STATE OF NEW YORK

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IN ASSEMBLY

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Introduced by M. of A. SIMON, KELLES, LEVENBERG, SEAWRIGHT, STERN, GONZALEZ-ROJAS, SHIMSKY, GALLAGHER, BARRETT, ROSENTHAL, EPSTEIN, SIMONE, JACKSON, STIRPE, HEVESI, GLICK, FORREST, REYES, KIM, STECK, SHRESTHA, DINOWITZ, BICHOTTE HERMELYN, COLTON, BURDICK, TAPIA, RAGA -- Multi-Sponsored by -- M. of A. DAVILA -- read once and referred to the Committee on Economic Development

AN ACT to amend the tax law, in relation to eliminating property that directly produces, transmits, distributes, transports or stores fossil fuels from qualifying tangible property for purposes of the investment tax credit and the Brownfield redevelopment tax credit; to amend the tax law, in relation to tax on sales of motor fuel and petroleum products and to make conforming changes; to amend the tax law, in relation to taxes not authorized and the disposition of revenue; to repeal paragraph 3 of subdivision (f) and paragraph 4 of subdivision (g) of section 301-a of the tax law relating to manufacturing gallonage for purposes of the imposition of certain taxes; to repeal subdivisions (i), (j), and (l) of section 301-c of the tax law relating to reimbursement; to repeal section 301-d of the tax law relating to a utility credit or reimbursement; to repeal subdivision (f) of section 301-e of the tax law relating to an aviation fuel business which services four or more cities; to repeal subparagraph (xi) of paragraph 3 of subdivision (c) of section 1105 of the tax law relating to services rendered with respect to certain property; and to repeal paragraph 9 of subdivision (a) of section 1115 of the tax law relating to fuel sold to an airline for use in its airplanes

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

Section 1. Short title. This act shall be known and may be cited as the "Stop Climate Polluter Handouts Act".

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

LBD06545-02-5

§ 2. Subdivision (m) of section 301-a of the tax law, as added by section 20 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(m) Special rate adjustment for certain vessels. Notwithstanding any provision of this section to the contrary, the use of non-highway diesel motor fuel in the engine of a vessel to propel such vessel shall be subject to tax at the motor fuel and highway diesel motor fuel rate provided for in this section, and shall be subject to the provisions of section three hundred one-j of this article, including the adjustment set forth in paragraph [~~four~~] **three** of subdivision (a) of such section three hundred one-j. A credit or refund shall be available to the extent tax paid on gallonage used to propel any such vessel exceeds the amount of tax due based on the tax rate set forth herein. Provided, however, that the commissioner shall require such documentary proof to qualify for any credit or reimbursement provided hereunder as the commissioner deems appropriate.

§ 3. Paragraph 3 of subdivision (f) and paragraph 4 of subdivision (g) of section 301-a of the tax law are REPEALED.

§ 4. Subdivisions (a) and (d) of section 301-b of the tax law, subdivision (a) as added by chapter 190 of the laws of 1990, paragraph 5 of subdivision (a) as amended by section 3 of part E of chapter 59 of the laws of 2012, paragraphs 6, 7 and 8 of subdivision (a) as added by section 4 of part W-1 of chapter 109 of the laws of 2006, and subdivision (d) as amended by section 21 of part K of chapter 61 of the laws of 2011, are amended to read as follows:

(a) Products. (1) [~~Kerosene sold or used by a petroleum business which is registered under article twelve-A of this chapter as a distributor of diesel motor fuel so long as (i) such product has not been blended or mixed with any other product constituting diesel motor fuel or motor fuel or a residual petroleum product and (ii) such product is not used by the petroleum business as fuel to operate a motor vehicle or sold by such petroleum business to a consumer for use as fuel to operate a motor vehicle.~~

~~(2) Kero-jet fuel (i) sold by a petroleum business which is registered under article twelve-A of this chapter as a distributor of diesel motor fuel to a consumer for use exclusively as jet aircraft fuel or to a petroleum business registered under such article twelve-A as a "distributor of kero-jet fuel only" where such fixed base operator is engaged solely in making or offering to make retail sales not in bulk of kero-jet fuel directly into the fuel tank of an airplane for the purpose of operating such airplane, (ii) used by a petroleum business, registered under article twelve-A of this chapter as a distributor of diesel motor fuel, exclusively as jet aircraft fuel, or (iii) sold at retail not in bulk by a petroleum business registered under article twelve-A of this chapter as a "distributor of kero-jet fuel only" where such fuel is delivered directly into the fuel tank of a jet airplane for use in the operation of such airplane.~~

~~(3)~~] Aviation gasoline, meeting the specifications set forth in American Standard Testing Material Specification D910 or Military Specification MIL-G-5572, which is imported or caused to be imported into this state by a petroleum business which is registered under article twelve-A of this chapter as a distributor of motor fuel or produced, refined, manufactured or compounded in this state by such a petroleum business.

