STATE OF NEW YORK

300

2009-2010 Regular Sessions

IN SENATE

(PREFILED)

January 7, 2009

Introduced by Sen. LITTLE -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to exempting Diesel motor fuel and residual petroleum product used at or in a non-road operation from taxation

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

Section 1. Section 282-a of the tax law is amended by adding a new subdivision 6 to read as follows:

6. NOTWITHSTANDING ANY OTHER PROVISION, NO EXCISE TAX SHALL BE IMPOSED PURSUANT TO THIS SECTION ON SALES TRANSACTIONS OF ANY DIESEL MOTOR FUEL OR RESIDUAL PETROLEUM PRODUCT THAT IS DYED NON-ROAD, LOCOMOTIVE OR MARINE DIESEL FUEL (NRLM) WHERE THE INTENDED END SALE AND USE OF SUCH DIESEL MOTOR FUEL OR RESIDUAL PETROLEUM PRODUCT IS FOR A NON-ROAD OPERATION SUCH AS FARMING.

S 2. Subdivision 1 and paragraph (b) of subdivision 3 of section 285-b of the tax law, subdivision 1 as added by chapter 261 of the laws of 1988 and paragraph (b) of subdivision 3 as amended by chapter 245 of the laws of 1989, are amended to read as follows:

1. Except with respect to the exemptions from the excise tax on Diesel motor fuel set forth in [subdivision] SUBDIVISIONS three AND SIX of section two hundred eighty-two-a of this article, no person shall purchase Diesel motor fuel in this state unless the taxes imposed by this article have been assumed by a registered distributor of Diesel motor fuel in accordance with a certification under subdivision four of this section or paid by such distributor and, in each of such instances, except in the case of an exemption from the pass through of such tax authorized in subdivision four of such section two hundred eighty-two-a, are passed through to such purchaser. In addition to any other civil and

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

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criminal penalties which may apply, any person who purchases Diesel motor fuel without having received a certification from the seller in accordance with subdivision four of this section shall be jointly and severally liable to pay the taxes imposed by this article with respect to such Diesel motor fuel.

(b) A claim for the exemption from tax provided for in subparagraph (ii) or (viii) of paragraph (b) of subdivision three OR A CLAIM BY A DISTRIBUTOR FOR THE EXEMPTION FROM TAX PROVIDED FOR IN SUBDIVISION SIX of section two hundred eighty-two-a of this article shall be established by means of an interdistributor sale certificate. If such exemption is applicable, such certificate shall be provided by the purchaser to the seller at the time of or prior to delivery of the Diesel motor fuel. Such certificate shall set forth the name and address of the purchaser, the purchaser's registration number, an affirmation by such purchaser that the purchaser is registered as a distributor and that such registration has not been suspended or cancelled and shall be signed by such purchaser and by the seller. Such certificate shall be in such form and contain such other information as the commissioner [of taxation and finance] shall require. Where a proper and complete interdistributor sale certificate has been furnished and accepted by the seller in good faith, such certificate under such circumstance shall relieve the seller of the burden of proving that the Diesel motor fuel covered by such certificate is exempt from tax by reason of subparagraph (ii) or (viii) of paragraph (b) of subdivision three OR SUBDIVISION SIX of such section two hundred eighty-two-a. For purposes of this paragraph, a seller shall not have accepted such certificate in good faith if the purchaser's registration is invalid because it has been suspended or cancelled, or if the purchaser is not registered, and the commissioner [of taxation and finance] has furnished registered distributors with information identifying all those persons then validly registered as distributors of Diesel motor fuel and those persons whose registrations have been suspended or cancelled. Any purchaser who furnishes to his OR HER seller a false or fraudulent interdistributor sale certificate for the purpose of establishing an exemption from the tax imposed by section two hundred eighty-two-a of this article shall be jointly and severally liable for the tax imposed by such section.

S 3. The opening paragraph of subdivision (g) of section 301-b of the tax law is designated paragraph 1 and a new paragraph 2 is added to read as follows:

(2) SALES OF DIESEL MOTOR FUEL AND RESIDUAL PETROLEUM PRODUCT WHERE THE INTENDED END SALE AND USE OF SUCH DIESEL MOTOR FUEL OR RESIDUAL PETROLEUM PRODUCT IS FOR A NON-ROAD OPERATION SUCH AS FARMING.

S 4. Subdivision (c) of section 1115 of the tax law is amended by adding a new paragraph 3 to read as follows:

(3) DIESEL MOTOR FUEL AND RESIDUAL PETROLEUM PRODUCT SOLD IN ANY TRANSACTION WHERE THE INTENDED END SALE AND USE OF SUCH DIESEL MOTOR FUEL OR RESIDUAL PETROLEUM PRODUCT IS FOR A NON-ROAD OPERATION SUCH AS FARMING.

S 5. The commissioner of taxation and finance is hereby authorized and directed to promulgate any rules and regulations necessary to implement the provisions of this act.

S 6. This act shall take effect immediately, except that sections one, two, three and four of this act shall take effect on the first of January next succeeding the date on which it shall have become a law.