

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

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings and declarations. The legislature
2 hereby finds that commercial fishermen are exempt from the motor fuels
3 tax and the sales tax on diesel motor fuels when such fuels are to be
4 used in commercial fishing vessels. The legislature further finds that
5 the tax law requires commercial fishermen to pay said taxes at the time
6 of purchase of the diesel motor fuel and apply for a subsequent refund
7 of the taxes. The legislature further finds that such commercial fisher-
8 men endure an administrative and financial burden as a result of such
9 law.
10 The legislature, therefore, declares that it is in the interest of the
11 commercial fishing industry of the state of New York to extend the
12 exemption from the taxes to the exemption of the payment of the taxes,
13 and consequently remove the burden placed upon this industry.
14 S 2. Paragraph (b) of subdivision 3 of section 282-a of the tax law,
15 as amended by chapter 245 of the laws of 1989, is amended to read as
16 follows:
17 (b) The tax on the incident of sale or use imposed by subdivision one
18 of this section shall not apply to: (i) the sale to or use by the
19 consumer of previously untaxed Diesel motor fuel which is not enhanced
20 Diesel motor fuel and which is used exclusively for heating purposes or
21 for the purpose of use or consumption directly and exclusively in the
22 production of tangible personal property, gas, electricity, refriger-
23 ation or steam, for sale, but only if all of such fuel is consumed other
24 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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1 shall in no event apply to a sale of Diesel motor fuel which involves a
2 delivery at a filling station or into a repository which is equipped
3 with a hose or other apparatus by which such fuel can be dispensed into
4 the fuel tank of a motor vehicle; or (ii) the sale of previously untaxed
5 Diesel motor fuel which is not enhanced Diesel motor fuel to a person
6 registered under this article as a distributor of Diesel motor fuel
7 other than (A) a retail sale to such person or (B) a sale to such person
8 which involves a delivery at a filling station or into a repository
9 which is equipped with a hose or other apparatus by which such fuel can
10 be dispensed into the fuel tank of a motor vehicle; or (iii) a sale or
11 use of enhanced Diesel motor fuel to or by a consumer exclusively for
12 the purposes of heating specified in subparagraph (i) of this paragraph
13 but only if such enhanced Diesel motor fuel is delivered into a storage
14 tank which is not equipped with a hose or other apparatus by which such
15 fuel can be dispensed into the fuel tank of a motor vehicle and such
16 storage tank is attached to the heating unit burning such fuel, provided
17 that each delivery of such fuel of over four thousand five hundred
18 gallons shall be evidenced by a certificate signed by the purchaser
19 stating that the product will be used exclusively for heating purposes;
20 or (iv) a sale or use consisting of no more than four thousand five
21 hundred gallons of Diesel motor fuel in a thirty-day period to or by a
22 consumer who purchases or uses such fuel for use or consumption directly
23 and exclusively in the production for sale of tangible personal property
24 by farming but only if all of such fuel is delivered on the farm site
25 and is consumed other than on the highways of this state (except for the
26 use of the highway to reach adjacent farmlands) provided, however, a
27 farmer may purchase more than four thousand five hundred gallons of
28 Diesel motor fuel in a thirty-day period for such use or consumption
29 exempt from the tax in accordance with prior clearance given by the
30 commissioner [of taxation and finance]; or (v) a sale to the consumer
31 consisting of not more than twenty gallons of water-white kerosene to be
32 used and consumed exclusively for heating purposes; or (vi) the sale to
33 or delivery at a filling station or other retail vendor of water-white
34 kerosene provided such filling station or other retail vendor only sells
35 such water-white kerosene exclusively for heating purposes in containers
36 of no more than twenty gallons; or (vii) a sale of kero-jet fuel to an
37 airline for use in its airplanes or a use of kero-jet fuel by an airline
38 in its airplanes; or (viii) a sale of kero-jet fuel by a registered
39 distributor of Diesel motor fuel to a fixed base operator registered
40 under this article as a distributor of kero-jet fuel only where such
41 fixed base operator is engaged solely in making or offering to make
42 retail sales not in bulk of kero-jet fuel directly into the fuel tank of
43 an airplane for the purpose of operating such airplane; or (ix) a retail
44 sale not in bulk of kero-jet fuel by a fixed base operator registered
45 under this article as a distributor of kero-jet fuel only where such
46 fuel is delivered directly into the fuel tank of an airplane for use in
47 the operation of such airplane; OR (X) A SALE OF DIESEL MOTOR FUEL TO A
48 "COMMERCIAL FISHERMAN", AS SUCH TERM IS DEFINED IN SUBDIVISION (I) OF
49 SECTION THREE HUNDRED OF THIS CHAPTER, AT RETAIL UNDER THE CIRCUMSTANCES
50 SET FORTH IN PARAGRAPH ONE OF SUBDIVISION (G) OF SECTION THREE HUNDRED
51 ONE-C OF THIS CHAPTER, AND WHERE SUCH COMMERCIAL FISHING VESSEL IS OPER-
52 ATED BY A COMMERCIAL FISHERMAN.

