

5122

2009-2010 Regular Sessions

I N   S E N A T E

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Introduced by Sen. VALESKY -- 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 dyed Diesel motor fuel used in farming or manufacturing

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

1     Section 1. Paragraph (c) of subdivision 3 of section 282-a of the tax  
2     law, as added by chapter 302 of the laws of 2006, is amended to read as  
3     follows:  
4     (c) Limited exemptions for dyed Diesel motor fuel. (i) The tax imposed  
5     by this section shall not apply to: (A) the sale of dyed Diesel motor  
6     fuel by the importer to a purchaser under the circumstances and subject  
7     to the terms and conditions as follows: (1) the importer and purchaser  
8     are each registered under this article as a full Diesel motor fuel  
9     distributor; (2) such importer has imported the enhanced Diesel motor  
10    fuel, which is the subject of the sale, into the state and has dyed such  
11    fuel to comply with the provisions of 26 USC S 4082(a) and the regu-  
12    lations thereunder, as may be amended from time to time; (3) the  
13    purchaser is a holder of a currently valid direct payment permit issued  
14    pursuant to section two hundred eighty-three-d of this article; and  
15    (4)(I) such purchaser is primarily engaged in the retail heating oil  
16    business and such dyed Diesel motor fuel will be sold by such purchaser  
17    in a retail sale to a consumer for use [solely as] BY THAT CONSUMER  
18    DIRECTLY AND EXCLUSIVELY FOR residential or commercial heating [oil], OR  
19    (II) SUCH DYED DIESEL MOTOR FUEL WILL BE SOLD BY SUCH PURCHASER IN A  
20    RETAIL SALE TO A CONSUMER FOR USE BY THAT CONSUMER DIRECTLY AND EXCLU-  
21    SIVELY IN THE PRODUCTION OF TANGIBLE PERSONAL PROPERTY FOR SALE BY FARM-  
22    ING, BUT ONLY IF ALL OF THAT FUEL IS DELIVERED ON THE FARMING SITE AND  
23    IS CONSUMED OTHER THAN ON THE HIGHWAYS OF THIS STATE (EXCEPT FOR USE OF  
24    THE HIGHWAY TO REACH ADJACENT FARMLANDS); PROVIDED, HOWEVER, THAT A

