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

800

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. McDONOUGH, CALHOUN, McKEVITT, FIELDS, ERRIGO, FINCH -- Multi-Sponsored by -- M. of A. ALFANO, BACALLES, GABRYSZAK, GALEF, MAGEE, THIELE -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to requiring sellers and distributors of motor fuel to provide the state with information concerning the identity of purchasers and suppliers and the volume of fuel purchased or supplied

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

Section 1. Paragraph (a) of subdivision 3 of section 285-a of the tax law, as added by chapter 276 of the laws of 1986, is amended to read as follows:

(a) Upon each sale of motor fuel, other than a sale at retail, the seller must give to the purchaser and the purchaser shall receive at the time of delivery of such motor fuel, a certification containing such information as the tax commission shall require which shall include a statement to the effect: (i) if such seller is a distributor registered under this article, that he assumed the payment of or paid the taxes imposed by this article and, in each case, is passing through such taxes; or (ii) that such seller is passing through such taxes which were so previously assumed or paid by an identified distributor registered under this article, and passed through to him. EACH SUCH CERTIFICATION SHALL ALSO CLEARLY SET FORTH THE VOLUME OF MOTOR FUEL BEING SOLD, THE FEDERAL EMPLOYER IDENTIFICATION NUMBERS OR, IF NONE, THE NEW YORK STATE TAX ACCOUNT NUMBERS OF THE SELLER AND OF THE PURCHASER, AND THE RESALE NUMBER OF THE PURCHASER.

S 2. Subdivision 1 of section 286 of the tax law, as amended by chapter 302 of the laws of 2006, is amended to read as follows:

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

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1. Every person who imports or causes to be imported into this state, or who produces, refines, manufactures or compounds within this state, or who purchases or sells in this state motor fuel or diesel motor fuel or ingredients which may be manufactured or compounded into motor fuel or diesel motor fuel, or engages in the enhancement of diesel motor fuel, shall keep a complete and accurate record of all purchases and sales, uses or other dispositions thereof, INCLUDING A RECORD OF THE RESALE NUMBERS AND FEDERAL EMPLOYER IDENTIFICATION NUMBERS OR, IF NONE, THE NEW YORK STATE TAX ACCOUNT NUMBERS OF ALL SELLERS AND PURCHASERS AND THE AMOUNTS OF FUEL PURCHASED OR SOLD, AS APPLICABLE BY EACH SUCH ENTITY, and a complete and accurate record of the number of gallons of motor fuel or diesel motor fuel or such ingredients so imported, produced, refined, manufactured, compounded or enhanced. Every person who stores motor fuel or diesel motor fuel shall keep a complete and accurate record of the identity of the person for whom such fuel is stored, the quantity and type of fuel so stored, the identity of the person to whom such fuel is released from storage and the quantity and type of fuel so released. Such records shall be in such form and contain such other information as the commissioner shall prescribe. Said commissioner, by rule or regulation, also may require the delivery of statements to purchasers with consignments of motor fuel or diesel motor fuel or such ingredients, and prescribe the matters to be contained therein. Such records and statements, unless required by the commissioner to be preserved for a longer period, shall be preserved for a period of three years and shall be offered for inspection at any time upon oral or written demand by such commissioner or the commissioner's duly authorized agents. The commissioner is hereby further authorized to examine the equipment of any such person pertaining to the storage, sale or delivery of such fuels, as well as the stock of such fuels in the possession or control of such person. To verify the amount of tax due under this article, each such person is hereby directed and required to give to the commissioner or the commissioner's duly authorized representatives, the means, facilities and opportunity for such examinations as are herein provided for and required. Nothing in this section contained shall be construed to require the keeping for purposes of this article of a record of purchases or sales of motor fuel or diesel motor fuel or such ingredients at retail in small quantities (less than thirty gallons) or of motor fuel or diesel motor fuel imported into this state in the tank of a motor vehicle which supplies the fuel for its operation.

S 3. Subdivision 1 of section 287 of the tax law, as amended by chapter 261 of the laws of 1988, is amended to read as follows:

1. Every distributor shall, on or before the twentieth day of each month, file with the department of taxation and finance a return, on forms to be prescribed by the commissioner and furnished by such department, stating the number of gallons of motor fuel imported, manufactured or sold by such distributor in the state during the preceding calendar month and in the case of Diesel motor fuel, the number of gallons of enhanced Diesel motor fuel imported, the number of gallons enhanced and the number of gallons which have been sold or used. WITH REGARD TO SALES, EACH SUCH RETURN SHALL SPECIFY THE IDENTITY OF EACH PURCHASER TO WHOM SALES WERE MADE OR THE IDENTITY OF EACH SUPPLIER FROM WHOM PURCHASES WERE MADE, AS APPLICABLE, ALONG WITH THE FEDERAL EMPLOYER IDENTIFICATION NUMBERS OR, IF NONE, THE NEW YORK STATE TAX ACCOUNT NUMBER, AND THE RESALE NUMBER OF ALL SUCH ENTITIES, AS WELL AS THE TOTAL NUMBER OF GALLONS OF MOTOR FUEL AND THE TOTAL NUMBER OF GALLONS OF DIESEL MOTOR FUEL SOLD TO OR PURCHASED FROM EACH SUCH ENTITY. Provided,

