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

1908

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 the tax on motor fuels and providing for the temporary exemption from state sales tax of motor fuel and diesel motor fuel

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

Section 1. Subdivision 1 of section 284 of the tax law, as amended by chapter 276 of the laws of 1986, is amended to read as follows:

1. There is hereby levied and imposed an excise tax of [four] THREE AND ONE-HALF cents per gallon upon motor fuel (a) imported into or caused to be imported into the state by a distributor for use, distribution, storage or sale in the state or upon motor fuel which is produced, refined, manufactured or compounded by a distributor in the state (which acts shall hereinafter in this subdivision be encompassed by the phrase "imported or manufactured") or (b) if the tax has not been imposed prior to its sale in this state, which is sold by a distributor (which act, in conjunction with the acts described in paragraph (a) of this subdivision, shall hereinafter in this article be encompassed by the phrase "imported, manufactured or sold"), except when imported, manufactured or sold under circumstances which preclude the collection of such tax by reason of the United States constitution and of laws of the United States enacted pursuant thereto or when imported or manufactured by an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter or a hospital included in the organizations described in paragraph four of such subdivision for its own use or consumption and except kero-jet fuel when imported or manufactured by an airline for use in its airplanes. Provided, further, no motor fuel shall be included in the measure of the tax unless it shall have previously come to rest within the meaning of federal decisional law interpreting the United States constitution. All

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

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tax for the period for which a return is required to be filed shall be due on the date limited for the filing of the return for such period, regardless of whether a return is filed by such distributor as required by this article or whether the return which is filed correctly shows the amount of tax due.

S 2. Section 284-a of the tax law, as amended by section 3 of part EE of chapter 63 of the laws of 2000, is amended to read as follows:

S 284-a. Additional motor fuel tax. In addition to the tax imposed by section two hundred eighty-four of this [chapter] ARTICLE, a like tax shall be imposed at the rate of [three] TWO AND FIVE-EIGHTHS cents per gallon upon motor fuel imported, manufactured or sold within this state by a distributor. Except as otherwise provided in this section, all the provisions of this article except subdivision two of section two hundred eighty-nine-e of this article shall apply with respect to the additional tax imposed by this section to the same extent as if it were imposed by said section two hundred eighty-four. [Beginning on April first, nineteen hundred ninety-one, four and one-sixth per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway reconditioning and preservation fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of section eighty-nine of the state finance law. Beginning on April first, nineteen hundred ninety-one, four and one-sixth per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway construction and reconstruction fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of section eighty-nine-a of the state finance law. Beginning on April first, nineteen hundred ninety-two, an additional eight and one-third per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway reconditioning and preservation fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of section eighty-nine of the state finance law. Beginning on April first, nineteen hundred ninety-two, an additional eight and one-third per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway construction and reconstruction fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of section eighty-nine-a of the state finance law. Beginning on April first, two thousand, seventy-five per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited in the dedicated fund accounts pursuant to subdivision (d) of section three hundred one-j of this chapter.] Beginning on April first, two thousand three, all of the moneys received by the department pursuant to the provisions of this section shall be deposited in the dedicated fund accounts pursuant to subdivision (d) of section three hundred one-j of this chapter.

S 3. Section 284-c of the tax law, as amended by section 4 of part EE of chapter 63 of the laws of 2000, is amended to read as follows:

