

NEW YORK CITY
DEPARTMENT OF CONSUMER AFFAIRS

PUBLIC HEARING ON A PROPOSED AMENDMENT TO THE CONSUMER
PROTECTION LAW REGARDING THE COLLECTION OF UNLAWFUL SALES
TAX

42 Broadway, 5th Floor

January 21, 2020

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1 MR. CARLOS ORTIZ: Good morning. My name is
2 Carlos Ortiz. I've been designated as the hearing
3 officer for the public hearing of the Department of
4 Consumer Affairs on the Proposed Amendment to the
5 Consumer Protection Law Regarding the Collection of
6 Unlawful Sales Tax. This hearing is being held in the
7 fifth floor conference room of the Department's office
8 at 42 Broadway in Lower Manhattan. It is now 10:36
9 a.m. on Tuesday, January 21, 2019 [sic], and I'm
10 hereby co-, hereby convening the hearing on this
11 proposed rule.

12 The proposed rule was published in the City
13 Record on December 9, 2019. Copies of the published
14 notice and the rules are available on that table to my
15 left. Oops as well as online. The Department has
16 proposed these rules pursuant to the authority vested
17 in the commission of the Department of Consumer
18 Affairs by Section 1043 and 2203(f) of the New York
19 City Charter and Section 20-104(b) and 20-702 of the
20 New York City Administrative Code.

21 Just a quick correction, I want it's -- tod-
22 today's date is Tuesday, January 21, 2020.

23 This hearing affords the public the
24 opportunity to comment on all aspects of the rules the
25 department has proposed. The department will

1 carefully review all testimony and written comments
2 received at this hearing and will give, will give due
3 weight and consideration to all adequately
4 substantiated proposals and recommendations that are
5 submitted for the record at this hearing.

6 Anyone seeking to testify must complete a
7 registration card so you can be correctly identified
8 in the hearing record. Witnesses will be called to
9 testify in the order that they have signed in. Anyone
10 who does not appear when his or her name was called
11 will be deemed to have passed over the opportunity to
12 testify. Persons who are passed will be called at the
13 end of the hour. Persons who still do not appear must
14 then sign in again if they wish to testify. Each
15 witness will have a maximum of three minutes to
16 testify. Oh, well, now it's just the three of us, so
17 we'll keep it loose. To be fair to everyone seeking
18 to testify, I will strictly apply this limit. If your
19 comments take longer than three minutes, synthesize
20 your oral testimony and leave a written copy for the
21 record.

22 Unlike the limit on the time for testimony,
23 there is no limit on the number of pages you can
24 submit as written comments or as documents for the
25 record. The written submission will be made part of

1 the record as exhibits presented with your testimony.
2 I must -- so I'll make a copy of housekeeping ho-,
3 housekeeping announcements about the physical layout.
4 Emergency exits are out this door to my right.
5 Restrooms are out the door to my left. Please turn
6 off all cell phones. To capture your testimony from
7 the -- for the record, please lay your testimony at
8 the desk over here to my left, and I will now call the
9 first witness. Jay Peltz.

10 MR. JAY PELTZ: So I had three copies for
11 you, but I just brought up one, so.

12 MR. ORTIZ: Thank you.

13 MR. PELTZ: You too.

14 MR. ORTIZ: That's that.

15 MR. PELTZ: Sorry. Did you want me here? I
16 don't remember.

17 MR. ORTIZ: Yeah. If you can sit there, I'm
18 going to -- I'm going to record you using this.

19 MR. PELTZ: Alright. I might go a little
20 over, but not much.

21 MR. ORTIZ: That's -- no worries.

22 MR. PELTZ: Alright. Ready?

23 MR. ORTIZ: Yes.

24 MR. PELTZ: Thank you for the opportunity to
25 testify this morning on the proposed rule amendment.

1 My name is Jay Peltz, and I'm the General Counsel and
2 Senior Vice President of Government Relations for the
3 Food Industry Alliance of New York.

4 In our submitted testimony, we ask that the
5 proposed rule be withdrawn so that DCA can discuss
6 their framework with FIA and other stakeholders that
7 will reduce tax related overcharges without
8 unnecessarily penalizing businesses. Should the
9 department choose to proceed with this rule making, we
10 ask the proposed rule be revised to incorporate
11 standards intended to afford reasonable protections to
12 establishments that make good-faith mistakes including
13 that a (1), warning be provided if a first violation
14 arises from a good-faith mistake, and (2), that a
15 willful pat-, a willful pattern of deception be proven
16 to establish a violation.

17 As more fully discussed in our submitted
18 testimony, we make these requests because nowhere in
19 the, in the Statement of Basis and Purposes of Rule
20 for the original Unlawful Sales Tax collection rule or
21 the Statement of Basis and Purpose of Proposed Rule,
22 does DCA indicate what specific language from the
23 statutory definition of deceptive trade practice it is
24 interpreting, to support its contention that in
25 enacting a local deceptive trade practice law, the

1 Mayor and the Council intended that a city agency that
2 is not a tax agency, and therefore, lacks tax
3 expertise enforce state sales tax laws through the
4 deceptive trade practice law. Nor has the department
5 specified the section of the city legislative record
6 that support this interpretation of legislative
7 intent.

8 In addition, where in the legislative
9 history of the state sales tax law is it indicated
10 that the state legislature and the governor intended
11 that local non-tax agencies that do specialize in
12 interpreting and enforcing vague, complex state sales
13 tax laws enforce such laws through a local, through a
14 local law and related rules. DCA has not yet cited
15 the text from the state legislative record that
16 substantiates this interpretation. Without such
17 corroboration, the department would be amending rather
18 than interpreting the local deceptive trade practice
19 law. In that case, it would be usurping the role of
20 the mayor and the city council in the legislative
21 process.

