

S T A T E   O F   N E W   Y O R K

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S. 782--A

A. 138--A

2013-2014 Regular Sessions

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

(PREFILED)

January 9, 2013

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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 -- 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 providing an exemption from the payment of the motor fuels tax and the sales tax on motor fuels used in the operation of commercial fishing vessels

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

1     Section 1. Paragraph (b) of subdivision 3 of section 282-a of the tax  
2     law, as amended by section 2 of part E of chapter 59 of the laws of  
3     2012, is amended to read as follows:  
4     (b) The tax on the incidence of sale or use imposed by subdivision one  
5     of this section shall not apply to: (i) the sale or use of non-highway  
6     Diesel motor fuel, but only if all of such fuel is consumed other than  
7     on the public highways of this state (except for the use of the public  
8     highway by farmers to reach adjacent farmlands); provided, however, this  
9     exemption shall in no event apply to a sale of non-highway Diesel motor  
10    fuel which involves a delivery at a filling station or into a repository  
11    which is equipped with a hose or other apparatus by which such fuel can  
12    be dispensed into the fuel tank of a motor vehicle (except for delivery  
13    at a farm site which qualifies for the exemption under subdivision (g)  
14    of section three hundred one-b of this chapter); or (ii) a sale to the

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

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1 consumer consisting of not more than twenty gallons of water-white kero-  
2 sene to be used and consumed exclusively for heating purposes; or (iii)  
3 the sale to or delivery at a filling station or other retail vendor of  
4 water-white kerosene provided such filling station or other retail  
5 vendor only sells such water-white kerosene exclusively for heating  
6 purposes in containers of no more than twenty gallons; or (iv) a sale of  
7 kero-jet fuel to an airline for use in its airplanes or a use of kero-  
8 jet fuel by an airline in its airplanes; or (v) a sale of kero-jet fuel  
9 by a registered distributor of Diesel motor fuel to a fixed base opera-  
10 tor registered under this article as a distributor of kero-jet fuel only  
11 where such fixed base operator is engaged solely in making or offering  
12 to make retail sales not in bulk of kero-jet fuel directly into the fuel  
13 tank of an airplane for the purpose of operating such airplane; (vi) a  
14 retail sale not in bulk of kero-jet fuel by a fixed base operator regis-  
15 tered under this article as a distributor of kero-jet fuel only where  
16 such fuel is delivered directly into the fuel tank of an airplane for  
17 use in the operation of such airplane; or (vii) the sale of previously  
18 untaxed qualified biodiesel to a person registered under this article as  
19 a distributor of Diesel motor fuel other than (A) a retail sale to such  
20 person or (B) a sale to such person which involves a delivery at a fill-  
21 ing station or into a repository which is equipped with a hose or other  
22 apparatus by which such qualified biodiesel can be dispensed into the  
23 fuel tank of a motor vehicle; OR (VIII) A SALE OF DIESEL MOTOR FUEL TO A  
24 "COMMERCIAL FISHERMAN", AS SUCH TERM IS DEFINED IN SUBDIVISION (I) OF  
25 SECTION THREE HUNDRED OF THIS CHAPTER, AT RETAIL UNDER THE CIRCUMSTANCES  
26 SET FORTH IN PARAGRAPH ONE OF SUBDIVISION (G) OF SECTION THREE HUNDRED  
27 ONE-C OF THIS CHAPTER, AND WHERE SUCH COMMERCIAL FISHING VESSEL IS OPER-  
28 ATED BY A COMMERCIAL FISHERMAN.