S 284-c. Supplemental motor fuel tax. In addition to the taxes imposed by sections two hundred eighty-four and two hundred eighty-four-a of this [chapter] ARTICLE, a like tax shall be imposed at the rate of SEVEN-EIGHTHS OF one cent per gallon upon motor fuel imported, manufactured or sold within this state by a distributor. Except for paragraph (b) of subdivision three of section two hundred eighty-nine-c OF THIS ARTICLE, all the provisions of this article shall apply with respect to the supplemental tax imposed by this section to the same extent as if it were imposed by said section two hundred eighty-four. [On and after the first day of October, nineteen hundred seventy-two, twenty-five per centum of the monies received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway reconditioning and preservation fund established pursuant to the provisions of section eighty-nine of the state finance law. Beginning on April first, nineteen hundred eighty-three, twenty-five per centum of the monies received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway construction and reconstruction fund established pursuant to the provisions of section eighty-nine-a of the state finance law. Beginning on April first, nineteen hundred ninety, an additional twelve and one-half per centum of the monies received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway reconditioning and preservation fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of section eighty-nine of the state finance law. Beginning on April first, nineteen hundred ninety, an additional twelve and one-half per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway construction and reconstruction fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of section eighty-nine-a of the state finance law. Beginning on April first, nineteen hundred ninety-one, an additional twelve and one-half per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway reconditioning and preservation fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of section eighty-nine of the state finance law. Beginning on April first, nineteen hundred ninety-one, an additional twelve and one-half per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway construction and reconstruction fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of section eighty-nine-a of the state finance law.] Beginning on April first, two thousand three, all of the moneys received by the department pursuant to the provisions of this section shall be deposited in the dedicated fund accounts pursuant to subdivision (d) of section three hundred one-j of this chapter.

S 4. Subdivision 1 of section 284 of the tax law, as amended by section one of this act, is amended to read as follows:

1. There is hereby levied and imposed an excise tax of three [and one-half] cents per gallon upon motor fuel (a) imported into or caused to be imported into the state by a distributor for use, distribution, storage or sale in the state or upon motor fuel which is produced, refined, manufactured or compounded by a distributor in the state (which acts shall hereinafter in this subdivision be encompassed by the phrase "imported or manufactured") or (b) if the tax has not been imposed prior to its sale in this state, which is sold by a distributor (which act, in conjunction with the acts described in paragraph (a) of this subdivision, shall hereinafter in this article be encompassed by the phrase "imported, manufactured or sold"), except when imported, manufactured or sold under circumstances which preclude the collection of such tax by reason of the United States constitution and of laws of the United States enacted pursuant thereto or when imported or manufactured by an

organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter or a hospital included in the organizations described in paragraph four of such subdivision for its own use or consumption and except kero-jet fuel when imported or manufactured by an airline for use in its airplanes. Provided, further, no motor fuel shall be included in the measure of the tax unless it shall have previously come to rest within the meaning of federal decisional law interpreting the United States constitution. All tax for the period for which a return is required to be filed shall be due on the date limited for the filing of the return for such period, regardless of whether a return is filed by such distributor as required by this article or whether the return which is filed correctly shows the amount of tax due.

S 5. Section 284-a of the tax law, as amended by section two of this act, is amended to read as follows:

S 284-a. Additional motor fuel tax. In addition to the tax imposed by section two hundred eighty-four of this article, a like tax shall be imposed at the rate of two and [five-eighths] ONE-FOURTH cents per gallon upon motor fuel imported, manufactured or sold within this state by a distributor. Except as otherwise provided in this section, all the provisions of this article except subdivision two of section two hundred eighty-nine-e of this article shall apply with respect to the additional tax imposed by this section to the same extent as if it were imposed by said section two hundred eighty-four. Beginning on April first, two thousand three, all of the moneys received by the department pursuant to the provisions of this section shall be deposited in the dedicated fund accounts pursuant to subdivision (d) of section three hundred one-j of this chapter.

S 6. Section 284-c of the tax law, as amended by section three of this act, is amended to read as follows:

S 284-c. Supplemental motor fuel tax. In addition to the taxes imposed by sections two hundred eighty-four and two hundred eighty-four-a of this article, a like tax shall be imposed at the rate of [seven-eighths] THREE-FOURTHS of one cent per gallon upon motor fuel imported, manufactured or sold within this state by a distributor. Except for paragraph (b) of subdivision three of section two hundred eighty-nine-c of this article, all the provisions of this article shall apply with respect to the supplemental tax imposed by this section to the same extent as if it were imposed by said section two hundred eighty-four. Beginning on April first, two thousand three, all of the moneys received by the department pursuant to the provisions of this section shall be deposited in the dedicated fund accounts pursuant to subdivision (d) of section three hundred one-j of this chapter.