[~~(4) Residual petroleum product sold by a petroleum business registered under this article as a residual petroleum product business if such product is sold by such petroleum business to a consumer for use~~

~~exclusively as bunker fuel for vessels or if such product is used by such petroleum business exclusively as bunker fuel in its own vessels.~~

~~(5)~~] **(2)** Liquefied petroleum gases, such as butane, ethane or propane~~,~~ **used for purposes other than as motor fuel in the operation of a motor vehicle or for use in the operation of a pleasure or recreational motor boat or using or consuming liquefied petroleum gas for such purpose**.

[~~(6)~~] **(3)** E85 imported or caused to be imported into this state or produced, refined, manufactured or compounded in this state by a petroleum business registered under article twelve-A of this chapter, as a distributor of motor fuel, and then sold by such petroleum business and delivered to a filling station and placed in a storage tank of such filling station for such E85 to be dispensed directly into a motor vehicle for use in the operation of such vehicle.

[~~(7)~~] **(4)** (i) Partial B20 exemption. B20 imported or caused to be imported into this state or produced, refined, manufactured or compounded in this state by a petroleum business registered under article twelve-A of this chapter, as a distributor of diesel motor fuel, and then sold by such petroleum business.

(ii) Calculation of partial exemption. The amount of the partial exemption under this paragraph shall be determined by multiplying the quantity of B20 times twenty percent of the applicable taxes otherwise imposed by this article on such fuel.

[~~(8)~~] **(5)** CNG or hydrogen.

(d) Sales to consumers for heating purposes. [~~(1)~~] Total residential heating exemption. Non-highway diesel motor fuel sold by a petroleum business registered under article twelve-A of this chapter as a distributor of diesel motor fuel or residual petroleum product sold by a petroleum business registered under this article as a residual petroleum product business to the consumer exclusively for residential heating purposes only if such non-highway diesel motor fuel is delivered into a storage tank which is not equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such fuel.

[~~(2) Partial non-residential heating exemption. (A) Non-highway diesel motor fuel sold by a petroleum business registered under article twelve-A of this chapter as a distributor of diesel motor fuel or residual petroleum product sold by a petroleum business registered under this article as a residual petroleum product business to the consumer exclusively for heating, other than residential heating purposes only if such non-highway diesel motor fuel is delivered into a storage tank which is not equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such fuel. (B) Calculation of partial exemption. The partial exemption under this paragraph shall be determined by multiplying the quantity of non-highway diesel motor fuel and residual petroleum product eligible for the exemption times the sum of the then current rate of the supplemental tax imposed by section three hundred one-j of this article and forty-six percent of the then current rate of the tax imposed by section three hundred one-a of this article, with respect to the specific non-highway diesel motor fuel or residual petroleum product rate, as the case may be.~~]

§ 5. The subdivision heading and paragraph 1 of subdivision (c) of section 301-b of the tax law, as added by chapter 190 of the laws of 1990, are amended to read as follows:

Sales to [~~New York state and~~] the federal government. (1) Motor fuel imported or caused to be imported into this state or produced, refined,

manufactured or compounded in this state by a petroleum business registered under article twelve-A of this chapter, as a distributor of motor fuel, and then sold by such petroleum business to an organization described in paragraph [~~one or~~] two of subdivision (a) of section eleven hundred sixteen of this chapter where such motor fuel is used by such organization for its own use or consumption.

