

# STATE OF NEW YORK

9933

## IN ASSEMBLY

April 19, 2022

Introduced by M. of A. WALCZYK -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to establishing limitations on excise and sales taxes on diesel motor fuel and motor fuel and to authorize cities having a population of one million or more and counties to adopt local laws limiting taxes on diesel motor fuel and motor fuel

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 1 of section 282-a of the tax law, as amended  
2 by section 2 of part W of chapter 59 of the laws of 2013, is amended and  
3 a new subdivision 1-a is added to read as follows:

4 1. [~~There~~] Subject to the provisions of subdivision one-a of this  
5 section, there is hereby levied and imposed with respect to Diesel motor  
6 fuel an excise tax of four cents per gallon upon the sale or use of  
7 Diesel motor fuel in this state.

8 The excise tax is imposed on the first sale or use of Diesel motor  
9 fuel to occur which is not exempt from tax under this article. Provided,  
10 however, if the tax has not been imposed prior thereto, it shall be  
11 imposed on the removal of highway Diesel motor fuel from a terminal,  
12 other than by pipeline, barge, tanker or other vessel, or the delivery  
13 of Diesel motor fuel to a filling station or into the fuel tank connect-  
14 ing with the engine of a motor vehicle for use in the operation thereof  
15 whichever event shall be first to occur. The tax shall be computed based  
16 upon the number of gallons of Diesel motor fuel sold, removed or used or  
17 the number of gallons of Diesel fuel delivered into the fuel tank of a  
18 motor vehicle, as the case may be. Nothing in this article shall be  
19 construed to require the payment of such excise tax more than once upon  
20 the same Diesel motor fuel. Nor shall the collection of such tax be made  
21 applicable to the sale or use of Diesel motor fuel under circumstances  
22 which preclude the collection of such tax by reason of the United States  
23 constitution and of laws of the United States enacted pursuant thereto.  
24 Provided, further, no Diesel motor fuel shall be included in the measure  
25 of the tax unless it shall have previously come to rest within the mean-

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

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ing of federal decisional law interpreting the United States constitution. All tax for the period for which a return is required to be filed shall be due on the date limited for the filing of the return for such period, regardless of whether a return is filed as required by this article or whether the return which is filed correctly shows the amount of tax due.

1-a. The full amount of the tax imposed by this section shall apply to sales of motor fuel at prices up to two dollars and twenty-five cents per gallon. If the average price of motor fuel in the state exceeds two dollars and twenty-five cents per gallon, the amount of tax imposed by this section shall be reduced by one-quarter of a percentage point (.0025) for every increment of five cents increase in the cost of motor fuel per gallon. The tax imposed by this section shall be suspended entirely if the average price of motor fuel in the state equals or exceeds three dollars per gallon. If the average price of motor fuel in the state falls below three dollars per gallon, the tax imposed by this section shall be assessed in increases of one-quarter of a percentage point (.0025) for every increment of five cents increase in the cost of motor fuel per gallon until the average price of motor fuel in the state decreases to two dollars and twenty-five cents per gallon, at which time the full amount of tax imposed by this section shall apply to sales of motor fuel.

§ 2. Section 282-b of the tax law, as amended by section 1 of part EE of chapter 63 of the laws of 2000, is amended to read as follows:

§ 282-b. Additional Diesel motor fuel tax. 1. In addition to the tax imposed by section two hundred eighty-two-a of this ~~chapter~~ article, a like tax shall be imposed at the rate of three cents per gallon upon sale or use within the state of Diesel motor fuel or upon the delivery of Diesel motor fuel to a filling station or into the fuel tank of a motor vehicle for use in the operation thereof. Except as otherwise provided in this section, all of the provisions of this article shall apply with respect to the additional tax imposed by this section to the same extent as if it were imposed by said section two hundred eighty-two-a. Beginning on April first, nineteen hundred ninety-one, four and one-sixth per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway reconditioning and preservation fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of former section eighty-nine of the state finance law. Beginning on April first, nineteen hundred ninety-one, four and one-sixth per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway construction and reconstruction fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of former section eighty-nine-a of the state finance law. Beginning on April first, nineteen hundred ninety-two, an additional eight and one-third per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway reconditioning and preservation fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of former section eighty-nine of the state finance law. Beginning on April first, nineteen hundred ninety-two, an additional eight and one-third per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway construction and reconstruction fund reserve account established pursuant to the provisions of paragraph (b)

