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

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2009-2010 Regular Sessions

I N A S S E M B L Y

January 14, 2009

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

AN ACT to amend the tax law, in relation to providing an exemption from the payment of the motor fuels tax and the sales tax on motor fuels used in the operation of commercial fishing vessels

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

Section 1. Legislative findings and declarations. The legislature hereby finds that commercial fishermen are exempt from the motor fuels tax and the sales tax on diesel motor fuels when such fuels are to be used in commercial fishing vessels. The legislature further finds that the tax law requires commercial fishermen to pay said taxes at the time of purchase of the diesel motor fuel and apply for a subsequent refund of the taxes. The legislature further finds that such commercial fishermen endure an administrative and financial burden as a result of such law.

The legislature, therefore, declares that it is in the interest of the commercial fishing industry of the state of New York to extend the exemption from the taxes to the exemption of the payment of the taxes, and consequently remove the burden placed upon this industry.

S 2. Paragraph (b) of subdivision 3 of section 282-a of the tax law, as amended by chapter 245 of the laws of 1989, is amended to read as follows:

(b) The tax on the incident of sale or use imposed by subdivision one of this section shall not apply to: (i) the sale to or use by the consumer of previously untaxed Diesel motor fuel which is not enhanced Diesel motor fuel and which is used exclusively for heating purposes or for the purpose of use or consumption directly and exclusively in the production of tangible personal property, gas, electricity, refrigeration or steam, for sale, but only if all of such fuel is consumed other than on the highways of this state; provided, however, this exemption

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

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shall in no event apply to a sale of Diesel motor fuel which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle; or (ii) the sale of previously untaxed Diesel motor fuel which is not enhanced Diesel motor fuel to a person registered under this article as a distributor of Diesel motor fuel other than (A) a retail sale to such person or (B) a sale to such person which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle; or (iii) a sale or use of enhanced Diesel motor fuel to or by a consumer exclusively for the purposes of heating specified in subparagraph (i) of this paragraph but only if such enhanced 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, provided that each delivery of such fuel of over four thousand five hundred gallons shall be evidenced by a certificate signed by the purchaser stating that the product will be used exclusively for heating purposes; or (iv) a sale or use consisting of no more than four thousand five hundred gallons of Diesel motor fuel in a thirty-day period to or by a consumer who purchases or uses such fuel for use or consumption directly and exclusively in the production for sale of tangible personal property by farming but only if all of such fuel is delivered on the farm site and is consumed other than on the highways of this state (except for the use of the highway to reach adjacent farmlands) provided, however, a farmer may purchase more than four thousand five hundred gallons of Diesel motor fuel in a thirty-day period for such use or consumption exempt from the tax in accordance with prior clearance given by the commissioner [of taxation and finance]; or (v) a sale to the consumer consisting of not more than twenty gallons of water-white kerosene to be used and consumed exclusively for heating purposes; or (vi) the sale to or delivery at a filling station or other retail vendor of water-white kerosene provided such filling station or other retail vendor only sells such water-white kerosene exclusively for heating purposes in containers of no more than twenty gallons; or (vii) a sale of kero-jet fuel to an airline for use in its airplanes or a use of kero-jet fuel by an airline in its airplanes; or (viii) a sale of kero-jet fuel by a registered distributor of Diesel motor fuel to a fixed base operator registered under this article 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; or (ix) a retail sale not in bulk of kero-jet fuel by a fixed base operator registered under this article as a distributor of kero-jet fuel only where such fuel is delivered directly into the fuel tank of an airplane for use in the operation of such airplane; OR (X) A SALE OF DIESEL MOTOR FUEL TO A "COMMERCIAL FISHERMAN", AS SUCH TERM IS DEFINED IN SUBDIVISION (I) OF SECTION THREE HUNDRED OF THIS CHAPTER, AT RETAIL UNDER THE CIRCUMSTANCES SET FORTH IN PARAGRAPH ONE OF SUBDIVISION (G) OF SECTION THREE HUNDRED ONE-C OF THIS CHAPTER, AND WHERE SUCH COMMERCIAL FISHING VESSEL IS OPERATED BY A COMMERCIAL FISHERMAN.

S 3. Subdivision 4 of section 282-a of the tax law, as added by chapter 261 of the laws of 1988, is amended to read as follows:

4. The tax imposed by this section on Diesel motor fuel shall be passed through by the seller and included as part of the selling price