29 S 2. Paragraph (b) of subdivision 3 of section 282-a of the tax law,  
30 as amended by section 3 of part W of chapter 59 of the laws of 2013, is  
31 amended to read as follows:

32 (b) The tax on the incidence of sale or use imposed by subdivision one  
33 of this section shall not apply to: (i) the sale or use of non-highway  
34 Diesel motor fuel, but only if all of such fuel is consumed other than  
35 on the public highways of this state (except for the use of the public  
36 highway by farmers to reach adjacent farmlands); provided, however, this  
37 exemption shall in no event apply to a sale of non-highway Diesel motor  
38 fuel which involves a delivery at a filling station or into a repository  
39 which is equipped with a hose or other apparatus by which such fuel can  
40 be dispensed into the fuel tank of a motor vehicle (except for delivery  
41 at a farm site which qualifies for the exemption under subdivision (g)  
42 of section three hundred one-b of this chapter); or (ii) a sale to the  
43 consumer consisting of not more than twenty gallons of water-white kero-  
44 sene to be used and consumed exclusively for heating purposes; or (iii)  
45 the sale to or delivery at a filling station or other retail vendor of  
46 water-white kerosene provided such filling station or other retail  
47 vendor only sells such water-white kerosene exclusively for heating  
48 purposes in containers of no more than twenty gallons; or (iv) a sale of  
49 kero-jet fuel to an airline for use in its airplanes or a use of kero-  
50 jet fuel by an airline in its airplanes; or (v) a sale of kero-jet fuel  
51 by a registered distributor of Diesel motor fuel to a fixed base opera-  
52 tor registered under this article as a distributor of kero-jet fuel only  
53 where such fixed base operator is engaged solely in making or offering  
54 to make retail sales not in bulk of kero-jet fuel directly into the fuel  
55 tank of an airplane for the purpose of operating such airplane; or (vi)  
56 a retail sale not in bulk of kero-jet fuel by a fixed base operator

1 registered under this article as a distributor of kero-jet fuel only  
2 where such fuel is delivered directly into the fuel tank of an airplane  
3 for use in the operation of such airplane; or (vii) the sale of previ-  
4 ously untaxed qualified biodiesel to a person registered under this  
5 article as a distributor of Diesel motor fuel other than (A) a retail  
6 sale to such person or (B) a sale to such person which involves a deliv-  
7 ery at a filling station or into a repository which is equipped with a  
8 hose or other apparatus by which such qualified biodiesel can be  
9 dispensed into the fuel tank of a motor vehicle; or (viii) the sale of  
10 previously untaxed highway Diesel motor fuel by a person registered  
11 under this article as a distributor of Diesel motor fuel to a person  
12 registered under this article as a distributor of Diesel motor fuel  
13 where the highway Diesel motor fuel is either: (A) being delivered by  
14 pipeline, railcar, barge, tanker or other vessel to a terminal, the  
15 operator of which terminal is registered under section two hundred  
16 eighty-three-b of this article, or (B) within such a terminal where it  
17 has been so delivered. Provided, however, that the exemption set forth  
18 in this subparagraph shall not apply to any highway Diesel motor fuel if  
19 it is removed from a terminal, other than by pipeline, barge, tanker or  
20 other vessel; OR (IX) A SALE OF DIESEL MOTOR FUEL TO A "COMMERCIAL FISH-  
21 ERMAN", AS SUCH TERM IS DEFINED IN SUBDIVISION (I) OF SECTION THREE  
22 HUNDRED OF THIS CHAPTER, AT RETAIL UNDER THE CIRCUMSTANCES SET FORTH IN  
23 PARAGRAPH ONE OF SUBDIVISION (G) OF SECTION THREE HUNDRED ONE-C OF THIS  
24 CHAPTER, AND WHERE SUCH COMMERCIAL FISHING VESSEL IS OPERATED BY A  
25 COMMERCIAL FISHERMAN.

