S T A T E   O F   N E W   Y O R K

4880--B

2011-2012 Regular Sessions

I N  S E N A T E

April 28, 2011

Introduced by Sens. BALL, LARKIN, NOZZOLIO, ROBACH -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, the state finance law, and the general business law, in relation to suspending taxes on gasoline and similar motor fuels on certain summer holiday weekends in 2011

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

Section 1. The tax law is amended by adding a new section 36 to read as follows:

S 36. FUEL TAX HOLIDAY. (A) DEFINITIONS. FOR PURPOSES OF THIS SECTION,

(1) "APPLICABLE PERIOD" SHALL MEAN (A) FRIDAY, MAY TWENTY-SEVENTH THROUGH MONDAY, MAY THIRTIETH, TWO THOUSAND ELEVEN, (B) FRIDAY, JULY FIRST, THROUGH MONDAY, JULY FOURTH, TWO THOUSAND ELEVEN, AND (C) FRIDAY, SEPTEMBER SECOND THROUGH MONDAY, SEPTEMBER FIFTH, TWO THOUSAND ELEVEN.

(2) "DIESEL MOTOR FUEL" AND "MOTOR FUEL" SHALL HAVE THE SAME MEANING AS SECTION TWO HUNDRED EIGHTY-TWO OF THIS CHAPTER.

(3) "FILLING STATION" SHALL HAVE THE SAME MEANING AS SECTION TWO HUNDRED EIGHTY-TWO OF THIS CHAPTER.

(4) "RETAIL SALE" AND "SOLD AT RETAIL" SHALL MEAN ANY SALE OF MOTOR FUEL OR DIESEL MOTOR FUEL AT A FILLING STATION TO A PERSON FOR USE IN A MOTOR VEHICLE.

(5) "RETAIL SELLER" SHALL MEAN ANY PERSON WHO SELLS MOTOR FUEL OR DIESEL MOTOR FUEL AT RETAIL.

(6) "SALE" SHALL HAVE THE SAME MEANING AS SECTION TWO HUNDRED EIGHTY-TWO OF THIS CHAPTER.

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

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(B) EXEMPTION FROM TAXATION. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, THE TAXES IMPOSED ON RETAIL SALES OF MOTOR FUEL AND DIESEL MOTOR FUEL MADE DURING THE APPLICABLE PERIOD SHALL BE EXEMPT FROM THE TAXES IMPOSED BY ARTICLES TWELVE-A, THIRTEEN-A, AND TWENTY-EIGHT OF THIS CHAPTER. IF THE RETAIL SELLER IS LOCATED WITHIN A MUNICIPALITY THAT HAS ELECTED TO ELIMINATE THE TAX IMPOSED PURSUANT TO ARTICLE TWENTY-NINE OF THIS CHAPTER, SUCH TAXES SHALL NOT BE IMPOSED ON THE RETAIL SALE OF MOTOR FUEL OR DIESEL MOTOR FUEL DURING THE APPLICABLE PERIOD.

(C) PRICE REDUCTION. DURING THE APPLICABLE PERIOD, EACH RETAIL SELLER SHALL REDUCE THE PRICE PER GALLON OF MOTOR FUEL AND DIESEL MOTOR FUEL OFFERED FOR SALE BY THE AMOUNT OF THE TAXES THAT THE RETAIL SELLER PREPAID ON THE GALLON OF MOTOR FUEL AND DIESEL MOTOR FUEL AND THE AMOUNT OF TAX IN EXCESS OF THE PREPAID AMOUNT THAT WOULD HAVE BEEN COLLECTED FROM THE CONSUMER IF THE SALE OF THE MOTOR FUEL OR DIESEL MOTOR FUEL HAD NOT BEEN EXEMPT FROM TAX PURSUANT TO SUBDIVISION (B) OF THIS SECTION.

(D) ADVERTISING. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, A RETAIL SELLER MAY ADVERTISE THAT THE MOTOR FUEL AND/OR DIESEL MOTOR FUEL IS BEING OR WILL BE SOLD WITHOUT THE STATE TAXES. SUCH ADVERTISEMENT MAY COMMENCE NO EARLIER THAN THREE DAYS BEFORE THE APPLICABLE PERIOD AND MUST END BY THE END OF THE APPLICABLE PERIOD.