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

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

1 to each purchaser of such fuel. Provided, however, the amount of the tax
2 imposed by this section may be excluded from the selling price of Diesel
3 motor fuel where (i) a sale of Diesel motor fuel is made to an organiza-
4 tion described in paragraph (a) of subdivision three of this section
5 solely for the purpose stated therein; (ii) a sale of enhanced Diesel
6 motor fuel is made to a consumer exclusively for the purposes of heating
7 specified in subparagraph (i) of paragraph (b) of subdivision three of
8 this section but only if such enhanced Diesel motor fuel is delivered
9 into a storage tank which is not equipped with a hose or other apparatus
10 by which such fuel can be dispensed into the fuel tank of a motor vehi-
11 cle and such storage tank is attached to the heating unit burning such
12 fuel, provided that each delivery of such fuel of over four thousand
13 five hundred gallons shall be evidenced by a certificate signed by the
14 purchaser stating that the product will be used exclusively for heating
15 purposes; (iii) a sale is made consisting of no more than four thousand
16 five hundred gallons (or a greater amount which has been given prior
17 clearance by the commissioner [of taxation and finance]) of Diesel motor
18 fuel in a thirty-day period to a consumer who purchases such fuel for
19 use or consumption directly and exclusively in the production for sale
20 of tangible personal property by farming but only if all of such fuel is
21 consumed other than on the highways or waterways of this state; or (iv)
22 the sale to or delivery at a filling station or other retail vendor of
23 water-white kerosene provided such filling station or other retail
24 vendor only sells such water-white kerosene exclusively for heating
25 purposes in containers of no more than twenty gallons; or (v) a sale of
26 kero-jet fuel is made to an airline for use in its airplanes; OR (VI) A
27 SALE OF DIESEL MOTOR FUEL IS MADE TO A "COMMERCIAL FISHERMAN", AS SUCH
28 TERM IS DEFINED IN SUBDIVISION (I) OF SECTION THREE HUNDRED OF THIS
29 CHAPTER, AT RETAIL UNDER THE CIRCUMSTANCES SET FORTH IN PARAGRAPH ONE OF
30 SUBDIVISION (G) OF SECTION THREE HUNDRED ONE-C OF THIS CHAPTER, AND
31 WHERE SUCH COMMERCIAL FISHING VESSEL IS OPERATED BY A COMMERCIAL FISHER-
32 MAN.

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

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

42 S 4-a. Subdivision (j) of section 1115 of the tax law, as amended by
43 section 12 of part W-1 of chapter 109 of the laws of 2006, is amended to
44 read as follows:

45 (j) The exemptions provided in this section shall not apply to the tax
46 required to be prepaid pursuant to the provisions of section eleven
47 hundred two of this article nor to the taxes imposed by sections eleven
48 hundred five and eleven hundred ten of this article with respect to
49 receipts from sales and uses of motor fuel or diesel motor fuel, except
50 that the exemptions provided in paragraphs nine and forty-two of subdivi-
51 sion (a) of this section shall apply to the tax required to be prepaid
52 pursuant to the provisions of section eleven hundred two of this article
53 and to the taxes imposed by sections eleven hundred five and eleven
54 hundred ten of this article with respect to sales and uses of kero-jet
55 fuel, CNG, hydrogen and E85, provided, however, the exemption allowed
56 for E85 shall be subject to the additional requirements provided in

