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

8512--A

2009-2010 Regular Sessions

I N A S S E M B L Y

May 26, 2009

Introduced by M. of A. GABRYSZAK, KOON, GORDON, FIELDS, BURLING, RAIA, McDONOUGH, CASTRO -- Multi-Sponsored by -- M. of A. BARCLAY, DelMONTE, DESTITO, REILLY, SKARTADOS, THIELE, TOWNSEND -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to setting local sales tax at a rate of four percent per gallon upon the sale of a gallon of diesel motor fuel

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

Section 1. Subdivision (b) of section 523 of the tax law, as amended by section 7 of part M-1 of chapter 109 of the laws of 2006, is amended to read as follows:

(b) Rate of tax. The tax imposed by this section shall be at a composite rate determined by adding together (1) a fuel tax component which shall be equal to the applicable rate per gallon in effect under the taxes on motor fuel and diesel motor fuel imposed by article twelve-A of this chapter and (2) a sales tax component, which shall be equal to the sum of (A) a state sales and compensating use tax subcomponent, equal to the applicable rate per gallon in effect under the sales and compensating use taxes on motor fuel and diesel motor fuel imposed by sections eleven hundred five and eleven hundred ten of this chapter as described in subdivision (m) of section eleven hundred eleven of this chapter plus (B) a local sales and compensating use tax subcomponent, which shall be [the lower of (i) the lowest applicable rate per gallon in effect under the sales and compensating use taxes on such fuels in effect in any county of this state imposing a local sales and compensating use tax on a cents per gallon basis pursuant to the authority of subpart B of part one of article twenty-nine of this chapter, or (ii) the equivalent rate per gallon based on the highest rate applicable to the receipts from the

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

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sale of a gallon of motor fuel or diesel motor fuel in effect in any locality of this state imposing a local sales and compensating use tax on a percentage rate basis on the sale of motor fuel and diesel motor fuel pursuant to the authority of subpart B of part one of article twenty-nine of this chapter. Provided, however, that the total rate per gallon applicable to the receipts from the sale of a gallon of such fuels imposed under clause (ii) of subparagraph (B) of paragraph two of this subdivision shall not exceed three percent. Such equivalent rate per gallon under clause (ii) of subparagraph B of paragraph two of this subdivision shall be determined as provided in subdivision (d) or (m) of section eleven hundred eleven of this chapter and the schedules prescribed by the commissioner pursuant to such subdivision (d), and shall be based on the average price per gallon (including all federal and state and any local taxes included in such price or imposed on the use or consumption of such fuels upon which the state and local sales and compensating use taxes are computed but determined without the inclusion of any state or local sales tax on receipts from sales of such fuels) paid by the carrier during the reporting period for all motor fuel and diesel motor fuel purchased for use in its operations either within or without this state. For purposes of clause (ii) of subparagraph (B) of paragraph two of this subdivision, the price for motor fuel and diesel motor fuel purchased by such carrier shall be deemed to be the prevailing price for motor fuel and diesel motor fuel, as established by the commissioner each calendar quarter pursuant to this section, applicable to the reporting period] AT A RATE OF FOUR PERCENT PER GALLON UPON THE SALE OF A GALLON OF DIESEL MOTOR FUEL, PAYABLE TO THOSE LOCALITIES OF THE STATE WHICH IMPOSE LOCAL SALES AND COMPENSATING USE TAXES ON A CENTS PER GALLON BASIS PURSUANT TO SUBPART B OF PART ONE OF ARTICLE TWENTY-NINE OF THIS CHAPTER. SUCH UNIFORM RATE SHALL BE SUBJECT TO ADJUSTMENT ON A QUARTERLY BASIS. The commissioner shall for each calendar quarter establish a prevailing price for motor fuel and diesel motor fuel based on the prices being charged on any given day during the first fifteen days of the previous calendar quarter at a minimum of ten selected truck stops widely scattered throughout the state. SUCH TAX FOR DIESEL MOTOR FUEL SHALL BE COMPUTED BY TAKING THE COMPOSITE RATE MINUS THE STATE EXCISE TAX AND MINUS THE STATE SALES TAX; THE RESULTANT TAXABLE SALES NUMBER SHALL BE MULTIPLIED BY FOUR PERCENT AND THIS SHALL ESTABLISH THE CENTS PER GALLON STATEWIDE LOCAL SALES TAX ON A GALLON OF DIESEL MOTOR FUEL FOR THE CALENDAR QUARTER. The tax imposed by this section shall be computed by multiplying such composite rate by the amount of motor fuel [or diesel motor fuel, as the case may be], used by a carrier in its operations within this state during each reporting period. The amount of motor fuel and diesel motor fuel used in the operations of any carrier within this state shall be determined by dividing the number of miles traveled in this state subject to tax under this section by the average miles per gallon for the type of fuel. Where the records of any carrier are inadequate or incomplete, the qualified motor vehicles of a carrier filing returns shall be deemed to have consumed, on the average, one gallon of diesel motor fuel for every four miles traveled or one gallon of motor fuel for every three miles traveled unless substantial evidence discloses that a different amount was consumed; provided, however, that if the commissioner enters into a cooperative agreement pursuant to section five hundred twenty-eight of this article and such agreement prescribes a different average miles per gallon deemed to be consumed, the commissioner shall prescribe such different average. THE COMMISSIONER SHALL BE CHARGED WITH DEVELOPING A

MECHANISM TO COMPENSATE THOSE COUNTIES CHARGING A RATE HIGHER THAN FOUR PERCENT ON DIESEL MOTOR FUEL SALES FOR SUCH COUNTIES' LOSS IN TAX REVENUES.

S 2. This act shall take effect immediately and shall apply to the next taxable year and all subsequent taxable years.