

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. CAHILL, MORELLE, DESTITO, LUPARDO, GUNTHER,
ROSENTHAL, PHEFFER -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT --
read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to eliminating the residential
restriction for heating exemptions

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

1 Section 1. Subdivision (d) of section 301-b of the tax law, as amended
2 by section 2 of part H of chapter 407 of the laws of 1999, subparagraph
3 (C) of paragraph 2 as amended by section 1 of part X of chapter 63 of
4 the laws of 2000, is amended to read as follows:

5 (d) Sales to consumers for heating purposes. [(1) Total residential
6 heating] HEATING exemption. (A) Unenhanced diesel motor fuel sold by a
7 petroleum business registered under article twelve-A of this chapter as
8 a distributor of diesel motor fuel or residual petroleum product sold by
9 a petroleum business registered under this article as a residual petro-
10 leum product business to the consumer exclusively for [residential]
11 heating purposes.

12 (B) Enhanced diesel motor fuel sold by a petroleum business registered
13 under article twelve-A of this chapter as a distributor of diesel motor
14 fuel to the consumer exclusively for [residential] heating purposes but
15 only if such enhanced diesel motor fuel is delivered into a storage tank
16 which is not equipped with a hose or other apparatus by which such fuel
17 can be dispensed into the fuel tank of a motor vehicle and such storage
18 tank is attached to the heating unit burning such fuel, provided, that
19 with respect to each delivery of such fuel over four thousand five
20 hundred gallons, to obtain this exemption there shall be required a
21 certificate signed by the purchaser stating that the product will be
22 used exclusively for [residential] heating purposes.

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

LBD01149-02-1

1 [(2) Partial non-residential heating exemption. (A) Unenhanced diesel
2 motor fuel sold by a petroleum business registered under article
3 twelve-A of this chapter as a distributor of diesel motor fuel or resi-
4 dual petroleum product sold by a petroleum business registered under
5 this article as a residual petroleum product business to the consumer
6 exclusively for heating, other than residential heating purposes.

7 (B) Enhanced diesel motor fuel sold by a petroleum business registered
8 under article twelve-A of this chapter as a distributor of diesel motor
9 fuel to the consumer exclusively for heating, other than residential
10 heating purposes, but only if such enhanced diesel motor fuel is deliv-
11 ered into a storage tank which is not equipped with a hose or other
12 apparatus by which such fuel can be dispensed into the fuel tank of a
13 motor vehicle and such storage tank is attached to the heating unit
14 burning such fuel, provided, that with respect to each delivery of such
15 fuel over four thousand five hundred gallons, to obtain this exemption
16 there shall be required a certificate signed by the purchaser stating
17 that the product will be used exclusively for heating, other than resi-
18 dential heating purposes.

19 (C) Calculation of partial exemption. Notwithstanding any other
20 provision of this article, commencing April first, two thousand one and
21 ending August thirty-first, two thousand two, the amount of the partial
22 exemption under this paragraph shall be determined by multiplying the
23 quantity of diesel motor fuel and residual petroleum product eligible
24 for the exemption times the sum of the then current rate of the supple-
25 mental tax imposed by section three hundred one-j of this article and
26 twenty percent of the then current rate of the tax imposed by section
27 three hundred one-a of this article, with respect to the specific diesel
28 motor fuel or residual petroleum product rate, as the case may be, and
29 commencing September first, two thousand two, the amount of the partial
30 exemption under this paragraph shall be determined by multiplying the
31 quantity of diesel motor fuel and residual petroleum product eligible
32 for the exemption times the sum of the then current rate of the supple-
33 mental tax imposed by section three hundred one-j of this article and
34 forty-six percent of the then current rate of the tax imposed by section
35 three hundred one-a of this article, with respect to the specific diesel
36 motor fuel or residual petroleum product rate, as the case may be.]