§ 6. The opening paragraph and subdivisions (a) and (b) of section 301-c of the tax law, the opening paragraph as amended by section 2 of part T of chapter 59 of the laws of 2022, subdivision (a) as amended by section 23 of part K of chapter 61 of the laws of 2011, and subdivision (b) as amended by chapter 330 of the laws of 1991, are amended to read as follows:

A subsequent purchaser shall be eligible for reimbursement of tax with respect to the following gallonage, subsequently sold by such purchaser in accordance with subdivision (a), (b), (e), (h), [~~(j), (k), (n) or (o)~~] **(i), (k) or (l)** of this section or used by such purchaser in accordance with subdivision (c), (d), (f), (g), [~~(i), (l), (m)~~] **(j)** or [~~(q)~~] **(n)** of this section, which gallonage has been included in the measure of the tax imposed by this article on a petroleum business:

(a) [~~Non-highway Diesel motor fuel used for heating purposes. (1)~~] Total residential heating reimbursement. Non-highway Diesel motor fuel purchased in this state and sold by such purchaser to a consumer for use exclusively for residential heating purposes but only where (i) such non-highway diesel motor fuel is delivered into a storage tank which is not equipped with a hose or other apparatus by which such non-highway Diesel motor fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such non-highway Diesel motor fuel, (ii) the tax imposed pursuant to this article has been paid with respect to such non-highway diesel motor fuel and the entire amount of such tax has been absorbed by such purchaser, and (iii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that the commissioner is authorized, in the event that the commissioner determines that it would not threaten the integrity of the administration and enforcement of the tax imposed by this article, to provide a reimbursement with respect to a retail sale to a consumer for residential heating purposes of less than ten gallons of non-highway diesel motor fuel provided such fuel is not dispensed into the tank of a motor vehicle.

[~~(2) Partial non-residential heating reimbursement. (A) Non-highway Diesel motor fuel purchased in this state and sold by such purchaser to a consumer for use exclusively for heating, other than for residential heating purposes, but only where (i) such non-highway diesel motor fuel is delivered into a storage tank which is not equipped with a hose or other apparatus by which such non-highway Diesel motor fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such non-highway Diesel motor fuel, (ii) the tax imposed pursuant to this article has been paid with respect to such non-highway diesel motor fuel and the entire amount of such tax has been absorbed by such purchaser, and (iii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article.~~

~~(B) Calculation of partial reimbursement. Notwithstanding any other provision of this article, the amount of the reimbursement under this paragraph shall be determined by multiplying the quantity of non-highway~~

~~diesel motor fuel eligible for the reimbursement times the sum of the then current rate of the supplemental tax imposed by section three hundred one-j of this article and forty-six percent of the then current rate of the tax imposed by section three hundred one-a of this article, with respect to the non-highway diesel motor fuel rate, as the case may be.~~]

(b) Sales to [~~New York state and~~] the federal government. Motor fuel and diesel motor fuel purchased in this state and sold by such purchaser in this state to an organization described in paragraph [~~one or~~] two of subdivision (a) of section eleven hundred sixteen of this chapter where (i) such motor fuel or diesel motor fuel is for such organization's own use or consumption, (ii) the tax imposed pursuant to this article has been paid with respect to such motor fuel or diesel motor fuel and the entire amount of such tax has been absorbed by such purchaser and, (iii) such purchaser possesses documentary proof satisfactory to the commissioner of taxation and finance evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that the commissioner [~~of taxation and finance~~] shall require such documentary proof to qualify for any reimbursement of tax provided by this section as the commissioner deems appropriate, including the expansion of any certification required pursuant to section two hundred eighty-five-a or two hundred eighty-five-b of this chapter to cover the taxes imposed pursuant to this article.

§ 6-a. The opening paragraph of section 301-c of the tax law, as amended by section 3 of part T of chapter 59 of the laws of 2022, is amended to read as follows:

A subsequent purchaser shall be eligible for reimbursement of tax with respect to the following gallonage, subsequently sold by such purchaser in accordance with subdivision (a), (b), (e), (h), [~~(j)~~] or [~~(k)~~] (i) of this section or used by such purchaser in accordance with subdivision (c), (d), (f), (g), [~~(i), (l), (m)~~] (j) or [~~(q)~~] (n) of this section, which gallonage has been included in the measure of the tax imposed by this article on a petroleum business:

§ 7. Subdivisions (i), (j) and (l) of section 301-c of the tax law are REPEALED.

§ 8. Subdivisions (k), (m), (n), (o), (p) and (q) of section 301-c of the tax law are relettered subdivisions (i), (j), (k), (l), (m) and (n).

§ 9. Section 301-d of the tax law is REPEALED.

§ 10. Subdivision (f) of section 301-e of the tax law is REPEALED.

