

S. 1766--A

A. 1218--A

2013-2014 Regular Sessions

S E N A T E - A S S E M B L Y

(PREFILED)

January 9, 2013

IN SENATE -- Introduced by Sen. LAVALLE -- 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

IN ASSEMBLY -- Introduced by M. of A. THIELE, GRAF -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to exempting fuel used in vessels used directly and predominantly in a business providing sport fishing opportunities for hire to the general public from the tax on petroleum businesses and from sales and compensating use taxes

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

1 Section 1. Section 300 of the tax law is amended by adding a new  
2 subdivision (j-1) to read as follows:  
3 (J-1) "COMMERCIAL SPORT FISHING VESSEL" MEANS A VESSEL OWNED BY A  
4 PERSON, WHO HAS BEEN ISSUED AND HOLDS A MARINE AND COASTAL DISTRICT  
5 PARTY AND CHARTER BOAT LICENSE PURSUANT TO SECTION 13-0336 OF THE ENVI-  
6 RONMENTAL CONSERVATION LAW.  
7 S 2. Paragraph 2 of subdivision (b) of section 301-a of the tax law,  
8 as added by section 154 of part A of chapter 389 of the laws of 1997, is  
9 amended to read as follows:  
10 (2) Motor fuel brought into this state in the fuel tank connecting  
11 with the engine of a vessel propelled by the use of such motor fuel  
12 shall be deemed to constitute a taxable use of motor fuel for the  
13 purposes of this subdivision to the extent that the fuel is consumed in

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

LBD03496-03-3

1 the operation of the vessel in this state. Provided, however, that this  
2 paragraph shall not apply to (i) a recreational motor boat or (ii)  
3 subsequent to August thirty-first, nineteen hundred ninety-four, a  
4 commercial fishing vessel (as defined in subdivision (j) of section  
5 three hundred of this article) if the motor fuel imported and consumed  
6 in this state is used to operate such vessel while it is engaged in the  
7 harvesting of fish for sale OR (III) A COMMERCIAL SPORT FISHING VESSEL,  
8 IF SUCH VESSEL PROVIDES ITS OWNER WITH AT LEAST FIFTY PERCENT OF HIS OR  
9 HER TOTAL ANNUAL INCOME. Provided, further, that tax liability for  
10 gallonage that a vessel consumes shall be the tax liability with respect  
11 to the positive difference between the gallonage consumed in this state  
12 during the reporting period and the gallonage purchased in this state  
13 (upon which the tax imposed by this section has been paid) during such  
14 period. A credit or refund shall be available for any excess of tax  
15 liability for gallonage purchased in this state during the period over  
16 tax liability on gallonage so consumed in this state during such period,  
17 which excess shall be presumed to have been used outside this state.

18 S 3. Subparagraph (B) of paragraph 1 of subdivision (c) of section  
19 301-a of the tax law, as amended by section 19 of part K of chapter 61  
20 of the laws of 2011, is amended to read as follows:

21 (B) Highway diesel motor fuel brought into this state in the fuel tank  
22 connecting with the engine of a vessel propelled by the use of such  
23 diesel motor fuel shall be deemed to constitute a taxable use of diesel  
24 motor fuel for the purpose of this paragraph to the extent of the fuel  
25 that is consumed in the operation of the vessel in this state. Provided,  
26 however, this paragraph shall not apply to (i) a recreational motor boat  
27 or (ii) a commercial fishing vessel (as defined in subdivision (j) of  
28 section three hundred of this article) if the highway diesel motor fuel  
29 imported into and consumed in this state is used to operate such commer-  
30 cial fishing vessel while it is engaged in the harvesting of fish for  
31 sale OR (III) A COMMERCIAL SPORT FISHING VESSEL, IF SUCH VESSEL PROVIDES  
32 ITS OWNER WITH AT LEAST FIFTY PERCENT OF HIS OR HER TOTAL ANNUAL INCOME.  
33 Provided, further, that tax liability for gallonage that a vessel  
34 consumes in this state shall be the tax liability with respect to the  
35 positive difference between the gallonage consumed in this state during  
36 the reporting period and the gallonage purchased in this state (upon  
37 which the tax imposed by this section has been paid) during such period.  
38 A credit or refund shall be available for any excess of tax liability  
39 for gallonage purchased in this state during the period over tax liabil-  
40 ity on gallonage so consumed in this state during such period, which  
41 excess shall be presumed to have been used outside this state.