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

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1 FARMER MAY PURCHASE NO MORE THAN FOUR THOUSAND FIVE HUNDRED GALLONS OF  
2 DIESEL MOTOR FUEL AND DYED DIESEL MOTOR FUEL COMBINED IN A THIRTY-DAY  
3 PERIOD FOR SUCH USE OR CONSUMPTION EXEMPT FROM THE MEASURE OF THE TAX  
4 IMPOSED BY THIS SECTION, EXCEPT IN ACCORDANCE WITH PRIOR CLEARANCE GIVEN  
5 BY THE COMMISSIONER, OR (III) SUCH DYED DIESEL MOTOR FUEL WILL BE SOLD  
6 BY SUCH PURCHASER IN A RETAIL SALE TO A CONSUMER FOR USE BY THAT CONSUM-  
7 ER DIRECTLY AND EXCLUSIVELY IN THE PRODUCTION OF TANGIBLE PERSONAL PROP-  
8 ERTY FOR SALE BY MANUFACTURING, PROCESSING, OR ASSEMBLY, BUT ONLY IF ALL  
9 OF THAT FUEL IS DELIVERED ON THE MANUFACTURING SITE AND IS CONSUMED  
10 OTHER THAN ON THE HIGHWAYS OF THIS STATE; (B) a first sale of the dyed  
11 Diesel motor fuel, which [as] WAS the subject of an exempt sale  
12 described in clause (A) of this subparagraph, by the purchaser described  
13 therein to a purchaser likewise holding a currently valid direct pay  
14 permit under the circumstances and subject to the terms and conditions  
15 as follows: (1) the sale [of] TO such second purchaser by such first  
16 purchaser is the first and only sale of such dyed Diesel motor fuel by  
17 such first purchaser; (2) (I) such second purchaser is primarily engaged  
18 in the retail heating oil business and such dyed Diesel motor fuel will  
19 be sold by such second purchaser in a retail sale to a consumer for use  
20 [solely as] BY THAT CONSUMER DIRECTLY AND EXCLUSIVELY FOR residential or  
21 commercial heating [oil], OR (II) SUCH DYED DIESEL MOTOR FUEL WILL BE  
22 SOLD BY SUCH SECOND PURCHASER IN A RETAIL SALE TO A CONSUMER FOR USE BY  
23 THAT CONSUMER DIRECTLY AND EXCLUSIVELY IN THE PRODUCTION OF TANGIBLE  
24 PERSONAL PROPERTY FOR SALE BY FARMING, BUT ONLY IF ALL OF THAT FUEL IS  
25 DELIVERED ON THE FARMING SITE AND IS CONSUMED OTHER THAN ON THE HIGHWAYS  
26 OF THIS STATE (EXCEPT FOR USE OF THE HIGHWAY TO REACH ADJACENT FARM-  
27 LANDS); PROVIDED, HOWEVER, THAT A FARMER MAY PURCHASE NO MORE THAN FOUR  
28 THOUSAND FIVE HUNDRED GALLONS OF DIESEL MOTOR FUEL AND DYED DIESEL MOTOR  
29 FUEL COMBINED IN A THIRTY-DAY PERIOD FOR SUCH USE OR CONSUMPTION EXEMPT  
30 FROM THE MEASURE OF THE TAX IMPOSED BY THIS SECTION, EXCEPT IN ACCORD-  
31 ANCE WITH PRIOR CLEARANCE GIVEN BY THE COMMISSIONER, OR (III) SUCH DYED  
32 DIESEL MOTOR FUEL WILL BE SOLD BY SUCH SECOND PURCHASER IN A RETAIL SALE  
33 TO A CONSUMER FOR USE BY THAT CONSUMER DIRECTLY AND EXCLUSIVELY IN THE  
34 PRODUCTION OF TANGIBLE PERSONAL PROPERTY FOR SALE BY MANUFACTURING,  
35 PROCESSING, OR ASSEMBLY, BUT ONLY IF ALL OF THAT FUEL IS DELIVERED ON  
36 THE MANUFACTURING SITE AND IS CONSUMED OTHER THAN ON THE HIGHWAYS OF  
37 THIS STATE; (3) on the sale to the second purchaser, such first purchas-  
38 er described in such clause (A) attaches to the invoice a copy of the  
39 invoice given by the importer on the exempt sale described in such  
40 clause (A), so as to identify the origin of the dyed Diesel fuel [which]  
41 THAT is the subject of the sale to such second purchaser; and (4) such  
42 second purchaser certifies that such dyed Diesel motor fuel is to be  
43 sold by it only to a consumer for use [solely as] BY THAT CONSUMER  
44 DIRECTLY AND EXCLUSIVELY (I) FOR residential or commercial heating  
45 [oil], (II) IN THE PRODUCTION OF TANGIBLE PERSONAL PROPERTY FOR SALE BY  
46 FARMING, BUT ONLY IF ALL OF THAT FUEL IS DELIVERED ON THE FARMING SITE  
47 AND IS CONSUMED OTHER THAN ON THE HIGHWAYS OF THIS STATE (EXCEPT FOR USE  
48 OF THE HIGHWAY TO REACH ADJACENT FARMLANDS); PROVIDED, HOWEVER, THAT A  
49 FARMER MAY PURCHASE NO MORE THAN FOUR THOUSAND FIVE HUNDRED GALLONS OF  
50 DIESEL MOTOR FUEL AND DYED DIESEL MOTOR FUEL COMBINED IN A THIRTY-DAY  
51 PERIOD FOR SUCH USE OR CONSUMPTION EXEMPT FROM THE MEASURE OF THE TAX  
52 IMPOSED BY THIS SECTION, EXCEPT IN ACCORDANCE WITH PRIOR CLEARANCE GIVEN  
53 BY THE COMMISSIONER, OR (III) IN THE PRODUCTION OF TANGIBLE PERSONAL  
54 PROPERTY FOR SALE BY MANUFACTURING, PROCESSING, OR ASSEMBLY, BUT ONLY IF  
55 ALL OF THAT FUEL IS DELIVERED ON THE MANUFACTURING SITE AND IS CONSUMED  
56 OTHER THAN ON THE HIGHWAYS OF THIS STATE. (ii) Prior to, or at the time