1 of subdivision two of former section eighty-nine-a of the state finance  
2 law. Beginning on April first, two thousand one, seventy-five per centum  
3 of the moneys received by the department pursuant to the provisions of  
4 this section shall be deposited in the dedicated fund accounts pursuant  
5 to subdivision (d) of section three hundred one-j of this chapter.  
6 Beginning on April first, two thousand three, all of the moneys received  
7 by the department pursuant to the provisions of this section shall be  
8 deposited in the dedicated fund accounts pursuant to subdivision (d) of  
9 section three hundred one-j of this chapter.

10 2. The full amount of the tax imposed by this section shall apply to  
11 sales of motor fuel at prices up to two dollars and twenty-five cents  
12 per gallon. If the average price of motor fuel in the state exceeds two  
13 dollars and twenty-five cents per gallon, the amount of tax imposed by  
14 this section shall be reduced by two-tenths of a percentage point (.002)  
15 for every increment of five cents increase in the cost of motor fuel per  
16 gallon. The tax imposed by this section shall be suspended entirely if  
17 the average price of motor fuel in the state equals or exceeds three  
18 dollars per gallon. If the average price of motor fuel in the state  
19 falls below three dollars per gallon, the tax imposed by this section  
20 shall be assessed in increases of two-tenths of a percentage point  
21 (.002) for every increment of five cents increase in the cost of motor  
22 fuel per gallon until the average price of motor fuel in the state  
23 decreases to two dollars and twenty-five cents per gallon, at which time  
24 the full amount of tax imposed by this section shall apply to sales of  
25 motor fuel.

26 § 3. Section 282-c of the tax law, as amended by section 2 of part EE  
27 of chapter 63 of the laws of 2000, is amended to read as follows:

28 § 282-c. Supplemental Diesel motor fuel tax. 1. In addition to the  
29 taxes imposed by sections two hundred eighty-two-a and two hundred  
30 eighty-two-b of this [~~chapter~~] article, a like tax shall be imposed at  
31 the rate of one cent per gallon upon the sale or use within the state of  
32 Diesel motor fuel or upon the delivery of Diesel motor fuel to a filling  
33 station or into the fuel tank of a motor vehicle for use in the opera-  
34 tion thereof. Except for paragraph (b) of subdivision three of section  
35 two hundred eighty-nine-c of this article, all the provisions of this  
36 article shall apply with respect to the supplemental tax imposed by this  
37 section to the same extent as if it were imposed by said section two  
38 hundred eighty-two-a. On and after the first day of October, nineteen  
39 hundred seventy-two, twenty-five per centum of the monies received by  
40 the department pursuant to the provisions of this section shall be  
41 deposited to the credit of the emergency highway reconditioning and  
42 preservation fund established pursuant to the provisions of former  
43 section eighty-nine of the state finance law. Beginning on April first,  
44 nineteen hundred eighty-three, twenty-five per centum of the monies  
45 received by the department pursuant to the provisions of this section  
46 shall be deposited to the credit of the emergency highway construction  
47 and reconstruction fund established pursuant to the provisions of former  
48 section eighty-nine-a of the state finance law. Beginning on April  
49 first, nineteen hundred ninety, an additional twelve and one-half per  
50 centum of the moneys received by the department pursuant to the  
51 provisions of this section shall be deposited to the credit of the emer-  
52 gency highway reconditioning and preservation fund reserve account  
53 established pursuant to the provisions of paragraph (b) of subdivision  
54 two of former section eighty-nine of the state finance law. Beginning on  
55 April first, nineteen hundred ninety, an additional twelve and one-half  
56 per centum of the moneys received by the department pursuant to the