42 S 4. The opening paragraph of section 301-c of the tax law, as amended  
43 by section 5 of part W-1 of chapter 109 of the laws of 2006, is amended  
44 to read as follows:

45 A subsequent purchaser shall be eligible for reimbursement of tax with  
46 respect to the following gallonage, subsequently sold by such purchaser  
47 in accordance with subdivision (a), (b), (e), (h), (j), (k), (n) or (o)  
48 of this section or used by such purchaser in accordance with subdivision  
49 (c), (d), (f), (g), (G-1), (i), (l) or (m) of this section, which gallo-  
50 nage has been included in the measure of the tax imposed by this article  
51 on a petroleum business:

52 S 5. The opening paragraph of section 301-c of the tax law, as amended  
53 by chapter 468 of the laws of 2000, is amended to read as follows:

54 A subsequent purchaser shall be eligible for reimbursement of tax with  
55 respect to the following gallonage, subsequently sold by such purchaser  
56 in accordance with subdivision (a), (b), (e), (h), (j) or (k) of this

1 section or used by such purchaser in accordance with subdivision (c),  
2 (d), (f), (g), (G-1), (i), (l) or (m) of this section, which gallonage  
3 has been included in the measure of the tax imposed by this article on a  
4 petroleum business:

5 S 6. Section 301-c of the tax law is amended by adding a new subdivi-  
6 sion (g-1) to read as follows:

7 (G-1) DIESEL MOTOR FUEL AND MOTOR FUEL USED IN THE OPERATION OF  
8 COMMERCIAL SPORT FISHING VESSELS. DIESEL MOTOR FUEL OR MOTOR FUEL  
9 PURCHASED IN THIS STATE BY THE OPERATOR OF A COMMERCIAL SPORT FISHING  
10 VESSEL AT RETAIL WHEREIN SUCH DIESEL MOTOR FUEL OR SUCH MOTOR FUEL IS  
11 DELIVERED BY A PUMP EQUIPPED WITH A HOSE DIRECTLY INTO THE FUEL TANK OF  
12 A COMMERCIAL SPORT FISHING VESSEL TO BE USED AS FUEL IN THE OPERATION OF  
13 SUCH VESSEL FOR THE PURPOSE OF PROVIDING SPORT FISHING OPPORTUNITIES FOR  
14 HIRE TO THE GENERAL PUBLIC; BUT ONLY WHERE (1) THE TAX IMPOSED PURSUANT  
15 TO THIS ARTICLE HAS BEEN PAID WITH RESPECT TO SUCH DIESEL MOTOR FUEL OR  
16 SUCH MOTOR FUEL AND THE ENTIRE AMOUNT OF SUCH TAX HAS BEEN ABSORBED BY  
17 SUCH PURCHASER, (2) SUCH PURCHASER POSSESSES DOCUMENTARY PROOF SATISFAC-  
18 TORY TO THE COMMISSIONER EVIDENCING THE ABSORPTION BY IT OF THE ENTIRE  
19 AMOUNT OF THE TAX IMPOSED PURSUANT TO THIS ARTICLE, AND (3) THE VESSEL  
20 PROVIDES ITS OWNER WITH AT LEAST FIFTY PERCENT OF HIS OR HER TOTAL ANNU-  
21 AL INCOME. PROVIDED, HOWEVER, THAT THE COMMISSIONER SHALL REQUIRE SUCH  
22 DOCUMENTARY PROOF TO QUALIFY FOR ANY REIMBURSEMENT OF TAX PROVIDED BY  
23 THIS SECTION AS THE COMMISSIONER DEEMS APPROPRIATE.

24 S 7. Subdivision (a) of section 1115 of the tax law is amended by  
25 adding a new paragraph 24-a to read as follows:

26 (24-A) FUEL USED IN VESSELS USED DIRECTLY AND PREDOMINANTLY IN A BUSI-  
27 NESS PROVIDING SPORT FISHING OPPORTUNITIES FOR HIRE TO THE GENERAL  
28 PUBLIC; PROVIDED THAT SUCH VESSEL PROVIDES ITS OWNER WITH AT LEAST FIFTY  
29 PERCENT OF HIS OR HER TOTAL ANNUAL INCOME.