37 S 2. Subdivision (a) of section 301-c of the tax law, as amended by
38 section 4 of part H of chapter 407 of the laws of 1999 and subparagraph
39 (B) of paragraph 2 as amended by section 2 of part X of chapter 63 of
40 the laws of 2000, is amended to read as follows:

41 (a) Diesel motor fuel used for heating purposes. [(1) Total residen-
42 tial heating] HEATING reimbursement. Diesel motor fuel purchased in this
43 state and sold by such purchaser to a consumer for use exclusively for
44 [residential] heating purposes but only where (i) such diesel motor fuel
45 is delivered into a storage tank which is not equipped with a hose or
46 other apparatus by which such fuel can be dispensed into the fuel tank
47 of a motor vehicle and such storage tank is attached to the heating unit
48 burning such fuel, (ii) the tax imposed pursuant to this article has
49 been paid with respect to such diesel motor fuel and the entire amount
50 of such tax has been absorbed by such purchaser, and (iii) such purchas-
51 er possesses documentary proof satisfactory to the commissioner evidenc-
52 ing the absorption by it of the entire amount of the tax imposed pursu-
53 ant to this article. Provided, however, that the commissioner is
54 authorized, in the event that the commissioner determines that it would
55 not threaten the integrity of the administration and enforcement of the
56 tax imposed by this article, to provide a reimbursement with respect to

1 a retail sale to a consumer for [residential] heating purposes of less
2 than ten gallons of diesel motor fuel provided such fuel is not
3 dispensed into the tank of a motor vehicle. Provided, further, that with
4 respect to each delivery of enhanced diesel motor fuel of over four
5 thousand five hundred gallons, to obtain this reimbursement there shall
6 be required a certificate signed by the consumer stating that the prod-
7 uct will be used exclusively for [residential] heating purposes.

8 [(2) Partial non-residential heating reimbursement. (A) Diesel motor
9 fuel purchased in this state and sold by such purchaser to a consumer
10 for use exclusively for heating, other than for residential heating
11 purposes, but only where (i) such diesel motor fuel is delivered into a
12 storage tank which is not equipped with a hose or other apparatus by
13 which such fuel can be dispensed into the fuel tank of a motor vehicle
14 and such storage tank is attached to the heating unit burning such fuel,
15 (ii) the tax imposed pursuant to this article has been paid with respect
16 to such diesel motor fuel and the entire amount of such tax has been
17 absorbed by such purchaser, and (iii) such purchaser possesses documen-
18 tary proof satisfactory to the commissioner evidencing the absorption by
19 it of the entire amount of the tax imposed pursuant to this article.
20 Provided, however, that with respect to each delivery of enhanced diesel
21 motor fuel of over four thousand five hundred gallons, to obtain this
22 reimbursement there shall be required a certificate signed by the
23 consumer stating that the product will be used exclusively for heating,
24 other than for residential heating purposes.

25 (B) Calculation of partial reimbursement. Notwithstanding any other
26 provision of this article, commencing April first, two thousand one and
27 ending August thirty-first, two thousand two, the amount of the
28 reimbursement under this paragraph shall be determined by multiplying
29 the quantity of diesel motor fuel eligible for the reimbursement times
30 the sum of the then current rate of the supplemental tax imposed by
31 section three hundred one-j of this article and twenty percent of the
32 then current rate of the tax imposed by section three hundred one-a of
33 this article, with respect to the specific diesel motor fuel rate, as
34 the case may be, and commencing September first, two thousand two, the
35 amount of the reimbursement under this paragraph shall be determined by
36 multiplying the quantity of diesel motor fuel eligible for the
37 reimbursement times the sum of the then current rate of the supplemental
38 tax imposed by section three hundred one-j of this article and forty-six
39 percent of the then current rate of the tax imposed by section three
40 hundred one-a of this article, with respect to the specific diesel motor
41 fuel rate, as the case may be.]

42 S 3. This act shall take effect April 1, 2011; provided, however, if
43 this act shall become a law after such date it shall be deemed to have
44 been in full force and effect on and after April 1, 2011.