§ 11. Subdivision (a) of section 301-j of the tax law, as amended by chapter 309 of the laws of 1996, paragraphs 1, 2, 3 and 4 as amended by section 29 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(a) Imposition of tax. (1) In addition to the taxes imposed by sections three hundred one-a and three hundred one-e of this article, there is hereby imposed upon every petroleum business subject to tax imposed under section three hundred one-a of this article and every aviation fuel business subject to the aviation gasoline component of the tax imposed under section three hundred one-e of this article, a supplemental monthly tax for each or any part of a taxable month at a rate of six and eight-tenths cents per gallon with respect to the products included in each component of the taxes imposed by such section three hundred one-a and the aviation gasoline component of the tax imposed by such section three hundred one-e of this article.

(2) [~~Provided, however, "commercial gallonage," as such term is defined in subdivision (k) of section three hundred of this article, shall be exempt from the measure of the tax imposed under this section.~~

~~(3)~~] Provided, further, "railroad diesel," as such term is defined in subdivision (l) of section three hundred of this article, shall be exempt from the measure of the tax imposed under this section.

[~~(4)~~] **(3)** Provided, further, a separate per gallon rate shall apply with respect to highway diesel motor fuel. Such rate shall be determined by taking the adjusted rate per gallon of tax imposed under paragraph one of this subdivision as adjusted in accordance with paragraph [~~five~~] **four** of this subdivision and subtracting therefrom one and three-quarters cents. Commencing January first, two thousand twelve, and each January thereafter, the per gallon rate applicable to highway diesel motor fuel shall be the adjusted rate under paragraph one of this subdivision as adjusted in accordance with paragraph [~~five~~] **four** of this subdivision which commences on such date minus one and three-quarters cents. The resulting rate under this paragraph shall be expressed in hundredths of a cent.

[~~(5)~~] **(4)** Except as herein provided, the tax imposed under this section shall be calculated in the same respective manner as the taxes imposed by section three hundred one-a and section three hundred one-e of this article. Except [~~for section three hundred one-d and except~~] as otherwise provided in this section, all the provisions of this article applicable to the taxes imposed by sections three hundred one-a and three hundred one-e of this article, shall apply with respect to the supplemental tax imposed by this section to the same extent as if it were respectively imposed by such sections.

§ 12. Subparagraphs (ix) and (x) of paragraph 3 and paragraph 5 of subdivision (c) of section 1105 of the tax law, subparagraph (ix) of paragraph 3 as added by chapter 395 of the laws of 1998, subparagraph (x) of paragraph 3 as added by section 1 of part FF of chapter 407 of the laws of 1999, and paragraph 5 as amended by chapter 321 of the laws of 2005, are amended to read as follows:

(ix) [~~such services rendered with respect to tangible property used or consumed directly and predominantly in the production for sale of gas or oil by manufacturing, processing, generating, assembling, refining, mining, or extracting.~~

~~(x)~~] such services rendered with respect to property described in paragraph twelve-a of subdivision (a) of section eleven hundred fifteen of this article.

(5) Maintaining, servicing or repairing real property, property or land, as such terms are defined in the real property tax law, whether the services are performed in or outside of a building, as distinguished from adding to or improving such real property, property or land, by a capital improvement as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this article, but excluding (i) services rendered by an individual who is not in a regular trade or business offering [~~his~~] **such individual's** services to the public, (ii) [~~services rendered directly with respect to real property, property or land used or consumed directly and predominantly in the production for sale of gas or oil by manufacturing, processing, generating, assembling, refining, mining, or extracting, (iii)~~] services rendered with respect to real property, property or land used or consumed predominantly either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both and [~~(iv)~~] **(iii)** services of removal of waste material

from a facility regulated as a transfer station or construction and demolition debris processing facility by the department of environmental conservation, provided that the waste material to be removed was not generated by the facility.

§ 13. Subparagraph (xi) of paragraph 3 of subdivision (c) of section 1105 of the tax law is REPEALED.

§ 14. Paragraph 9 of subdivision (a) of section 1115 of the tax law is REPEALED.

§ 15. Paragraphs 3 and 4 of subdivision (a) of section 1221 of the tax law, paragraph 3 as amended by chapter 2 of the laws of 1995 and paragraph 4 as added by chapter 93 of the laws of 1965, are amended and a new paragraph 5 is added to read as follows:

(3) except in accordance with the provisions of section twenty-b of the general city law, a tax upon gross incomes, gross operating incomes or gross receipts of persons subject to taxation under the provisions of section one hundred eighty-six-a or one hundred eighty-six-e of this chapter, but this clause shall not be deemed to restrict the power to tax persons not subject to taxation under such section of this chapter who are otherwise subject to taxation under subdivision (a) of section twelve hundred one **of this article**, nor the power to provide for credits against any tax imposed pursuant to such subdivision, nor to limit the rates of taxes authorized to be imposed by such subdivision [~~(a) of such section twelve hundred one~~], [~~or~~]

(4) a tax upon interest or dividends received from a corporation by a person referred to in this section[~~.~~]**, or**

(5) a tax on fuel sold to an airline for use in its airplanes.

