

S T A T E   O F   N E W   Y O R K

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S. 782--B

A. 138--B

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 -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- 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 -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- 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 3 of part W of chapter 59 of the laws of  
3     2013, 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

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

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1 exemption shall in no event apply to a sale of non-highway Diesel motor  
2 fuel which involves a delivery at a filling station or into a repository  
3 which is equipped with a hose or other apparatus by which such fuel can  
4 be dispensed into the fuel tank of a motor vehicle (except for delivery  
5 at a farm site which qualifies for the exemption under subdivision (g)  
6 of section three hundred one-b of this chapter); or (ii) a sale to the  
7 consumer consisting of not more than twenty gallons of water-white kero-  
8 sene to be used and consumed exclusively for heating purposes; or (iii)  
9 the sale to or delivery at a filling station or other retail vendor of  
10 water-white kerosene provided such filling station or other retail  
11 vendor only sells such water-white kerosene exclusively for heating  
12 purposes in containers of no more than twenty gallons; or (iv) a sale of  
13 kero-jet fuel to an airline for use in its airplanes or a use of kero-  
14 jet fuel by an airline in its airplanes; or (v) a sale of kero-jet fuel  
15 by a registered distributor of Diesel motor fuel to a fixed base opera-  
16 tor registered under this article as a distributor of kero-jet fuel only  
17 where such fixed base operator is engaged solely in making or offering  
18 to make retail sales not in bulk of kero-jet fuel directly into the fuel  
19 tank of an airplane for the purpose of operating such airplane; or (vi)  
20 a retail sale not in bulk of kero-jet fuel by a fixed base operator  
21 registered under this article as a distributor of kero-jet fuel only  
22 where such fuel is delivered directly into the fuel tank of an airplane  
23 for use in the operation of such airplane; or (vii) the sale of previ-  
24 ously untaxed qualified biodiesel to a person registered under this  
25 article as a distributor of Diesel motor fuel other than (A) a retail  
26 sale to such person or (B) a sale to such person which involves a deliv-  
27 ery at a filling station or into a repository which is equipped with a  
28 hose or other apparatus by which such qualified biodiesel can be  
29 dispensed into the fuel tank of a motor vehicle; or (viii) the sale of  
30 previously untaxed highway Diesel motor fuel by a person registered  
31 under this article as a distributor of Diesel motor fuel to a person  
32 registered under this article as a distributor of Diesel motor fuel  
33 where the highway Diesel motor fuel is either: (A) being delivered by  
34 pipeline, railcar, barge, tanker or other vessel to a terminal, the  
35 operator of which terminal is registered under section two hundred  
36 eighty-three-b of this article, or (B) within such a terminal where it  
37 has been so delivered. Provided, however, that the exemption set forth  
38 in this subparagraph shall not apply to any highway Diesel motor fuel if  
39 it is removed from a terminal, other than by pipeline, barge, tanker or  
40 other vessel; OR (IX) A SALE OF DIESEL MOTOR FUEL TO A "COMMERCIAL FISH-  
41 ERMAN", AS SUCH TERM IS DEFINED IN SUBDIVISION (I) OF SECTION THREE  
42 HUNDRED OF THIS CHAPTER, AT RETAIL UNDER THE CIRCUMSTANCES SET FORTH IN  
43 PARAGRAPH ONE OF SUBDIVISION (G) OF SECTION THREE HUNDRED ONE-C OF THIS  
44 CHAPTER, AND WHERE SUCH COMMERCIAL FISHING VESSEL IS OPERATED BY A  
45 COMMERCIAL FISHERMAN.

46 S 2. Subdivision 4 of section 282-a of the tax law, as amended by  
47 section 5 of part K of chapter 61 of the laws of 2011, is amended to  
48 read as follows:

49 4. The tax imposed by this section on Diesel motor fuel shall be  
50 passed through by the seller and included as part of the selling price  
51 to each purchaser of such fuel. Provided, however, the amount of the tax  
52 imposed by this section may be excluded from the selling price of Diesel  
53 motor fuel where (i) a sale of Diesel motor fuel is made to an organiza-  
54 tion described in paragraph (a) of subdivision three of this section  
55 solely for the purpose stated therein; (ii) a sale of non-highway Diesel  
56 motor fuel is made to a consumer but only if such non-highway Diesel