22 While the original Statement of Basis and
23 Purpose of Rule provides that quote, New York State
24 Tax Law specifies categories of goods that are subject
25 to sales tax, it failed to acknowledge that the state

1 department does not provide a master list with
2 universal product codes on the tax status of every
3 item available in the marketplace. This makes
4 compliance very difficult for retailers operating in
5 the City. For example, while carbonated beverages are
6 taxable and fruit juices are not, what is the tax
7 status of carbonated fruit juices? While the purchase
8 of a single container of soda is taxable, are all
9 three units of soda subject to a buy-one-get-two free
10 promotion taxable? Cookies are not taxable but candy
11 is. Are Twix or similar bars cookies or candy? Skin
12 moisturizers are taxable, suntan lotion is not. What
13 is the tax status of a skin moisturizer with suntan
14 lotion in it? Considering these questions, is it
15 reasonable to characterize the good-faith, mistaken
16 collection of a sales tax as deceptive or dishonest?
17 We don't think it is.

18 And what are the fruits of the alleged
19 deceptive practice? The proceeds of the purported
20 deception are remitted to the state, where they are
21 used for the public benefit. Accordingly, the party
22 engaged in the deception realizes no gain, in the
23 alleged deception. To the contrary, the retailer is
24 worse off, since it incurs an unnecessary
25 administrative cost and risks losing a customer

1 through overcharges.

2 In light of the \$15.00 minimum wage and
3 other significant challenges facing neighborhood
4 grocers operating in the city, regulators should not
5 be increasing the costs of doing business by expanding
6 a dubious rule which among other things, does not
7 protect good-faith mistakes by grocers making
8 significant investments in compliance with state tax
9 laws. Accordingly, our first request is that the
10 proposed rule be withdrawn so that productive
11 discussions with FIA and other stakeholders can
12 commence. Thank you for your time and attention to
13 our concerns, and we look forward to working with you
14 on this important issue.

15 MR. ORTIZ: Thank you for your testimony
16 today.

17 MR. PELTZ: You're welcome. Thank you.

18 MR. ORTIZ: Can I please call up now, Yousef
19 Mubarez. Thank you. Whenever you're ready.

20 MR. YOUSEF MUBAREZ: Hi, I'm Yousef Mubarez
21 from the Yemeni American Merchants Association. We're
22 a grassroot nonprofit that was established after the
23 Bodega Strike in 2017, a merchant organized protest
24 against the Muslim ban. We at YAMA are pleased to
25 provide testimony on behalf of our merchants on the

1 subject of Amendment of Rules Regarding Collection of
2 Unlawful Sales Tax. We'd like to thank the Department
3 of Consumer Affairs for considering our merchants
4 and their position on this matter. We at YAMA see
5 this amendment to be a good opportunity to educate our
6 merchants on the subject of unlawful sales tax
7 practices while at the same time educating DCA on how
8 our merchants operate on a daily basis.

9 As an organization that represents thousands
10 of Yemeni merchants across New York City, we are proud
11 to say we are dedicated to educating, advocating
12 and elevating our community. Our merchants try their
13 best to be thorough and very careful in areas that
14 require legal vigilance. When we've seen unlawful
15 sales practices it's always due to a lack of
16 understanding of the sales practice with little
17 information to find, and it's usually a worker and not
18 the owner. It's very hard for many small business
19 owners to thoroughly train their staff and keep a
20 close eye on their work. So we do our best to educate
21 them on how they can make their workers aware of these
22 tax legalities.

23 We at YAMA help, hold events and broadcast
24 Facebook live events regarding this specific issue
25 in the past. We continue to educate our merchants

1 every chance we get and hear their considerations and
2 opinions on matters like these, but it's hard to
3 engage every individual. Yemeni merchants are always
4 rec- receptive about issues like this, but due to the
5 challenge of running their business and all the other
6 laws being passed, they're not always available to
7 attend our educational events. It's very hard for
8 them to get all this information by watching only our
9 informational videos on Facebook.

10 We believe the implementation of this
11 amendment would be a good opportunity to educate our
12 merchants on these deceptive sales tactics, so we ask
13 DCA to have an open line of communication with us and
14 our merchants on issues like these. What we find is
15 that the information on all these laws is very vague,
16 and actually, very difficult to find in translations
17 in the Arabic language considering most of merchants
18 and thousands of merchants throughout the city speak
19 mostly Arabic. If DCA can provide educational
20 resources and materials in Arabic explaining how
21 merchants should be applying taxes on individual items
22 in great detail, the materials should also include the
23 description of the new amendment and penalties
24 associated with these unlawful sales practices.

25 Our merchants are always looking for ways to

1 improve their ways of conducting business and are
2 always welcome to new amendments that protect
3 consumers from unlawful sales practices. We're more
4 than happy to collaborate with you on future resoluti-
5 , resolutions and hope you all consider us for any
6 future amicable decision. Thank you.

7 MR. ORTIZ: Thank you for your testimony.
8 Seeing that no one is present to offer more testimony,
9 I shall adjourn this hearing until an individual
10 appears to offer testimony or until 11:30 a.m.
11 whichever comes first.

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CERTIFICATE OF ACCURACY

I, Devin Turpin, certify that the foregoing transcript of Public Hearing on a Proposed Amendment to the Consumer Protection Law Regarding the Collection of Unlawful Sales Tax on January 21, 2020 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: February 19, 2020

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