1 of, such sale of such dyed Diesel motor fuel described in clause (A) or  
2 (B) of subparagraph (i) of this paragraph, the purchaser shall give a  
3 certificate to the seller setting forth the intended use of the dyed  
4 Diesel motor fuel [which] THAT is sought to be qualified for exemption  
5 under this paragraph, that the purchaser has been issued a direct  
6 payment permit which is currently valid, that such permit has not been  
7 suspended or revoked and that the purchaser otherwise meets the quali-  
8 fications of this paragraph. (iii) The limited exemptions allowed under  
9 this paragraph, EXCEPT THE EXEMPTIONS FOR SALES OF DYED DIESEL MOTOR  
10 FUEL TO CONSUMERS FOR USE BY THOSE CONSUMERS IN THE PRODUCTION OF TANGI-  
11 BLE PERSONAL PROPERTY FOR SALE BY FARMING, shall in no event apply to  
12 any dyed Diesel motor fuel [which] THAT is delivered into a repository  
13 equipped with hose or other apparatus capable of being used to dispense  
14 fuel into the fuel tank of a motor vehicle, or where the purchaser's  
15 direct payment permit has been suspended or revoked and the commissioner  
16 has made generally available the identity of those persons whose direct  
17 payment permits have been suspended or revoked.

18 S 2. The section heading and subdivision 1 of section 283-d of the tax  
19 law, as added by chapter 302 of the laws of 2006, is amended to read as  
20 follows:

21 Direct payment permit with respect to dyed Diesel motor fuel [used as  
22 residential or commercial heating oil]. 1. The commissioner, upon the  
23 application of a person registered under this article as a distributor  
24 of Diesel motor fuel, may issue a direct payment permit to such person  
25 for the payment of tax liability under this article with respect to dyed  
26 Diesel motor fuel [which] THAT is certified to be used [solely] DIRECTLY  
27 AND EXCLUSIVELY for ONE OF THE FOLLOWING PURPOSES: residential or  
28 commercial heating [oil], PRODUCTION OF TANGIBLE PERSONAL PROPERTY FOR  
29 SALE BY FARMING, OR PRODUCTION OF TANGIBLE PERSONAL PROPERTY FOR SALE BY  
30 MANUFACTURING, PROCESSING, OR ASSEMBLY if: (a) such person, at the time  
31 of application, meets all the requirements described in section two  
32 hundred eighty-two-a of this article and any other requirements under  
33 this article relating to Diesel motor fuel distributors, (b) there has  
34 been timely filing and payment of tax liability with respect to taxes  
35 under this chapter (excluding those taxes timely protested), by such  
36 person, any officer, director or partner of such person, shareholder  
37 directly or indirectly owning more than ten percent of the number of  
38 shares of stock of such person entitling the holder thereof to vote for  
39 the election of directors or trustees, or any shareholder or employee of  
40 such person under a duty to file a return under or pursuant to the  
41 authority of this article or pay the taxes imposed by or pursuant to the  
42 authority of this article on behalf of such person (the provisions of  
43 subdivision ten of section two hundred eighty-three of this article  
44 shall apply to the provisions of this paragraph), AND (c) [such person  
45 is engaged primarily in the retail sale of residential or commercial  
46 heating oil and does not make wholesale sales of Diesel motor fuel other  
47 than in the circumstances described in clause (B) of subparagraph (i) of  
48 paragraph (c) of subdivision three of section two hundred eighty-two-a  
49 of this article, and (d)] such person files a bond or other security  
50 covering potential tax liability under this chapter with respect to such  
51 dyed Diesel motor fuel.