to each purchaser of such fuel. Provided, however, the amount of the tax imposed by this section may be excluded from the selling price of Diesel motor fuel where (i) a sale of Diesel motor fuel is made to an organization described in paragraph (a) of subdivision three of this section solely for the purpose stated therein; (ii) a sale of enhanced Diesel motor fuel is made to a consumer exclusively for the purposes of heating specified in subparagraph (i) of paragraph (b) of subdivision three of this section but only if such enhanced 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, provided that each delivery of such fuel of over four thousand five hundred gallons shall be evidenced by a certificate signed by the purchaser stating that the product will be used exclusively for heating purposes; (iii) a sale is made consisting of no more than four thousand five hundred gallons (or a greater amount which has been given prior clearance by the commissioner [of taxation and finance]) of Diesel motor fuel in a thirty-day period to a consumer who purchases such fuel for use or consumption directly and exclusively in the production for sale of tangible personal property by farming but only if all of such fuel is consumed other than on the highways or waterways of this state; or (iv) the sale to or delivery at a filling station or other retail vendor of water-white kerosene provided such filling station or other retail vendor only sells such water-white kerosene exclusively for heating purposes in containers of no more than twenty gallons; or (v) a sale of kero-jet fuel is made to an airline for use in its airplanes; OR (VI) A SALE OF DIESEL MOTOR FUEL IS MADE TO A "COMMERCIAL FISHERMAN", AS SUCH TERM IS DEFINED IN SUBDIVISION (I) OF SECTION THREE HUNDRED OF THIS CHAPTER, AT RETAIL UNDER THE CIRCUMSTANCES SET FORTH IN PARAGRAPH ONE OF SUBDIVISION (G) OF SECTION THREE HUNDRED ONE-C OF THIS CHAPTER, AND WHERE SUCH COMMERCIAL FISHING VESSEL IS OPERATED BY A COMMERCIAL FISHERMAN.

S 4. Section 301-b of the tax law is amended by adding a new subdivision (k) to read as follows:

(K) SALES OR USES OF DIESEL MOTOR FUEL AND RESIDUAL PETROLEUM PRODUCT FOR COMMERCIAL FISHING. DIESEL MOTOR FUEL OR RESIDUAL PETROLEUM PRODUCT SOLD TO OR USED BY A "COMMERCIAL FISHERMAN", AS SUCH TERM IS DEFINED IN SUBDIVISION (I) OF SECTION THREE HUNDRED OF THIS ARTICLE, AT RETAIL UNDER THE CIRCUMSTANCES SET FORTH IN PARAGRAPH ONE OF SUBDIVISION (G) OF SECTION THREE HUNDRED ONE-C OF THIS ARTICLE, AND WHERE SUCH COMMERCIAL FISHING VESSEL IS OPERATED BY A COMMERCIAL FISHERMAN.

S 4-a. Subdivision (j) of section 1115 of the tax law, as amended by section 12 of part W-1 of chapter 109 of the laws of 2006, 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 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 AND EXCEPT THAT THE EXEMPTION PROVIDED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A) OF THIS SECTION SHALL APPLY TO THE TAXES IMPOSED BY SECTIONS ELEVEN HUNDRED FIVE AND ELEVEN HUNDRED TEN OF THIS ARTICLE WITH RESPECT TO SALES AND USES OF DIESEL MOTOR FUEL USED IN THE OPERATION OF A FISHING VESSEL AS DESCRIBED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A) OF THIS SECTION. The exemption provided in subdivision (c) of this section shall apply to sales and uses of diesel motor fuel which is not enhanced diesel motor fuel but only if all of such fuel is consumed other than on the highways of this state, provided, however, this exemption shall in no event apply to a sale of diesel motor fuel which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle. The exemption provided in subdivision (c) of this section shall apply to sales and uses of no more than four thousand five hundred gallons of diesel motor fuel in a thirty-day period 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 highways of this state (except for the use of the highways to reach adjacent farmlands or adjacent lands used in a commercial horse boarding operation, or both), provided, however, such exemption shall be applicable to the sale or use of more than four thousand five hundred gallons of diesel motor fuel in a thirty-day period for such use or consumption in accordance with a prior clearance given by the commissioner.

S 5. Subdivision (j) of section 1115 of the tax law, as amended by section 8 of part B of chapter 63 of the laws of 2000, 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 AND EXCEPT THAT THE EXEMPTION PROVIDED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A) OF THIS SECTION SHALL APPLY TO THE TAXES IMPOSED BY SECTIONS ELEVEN HUNDRED FIVE AND ELEVEN HUNDRED TEN OF THIS ARTICLE WITH RESPECT TO SALES AND USES OF DIESEL MOTOR FUEL USED IN THE OPERATION OF A FISHING VESSEL AS DESCRIBED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A) OF THIS SECTION. The exemption provided in subdivision (c) of this section shall apply to sales and uses of diesel motor fuel which is not enhanced diesel motor fuel but only if all of such fuel is consumed other than on the highways of this state, provided, however, this exemption shall in no event apply to a sale of diesel motor fuel which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle. The exemption provided in subdivision (c) of this section shall apply to sales and uses of no more than four thousand five hundred gallons of diesel motor fuel in a thirty-day period 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 highways of this state (except for the use of the highways to reach adjacent farmlands or adjacent lands used in a commercial horse boarding operation, or both), provided, however, such exemption shall be applicable to the sale or use of more than four thousand five hundred gallons of diesel motor fuel in a thirty-day period for such use or consumption in accordance with a prior clearance given by the commissioner.

S 6. This act shall take effect on the first day of a sales tax quarterly period, as described in subdivision (b) of section 1136 of the tax law, next commencing at least ninety days after this act shall have become a law, and sections four-a and five of this act shall apply to sales made under and uses occurring on or after the dates such sections four-a and five shall have taken effect, respectively, although made or occurring under a prior contract, provided that the amendments to subdivision (j) of section 1115 of the tax law made by section four-a 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 five of this act shall take effect.