26 S 3. Subdivision 4 of section 282-a of the tax law, as amended by  
27 section 5 of part K of chapter 61 of the laws of 2011, is amended to  
28 read as follows:

29 4. The tax imposed by this section on Diesel motor fuel shall be  
30 passed through by the seller and included as part of the selling price  
31 to each purchaser of such fuel. Provided, however, the amount of the tax  
32 imposed by this section may be excluded from the selling price of Diesel  
33 motor fuel where (i) a sale of Diesel motor fuel is made to an organiza-  
34 tion described in paragraph (a) of subdivision three of this section  
35 solely for the purpose stated therein; (ii) a sale of non-highway Diesel  
36 motor fuel is made to a consumer but only if such non-highway Diesel  
37 motor fuel is not delivered to a filling station, nor delivered into a  
38 storage tank which is equipped with a hose or other apparatus by which  
39 such fuel can be dispensed into the fuel tank of a motor vehicle; or  
40 (iii) the sale to or delivery at a filling station or other retail  
41 vendor of water-white kerosene provided such filling station or other  
42 retail vendor only sells such water-white kerosene exclusively for heat-  
43 ing purposes in containers of no more than twenty gallons; or (iv) a  
44 sale of kero-jet fuel is made to an airline for use in its airplanes; OR  
45 (V) A SALE OF DIESEL MOTOR FUEL IS MADE TO A "COMMERCIAL FISHERMAN", AS  
46 SUCH TERM IS DEFINED IN SUBDIVISION (I) OF SECTION THREE HUNDRED OF THIS  
47 CHAPTER, AT RETAIL UNDER THE CIRCUMSTANCES SET FORTH IN PARAGRAPH ONE OF  
48 SUBDIVISION (G) OF SECTION THREE HUNDRED ONE-C OF THIS CHAPTER, AND  
49 WHERE SUCH COMMERCIAL FISHING VESSEL IS OPERATED BY A COMMERCIAL FISHER-  
50 MAN.

51 S 4. Section 301-b of the tax law is amended by adding a new subdivi-  
52 sion (j) to read as follows:

53 (J) SALES OR USES OF DIESEL MOTOR FUEL AND RESIDUAL PETROLEUM PRODUCT  
54 FOR COMMERCIAL FISHING. DIESEL MOTOR FUEL OR RESIDUAL PETROLEUM PRODUCT  
55 SOLD TO OR USED BY A "COMMERCIAL FISHERMAN", AS SUCH TERM IS DEFINED IN  
56 SUBDIVISION (I) OF SECTION THREE HUNDRED OF THIS ARTICLE, AT RETAIL

1 UNDER THE CIRCUMSTANCES SET FORTH IN PARAGRAPH ONE OF SUBDIVISION (G) OF  
2 SECTION THREE HUNDRED ONE-C OF THIS ARTICLE, AND WHERE SUCH COMMERCIAL  
3 FISHING VESSEL IS OPERATED BY A COMMERCIAL FISHERMAN.

4 S 5. Subdivision (j) of section 1115 of the tax law, as amended by  
5 section 41 of part K of chapter 61 of the laws of 2011, is amended to  
6 read as follows:

7 (j) The exemptions provided in this section shall not apply to the tax  
8 required to be prepaid pursuant to the provisions of section eleven  
9 hundred two of this article nor to the taxes imposed by sections eleven  
10 hundred five and eleven hundred ten of this article with respect to  
11 receipts from sales and uses of motor fuel or diesel motor fuel, except  
12 that the exemptions provided in paragraphs nine and forty-two of subdi-  
13 vision (a) of this section shall apply to the tax required to be prepaid  
14 pursuant to the provisions of section eleven hundred two of this article  
15 and to the taxes imposed by sections eleven hundred five and eleven  
16 hundred ten of this article with respect to sales and uses of kero-jet  
17 fuel, CNG, hydrogen and E85, provided, however, the exemption allowed  
18 for E85 shall be subject to the additional requirements provided in  
19 section eleven hundred two of this article with respect to E85 AND  
20 EXCEPT THAT THE EXEMPTION PROVIDED IN PARAGRAPH TWENTY-FOUR OF SUBDIVI-  
21 SION (A) OF THIS SECTION SHALL APPLY TO THE TAXES IMPOSED BY SECTIONS  
22 ELEVEN HUNDRED FIVE AND ELEVEN HUNDRED TEN OF THIS ARTICLE WITH RESPECT  
23 TO SALES AND USES OF DIESEL MOTOR FUEL USED IN THE OPERATION OF A FISH-  
24 ING VESSEL AS DESCRIBED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A) OF  
25 THIS SECTION. The exemption provided in subdivision (c) of this section  
26 shall apply to sales and uses of non-highway diesel motor fuel but only  
27 if all of such fuel is consumed other than on the public highways of  
28 this state. The exemption provided in subdivision (c) of this section  
29 shall apply to sales and uses of non-highway diesel motor fuel for use  
30 or consumption either in the production for sale of tangible personal  
31 property by farming or in a commercial horse boarding operation, or in  
32 both but only if all of such fuel is consumed other than on the public  
33 highways of this state (except for the use of the public highways to  
34 reach adjacent farmlands or adjacent lands used in a commercial horse  
35 boarding operation, or both).

