

4831

2011-2012 Regular Sessions

I N S E N A T E

April 27, 2011

Introduced by Sen. O'MARA -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to eliminating the residential restriction for heating exemptions

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision (d) of section 301-b of the tax law, as amended
2 by section 21 of part K of chapter 61 of the laws of 2011, is amended to
3 read as follows:
4 (d) Sales to consumers for heating purposes. [(1) Total residential
5 heating] HEATING exemption. Non-highway diesel motor fuel sold by a
6 petroleum business registered under article twelve-A of this chapter as
7 a distributor of diesel motor fuel or residual petroleum product sold by
8 a petroleum business registered under this article as a residual petro-
9 leum product business to the consumer exclusively for [residential]
10 heating purposes only if such non-highway diesel motor fuel is delivered
11 into a storage tank which is not equipped with a hose or other apparatus
12 by which such fuel can be dispensed into the fuel tank of a motor vehi-
13 cle and such storage tank is attached to the heating unit burning such
14 fuel.
15 [(2) Partial non-residential heating exemption. (A) Non-highway diesel
16 motor fuel sold by a petroleum business registered under article
17 twelve-A of this chapter as a distributor of diesel motor fuel or resi-
18 dual petroleum product sold by a petroleum business registered under
19 this article as a residual petroleum product business to the consumer
20 exclusively for heating, other than residential heating purposes only if
21 such non-highway diesel motor fuel is delivered into a storage tank
22 which is not equipped with a hose or other apparatus by which such fuel
23 can be dispensed into the fuel tank of a motor vehicle and such storage
24 tank is attached to the heating unit burning such fuel (B) Calculation

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 of partial exemption. The partial exemption under this paragraph shall
2 be determined by multiplying the quantity of non-highway diesel motor
3 fuel and residual petroleum product eligible for the exemption times the
4 sum of the then current rate of the supplemental tax imposed by section
5 three hundred one-j of this article and forty-six percent of the then
6 current rate of the tax imposed by section three hundred one-a of this
7 article, with respect to the specific non-highway diesel motor fuel or
8 residual petroleum product rate, as the case may be.]

9 S 2. Subdivision (a) of section 301-c of the tax law, as amended by
10 section 23 of part K of chapter 61 of the laws of 2011, is amended to
11 read as follows:

12 (a) Non-highway Diesel motor fuel used for heating purposes. [(1)
13 Total residential heating] HEATING reimbursement. Non-highway Diesel
14 motor fuel purchased in this state and sold by such purchaser to a
15 consumer for use exclusively for [residential] heating purposes but only
16 where (i) such non-highway diesel motor fuel is delivered into a storage
17 tank which is not equipped with a hose or other apparatus by which such
18 non-highway Diesel motor fuel can be dispensed into the fuel tank of a
19 motor vehicle and such storage tank is attached to the heating unit
20 burning such non-highway Diesel motor fuel, (ii) the tax imposed pursu-
21 ant to this article has been paid with respect to such non-highway
22 diesel motor fuel and the entire amount of such tax has been absorbed by
23 such purchaser, and (iii) such purchaser possesses documentary proof
24 satisfactory to the commissioner evidencing the absorption by it of the
25 entire amount of the tax imposed pursuant to this article. Provided,
26 however, that the commissioner is authorized, in the event that the
27 commissioner determines that it would not threaten the integrity of the
28 administration and enforcement of the tax imposed by this article, to
29 provide a reimbursement with respect to a retail sale to a consumer for
30 residential heating purposes of less than ten gallons of non-highway
31 diesel motor fuel provided such fuel is not dispensed into the tank of a
32 motor vehicle.

33 [(2) Partial non-residential heating reimbursement. (A) Non-highway
34 Diesel motor fuel purchased in this state and sold by such purchaser to
35 a consumer for use exclusively for heating, other than for residential
36 heating purposes, but only where (i) such non-highway diesel motor fuel
37 is delivered into a storage tank which is not equipped with a hose or
38 other apparatus by which such non-highway Diesel motor fuel can be
39 dispensed into the fuel tank of a motor vehicle and such storage tank is
40 attached to the heating unit burning such non-highway Diesel motor fuel,
41 (ii) the tax imposed pursuant to this article has been paid with respect
42 to such non-highway diesel motor fuel and the entire amount of such tax
43 has been absorbed by such purchaser, and (iii) such purchaser possesses
44 documentary proof satisfactory to the commissioner evidencing the
45 absorption by it of the entire amount of the tax imposed pursuant to
46 this article.

47 (B) Calculation of partial reimbursement. Notwithstanding any other
48 provision of this article, the amount of the reimbursement under this
49 paragraph shall be determined by multiplying the quantity of non-highway
50 diesel motor fuel eligible for the reimbursement times the sum of the
51 then current rate of the supplemental tax imposed by section three
52 hundred one-j of this article and forty-six percent of the then current
53 rate of the tax imposed by section three hundred one-a of this article,
54 with respect to the non-highway diesel motor fuel rate, as the case may
55 be.]

1 S 3. This act shall take effect on the one hundred eightieth day after
2 it shall have become a law; provided, however, that if part K of chapter
3 61 of the laws of 2011 shall not have taken effect on or before such
4 date then sections one and two of this act shall take effect on the same
5 date and in the same manner as such chapter of the laws of 2011 takes
6 effect.