

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

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.

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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.