§ 16. Section 1148 of the tax law is amended by adding a new subdivision (d) to read as follows:

(d) Provided, however, before such funds are distributed pursuant to subdivision (a) of this section, any revenue collected by the state, from fuel sold to an airline for use in its airplanes, under the authority granted to the state by this article shall be dedicated to the aviation purpose account of the dedicated highway and bridge trust fund, provided that the portion for the airport or aviation state program shall be no less than forty million dollars annually, with the remaining revenue collected from such taxes being dedicated to the capital projects fund for aviation purposes required in connection therewith of airports and aviation facilities, equipment and related projects.

§ 17. Paragraph (ii) of subdivision (b) of section 1115 of the tax law, as amended by section 30 of part Y of chapter 63 of the laws of 2000, is amended to read as follows:

(ii) [~~Gas, electricity~~] **Electricity**, refrigeration and steam, and [~~gas,~~] electric, refrigeration and steam service of whatever nature for use or consumption directly and exclusively in research and development in the experimental or laboratory sense shall be exempt from the tax imposed under subdivision (b) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten of this article. Such research and development shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects.

§ 18. Paragraph 1 of subdivision (c) of section 1115 of the tax law, as amended by section 7 of part B of chapter 63 of the laws of 2000, is amended to read as follows:

(1) [~~Fuel, gas, electricity~~] **Electricity**, refrigeration and steam, and [~~gas,~~] electric, refrigeration and steam service of whatever nature for use or consumption directly and exclusively in the production of tangible personal property, [~~gas,~~] electricity, refrigeration or steam, for sale, by manufacturing, processing, assembling, generating, refining, mining or extracting shall be exempt from the taxes imposed under subdivisions (a) and (b) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten of this article.

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

(j) The exemptions provided in this section shall not apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article nor to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to receipts from sales and uses of motor fuel or diesel motor fuel, except that the exemptions provided in [~~paragraphs nine and~~] **paragraph** forty-two of subdivision (a) of this section shall apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article and to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to sales and uses of [~~kero-jet fuel,~~] CNG, hydrogen and E85, provided, however, the exemption allowed for E85 shall be subject to the additional requirements provided in section eleven hundred two of this article with respect to E85. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel but only if all of such fuel is consumed other than on the public highways of this state. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel for use or consumption either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation, or in both but only if all of such fuel is consumed other than on the public highways of this state (except for the use of the public highways to reach adjacent farmlands or adjacent lands used in a commercial horse boarding operation, or both).

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

(j) The exemptions provided in this section shall not apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article nor to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to receipts from sales and uses of motor fuel or diesel motor fuel[~~, except that the exemption provided in paragraph nine of subdivision (a) of this section shall apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article and to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to sales and uses of kero-jet fuel~~]. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel but only if all of such fuel is consumed other than on the public highways of this state. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel for use or consumption either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation, or in both but only if all of such fuel is consumed other than on the public highways of this

state (except for the use of the public highways to reach adjacent farmlands or adjacent lands used in a commercial horse boarding operation, or both).

§ 20. Subdivision (s) of section 1115 of the tax law, as added by chapter 201 of the laws of 1995, is relettered subdivision (p).

§ 21. Subdivision (w) of section 1115 of the tax law, as added by section 32 of part Y of chapter 63 of the laws of 2000, is amended to read as follows:

(w) Receipts from the sale of [~~gas or~~] electricity or [~~gas or~~] electric service of whatever nature and consideration given or contracted to be given for, or for the use of, [~~gas or~~] electricity or [~~gas or~~] electric service of whatever nature purchased for use or consumption directly and exclusively to provide [~~gas or~~] electric service of whatever nature consisting of operating [~~a gas pipeline or gas distribution line or~~] an electric transmission or distribution line [~~and ensuring the necessary working pressure in an underground gas storage facility~~] shall be exempt from sales and compensating use taxes imposed by this article. Such exempt [~~gas or~~] electricity or [~~gas or~~] electric service of whatever nature shall include, but shall not be limited to, such [~~gas or~~] electricity or [~~gas or~~] electric service of whatever nature used or consumed directly and exclusively to (1) [~~ensure necessary working pressure in a gas pipeline used to transport, transmit or distribute gas, (2) operate compressors used to transport, transmit or distribute gas through such a gas pipeline or distribution line or used to ensure necessary working pressure in such a storage facility, (3) operate heaters to prevent gas in such a pipeline or distribution line from freezing, (4) operate equipment which removes impurities and moisture from gas in such a pipeline or distribution line, (5)~~] operate substations and equipment related to electric transmission and distribution lines such as transformers, capacitors, meters, switches, communication devices and heating and cooling equipment, and [~~(6)~~] **(2)** ensure the reliability of electricity or electric service transmitted or distributed through such lines, for example, by operating reserve capacity machinery and equipment.