30 S 8. Subparagraph (i) of paragraph 1 of subdivision (a) of section  
31 1210 of the tax law, as amended by chapter 13 of the laws of 2013, is  
32 amended to read as follows:

33 (i) Any local law, ordinance or resolution enacted by any city of less  
34 than one million or by any county or school district, imposing the taxes  
35 authorized by this subdivision, shall, notwithstanding any provision of  
36 law to the contrary, exclude from the operation of such local taxes all  
37 sales of tangible personal property for use or consumption directly and  
38 predominantly in the production of tangible personal property, gas,  
39 electricity, refrigeration or steam, for sale, by manufacturing, proc-  
40 essing, generating, assembly, refining, mining or extracting; and all  
41 sales of tangible personal property for use or consumption predominantly  
42 either in the production of tangible personal property, for sale, by  
43 farming or in a commercial horse boarding operation, or in both; and,  
44 unless such city, county or school district elects otherwise, shall omit  
45 THE FUEL USED IN COMMERCIAL SPORT FISHING VESSELS EXEMPTION PROVIDED FOR  
46 IN PARAGRAPH TWENTY-FOUR-A OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED  
47 FIFTEEN OF THIS CHAPTER, the provision for credit or refund contained in  
48 clause six of subdivision (a) or subdivision (d) of section eleven  
49 hundred nineteen of this chapter.

50 S 9. Section 1210 of the tax law is amended by adding a new subdivi-  
51 sion (q) to read as follows:

52 (Q) NOTWITHSTANDING ANY OTHER PROVISION OF STATE OR LOCAL LAW, ORDI-  
53 NANCE OR RESOLUTION TO THE CONTRARY:

54 (1) ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE IN WHICH THE  
55 TAXES IMPOSED BY SECTION ELEVEN HUNDRED SEVEN OF THIS CHAPTER ARE IN  
56 EFFECT, ACTING THROUGH ITS LOCAL LEGISLATIVE BODY, IS HEREBY AUTHORIZED

1 AND EMPOWERED TO ELECT TO PROVIDE THE SAME EXEMPTIONS FROM SUCH TAXES AS  
2 THE FUEL USED IN COMMERCIAL SPORT FISHING VESSELS EXEMPTION FROM STATE  
3 SALES AND COMPENSATING USE TAXES DESCRIBED IN PARAGRAPH TWENTY-FOUR-A OF  
4 SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER BY  
5 ENACTING A RESOLUTION IN THE FORM SET FORTH IN PARAGRAPH TWO OF THIS  
6 SUBDIVISION; WHEREUPON, UPON COMPLIANCE WITH THE PROVISIONS OF SUBDIVI-  
7 SIONS (D) AND (E) OF THIS SECTION, SUCH ENACTMENT OF SUCH RESOLUTION  
8 SHALL BE DEEMED TO BE AN AMENDMENT TO SUCH SECTION ELEVEN HUNDRED SEVEN  
9 AND SUCH SECTION ELEVEN HUNDRED SEVEN SHALL BE DEEMED TO INCORPORATE  
10 SUCH EXEMPTIONS AS IF THEY HAD BEEN DULY ENACTED BY THE STATE LEGISLA-  
11 TURE AND APPROVED BY THE GOVERNOR.

12 (2) FORM OF RESOLUTION: BE IT ENACTED BY THE (INSERT PROPER TITLE OF  
13 LOCAL LEGISLATIVE BODY) AS FOLLOWS:

14 SECTION ONE. RECEIPTS FROM SALES OF AND CONSIDERATION GIVEN OR  
15 CONTRACTED TO BE GIVEN FOR, OR FOR THE USE OF, PROPERTY AND SERVICES  
16 EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES PURSUANT TO PARAGRAPH  
17 TWENTY-FOUR-A OF SUBDIVISION (A) OF SECTION 1115 OF THE TAX LAW SHALL  
18 ALSO BE EXEMPT FROM SALES AND COMPENSATING USE TAXES IMPOSED IN THIS  
19 JURISDICTION.

20 SECTION TWO. THIS RESOLUTION SHALL TAKE EFFECT JUNE 1, (INSERT THE  
21 YEAR, BUT NOT EARLIER THAN THE YEAR 2010) AND SHALL APPLY TO SALES MADE,  
22 SERVICES RENDERED AND USES OCCURRING ON AND AFTER THAT DATE IN ACCORD-  
23 ANCE WITH THE APPLICABLE TRANSITIONAL PROVISIONS IN SECTIONS 1106, 1216  
24 AND 1217 OF THE NEW YORK TAX LAW.

25 S 10. This act shall take effect immediately and shall be deemed to  
26 have been in full force and effect on and after January 1, 2012;  
27 provided, further, that the amendments to the opening paragraph of  
28 section 301-c of the tax law, made by section four of this act shall not  
29 affect the expiration and repeal of such paragraph pursuant to section  
30 19 of part W-1 of chapter 109 of the laws of 2006, as amended, and shall  
31 expire and be deemed repealed therewith, when upon such date the  
32 provisions of section five of this act shall take effect.