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

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I N A S S E M B L Y

April 2, 2010

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AN ACT to amend the tax law, in relation to reducing the tax on petroleum businesses and the sales and compensating use taxes on the retail sales of motor fuel and diesel motor fuel

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

Section 1. Subdivision (a) of section 301 of the tax law, as amended by chapter 190 of the laws of 1990, is amended to read as follows:

(a)(1) General.--Notwithstanding any other provision of this chapter, or of any other law, for taxable years commencing on or after the first day of April, nineteen hundred eighty-four, but including that portion of any taxable year commencing prior thereto to the extent of that portion of such year which includes the period which commences with the first day of April, nineteen hundred eighty-four, and ending with (but not including) taxable years commencing on and after the first day of September, nineteen hundred ninety, but including that portion of any taxable year commencing prior thereto to the extent of that portion of such year which includes the period which terminates with the thirty-first day of August, nineteen hundred ninety, there is hereby imposed upon every petroleum business, for the privilege of engaging in business, doing business, employing capital, owning or leasing property, or maintaining an office in this state, for all or any part of each of its taxable years, an annual tax equal to two and three-quarters per centum, provided that for taxable years commencing on or after the first day of June, nineteen hundred ninety, but including that portion of any taxable year commencing prior thereto to the extent of that portion of such year which includes the period which commences with the first day of June, nineteen hundred ninety, the annual tax shall be equal to [seven and

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

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two-tenths] THREE AND THREE-FIFTHS per centum, of (i) its gross receipts from sales of petroleum where shipments are made to points within the state, (ii) the consideration given or contracted to be given by it for petroleum (other than aviation fuel) which it imported or caused to be imported (by a person other than one which is subject to tax under this article) into this state for consumption by it in this state, and (iii) the consideration given or contracted to be given by it for aviation fuel consumed by it in this state. In no event shall the tax imposed by this article be less than [two hundred fifty] ONE HUNDRED TWENTY-FIVE dollars. For the purpose of the tax imposed by this section, any taxable year commencing prior to the first day of September, nineteen hundred ninety but ending after the thirty-first day of August, nineteen hundred ninety shall be deemed terminated as of such thirty-first day of August and such year shall be brought to a close as of such thirty-first day of August.

(2) Credit, refund or reimbursement. (A) An electric corporation, as defined in subdivision thirteen of section two of the public service [service] law, subject to the supervision of the department of public service shall be allowed a credit against the tax imposed by this section, or a refund or reimbursement, with respect to residual petroleum product or diesel motor fuel (which is not enhanced diesel motor fuel) used by such electric corporation to fuel generators for the purpose of manufacturing or producing electricity. Such credit or refund shall be applicable only to gallonage which is included in the return of such electric corporation and the consideration for which has been subjected to tax under this section on and after June first, nineteen hundred ninety at the rate of [seven and two-tenths] THREE AND THREE-FIFTHS per centum; such reimbursement shall apply only to gallonage purchased in this state by such electric corporation on and after June first, nineteen hundred ninety wherein (i) with respect to such gallonage so purchased a tax under this section has been imposed at the rate of [seven and two-tenths] THREE AND THREE-FIFTHS per centum and (ii) such electric corporation absorbed the entire amount of such tax in the purchase price of such fuel. The amount of such credit or refund shall be determined by multiplying the consideration given with respect to such eligible gallons of residual petroleum product and diesel product times four and forty-five hundredths percent. The amount of such reimbursement shall be equal to the result obtained by subtracting from the entire amount of the tax absorbed by such electric corporation the product of such entire amount of tax absorbed times two and seventy-five hundredths divided by [seven and two-tenths] THREE AND THREE-FIFTHS. (B) An aviation fuel business shall be allowed a credit against the tax imposed by clause (iii) of paragraph (1) of this subdivision on and after June first, nineteen hundred ninety with respect to kero-jet fuel with respect to which a tax has been imposed at the rate of [seven and two-tenths] THREE AND THREE-FIFTHS per centum and which was consumed in this state by such business in the operation of its aircraft. The amount of such credit shall be four and forty-five hundredths percent of the consideration given or contracted to be given by such business for such kero-jet fuel consumed by it in this state.

S 2. Subdivision (a) of section 301-f of the tax law, as added by chapter 190 of the laws of 1990, is amended to read as follows:

(a) Imposition of tax surcharge. In addition to the tax imposed by section three hundred one of this article, for taxable years commencing on or after June first, nineteen hundred ninety, but including that portion of any taxable year commencing prior thereto to the extent of

that portion of such year which includes the period which commences with June first, nineteen hundred ninety, and ending with (but not including) taxable years commencing on and after September first, nineteen hundred ninety, but including that portion of any taxable year commencing prior thereto to the extent of that portion of such year which included the period which terminates with August thirty-first, nineteen hundred ninety, there is hereby imposed upon every petroleum business, for all or any part of each of its taxable years, a tax surcharge equal to [fifteen] SEVEN AND ONE-HALF percent of the rate of tax imposed by section three hundred one of this article on (i) its gross receipts from sales of petroleum where shipments are made to points within the state, (ii) the consideration given or contracted to be given by it for petroleum (other than aviation fuel) which it imported or caused to be imported (by a person other than one which is subject to tax under this article) into this state for consumption by it in this state, and (iii) the consideration given or contracted to be given by it for aviation fuel consumed by it in this state. The tax surcharge shall be applicable to receipts from or consideration given with respect to all deliveries on and after June first, nineteen hundred ninety. For purposes of the tax surcharge imposed by this section, any taxable year commencing prior to September first, nineteen hundred ninety but ending after August thirty-first, nineteen hundred ninety shall be deemed terminated as of such August thirty-first and such year shall be brought to a close as of such August thirty-first. Except as provided in subdivision (c) of this section, all of the provisions of this article applicable to the tax imposed by section three hundred one of this article shall apply with respect to the tax surcharge imposed by this section to the same extent as if it were imposed by such section three hundred one, insofar as such provisions can be made applicable to the tax surcharge imposed by this section, with such modification as may be necessary to adapt such provisions to the tax surcharge imposed by this section.

S 3. Paragraph 1 of subdivision (a) of section 301-j of the tax law, as amended by chapter 309 of the laws of 1996, is amended to read as follows:

(1) In addition to the taxes imposed by sections three hundred one-a and three hundred one-e of this article, for taxable months commencing on or after July first, nineteen hundred ninety-one 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 [four and one-half] TWO AND ONE-QUARTER cents per gallon with respect to the products included in each component of the taxes imposed by such [sections] SECTION three hundred one-a and the aviation gasoline component of the tax imposed by such section three hundred one-e of this article.

S 4. Paragraph 1 of subdivision (m) of section 1111 of the tax law, as amended by section 1 of part M1 of chapter 109 of the laws of 2006, is amended to read as follows:

(1) The sales tax imposed by subdivision (a) of section eleven hundred five of this article and the compensating use tax imposed by section eleven hundred ten of this article, in regard to retail sales of motor fuel and diesel motor fuel, shall be [eight] FOUR cents per gallon.

S 5. This act shall take effect immediately.