminal use of an  
13 illegal tax device or software in the second degree where the aggregate  
14 tax liability paid the state or a political subdivision of the state  
15 (whether by means of underpayment or receipt of refund or both) as a  
16 result of the use of such device or software is at least fifty thousand  
17 dollars less than the tax liability that is due. Criminal use of an  
18 illegal tax device or software in the second degree is a class C felony.

19 (5) Any person who violates any prohibition in subdivision (a) of this  
20 section or who causes another person to violate any prohibition in  
21 subdivision (a) of this section shall be guilty of criminal use of an  
22 illegal tax device or software in the first degree where the aggregate  
23 tax liability paid the state or a political subdivision of the state  
24 (whether by means of underpayment or receipt of refund or both) as a  
25 result of the use of such device or software is at least one million  
26 dollars less than the tax liability that is due. Criminal use of an  
27 illegal tax device or software in the first degree is a class B felony.

1 (c) Disposition of fines and interest. All fines, penalties, and  
2 interest levied under this section shall be paid into the state treasury  
3 to the credit of the general fund. However, fines or interest paid in  
4 respect to the evasion of sales and compensating use taxes imposed  
5 pursuant to the authority of article twenty-nine of this chapter shall  
6 be disposed of as provided in section twelve hundred sixty-one of this  
7 chapter.

8 (d) Separate offense. The crimes and penalties in this section shall  
9 be in addition to and considered a separate offense from any offense  
10 under the other sections of this article or under the penal law.

11 (e) Definitions. For purposes of this section:

12 (1) "Device" includes an electrical, electronic, mechanical, or other  
13 device.

14 (2) "Software" includes prewritten or custom software, of any nature  
15 whatsoever, whether sold as part of a package, as a separate component,  
16 or otherwise, and regardless of the medium by means of which the soft-  
17 ware is conveyed to the purchaser, lessee, licensee, or user, and  
18 includes any update to such software.

19 (3) "Creation" includes manufacturing, producing, processing, assembl-  
20 ing, fabricating, writing, programming, updating, and other processes  
21 that culminate in a device or software.

22 (4) "Point of sale device" means a device that accepts, records,  
23 compiles, processes, or stores details of a transaction at the time of  
24 or in conjunction with a sale, such as a computer, cash register and the  
25 like, and shall include, among other things, a taximeter under article  
26 twenty-nine-A of this chapter and similar devices.

27 (5) "Sales or other transaction data" includes data associated with  
28 property or services purchased by a customer, the prices for each item,

1 a taxability determination for each item, a segregated tax amount for  
2 each of the taxed items, the amount of cash or other consideration  
3 tendered, any amount returned to the customer in change, the date and  
4 time of the purchase, the name, address, and identification number of  
5 the seller, and the receipt, sequence or invoice number of the trans-  
6 action.

7 (6) "Person" shall also include the entities included in subdivision  
8 (a) of section eleven hundred one of this chapter.

9 (7) "Willfully," "this chapter," "related statute," and "related  
10 income or earnings tax statute" shall have the same meaning as those  
11 terms have in section eighteen hundred one of this article.

12 § 2. The tax law is amended by adding a new section 177-a to read as  
13 follows:

14 § 177-a. Devices and software used to evade tax banned, civil penal-  
15 ties. (1) Civil penalties. (a) Any person who uses a device or software  
16 banned pursuant to section eighteen hundred twenty-two of this chapter  
17 to evade any tax due under this chapter or a related statute or to evade  
18 the payment or payment over of any moneys collected purportedly as tax  
19 shall be liable for a penalty equal to three hundred percent of the  
20 amount evaded or estimated to be evaded together with interest at the  
21 underpayment rate set by the commissioner as described in subdivision  
22 (e) of section one thousand ninety-six of this chapter in addition to  
23 any crime or penalty under this chapter or other law that such person  
24 may be subject.

25 (b) Two or more persons who conspire to use a device or software  
26 banned pursuant to section eighteen hundred twenty-two of this chapter  
27 in a scheme to evade any tax due under this chapter or a related statute  
28 or to evade the payment or payment over of any moneys collected purport-

1 edly as tax shall be liable for a penalty equal to three hundred percent  
2 of the amount evaded or estimated to be evaded together with interest at  
3 the underpayment rate set by the commissioner as described in subdivi-  
4 sion (e) of section one thousand ninety-six of this chapter in addition  
5 to any crime or penalty under this chapter or other law that such  
6 persons may be subject. Such persons shall be jointly and severally  
7 liable for the total amount of the penalty and interest. A person who  
8 sells, leases, or licenses the use of such a banned device or software  
9 to another person who uses the banned device or software to evade the  
10 payment of any such tax or moneys collected purportedly as tax shall be  
11 presumed to have conspired to use a banned device or software in a  
12 scheme to evade any tax due with such other person.

13 (c) Any person who designs, engineers, creates, offers to sell or  
14 lease or license to use, transports, possesses, maintains, services, or  
15 repairs a device or software banned pursuant to section eighteen hundred  
16 twenty-two of this chapter, and knows, or reasonably should have known,  
17 that the device or software will be used to evade tax or payment or  
18 payment over of any moneys collected as a tax shall be liable for a  
19 penalty equal to three hundred percent of the amount evaded or estimated  
20 to be evaded together with interest at the underpayment rate set by the  
21 commissioner as described in subdivision (e) of section one thousand  
22 ninety-six of this chapter in addition to any crime or penalty under  
23 this chapter or other law that such persons may be subject.