S 7. Subdivision 1 of section 284 of the tax law, as amended by section four of this act, is amended to read as follows:

1. There is hereby levied and imposed an excise tax of [three] TWO cents per gallon upon motor fuel (a) imported into or caused to be imported into the state by a distributor for use, distribution, storage or sale in the state or upon motor fuel which is produced, refined, manufactured or compounded by a distributor in the state (which acts shall hereinafter in this subdivision be encompassed by the phrase "imported or manufactured") or (b) if the tax has not been imposed prior to its sale in this state, which is sold by a distributor (which act, in conjunction with the acts described in paragraph (a) of this subdivision, shall hereinafter in this article be encompassed by the phrase "imported, manufactured or sold"), except when imported, manufactured or

sold under circumstances which preclude the collection of such tax by reason of the United States constitution and of laws of the United States enacted pursuant thereto or when imported or manufactured by an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter or a hospital included in the organizations described in paragraph four of such subdivision for its own use or consumption and except kero-jet fuel when imported or manufactured by an airline for use in its airplanes. Provided, further, no motor fuel shall be included in the measure of the tax unless it shall have previously come to rest within the meaning of federal decisional law interpreting the United States constitution. All tax for the period for which a return is required to be filed shall be due on the date limited for the filing of the return for such period, regardless of whether a return is filed by such distributor as required by this article or whether the return which is filed correctly shows the amount of tax due.

S 8. Section 284-a of the tax law, as amended by section five of this act, is amended to read as follows:

S 284-a. Additional motor fuel tax. In addition to the tax imposed by section two hundred eighty-four of this article, a like tax shall be imposed at the rate of [two and one-fourth] ONE AND ONE-HALF cents per gallon upon motor fuel imported, manufactured or sold within this state by a distributor. Except as otherwise provided in this section, all the provisions of this article except subdivision two of section two hundred eighty-nine-e of this article shall apply with respect to the additional tax imposed by this section to the same extent as if it were imposed by said section two hundred eighty-four. Beginning on April first, two thousand three, all of the moneys received by the department pursuant to the provisions of this section shall be deposited in the dedicated fund accounts pursuant to subdivision (d) of section three hundred one-j of this chapter.

S 9. Section 284-c of the tax law, as amended by section six of this act, is amended to read as follows:

S 284-c. Supplemental motor fuel tax. In addition to the taxes imposed by sections two hundred eighty-four and two hundred eighty-four-a of this article, a like tax shall be imposed at the rate of [three-fourths] ONE-HALF of one cent per gallon upon motor fuel imported, manufactured or sold within this state by a distributor. Except for paragraph (b) of subdivision three of section two hundred eighty-nine-c of this article, all the provisions of this article shall apply with respect to the supplemental tax imposed by this section to the same extent as if it were imposed by said section two hundred eighty-four. Beginning on April first, two thousand three, all of the moneys received by the department pursuant to the provisions of this section shall be deposited in the dedicated fund accounts pursuant to subdivision (d) of section three hundred one-j of this chapter.

S 10. Subdivision (b) of section 1107 of the tax law is amended by adding a new clause 12 to read as follows:

(12) EXCEPT AS OTHERWISE PROVIDED BY LAW, THE EXEMPTION PROVIDED IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS ARTICLE RELATING TO MOTOR FUEL AND DIESEL MOTOR FUEL SHALL NOT APPLY.

S 11. Subdivision (a) of section 1115 of the tax law is amended by adding a new paragraph 44 to read as follows:

(44) FOR THE PERIOD COMMENCING MAY THIRTY-FIRST, TWO THOUSAND TEN, AND ENDING SEPTEMBER SIXTH, TWO THOUSAND TEN, MOTOR FUEL AND DIESEL MOTOR FUEL.