52 S 3. Clause (i) of subparagraph (C) of paragraph 1 of subdivision (c)  
53 of section 300 of the tax law, as added by chapter 190 of the laws of  
54 1990, is amended to read as follows:

55 (i) ["nonautomotive type diesel"] "NONAUTOMOTIVE-TYPE DIESEL motor  
56 fuel" as used in relation to the rates of the tax imposed by section

1 three hundred one-a of this article means any diesel motor fuel, as  
2 described in subparagraph (A) of this paragraph, which would be excluded  
3 from the diesel motor fuel excise tax imposed by section two hundred  
4 eighty-two-a of this chapter solely by reason of the enumerated exclu-  
5 sions based on ultimate use of the product set forth in paragraph (b) of  
6 subdivision three of such section, AND ANY DYED DIESEL MOTOR FUEL, AS  
7 DESCRIBED IN SUBDIVISION EIGHTEEN OF SECTION TWO HUNDRED EIGHTY-TWO OF  
8 THIS CHAPTER, WHICH WOULD BE EXCLUDED FROM THE DIESEL MOTOR FUEL EXCISE  
9 TAX IMPOSED BY SECTION TWO HUNDRED EIGHTY-TWO-A OF THIS CHAPTER SOLELY  
10 BY REASON OF THE ENUMERATED EXCLUSIONS BASED ON ULTIMATE USE OF THE  
11 PRODUCT SET FORTH IN PARAGRAPH (C) OF SUBDIVISION THREE OF THAT SECTION,  
12 and (ii) "automotive-type diesel motor fuel" as used in relation to the  
13 rates of tax imposed by such section three hundred one-a means diesel  
14 motor fuel [which] THAT is not nonautomotive-type diesel motor fuel.

15 S 4. Subdivision (m) of section 300 of the tax law, as added by chap-  
16 ter 309 of the laws of 1996, is amended to read as follows:

17 (m) "Manufacturing gallonage" means residual petroleum product, DYED  
18 DIESEL MOTOR FUEL, or diesel motor fuel (which is not enhanced diesel  
19 motor fuel) THAT IS used and consumed directly and exclusively in the  
20 production of tangible personal property for sale by manufacturing,  
21 processing or assembly, but only if all of such fuel or product is  
22 delivered on the manufacturing site and is consumed other than on the  
23 highways of this state. "Manufacturing gallonage" shall in no event  
24 include diesel motor fuel OR DYED DIESEL MOTOR FUEL delivered at a fill-  
25 ing station or into a repository [which] THAT is equipped with a hose or  
26 other apparatus by which such fuel can be dispensed into the fuel tank  
27 of a motor vehicle. The commissioner shall require such documentary  
28 proof to substantiate the classification of product as "manufacturing  
29 gallonage" as the commissioner deems appropriate.

30 S 5. Subdivision (j) of section 301-c of the tax law, as added by  
31 chapter 309 of the laws of 1996, is amended to read as follows:

32 (j) Reimbursement for manufacturing gallonage. Commencing January  
33 first, nineteen hundred ninety-eight, a subsequent purchaser shall be  
34 eligible for reimbursement of any taxes imposed under this article with  
35 respect to gallonage of residual petroleum product, DYED DIESEL MOTOR  
36 FUEL, and diesel motor fuel (which is not enhanced diesel motor fuel),  
37 subsequently sold by such purchaser to a consumer as "manufacturing  
38 gallonage." This reimbursement may be claimed only where (1) any tax  
39 imposed pursuant to this article has been paid with respect to such  
40 gallonage and the entire amount of such tax has been absorbed by such  
41 purchaser, and (2) such purchaser possesses documentary proof satisfac-  
42 tory to the commissioner evidencing the absorption by it of the entire  
43 amount of such tax. Provided, however, that the commissioner shall  
44 require such documentary proof to qualify for any reimbursement of tax  
45 provided by this subdivision as the commissioner deems appropriate  
46 including a certificate by the consumer that such product is to be used  
47 and consumed exclusively as "manufacturing gallonage".

48 S 6. This act shall take effect on the first day of the sales tax  
49 quarterly period, as described in subdivision (b) of section 1136 of the  
50 tax law, next commencing at least ninety days after this act becomes a  
51 law; provided, however, that registered distributors of Diesel motor  
52 fuel may apply for direct payment permits thirty days after this act  
53 becomes a law.