provisions of this section shall be deposited to the credit of the emergency highway construction and reconstruction fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of former section eighty-nine-a of the state finance law. Beginning on April first, nineteen hundred ninety-one, an additional twelve and one-half per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway reconditioning and preservation fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of former section eighty-nine of the state finance law. Beginning on April first, nineteen hundred ninety-one, an additional twelve and one-half per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency construction and reconstruction fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of former section eighty-nine-a of the state finance law. Beginning on April first, two thousand three, all of the moneys received by the department pursuant to the provisions of this section shall be deposited in the dedicated fund accounts pursuant to subdivision (d) of section three hundred one-j of this chapter.

2. The full amount of the tax imposed by this section shall apply to sales of motor fuel at prices up to two dollars and twenty-five cents per gallon. If the average price of motor fuel in the state exceeds two dollars and twenty-five cents per gallon, the amount of tax imposed by this section shall be reduced by sixty-six hundredths of a percentage point (.0066) for every increment of five cents increase in the cost of motor fuel per gallon. The tax imposed by this section shall be suspended entirely if the average price of motor fuel in the state equals or exceeds three dollars per gallon. If the average price of motor fuel in the state falls below three dollars per gallon, the tax imposed by this section shall be assessed in increases of sixty-six hundredths of a percentage point (.0066) for every increment of five cents increase in the cost of motor fuel per gallon until the average price of motor fuel in the state decreases to two dollars and twenty-five cents per gallon, at which time the full amount of tax imposed by this section shall apply to sales of motor fuel.

§ 4. Subdivision 1 of section 284 of the tax law, as amended by chapter 276 of the laws of 1986, is amended and a new subdivision 3 is added to read as follows:

1. ~~[There]~~ Subject to the provisions of subdivision three of this section, there is hereby levied and imposed an excise tax of four cents per gallon upon motor fuel (a) imported into or caused to be imported into the state by a distributor for use, distribution, storage or sale in the state or upon motor fuel which is produced, refined, manufactured or compounded by a distributor in the state (which acts shall hereinafter in this subdivision be encompassed by the phrase "imported or manufactured") or (b) if the tax has not been imposed prior to its sale in this state, which is sold by a distributor (which act, in conjunction with the acts described in paragraph (a) of this subdivision, shall hereinafter in this article be encompassed by the phrase "imported, manufactured or sold"), except when imported, manufactured or sold under circumstances which preclude the collection of such tax by reason of the United States constitution and of laws of the United States enacted pursuant thereto or when imported or manufactured by an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter or a hospital included in the organiza-

tions described in paragraph four of such subdivision for its own use or consumption and except kero-jet fuel when imported or manufactured by an airline for use in its airplanes. Provided, further, no motor fuel shall be included in the measure of the tax unless it shall have previously come to rest within the meaning of federal decisional law interpreting the United States constitution. All tax for the period for which a return is required to be filed shall be due on the date limited for the filing of the return for such period, regardless of whether a return is filed by such distributor as required by this article or whether the return which is filed correctly shows the amount of tax due.

3. The full amount of the tax imposed by this section shall apply to sales of motor fuel at prices up to two dollars and twenty-five cents per gallon. If the average price of motor fuel in the state exceeds two dollars and twenty-five cents per gallon, the amount of tax imposed by this section shall be reduced by one-quarter of a percentage point (.0025) for every increment of five cents increase in the cost of motor fuel per gallon. The tax imposed by this section shall be suspended entirely if the average price of motor fuel in the state equals or exceeds three dollars per gallon. If the average price of motor fuel in the state falls below three dollars per gallon, the tax imposed by this section shall be assessed in increases of one-quarter of a percentage point (.0025) for every increment of five cents increase in the cost of motor fuel per gallon until the average price of motor fuel in the state decreases to two dollars and twenty-five cents per gallon, at which time the full amount of tax imposed by this section shall apply to sales of motor fuel.

