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

March 9, 2010

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

AN ACT to amend the tax law, in relation to issuing coupons for tax exempt fuel sales on Indian reservations

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

Section 1. Paragraph (b) of subdivision 1 and paragraph (d) of subdivision 3 of section 284-e of the tax law, as added by section 4 of part K of chapter 61 of the laws of 2005, are amended and a new subdivision 6 is added to read as follows:

(b) In order to ensure an adequate quantity of motor fuel and Diesel motor fuel on Indian reservations which may be purchased by qualified Indians exempt from the motor fuel tax and Diesel motor fuel tax, the department shall provide Indian nations and tribes within this state with Indian tax exemption coupons as set forth in this section, AND SHALL PROVIDE SUCH COUPONS NO LATER THAN SIXTY DAYS AFTER THIS ACT SHALL HAVE BECOME A LAW. A reservation motor fuel seller shall be able to present such Indian tax exemption coupons to a distributor licensed pursuant to this article in order to purchase motor fuel or Diesel motor fuel exempt from the imposition of the motor fuel tax or Diesel motor fuel tax. Qualified Indians may purchase motor fuel or Diesel motor fuel from a reservation motor fuel seller exempt from the motor fuel tax or Diesel motor fuel tax even though the motor fuel tax or Diesel motor fuel tax on such motor fuel or Diesel motor fuel will have been previously paid or assumed by, or passed through to such distributor.

(d) [A] UPON ISSUANCE OF THE COUPONS, BUT NO LATER THAN SIXTY DAYS AFTER THIS ACT SHALL HAVE BECOME A LAW, A DISTRIBUTOR SHALL SELL ONLY MOTOR FUEL OR DIESEL MOTOR FUEL UPON WHICH THE MOTOR FUEL TAX OR DIESEL MOTOR FUEL TAX HAS BEEN PREVIOUSLY PAID OR ASSUMED BY SUCH DISTRIBUTOR TO INDIAN NATIONS OR TRIBES OR TO RESERVATION MOTOR FUEL SELLERS AND OTHER PURCHASERS, BUT A distributor shall not collect or pass through, as the case may be, the motor fuel tax or Diesel motor fuel tax from any purchaser to the extent the purchaser gives such distributor Indian tax exemption coupons entitling the purchaser to purchase such quantities of

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

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motor fuel or Diesel motor fuel as allowed for on each such Indian tax exemption coupon without paying the motor fuel tax or Diesel motor fuel tax.

6. FAILURE TO ISSUE COUPONS OR DELAY. (A) THE FAILURE OF THE DEPARTMENT TO ISSUE COUPONS AS PRESCRIBED BY THIS SECTION OR TO ISSUE ANY OTHER IMPLEMENTING REGULATIONS OR GUIDANCE SHALL NOT RELIEVE DISTRIBUTORS OF THE OBLIGATION TO SELL ONLY MOTOR FUEL OR DIESEL MOTOR FUEL ON WHICH THE MOTOR FUEL TAX OR DIESEL MOTOR FUEL TAX HAS BEEN PREVIOUSLY PAID OR ASSUMED BY SUCH DISTRIBUTORS TO INDIAN NATIONS OR TRIBES OR TO RESERVATION MOTOR FUEL SELLERS AS OF THE SIXTIETH DAY AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION. IN THE EVENT THAT THE DEPARTMENT FAILS TO ISSUE COUPONS AS PRESCRIBED BY THIS SECTION, AN INDIAN NATION OR TRIBE, A DISTRIBUTOR REGISTERED PURSUANT TO THIS ARTICLE, OR OTHER INTERESTED PARTY MAY BRING AN ACTION FOR INJUNCTIVE RELIEF DIRECTING THE DEPARTMENT TO ISSUE THE PRESCRIBED COUPONS.

(B) FOR MOTOR FUEL AND DIESEL MOTOR FUEL SOLD TO INDIAN NATIONS, TRIBES OR TO RESERVATION MOTOR FUEL SELLERS BETWEEN SIXTY DAYS AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION AND SUCH DATE THAT THE DEPARTMENT ISSUES THE PRESCRIBED COUPONS, A NATION, TRIBE OR RESERVATION MOTOR FUEL SELLER SHALL BE ENTITLED TO A REFUND FROM THE DEPARTMENT FOR TAXES PAID UNDER THIS ARTICLE ON THE QUANTITIES OF MOTOR FUEL OR DIESEL MOTOR FUEL SOLD OR DISTRIBUTED TO QUALIFIED INDIANS OF THE SELLER'S OWN TRIBE FOR TRIBAL PURPOSES OR FOR PERSONAL CONSUMPTION. SUCH REFUND SHALL BE PAID THIRTY DAYS FOLLOWING SUBMISSION OF AN APPLICATION FOR A REFUND. THE FAILURE OF THE DEPARTMENT TO ISSUE REFUNDS OR TAKE OTHER ADMINISTRATIVE ACTIONS FOR THE ISSUANCE OF REFUNDS SHALL NOT RELIEVE DISTRIBUTORS OF THE OBLIGATION TO COMPLY WITH THIS SECTION, BUT SHALL ENTITLE A PERSON WITH A CLAIM FOR A REFUND TO FILE AN ACTION FOR INJUNCTIVE RELIEF DIRECTING THE DEPARTMENT TO ISSUE REFUNDS AS REQUIRED HEREIN.

S 2. This act shall take effect on the sixtieth day after it shall have become a law.