however, the commissioner may, if he deems it necessary in order to insure the payment of the taxes imposed by this article, require returns to be made at such times and covering such periods as he may deem necessary, and, by regulation, may permit the filing of returns by distributors of Diesel motor fuel on a quarterly, semi-annual or annual basis, or may waive the filing of returns by a distributor of Diesel motor fuel for such time and upon such terms as he may deem proper if satisfied that no tax imposed by this article with respect to Diesel motor fuel is or will be payable by him during the time for which returns are waived. Such returns shall contain such further information as the commissioner shall require. The fact that a distributor's name is signed to a filed return shall be prima facie evidence for all purposes that the return was actually signed by such distributor. Each such distributor shall, with respect to motor fuel, pay to the department with the filing of such return, the taxes imposed by this article on each gallon of motor fuel imported, manufactured or sold by such distributor in the state, and so reported, during the period covered by such return. Each distributor shall, with respect to Diesel motor fuel, pay to the department with the filing of the return the taxes imposed by this article on the number of gallons of Diesel motor fuel sold or used or delivered to a filling station or delivered into the fuel tank of a motor vehicle during the period covered by the return. Provided, however, that where a distributor has purchased automotive fuel upon which the taxes imposed by this article have been paid or paid over and in each instance the tax is included in the price, a credit shall be allowed for the amount of such taxes upon the subsequent sale of such fuel to the extent that such taxes are so paid and included in the price.

S 4. Subdivision (a) of section 308 of the tax law, as amended by chapter 2 of the laws of 1995, is amended to read as follows:

(a) General.--Every petroleum business subject to tax under this article shall monthly, on or before the twentieth day following the close of its taxable month, file a return which shall state (i) the number of gallons of motor fuel imported or caused to be imported into this state for use, distribution, storage or sale in the state or produced, refined, manufactured or compounded in the state during the preceding calendar month, (ii) the number of gallons of diesel motor fuel sold or used or, with respect to gallonage which prior thereto has not been included in the measure of the tax imposed by this article, delivered by the petroleum business to a filling station or into the fuel tank connecting with the engine of a motor vehicle for use in the operation thereof during the preceding calendar month, (iii) the number of gallons of, and the resultant product produced, manufactured or blended, using diesel motor fuel as a component of such resultant product and the sales of such resultant product, and (iv) the number of gallons of residual petroleum product sold or used in this state and the sales of such residual petroleum product, for the period covered by such return. WITH REGARD TO SALES, EACH SUCH RETURN SHALL SPECIFY THE IDENTITY OF EACH PURCHASER TO WHOM SALES WERE MADE OR THE IDENTITY OF EACH SUPPLIER FROM WHOM PURCHASES WERE MADE, AS APPLICABLE, ALONG WITH THE FEDERAL EMPLOYER IDENTIFICATION NUMBERS OR, IF NONE, THE NEW YORK STATE TAX ACCOUNT NUMBER, AND THE RESALE NUMBER OF ALL SUCH ENTITIES, AS WELL AS THE TOTAL NUMBER OF GALLONS OF MOTOR FUEL AND THE TOTAL NUMBER OF GALLONS OF DIESEL MOTOR FUEL SOLD TO OR PURCHASED FROM EACH SUCH ENTITY. A residual petroleum business shall include in its reports the number of gallons of residual petroleum product imported into the state or purchased in this state, the number of gallons of diesel motor fuel purchased in this

state and the number of gallons of, and the resultant product produced, manufactured or blended by such petroleum business, using diesel motor fuel as a component of such resultant product. The commissioner of taxation and finance may permit the filing of a return on a quarterly basis in the case of a petroleum business which only makes sales of diesel motor fuel solely for residential heating purposes and which is registered under article twelve-A of this chapter as a diesel motor fuel distributor under a limited registration applicable only to the importation, sale and distribution of diesel motor fuel for the purposes described in subparagraph (i) of paragraph (b) of subdivision three of section two hundred eighty-two-a of this chapter or in the case of a petroleum business registered as a "distributor of kero-jet fuel only" pursuant to the provisions of subdivision two of section two hundred eighty-two-a of this chapter. In the case of such returns permitted to be filed on a quarterly basis, the adjustments to the rates of tax then in effect, as provided for in sections three hundred one-a and three hundred one-e of this article, which take effect on the first day of January of each year shall, with respect to such quarterly return, take effect on the first day of the next succeeding March. Returns shall be filed with the commissioner in a form prescribed by the commissioner, setting forth such other information as the commissioner may prescribe. Every petroleum business shall also transmit such other returns and such facts and information as the commissioner may require in the administration of this article. Every petroleum business which is a corporation subject to tax under this article and which ceases to exercise its franchise or to be subject to the tax imposed by this article shall transmit to the commissioner a return on the date of such cessation, or at such other time as the commissioner may require, covering each month or period for which no return was theretofore filed. The commissioner may, if the commissioner deems it necessary in order to insure the payment of the tax imposed by this article, require returns to be made at such times and covering such periods as the commissioner may deem necessary. Notwithstanding the foregoing provisions of this subdivision, the commissioner may require any corporation or unincorporated business which engages in transactions involving petroleum or similar products, including aviation fuels, to file a monthly return, which shall contain any data specified by him, regardless of whether such corporation or unincorporated business is subject to tax under this article.

S 5. This act shall take effect on the one hundred twentieth day after it shall have become a law.