§ 22. Subdivision (k) of section 300 of the tax law, as amended by section 17 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(k) "Commercial gallonage" means gallonage (1) which is non-highway diesel motor fuel or residual petroleum product, (2) [~~which is included in the full measure of the non-highway diesel motor fuel component or the residual petroleum product component of the tax imposed under section three hundred one-a of this article, (3)~~] which does not (and will not) qualify (A) [~~for the utility credit or reimbursement provided for in section three hundred one-d of this article, (B)~~] as "manufacturing gallonage", as such term is defined in subdivision (m) of this section, [~~(C)~~] **or (B)** for the not-for-profit organization exemption provided for in subdivision (h) of section three hundred one-b of this article, [~~or (D) for the heating exemption provided for in paragraph two of subdivision (d) of section three hundred one-b of this article or the heating reimbursement provided for in paragraph two of subdivision (a) of section three hundred one-c of this article,~~] and [~~(4)~~] **(3)** which will not be used nor has been used in the fuel tank connecting with the engine of a vessel. No gallonage shall qualify as "commercial gallonage" where such gallonage is eligible for the [~~(i) utility credit or reimbursement under such section three hundred one-d of this article, (ii) "manufacturing exemption" under paragraph three of subdivision (f)~~

~~of section three hundred one-a of this article, (iii)~~] not-for-profit organization exemption under subdivision (h) of section three hundred one-b of this article[~~, or (iv) heating exemption provided for in paragraph two of subdivision (d) of section three hundred one-b of this article or the heating reimbursement provided for in paragraph two of subdivision (a) of section three hundred one-c of this article~~]. The commissioner shall require such documentary proof to substantiate the classification of product as "commercial gallonage" as the commissioner deems appropriate.

§ 23. Paragraph 1 of subdivision (f) of section 301-b of the tax law, as amended by section 21 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(1) Residual petroleum product and non-highway diesel motor fuel sold to an electric corporation, [~~as described in subdivision (a) of section three hundred one-d of this article,~~] **as defined in subdivision thirteen of section two of the public service law, subject to the supervision of the department of public service,** which is registered with the department as a petroleum business tax direct pay permittee, and used by such electric corporation to fuel generators for the purpose of manufacturing or producing electricity where such electric corporation provides a copy of a direct pay permit authorized and issued by the commissioner, to the petroleum business making such sale. If so registered, such corporation shall be a taxpayer under this article and (i) such electric corporation shall file a return monthly and pay the applicable tax under this article, after the application of allowable credits, on all such purchases directly to the commissioner, (ii) such electric corporation shall be subject to all of the provisions of this article relating to the responsibilities and liabilities of taxpayers under this article with respect to such residual petroleum product and non-highway diesel motor fuel.

§ 24. This act shall take effect immediately and shall apply to taxable years commencing on or after the first of January next succeeding the date on which it shall have become a law; provided, however, that:

(a) the amendments to paragraphs 6, 7 and 8 of subdivision (a) of section 301-b of the tax law made by section four of this act shall not affect the repeal of such paragraphs and shall be deemed repealed therewith;

(b) the amendments to the opening paragraph of section 301-c of the tax law made by section six of this act shall be subject to the expiration and reversion of such paragraph pursuant to section 19 of part W-1 of chapter 109 of the laws of 2006, as amended, when upon such date the provisions of section six-a of this act shall take effect;

(c) the amendments to subdivisions (k) and (l) of section 301-c of the tax law made by section eight of this act shall not affect the repeal of such subdivisions and shall be deemed repealed therewith; and

(d) the amendments to subdivision (j) of section 1115 of the tax law made by section nineteen of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 19 of part W-1 of chapter 109 of the laws of 2006, as amended, when upon such date the provisions of section nineteen-a of this act shall take effect.