§ 5. Section 284-a of the tax law, as amended by section 3 of part EE of chapter 63 of the laws of 2000, is amended to read as follows:

§ 284-a. Additional motor fuel tax. 1. In addition to the tax imposed by section two hundred eighty-four of this ~~chapter~~ article, a like tax shall be imposed at the rate of three cents per gallon upon motor fuel imported, manufactured or sold within this state by a distributor. Except as otherwise provided in this section, all the provisions of this article except subdivision two of section two hundred eighty-nine-e of this article shall apply with respect to the additional tax imposed by this section to the same extent as if it were imposed by said section two hundred eighty-four. Beginning on April first, nineteen hundred ninety-one, four and one-sixth per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway reconditioning and preservation fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of former section eighty-nine of the state finance law. Beginning on April first, nineteen hundred ninety-one, four and one-sixth per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway construction and reconstruction fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of former section eighty-nine-a of the state finance law. Beginning on April first, nineteen hundred ninety-two, an additional eight and one-third per centum of the moneys received by the

department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway construction and reconstruction fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of former section eighty-nine-a of the state finance law. Beginning on April first, two thousand, seventy-five per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited in the dedicated fund accounts pursuant to subdivision (d) of section three hundred one-j of this chapter. Beginning on April first, two thousand three, all of the moneys received by the department pursuant to the provisions of this section shall be deposited in the dedicated fund accounts pursuant to subdivision (d) of section three hundred one-j of this chapter.

2. The full amount of the tax imposed by this section shall apply to sales of motor fuel at prices up to two dollars and twenty-five cents per gallon. If the average price of motor fuel in the state exceeds two dollars and twenty-five cents per gallon, the amount of tax imposed by this section shall be reduced by two-tenths of a percentage point (.002) for every increment of five cents increase in the cost of motor fuel per gallon. The tax imposed by this section shall be suspended entirely if the average price of motor fuel in the state equals or exceeds three dollars per gallon. If the average price of motor fuel in the state falls below three dollars per gallon, the tax imposed by this section shall be assessed in increases of two-tenths of a percentage point (.002) for every increment of five cents increase in the cost of motor fuel per gallon until the average price of motor fuel in the state decreases to two dollars and twenty-five cents per gallon, at which time the full amount of tax imposed by this section shall apply to sales of motor fuel.

§ 6. Section 284-c of the tax law, as amended by section 4 of part EE of chapter 63 of the laws of 2000, is amended to read as follows:

§ 284-c. Supplemental motor fuel tax. 1. In addition to the taxes imposed by sections two hundred eighty-four and two hundred eighty-four-a of this ~~chapter~~ article, a like tax shall be imposed at the rate of one cent per gallon upon motor fuel imported, manufactured or sold within this state by a distributor. Except for paragraph (b) of subdivision three of section two hundred eighty-nine-c of this article, all the provisions of this article shall apply with respect to the supplemental tax imposed by this section to the same extent as if it were imposed by said section two hundred eighty-four. On and after the first day of October, nineteen hundred seventy-two, twenty-five per centum of the monies received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway reconditioning and preservation fund established pursuant to the provisions of former section eighty-nine of the state finance law. Beginning on April first, nineteen hundred eighty-three, twenty-five per centum of the monies received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway construction and reconstruction fund established pursuant to the provisions of former section eighty-nine-a of the state finance law. Beginning on April first, nineteen hundred ninety, an additional twelve and one-half per centum of the monies received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway reconditioning and preservation fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of former section eighty-nine of the state finance law. Beginning on April first, nineteen hundred ninety, an additional