1 section eleven hundred two of this article with respect to E85 AND
2 EXCEPT THAT THE EXEMPTION PROVIDED IN PARAGRAPH TWENTY-FOUR OF SUBDIVI-
3 SION (A) OF THIS SECTION SHALL APPLY TO THE TAXES IMPOSED BY SECTIONS
4 ELEVEN HUNDRED FIVE AND ELEVEN HUNDRED TEN OF THIS ARTICLE WITH RESPECT
5 TO SALES AND USES OF DIESEL MOTOR FUEL USED IN THE OPERATION OF A FISH-
6 ING VESSEL AS DESCRIBED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A) OF
7 THIS SECTION. The exemption provided in subdivision (c) of this section
8 shall apply to sales and uses of diesel motor fuel which is not enhanced
9 diesel motor fuel but only if all of such fuel is consumed other than on
10 the highways of this state, provided, however, this exemption shall in
11 no event apply to a sale of diesel motor fuel which involves a delivery
12 at a filling station or into a repository which is equipped with a hose
13 or other apparatus by which such fuel can be dispensed into the fuel
14 tank of a motor vehicle. The exemption provided in subdivision (c) of
15 this section shall apply to sales and uses of no more than four thousand
16 five hundred gallons of diesel motor fuel in a thirty-day period for use
17 or consumption either in the production for sale of tangible personal
18 property by farming or in a commercial horse boarding operation, or in
19 both but only if all of such fuel is consumed other than on the highways
20 of this state (except for the use of the highways to reach adjacent
21 farmlands or adjacent lands used in a commercial horse boarding opera-
22 tion, or both), provided, however, such exemption shall be applicable to
23 the sale or use of more than four thousand five hundred gallons of
24 diesel motor fuel in a thirty-day period for such use or consumption in
25 accordance with a prior clearance given by the commissioner.

26 S 5. Subdivision (j) of section 1115 of the tax law, as amended by
27 section 8 of part B of chapter 63 of the laws of 2000, is amended to
28 read as follows:

29 (j) The exemptions provided in this section shall not apply to the tax
30 required to be prepaid pursuant to the provisions of section eleven
31 hundred two of this article nor to the taxes imposed by sections eleven
32 hundred five and eleven hundred ten of this article with respect to
33 receipts from sales and uses of motor fuel or diesel motor fuel, except
34 that the exemption provided in paragraph nine of subdivision (a) of this
35 section shall apply to the tax required to be prepaid pursuant to the
36 provisions of section eleven hundred two of this article and to the
37 taxes imposed by sections eleven hundred five and eleven hundred ten of
38 this article with respect to sales and uses of kero-jet fuel AND EXCEPT
39 THAT THE EXEMPTION PROVIDED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A)
40 OF THIS SECTION SHALL APPLY TO THE TAXES IMPOSED BY SECTIONS ELEVEN
41 HUNDRED FIVE AND ELEVEN HUNDRED TEN OF THIS ARTICLE WITH RESPECT TO
42 SALES AND USES OF DIESEL MOTOR FUEL USED IN THE OPERATION OF A FISHING
43 VESSEL AS DESCRIBED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A) OF THIS
44 SECTION. The exemption provided in subdivision (c) of this section shall
45 apply to sales and uses of diesel motor fuel which is not enhanced
46 diesel motor fuel but only if all of such fuel is consumed other than on
47 the highways of this state, provided, however, this exemption shall in
48 no event apply to a sale of diesel motor fuel which involves a delivery
49 at a filling station or into a repository which is equipped with a hose
50 or other apparatus by which such fuel can be dispensed into the fuel
51 tank of a motor vehicle. The exemption provided in subdivision (c) of
52 this section shall apply to sales and uses of no more than four thousand
53 five hundred gallons of diesel motor fuel in a thirty-day period for use
54 or consumption either in the production for sale of tangible personal
55 property by farming or in a commercial horse boarding operation, or in
56 both but only if all of such fuel is consumed other than on the highways

1 of this state (except for the use of the highways to reach adjacent
2 farmlands or adjacent lands used in a commercial horse boarding opera-
3 tion, or both), provided, however, such exemption shall be applicable to
4 the sale or use of more than four thousand five hundred gallons of
5 diesel motor fuel in a thirty-day period for such use or consumption in
6 accordance with a prior clearance given by the commissioner.
7 S 6. This act shall take effect on the first day of a sales tax quar-
8 terly period, as described in subdivision (b) of section 1136 of the tax
9 law, next commencing at least ninety days after this act shall have
10 become a law, and sections four-a and five of this act shall apply to
11 sales made under and uses occurring on or after the dates such sections
12 four-a and five shall have taken effect, respectively, although made or
13 occurring under a prior contract, provided that the amendments to subdivi-
14 sion (j) of section 1115 of the tax law made by section four-a of this
15 act shall be subject to the expiration and reversion of such subdivision
16 pursuant to section 19 of part W-1 of chapter 109 of the laws of 2006,
17 as amended, when upon such date the provisions of section five of this
18 act shall take effect.