S 12. Subparagraph (i) of paragraph 1 of subdivision (a) of section 1210 of the tax law, as amended by section 4 of part SS-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(i) Either, all of the taxes described in article twenty-eight of this chapter, at the same uniform rate, as to which taxes all provisions of the local laws, ordinances or resolutions imposing such taxes shall be identical, except as to rate and except as otherwise provided, with the corresponding provisions in such article twenty-eight, including the definition and exemption provisions of such article, so far as the provisions of such article twenty-eight can be made applicable to the taxes imposed by such city or county and with such limitations and special provisions as are set forth in this article. The taxes authorized under this subdivision may not be imposed by a city or county unless the local law, ordinance or resolution imposes such taxes so as to include all portions and all types of receipts, charges or rents, subject to state tax under sections eleven hundred five and eleven hundred ten of this chapter, except as otherwise provided. Any local law, ordinance or resolution enacted by any city of less than one million or by any county or school district, imposing the taxes authorized by this subdivision, shall, notwithstanding any provision of law to the contrary, exclude from the operation of such local taxes all sales of tangible personal property for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam, for sale, by manufacturing, processing, generating, assembly, refining, mining or extracting; and all sales of tangible personal property for use or consumption predominantly either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both; and, unless such city, county or school district elects otherwise, shall omit the provision for credit or refund contained in clause six of subdivision (a) of section eleven hundred nineteen of this chapter. Any local law, ordinance or resolution enacted by any city, county or school district, imposing the taxes authorized by this subdivision, shall omit the residential solar energy systems equipment exemption provided for in subdivision (ee), the clothing and footwear exemption provided for in paragraph thirty of subdivision (a) and the qualified empire zone enterprise exemptions provided for in subdivision (z) of section eleven hundred fifteen of this chapter, unless such city, county or school district elects otherwise as to either such residential solar energy systems equipment exemption or such clothing and footwear exemption or such qualified empire zone enterprise exemptions; provided that if such a city having a population of one million or more in which the taxes imposed by section eleven hundred seven of this chapter are in effect enacts the resolution described in subdivision (k) of this section or repeals such resolution or enacts the resolution described in subdivision (l) of this section or repeals such resolution or enacts the resolution described in subdivision (n) of this section or repeals such resolution, such resolution or repeal shall also be deemed to amend any local law, ordinance or resolution enacted by such a city imposing such taxes pursuant to the authority of this subdivision, whether or not such taxes are suspended at the time such city enacts its resolution pursuant to subdivision (k), (l) or (n) of this section or at the time of any such repeal; provided, further, that any such local law, ordinance or resolution and section eleven hundred seven of this chapter, as deemed to be amended in the event a city of one million or more enacts a resolution pursuant to the authority of subdivision (k), (l) or (n) of this section, shall be further amended, as provided in section twelve hundred eighteen of this subpart, so that the residential solar energy systems equipment exemption or the clothing and footwear exemption or the qualified empire zone enterprise exemptions in any such local law, ordinance or resolution or in such section eleven hundred seven are the same, as the case may be, as the residential solar energy systems equipment exemption provided for in subdivision (ee), the clothing and footwear exemption in paragraph thirty of subdivision (a) or the qualified empire zone enterprise exemptions in subdivision (z) of section eleven hundred fifteen of this chapter. EXCEPT AS OTHERWISE PROVIDED BY LAW, ANY LOCAL LAW, ORDINANCE OR RESOLUTION ENACTED BY ANY CITY OF LESS THAN ONE MILLION OR BY ANY COUNTY OR SCHOOL DISTRICT, IMPOSING THE TAXES AUTHORIZED BY THIS SUBDIVISION, SHALL OMIT THE MOTOR FUEL AND DIESEL MOTOR FUEL EXEMPTION PROVIDED FOR IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN.

S 13. Notwithstanding any other provision of state or local law, ordinance or resolution to the contrary: (a) any city, county or school district imposing sales and compensating use taxes pursuant to the authority of subpart B of part one of article 29 of the tax law, acting through its local legislative body, is hereby authorized and empowered to elect to provide the exemption from such taxes for the same motor fuel and diesel motor fuel exempt from state sales and compensating use taxes described in paragraph 44 of subdivision (a) of section 1115 of the tax law, for the period commencing May 31, 2010, and ending September 6, 2010, whether such taxes are imposed by local law, ordinance or resolution, by enacting a resolution in the form set forth in subdivision (c) of this section; whereupon, upon compliance with the provisions of subdivision (d) of this section, such enactment of such resolution shall be deemed to amend such local law, ordinance or resolution imposing such taxes, and such local law, ordinance or resolution shall be deemed to incorporate such exemption for such period.