1 motor fuel is not delivered to a filling station, nor delivered into a  
2 storage tank which is equipped with a hose or other apparatus by which  
3 such fuel can be dispensed into the fuel tank of a motor vehicle; or  
4 (iii) the sale to or delivery at a filling station or other retail  
5 vendor of water-white kerosene provided such filling station or other  
6 retail vendor only sells such water-white kerosene exclusively for heat-  
7 ing purposes in containers of no more than twenty gallons; or (iv) a  
8 sale of kero-jet fuel is made to an airline for use in its airplanes; OR  
9 (V) A SALE OF DIESEL MOTOR FUEL IS MADE TO A "COMMERCIAL FISHERMAN", AS  
10 SUCH TERM IS DEFINED IN SUBDIVISION (I) OF SECTION THREE HUNDRED OF THIS  
11 CHAPTER, AT RETAIL UNDER THE CIRCUMSTANCES SET FORTH IN PARAGRAPH ONE OF  
12 SUBDIVISION (G) OF SECTION THREE HUNDRED ONE-C OF THIS CHAPTER, AND  
13 WHERE SUCH COMMERCIAL FISHING VESSEL IS OPERATED BY A COMMERCIAL FISHER-  
14 MAN.

15 S 3. Section 301-b of the tax law is amended by adding a new subdivi-  
16 sion (j) to read as follows:

17 (J) SALES OR USES OF DIESEL MOTOR FUEL AND RESIDUAL PETROLEUM PRODUCT  
18 FOR COMMERCIAL FISHING. DIESEL MOTOR FUEL OR RESIDUAL PETROLEUM PRODUCT  
19 SOLD TO OR USED BY A "COMMERCIAL FISHERMAN", AS SUCH TERM IS DEFINED IN  
20 SUBDIVISION (I) OF SECTION THREE HUNDRED OF THIS ARTICLE, AT RETAIL  
21 UNDER THE CIRCUMSTANCES SET FORTH IN PARAGRAPH ONE OF SUBDIVISION (G) OF  
22 SECTION THREE HUNDRED ONE-C OF THIS ARTICLE, AND WHERE SUCH COMMERCIAL  
23 FISHING VESSEL IS OPERATED BY A COMMERCIAL FISHERMAN.

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

27 (j) The exemptions provided in this section shall not apply to the tax  
28 required to be prepaid pursuant to the provisions of section eleven  
29 hundred two of this article nor to the taxes imposed by sections eleven  
30 hundred five and eleven hundred ten of this article with respect to  
31 receipts from sales and uses of motor fuel or diesel motor fuel, except  
32 that the exemptions provided in paragraphs nine and forty-two of subdivi-  
33 sion (a) of this section shall apply to the tax required to be prepaid  
34 pursuant to the provisions of section eleven hundred two of this article  
35 and to the taxes imposed by sections eleven hundred five and eleven  
36 hundred ten of this article with respect to sales and uses of kero-jet  
37 fuel, CNG, hydrogen and E85, provided, however, the exemption allowed  
38 for E85 shall be subject to the additional requirements provided in  
39 section eleven hundred two of this article with respect to E85 AND  
40 EXCEPT THAT THE EXEMPTION PROVIDED IN PARAGRAPH TWENTY-FOUR OF SUBDIVI-  
41 SION (A) OF THIS SECTION SHALL APPLY TO THE TAXES IMPOSED BY SECTIONS  
42 ELEVEN HUNDRED FIVE AND ELEVEN HUNDRED TEN OF THIS ARTICLE WITH RESPECT  
43 TO SALES AND USES OF DIESEL MOTOR FUEL USED IN THE OPERATION OF A FISH-  
44 ING VESSEL AS DESCRIBED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A) OF  
45 THIS SECTION. The exemption provided in subdivision (c) of this section  
46 shall apply to sales and uses of non-highway diesel motor fuel but only  
47 if all of such fuel is consumed other than on the public highways of  
48 this state. The exemption provided in subdivision (c) of this section  
49 shall apply to sales and uses of non-highway diesel motor fuel for use  
50 or consumption either in the production for sale of tangible personal  
51 property by farming or in a commercial horse boarding operation, or in  
52 both but only if all of such fuel is consumed other than on the public  
53 highways of this state (except for the use of the public highways to  
54 reach adjacent farmlands or adjacent lands used in a commercial horse  
55 boarding operation, or both).

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

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

30 S 6. This act shall take effect on the first day of a sales tax quar-  
31 terly period, as described in subdivision (b) of section 1136 of the tax  
32 law, next commencing at least ninety days after this act shall have  
33 become a law; sections four and five of this act shall apply to sales  
34 made under and uses occurring on or after the dates such sections four  
35 and five shall have taken effect, respectively, although made or occur-  
36 ring under a prior contract; and provided further that such amendments  
37 made by section four of this act shall be subject to the expiration and  
38 reversion of such subdivision pursuant to section 19 of part W-1 of  
39 chapter 109 of the laws of 2006, as amended, when upon such date the  
40 provisions of section five of this act shall take effect.