(E) REFUNDS AND CREDITS. (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE RETAIL SELLER SHALL BE ENTITLED TO RECEIVE A CREDIT AGAINST THE TAXES DUE PURSUANT TO ARTICLE TWENTY-EIGHT OF THIS CHAPTER FOR THE AMOUNT OF TAX THAT THE RETAIL SELLER PREPAID PURSUANT TO ARTICLES TWELVE-A, THIRTEEN-A, TWENTY-EIGHT AND, IF APPLICABLE, TWENTY-NINE OF THIS CHAPTER. IF THE RETAIL SELLER IS LOCATED WITHIN A MUNICIPALITY THAT HAS ELECTED TO ELIMINATE THE TAX IMPOSED PURSUANT TO ARTICLE TWENTY-NINE OF THIS CHAPTER, THE RETAIL SELLER SHALL BE ENTITLED TO CLAIM A CREDIT AGAINST THE TAXES DUE PURSUANT TO ARTICLE TWENTY-EIGHT OF THIS CHAPTER FOR SUCH PREPAID TAXES. THE AMOUNT OF CREDIT SHALL EQUAL THE AMOUNT OF TAX THAT WAS PREPAID PURSUANT TO ARTICLES TWELVE-A, THIRTEEN-A, TWENTY-EIGHT AND, IF APPLICABLE, TWENTY-NINE OF THIS CHAPTER FOR EACH GALLON OF MOTOR FUEL AND DIESEL MOTOR FUEL SOLD AT RETAIL DURING THE APPLICABLE PERIOD. SUCH CREDIT SHALL NOT BE ALLOWED FOR SALES THAT WOULD HAVE OTHERWISE BEEN EXEMPT FROM TAX.

(2) A RETAIL SELLER MAY CLAIM THE CREDIT PRESCRIBED IN PARAGRAPH ONE OF THIS SUBDIVISION WHEN THE RETAIL SELLER FILES ITS RETURN OF TAX FOR THE SALES OF MOTOR FUEL AND DIESEL MOTOR FUEL FOR THE PERIOD THAT INCLUDES THE APPLICABLE PERIOD. NOTWITHSTANDING THE FOREGOING, IF A RETAILER SELLER IS REQUIRED TO FILE ITS RETURN MORE THAN THIRTY DAYS AFTER THE CLOSE OF THE APPLICABLE PERIOD DEFINED IN SUBPARAGRAPH (A), (B), OR (C) OF PARAGRAPH ONE OF SUBDIVISION (A) OF THIS SECTION, SUCH RETAILER SHALL BE AUTHORIZED TO FILE AN AMENDMENT TO ITS MOST RECENTLY FILED RETURN TO CLAIM SUCH CREDIT. NO CREDIT MAY BE CLAIMED FOR THE TAXES PREPAID PURSUANT TO ARTICLE TWELVE-A, THIRTEEN-A, TWENTY-EIGHT OR, IF APPLICABLE, TWENTY-NINE OF THIS CHAPTER PURSUANT TO THIS SECTION IF THE CLAIM WOULD HAVE BEEN BARRED PURSUANT TO THE ARTICLE THAT REQUIRED PREPAYMENT OF SUCH TAXES. NO INTEREST SHALL BE PAID ON ANY CLAIMS FOR CREDIT MADE PURSUANT TO THIS SECTION.

S 2. Section 88-a of the state finance law is amended by adding a new subdivision 10 to read as follows:

10. BY MARCH THIRTY-FIRST, TWO THOUSAND TWELVE, THE COMPTROLLER SHALL TRANSFER FROM THE GENERAL FUND TO THE MASS TRANSPORTATION OPERATING ASSISTANCE FUND AN AMOUNT NO GREATER THAN THE AMOUNT THAT WOULD HAVE OTHERWISE BEEN DEPOSITED IN THE MASS TRANSPORTATION OPERATING ASSISTANCE

FUND PURSUANT TO THIS SECTION IF THE EXEMPTION DEFINED IN SUBDIVISION (B) OF SECTION THIRTY-SIX OF THE TAX LAW HAD NOT BEEN AUTHORIZED; PROVIDED HOWEVER THAT THE COMPTROLLER SHALL MAKE SUCH TRANSFER ONLY AFTER THE DIRECTOR OF THE BUDGET HAS DETERMINED IN HIS OR HER DISCRETION THAT THE TRANSFER IS NECESSARY TO ENSURE A POSITIVE FUND BALANCE OF THE MASS TRANSPORTATION OPERATING ASSISTANCE FUND AT THE END OF THE TWO THOUSAND ELEVEN-TWO THOUSAND TWELVE STATE FISCAL YEAR.

S 3. Subdivision 3 of section 89-b of the state finance law is amended by adding a new paragraph (g) to read as follows:

(G) WITHIN FORTY-FIVE DAYS AFTER AN APPLICABLE PERIOD AS DEFINED BY SUBDIVISION (A) OF SECTION THIRTY-SIX OF THE TAX LAW, THE COMPTROLLER, IN CONSULTATION WITH THE DIRECTOR OF THE DIVISION OF THE BUDGET, SHALL TRANSFER FROM THE GENERAL FUND TO THE SPECIAL OBLIGATION RESERVE AND PAYMENT ACCOUNT AN AMOUNT EQUAL TO THE AMOUNT THAT WOULD HAVE OTHERWISE BEEN DEPOSITED IN THE SPECIAL OBLIGATION RESERVE AND PAYMENT ACCOUNT PURSUANT TO THIS SECTION IF THE EXEMPTION DEFINED IN SUBDIVISION (B) OF SECTION THIRTY-SIX OF THE TAX LAW HAD NOT BEEN AUTHORIZED.

