

1496

2011-2012 Regular Sessions

I N A S S E M B L Y

January 10, 2011

Introduced by M. of A. TEDISCO -- Multi-Sponsored by -- M. of A. BARCLAY, BOYLE, BURLING, BUTLER, CALHOUN, CONTE, CROUCH, DUPREY, FINCH, FITZPATRICK, GIGLIO, HAWLEY, HAYES, KOLB, P. LOPEZ, McDONOUGH, McKEVITT, MOLINARO, OAKS, RABBITT, RAIA, REILICH, SALADINO, SAYWARD, SPANO, THIELE, TOBACCO -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to reducing the tax on petroleum businesses and the sales and compensating use taxes on the retail sales of motor fuel and diesel motor fuel

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

1 Section 1. Subdivision (a) of section 301 of the tax law, as amended
2 by chapter 190 of the laws of 1990, is amended to read as follows:
3 (a)(1) General.--Notwithstanding any other provision of this chapter,
4 or of any other law, for taxable years commencing on or after the first
5 day of April, nineteen hundred eighty-four, but including that portion
6 of any taxable year commencing prior thereto to the extent of that
7 portion of such year which includes the period which commences with the
8 first day of April, nineteen hundred eighty-four, and ending with (but
9 not including) taxable years commencing on and after the first day of
10 September, nineteen hundred ninety, but including that portion of any
11 taxable year commencing prior thereto to the extent of that portion of
12 such year which includes the period which terminates with the thirty-
13 first day of August, nineteen hundred ninety, there is hereby imposed
14 upon every petroleum business, for the privilege of engaging in busi-
15 ness, doing business, employing capital, owning or leasing property, or
16 maintaining an office in this state, for all or any part of each of its
17 taxable years, an annual tax equal to two and three-quarters per centum,
18 provided that for taxable years commencing on or after the first day of
19 June, nineteen hundred ninety, but including that portion of any taxable
20 year commencing prior thereto to the extent of that portion of such year
21 which includes the period which commences with the first day of June,
22 nineteen hundred ninety, the annual tax shall be equal to [seven and
23 two-tenths] THREE AND THREE-FIFTHS per centum, of (i) its gross receipts

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

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1 from sales of petroleum where shipments are made to points within the
2 state, (ii) the consideration given or contracted to be given by it for
3 petroleum (other than aviation fuel) which it imported or caused to be
4 imported (by a person other than one which is subject to tax under this
5 article) into this state for consumption by it in this state, and (iii)
6 the consideration given or contracted to be given by it for aviation
7 fuel consumed by it in this state. In no event shall the tax imposed by
8 this article be less than [two hundred fifty] ONE HUNDRED TWENTY-FIVE
9 dollars. For the purpose of the tax imposed by this section, any taxable
10 year commencing prior to the first day of September, nineteen hundred
11 ninety but ending after the thirty-first day of August, nineteen hundred
12 ninety shall be deemed terminated as of such thirty-first day of August
13 and such year shall be brought to a close as of such thirty-first day of
14 August.

15 (2) Credit, refund or reimbursement. (A) An electric corporation, as
16 defined in subdivision thirteen of section two of the public service
17 [service] law, subject to the supervision of the department of public
18 service shall be allowed a credit against the tax imposed by this
19 section, or a refund or reimbursement, with respect to residual petrole-
20 um product or diesel motor fuel (which is not enhanced diesel motor
21 fuel) used by such electric corporation to fuel generators for the
22 purpose of manufacturing or producing electricity. Such credit or refund
23 shall be applicable only to gallonage which is included in the return of
24 such electric corporation and the consideration for which has been
25 subjected to tax under this section on and after June first, nineteen
26 hundred ninety at the rate of [seven and two-tenths] THREE AND
27 THREE-FIFTHS per centum; such reimbursement shall apply only to gallo-
28 nage purchased in this state by such electric corporation on and after
29 June first, nineteen hundred ninety wherein (i) with respect to such
30 gallonage so purchased a tax under this section has been imposed at the
31 rate of [seven and two-tenths] THREE AND THREE-FIFTHS per centum and
32 (ii) such electric corporation absorbed the entire amount of such tax in
33 the purchase price of such fuel. The amount of such credit or refund
34 shall be determined by multiplying the consideration given with respect
35 to such eligible gallons of residual petroleum product and diesel prod-
36 uct times four and forty-five hundredths percent. The amount of such
37 reimbursement shall be equal to the result obtained by subtracting from
38 the entire amount of the tax absorbed by such electric corporation the
39 product of such entire amount of tax absorbed times two and seventy-five
40 hundredths divided by [seven and two-tenths] THREE AND THREE-FIFTHS.
41 (B) An aviation fuel business shall be allowed a credit against the tax
42 imposed by clause (iii) of paragraph (1) of this subdivision on and
43 after June first, nineteen hundred ninety with respect to kero-jet fuel
44 with respect to which a tax has been imposed at the rate of [seven and
45 two-tenths] THREE AND THREE-FIFTHS per centum and which was consumed in
46 this state by such business in the operation of its aircraft. The amount
47 of such credit shall be four and forty-five hundredths percent of the
48 consideration given or contracted to be given by such business for such
49 kero-jet fuel consumed by it in this state.