24 (d) The commissioner shall assess penalty and interest under this  
25 subdivision in accord with procedures applicable to the type of tax  
26 found to have been evaded.

27 (2) Estimation of tax evaded. If a return or report required to be  
28 filed by this chapter or a related statute is incorrect or insufficient

1 because the person required to file it is found to have used a device or  
2 software banned pursuant to section eighteen hundred twenty-two of this  
3 chapter with intent to evade tax, the commissioner shall determine the  
4 amount of tax due from such information as may be available. If neces-  
5 sary, the commissioner may estimate tax on the basis of external  
6 indices, such as stock on hand, purchases, rental paid, number of rooms,  
7 location, scale of rents or charges, comparable rents or charges, type  
8 of accommodations and service, number of employees or other factors. In  
9 the case of retail food stores and other participants approved for  
10 participation in the federal food stamp program under or pursuant to the  
11 federal food stamp act of nineteen hundred seventy-seven (7 U.S.C. §  
12 2011 et seq.), as amended, whose records are incomplete or inadequate to  
13 determine tax, the external indices upon which tax may be estimated and  
14 determined may also include information contained in applications,  
15 updates of applications, redemption certificates, returns and reports  
16 which such retail food stores and other participants furnish to or are  
17 furnished by the United States government or this state or their agen-  
18 cies in order for such retail food stores and other participants to  
19 participate in the food stamp program or to redeem coupons issued under  
20 or pursuant to such food stamp act and any other available information  
21 considered relevant. Whenever such tax is estimated as provided for in  
22 this subdivision, the commissioner's notice to such person shall contain  
23 a statement in bold face type conspicuously placed on such notice advis-  
24 ing the taxpayer: that the amount of the tax was estimated; that the tax  
25 may be challenged through a hearing process; and that the petition for  
26 such challenge must be filed with the division of tax appeals within  
27 ninety days. The commissioner shall otherwise assess tax estimated

1 pursuant to this subdivision in accordance with procedures applicable to  
2 the type of tax found to have been evaded.

3 (3) Reimbursement of commissioner's expenses. If the commissioner  
4 employs or hires a computer or software forensic expert or other person  
5 to investigate and detect or find the use of a device or software banned  
6 pursuant to section eighteen hundred twenty-two of this chapter by a  
7 person required to file a return or report required under or pursuant to  
8 the authority of this chapter or related statute, and such expert or  
9 other person detects or finds that such person required to file a return  
10 or report has used such a banned device or software, or combination of  
11 them, and the commissioner finds that such person has evaded the report-  
12 ing or payment or payment over of any tax or moneys collected purported-  
13 ly as tax, then the commissioner shall be authorized to charge to such  
14 person that so evaded tax or the payment or payment over of such moneys  
15 the commissioner's costs and expenses to employ or hire such expert or  
16 other person for such investigation, including all reasonable costs and  
17 expenses of the commissioner or of such expert or other person. Any such  
18 costs and expenses charged under this subdivision shall be in addition  
19 to any civil or criminal fines, penalties, and interest that may be  
20 imposed by any other provision of law.

21 (4) Loss of certificate of authority. If the commissioner has issued a  
22 certificate of authority under section eleven hundred thirty-four of  
23 this chapter to a person, and the commissioner finds that the person has  
24 used such a banned device or software, or combination of them, to evade  
25 the reporting or payment or payment over of any tax or any moneys  
26 collected purportedly as tax under this chapter or a related statute,  
27 the commissioner shall revoke such certificate of authority pursuant to  
28 the procedures set forth in section eleven hundred thirty-four of this

1 chapter; provided however, that a person whose certificate of authority  
2 has been so revoked shall not be allowed to apply for or hold any  
3 certificate of authority issued under such section eleven hundred thir-  
4 ty-four for a period of five years from the effective date of such revo-  
5 cation. In addition, such person shall not be allowed to be a "person  
6 required to collect tax" with regard to any other person that holds or  
7 seeks to apply for such a certificate of authority during such five year  
8 period, and the commissioner shall not issue a certificate of authority  
9 during such five year period to any person who employs such person whose  
10 certificate was so revoked or to any person in which such person whose  
11 certificate was so revoked is a person required to collect tax or has a  
12 ten percent or more ownership interest of any nature. "Person required  
13 to collect tax" shall have the same meaning as such term has in section  
14 eleven hundred thirty-one of this chapter.

15 (5) Disposition of fines and interest. All fines, penalties, and  
16 interest levied under this section shall be paid into the state treasury  
17 to the credit of the general fund. However, fines or interest paid in  
18 respect to the evasion of sales and compensating use taxes imposed  
19 pursuant to the authority of article twenty-nine of this chapter shall  
20 be disposed of as provided in section twelve hundred sixty-one of this  
21 chapter.

22 (6) Additional fines, penalties and interest. The fines, penalties,  
23 and interest in this section shall be in addition to any penalties and  
24 interest imposed by any other section of this chapter or other law.

25 (7) Definitions. For purposes of this section, the definitions in  
26 section eighteen hundred twenty-two of this chapter shall be applicable.

27 § 3. This act shall take effect January 1, 2015.