S 4. Section 89-c of the state finance law is amended by adding a new subdivision 4 to read as follows:

4. WITHIN FORTY-FIVE DAYS AFTER AN APPLICABLE PERIOD AS DEFINED BY SUBDIVISION (A) OF SECTION THIRTY-SIX OF THE TAX LAW, THE COMPTROLLER, IN CONSULTATION WITH THE DIRECTOR OF THE DIVISION OF THE BUDGET, SHALL TRANSFER FROM THE GENERAL FUND TO THE DEDICATED MASS TRANSPORTATION TRUST FUND AN AMOUNT EQUAL TO THE AMOUNT THAT WOULD HAVE OTHERWISE BEEN DEPOSITED IN THE DEDICATED MASS TRANSPORTATION TRUST FUND PURSUANT TO THIS SECTION IF THE EXEMPTION DEFINED IN SUBDIVISION (B) OF SECTION THIRTY-SIX OF THE TAX LAW HAD NOT BEEN AUTHORIZED.

S 5. Section 392-i of the general business law, as amended by section 5 of part M-1 of chapter 109 of the laws of 2006, is amended to read as follows:

S 392-i. Prices reduced to reflect change in sales tax computation. Every person engaged in the retail sale of motor fuel and/or diesel motor fuel or a distributor of such fuels, as defined in article twelve-A of the tax law, shall reduce the price such person charges for motor fuel and/or diesel motor fuel in an amount equal to any reduction in taxes prepaid by the distributor, CREDIT FOR THE AMOUNT OF TAXES PREPAID BY THE RETAIL SELLER ALLOWABLE PURSUANT TO SECTION THIRTY-SIX OF THE TAX LAW, EXEMPTION FROM TAXATION PURSUANT TO SECTION THIRTY-SIX OF THE TAX LAW TO THE EXTENT THAT THE TAX THAT WOULD HAVE BEEN OTHERWISE DUE EXCEEDS THE AMOUNT OF TAX PREPAID, or paid by retail customers resulting from computing sales and compensating use AND OTHER taxes at a cents per gallon rate pursuant to the provisions of paragraph two of subdivision (e) and subdivision (m) of section eleven hundred eleven of the tax law.

S 6. Paragraph 1 of subdivision (n) of section 1817 of the tax law, as amended by section 30 of subpart I of part V-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(1) Every person engaged in the retail sale of motor fuel and/or diesel motor fuel or a distributor of such fuels, as defined in article twelve-A of this chapter, shall comply with the provisions of section three hundred ninety-two-i of the general business law by reducing the prices charged for motor fuel and diesel motor fuel in an amount equal to any reduction in taxes prepaid by the distributor, CREDIT FOR THE AMOUNT OF TAXES PREPAID BY THE RETAIL SELLER ALLOWABLE PURSUANT TO SECTION THIRTY-SIX OF THE TAX LAW, EXEMPTION FROM TAXATION PURSUANT TO SECTION THIRTY-SIX OF THE TAX LAW TO THE EXTENT THAT THE TAX THAT WOULD

HAVE BEEN OTHERWISE DUE EXCEEDS THE AMOUNT OF TAX PREPAID, or imposed on retail customers resulting from computing sales and compensating use taxes at a cents per gallon rate pursuant to the provisions of paragraph two of subdivision (e) and subdivision (m) of section one thousand one hundred eleven of this chapter.

S 7. Notwithstanding any law to the contrary, a municipality may make the election to eliminate all taxes on motor fuel and diesel motor fuel pursuant to sections eleven hundred seven and eleven hundred eight of the tax law or article twenty-nine of the tax law from Friday, May twenty-seventh through Monday, May thirtieth, two thousand eleven, from Friday, July first, through Monday, July fourth, two thousand eleven and from Friday, September second through Monday, September fifth, two thousand eleven, by local law, ordinance or resolution, if such municipality mails, by certified or registered mail, a certified copy of such local law, ordinance or resolution to the commissioner of taxation and finance at his or her office in Albany no later than the Wednesday immediately preceding the first date listed in subparagraph (A), (B) or (C) of paragraph one of subdivision (a) of section thirty-six of the tax law, provided, however, that a municipality may adopt one local law, ordinance or resolution that will apply to all or some of the dates listed in paragraph one of subdivision (a) of section thirty-six of the tax law.

S 8. The commissioner of taxation and finance shall, on an emergency basis, promulgate and/or amend any rules and regulations necessary to provide for the tax free sales of motor fuel and diesel motor fuel and refunds of prepaid tax to retail sellers.

S 9. This act shall take effect immediately, provided however that the commissioner of taxation and finance shall make provision for retail sellers to apply for credit for the taxes prepaid pursuant to articles twelve-A, thirteen-A, twenty-eight, and, if applicable, twenty-nine of the tax law, no later than the tenth day of June, two thousand eleven.