(b) Any city of one million or more in which the taxes imposed by section 1107 of the tax law are in effect, acting through its local legislative body, is hereby authorized and empowered to elect to provide the exemption from such taxes for the same motor fuel and diesel motor fuel exempt from state sales tax and compensating use taxes described in paragraph 44 of subdivision (a) of section 1115 of the tax law, for the period commencing May 31, 2010, and ending September 6, 2010, by enacting a resolution in the form set forth in subdivision (c) of this section; whereupon, upon compliance with the provisions of subdivision (d) of this section, such enactment of such resolution shall be deemed to be an amendment to such section 1107 of the tax law and such section 1107 shall be deemed to incorporate such exemption as if it had been duly enacted by the state legislature and approved by the governor.

(c) Form of Resolution: Be it enacted by the (insert proper title of local legislative body) as follows:

Section one. Receipts from sales of and consideration given or contracted to be given for purchases of motor fuel and diesel motor fuel exempt from state sales and compensating use taxes pursuant to paragraph 44 of subdivision (a) of section 1115 of the tax law shall also be exempt from sales and compensating use taxes imposed by this jurisdiction.

Section two. This resolution shall take effect immediately and shall apply to sales made and uses occurring during the period commencing May 31, 2010, and ending September 6, 2010, although made or occurring under a prior contract.

(d) A resolution enacted pursuant to this section shall not be effective unless (1) it is enacted by May 15, 2010, (2) a certified copy of such resolution is mailed by registered or certified mail no later than May 20, 2010, to the commissioner of taxation and finance, and (3) certified copies of such resolution shall also be filed with the city or county clerk, the secretary of state and the state comptroller within five business days after the date is enacted. The commissioner of taxation and finance shall accept and give effect to a resolution enacted pursuant to the authority of this section which is in substantial compliance with the provisions of this section so as to give notice to the commissioner of taxation and finance of the intent of a county, city or school district to provide the exemption authorized by this section.

(e) On and after September 7, 2010, any exemption enacted pursuant to this section shall be deemed repealed; (1) any local law, ordinance or resolution imposing sales and compensating use taxes of a city, county or school district which enacted a resolution pursuant to this section and (2) section 1107 of the tax law shall be given effect on and after that date as if no such resolution had been enacted, except that all provisions of any such local law, ordinance or resolution or section 1107, as deemed to be amended in the event that such a city enacts a resolution pursuant to this section to provide such an exemption, in respect to the assessment, payment, determination, collection and refund of taxes imposed thereunder, the filing of returns and preservation of records for the purposes of such taxes, the secrecy of returns, and the disposition of revenues shall continue in effect with respect to all such taxes accrued up to such date.

S 14. The provision of sections ten through fourteen of this act and of any resolution enacted pursuant thereto, taken separately or together, shall not be construed by any person or any court or other entity as either (i) a failure or refusal to continue to impose the taxes imposed by section 1107 of the tax law, as such section may from time to time be amended or (ii) as reduction in the rate at which such taxes are imposed. After sections ten through fourteen of this act shall have become a law, the taxes imposed by such section 1107 of the tax law on receipts from retail sales of and consideration given or contracted to be given for purchases of such motor fuel and diesel motor fuel shall, except as provided in section thirteen of this act for the period commencing May 31, 2010, and ending September 6, 2010, if a city of one million or more enacts a resolution pursuant to the authority of section thirteen of this act, continue to apply, persons liable for such taxes on purchases of such motor fuel and diesel motor fuel shall continue to be liable for such taxes, persons required to collect such taxes on such motor fuel and diesel motor fuel shall continue to be required to collect and pay over such taxes to the commissioner of taxation and finance, such commissioner shall continue to be required to certify such taxes on such motor fuel and diesel motor fuel as provided by article 28 of the tax law and section 92-d of the state finance law and the state comptroller shall continue to be required to deposit, appropriate and pay over such taxes as required by section 92-d of the state finance law, in the manner and to the extent as if sections ten through fourteen of this act had not become a law.

S 15. This act shall take effect immediately, except that:

1. sections one, two and three of this act shall take effect January 1, 2011;

2. sections four, five and six of this act shall take effect January 1, 2012;

3. sections seven, eight and nine of this act shall take effect January 1, 2012; and

4. the exemption provided in section eleven of this act and any exemption provided pursuant to the authority of section thirteen of this act shall apply to sales made and uses occurring during the period commencing May 31, 2010, and ending September 6, 2010, although made or occurring under a prior contract.