36 S 6. Subdivision (j) of section 1115 of the tax law, as amended by  
37 section 41-a of part K of chapter 61 of the laws of 2011, is amended to  
38 read as follows:

39 (j) The exemptions provided in this section shall not apply to the tax  
40 required to be prepaid pursuant to the provisions of section eleven  
41 hundred two of this article nor to the taxes imposed by sections eleven  
42 hundred five and eleven hundred ten of this article with respect to  
43 receipts from sales and uses of motor fuel or diesel motor fuel, except  
44 that the exemption provided in paragraph nine of subdivision (a) of this  
45 section shall apply to the tax required to be prepaid pursuant to the  
46 provisions of section eleven hundred two of this article and to the  
47 taxes imposed by sections eleven hundred five and eleven hundred ten of  
48 this article with respect to sales and uses of kero-jet fuel AND EXCEPT  
49 THAT THE EXEMPTION PROVIDED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A)  
50 OF THIS SECTION SHALL APPLY TO THE TAXES IMPOSED BY SECTIONS ELEVEN  
51 HUNDRED FIVE AND ELEVEN HUNDRED TEN OF THIS ARTICLE WITH RESPECT TO  
52 SALES AND USES OF DIESEL MOTOR FUEL USED IN THE OPERATION OF A FISHING  
53 VESSEL AS DESCRIBED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A) OF THIS  
54 SECTION. The exemption provided in subdivision (c) of this section  
55 shall apply to sales and uses of non-highway diesel motor fuel but only  
56 if all of such fuel is consumed other than on the public highways of

1 this state. The exemption provided in subdivision (c) of this section  
2 shall apply to sales and uses of non-highway diesel motor fuel for use  
3 or consumption either in the production for sale of tangible personal  
4 property by farming or in a commercial horse boarding operation, or in  
5 both but only if all of such fuel is consumed other than on the public  
6 highways of this state (except for the use of the public highways to  
7 reach adjacent farmlands or adjacent lands used in a commercial horse  
8 boarding operation, or both).

9 S 7. This act shall take effect on the first day of a sales tax quar-  
10 terly period, as described in subdivision (b) of section 1136 of the tax  
11 law, next commencing at least ninety days after this act shall have  
12 become a law; provided however that, if section 3 of part W of chapter  
13 59 of the laws of 2013 is not in effect as of such date then the amend-  
14 ments to paragraph (b) of subdivision 3 of section 282-a of the tax law  
15 made by section two of this act shall take effect on the same date and  
16 in the same manner as such section 3 of part W of chapter 59 of the laws  
17 of 2013 takes effect, as amended; sections five and six of this act  
18 shall apply to sales made under and uses occurring on or after the dates  
19 such sections five and six shall have taken effect, respectively,  
20 although made or occurring under a prior contract; and provided further  
21 that such amendments made by section five of this act shall be subject  
22 to the expiration and reversion of such subdivision pursuant to section  
23 19 of part W-1 of chapter 109 of the laws of 2006, as amended, when upon  
24 such date the provisions of section six of this act shall take effect.