1 twelve and one-half per centum of the moneys received by the department  
2 pursuant to the provisions of this section shall be deposited to the  
3 credit of the emergency highway construction and reconstruction fund  
4 reserve account established pursuant to the provisions of paragraph (b)  
5 of subdivision two of former section eighty-nine-a of the state finance  
6 law. Beginning on April first, nineteen hundred ninety-one, an addi-  
7 tional twelve and one-half per centum of the moneys received by the  
8 department pursuant to the provisions of this section shall be deposited  
9 to the credit of the emergency highway reconditioning and preservation  
10 fund reserve account established pursuant to the provisions of paragraph  
11 (b) of subdivision two of former section eighty-nine of the state  
12 finance law. Beginning on April first, nineteen hundred ninety-one, an  
13 additional twelve and one-half per centum of the moneys received by the  
14 department pursuant to the provisions of this section shall be deposited  
15 to the credit of the emergency highway construction and reconstruction  
16 fund reserve account established pursuant to the provisions of paragraph  
17 (b) of subdivision two of former section eighty-nine-a of the state  
18 finance law. Beginning on April first, two thousand three, all of the  
19 moneys received by the department pursuant to the provisions of this  
20 section shall be deposited in the dedicated fund accounts pursuant to  
21 subdivision (d) of section three hundred one-j of this chapter.

22 2. The full amount of the tax imposed by this section shall apply to  
23 sales of motor fuel at prices up to two dollars and twenty-five cents  
24 per gallon. If the average price of motor fuel in the state exceeds two  
25 dollars and twenty-five cents per gallon, the amount of tax imposed by  
26 this section shall be reduced by sixty-six hundredths of a percentage  
27 point (.0066) for every increment of five cents increase in the cost of  
28 motor fuel per gallon. The tax imposed by this section shall be  
29 suspended entirely if the average price of motor fuel in the state  
30 equals or exceeds three dollars per gallon. If the average price of  
31 motor fuel in the state falls below three dollars per gallon, the tax  
32 imposed by this section shall be assessed in increases of sixty-six  
33 hundredths of a percentage point (.0066) for every increment of five  
34 cents increase in the cost of motor fuel per gallon until the average  
35 price of motor fuel in the state decreases to two dollars and twenty-  
36 five cents per gallon, at which time the full amount of tax imposed by  
37 this section shall apply to sales of motor fuel.

38 § 7. Subdivision (b) of section 1105 of the tax law is amended by  
39 adding a new paragraph 5 to read as follows:

40 (5) Notwithstanding the provisions of of this subdivision, the full  
41 amount of the tax imposed by this section shall apply to sales of motor  
42 fuel at prices up to two dollars and twenty-five cents per gallon. If  
43 the average price of motor fuel in the state exceeds two dollars and  
44 twenty-five cents per gallon, the amount of tax imposed by this section  
45 shall be reduced by one-quarter of a percentage point (.0025) for every  
46 increment of five cents increase in the cost of motor fuel per gallon.  
47 The tax imposed by this section shall be suspended entirely if the aver-  
48 age price of motor fuel in the state equals or exceeds three dollars per  
49 gallon. If the average price of motor fuel in the state falls below  
50 three dollars per gallon, the tax imposed by this section shall be  
51 assessed in increases of one-quarter of a percentage point (.0025) for  
52 every increment of five cents increase in the cost of motor fuel per  
53 gallon until the average price of motor fuel in the state decreases to  
54 two dollars and twenty-five cents per gallon, at which time the full  
55 amount of tax imposed by this section shall apply to sales of motor  
56 fuel.

1     § 8. Section 1201 of the tax law is amended by adding a new subdivi-  
2 sion (n) to read as follows:

3     (n) Any city in this state having a population of one million or more,  
4 acting through its local legislative body, may impose limitations on  
5 taxes on diesel motor fuel and motor fuel in accordance with the  
6 provisions of subdivision (b) of section eleven hundred five of this  
7 chapter.

8     § 9. Section 1202 of the tax law is amended by adding a new subdivi-  
9 sion (h) to read as follows:

10    (h) Any county in this state, except a county wholly within a city,  
11 acting through its local legislative body, may impose limitations on  
12 taxes on diesel motor fuel and motor fuel in accordance with the  
13 provisions of subdivision (b) of section eleven hundred five of this  
14 chapter.

15    § 10. This act shall take effect on the ninetieth day after it shall  
16 have become a law and shall apply to sales of diesel motor fuel and  
17 motor fuel occurring on and after such date.