50 S 2. Subdivision (a) of section 301-f of the tax law, as added by
51 chapter 190 of the laws of 1990, is amended to read as follows:

52 (a) Imposition of tax surcharge. In addition to the tax imposed by
53 section three hundred one of this article, for taxable years commencing
54 on or after June first, nineteen hundred ninety, but including that
55 portion of any taxable year commencing prior thereto to the extent of
56 that portion of such year which includes the period which commences with

1 June first, nineteen hundred ninety, and ending with (but not including)
2 taxable years commencing on and after September first, nineteen hundred
3 ninety, but including that portion of any taxable year commencing prior
4 thereto to the extent of that portion of such year which included the
5 period which terminates with August thirty-first, nineteen hundred nine-
6 ty, there is hereby imposed upon every petroleum business, for all or
7 any part of each of its taxable years, a tax surcharge equal to
8 [fifteen] SEVEN AND ONE-HALF percent of the rate of tax imposed by
9 section three hundred one of this article on (i) its gross receipts from
10 sales of petroleum where shipments are made to points within the state,
11 (ii) the consideration given or contracted to be given by it for petro-
12 leum (other than aviation fuel) which it imported or caused to be
13 imported (by a person other than one which is subject to tax under this
14 article) into this state for consumption by it in this state, and (iii)
15 the consideration given or contracted to be given by it for aviation
16 fuel consumed by it in this state. The tax surcharge shall be applicable
17 to receipts from or consideration given with respect to all deliveries
18 on and after June first, nineteen hundred ninety. For purposes of the
19 tax surcharge imposed by this section, any taxable year commencing prior
20 to September first, nineteen hundred ninety but ending after August
21 thirty-first, nineteen hundred ninety shall be deemed terminated as of
22 such August thirty-first and such year shall be brought to a close as of
23 such August thirty-first. Except as provided in subdivision (c) of this
24 section, all of the provisions of this article applicable to the tax
25 imposed by section three hundred one of this article shall apply with
26 respect to the tax surcharge imposed by this section to the same extent
27 as if it were imposed by such section three hundred one, insofar as such
28 provisions can be made applicable to the tax surcharge imposed by this
29 section, with such modification as may be necessary to adapt such
30 provisions to the tax surcharge imposed by this section.

31 S 3. Paragraph 1 of subdivision (a) of section 301-j of the tax law,
32 as amended by chapter 309 of the laws of 1996, is amended to read as
33 follows:

34 (1) In addition to the taxes imposed by sections three hundred one-a
35 and three hundred one-e of this article, for taxable months commencing
36 on or after July first, nineteen hundred ninety-one there is hereby
37 imposed upon every petroleum business subject to tax imposed under
38 section three hundred one-a of this article and every aviation fuel
39 business subject to the aviation gasoline component of the tax imposed
40 under section three hundred one-e of this article, a supplemental month-
41 ly tax for each or any part of a taxable month at a rate of [four and
42 one-half] TWO AND ONE-QUARTER cents per gallon with respect to the
43 products included in each component of the taxes imposed by such
44 [sections] SECTION three hundred one-a and the aviation gasoline compo-
45 nent of the tax imposed by such section three hundred one-e of this
46 article.

47 S 4. Paragraph 1 of subdivision (m) of section 1111 of the tax law, as
48 amended by section 1 of part M1 of chapter 109 of the laws of 2006, is
49 amended to read as follows:

50 (1) The sales tax imposed by subdivision (a) of section eleven hundred
51 five of this article and the compensating use tax imposed by section
52 eleven hundred ten of this article, in regard to retail sales of motor
53 fuel and diesel motor fuel, shall be [eight] FOUR cents per gallon.

54 S 5. This act shall take effect immediately.