

7271

2011-2012 Regular Sessions

I N A S S E M B L Y

April 27, 2011

Introduced by M. of A. THIELE, MURRAY -- read once and referred to the
Committee on Ways and Means

AN ACT to amend the tax law, in relation to providing an exemption from the payment of the motor fuels tax and the sales tax on motor fuels used in the operation of commercial fishing vessels; and to amend the tax law, in relation to exempting fuel used in vessels used directly and predominantly in a business providing sport fishing opportunities for hire to the general public from the tax on petroleum businesses and from sales and compensating use taxes

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

1 Section 1. Paragraph (b) of subdivision 3 of section 282-a of the tax
2 law, as amended by section 5 of part K of chapter 61 of the laws of
3 2011, is amended to read as follows:
4 (b) The tax on the incidence of sale or use imposed by subdivision one
5 of this section shall not apply to: (i) the sale or use of non-highway
6 Diesel motor fuel, but only if all of such fuel is consumed other than
7 on the public highways of this state (except for the use of the public
8 highway by farmers to reach adjacent farmlands); provided, however, this
9 exemption shall in no event apply to a sale of non-highway Diesel motor
10 fuel which involves a delivery at a filling station or into a repository
11 which is equipped with a hose or other apparatus by which such fuel can
12 be dispensed into the fuel tank of a motor vehicle (except for delivery
13 at a farm site which qualifies for the exemption under subdivision (g)
14 of section three hundred one-b of this chapter); or (ii) a sale to the
15 consumer consisting of not more than twenty gallons of water-white kero-
16 sene to be used and consumed exclusively for heating purposes; or (iii)
17 the sale to or delivery at a filling station or other retail vendor of
18 water-white kerosene provided such filling station or other retail
19 vendor only sells such water-white kerosene exclusively for heating
20 purposes in containers of no more than twenty gallons; or (iv) a sale of

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

LBD10686-02-1

1 kero-jet fuel to an airline for use in its airplanes or a use of kero-
2 jet fuel by an airline in its airplanes; or (v) a sale of kero-jet fuel
3 by a registered distributor of Diesel motor fuel to a fixed base opera-
4 tor registered under this article as a distributor of kero-jet fuel only
5 where such fixed base operator is engaged solely in making or offering
6 to make retail sales not in bulk of kero-jet fuel directly into the fuel
7 tank of an airplane for the purpose of operating such airplane; or (vi)
8 a retail sale not in bulk of kero-jet fuel by a fixed base operator
9 registered under this article as a distributor of kero-jet fuel only
10 where such fuel is delivered directly into the fuel tank of an airplane
11 for use in the operation of such airplane; OR (VII) A SALE OF DIESEL
12 MOTOR FUEL TO A "COMMERCIAL FISHERMAN", AS SUCH TERM IS DEFINED IN
13 SUBDIVISION (I) OF SECTION THREE HUNDRED OF THIS CHAPTER, AT RETAIL
14 UNDER THE CIRCUMSTANCES SET FORTH IN PARAGRAPH ONE OF SUBDIVISION (G) OF
15 SECTION THREE HUNDRED ONE-C OF THIS CHAPTER, AND WHERE SUCH COMMERCIAL
16 FISHING VESSEL IS OPERATED BY A COMMERCIAL FISHERMAN.

17 S 2. Subdivision 4 of section 282-a of the tax law, as amended by
18 section 5 of part K of chapter 61 of the laws of 2011, is amended to
19 read as follows:

20 4. The tax imposed by this section on Diesel motor fuel shall be
21 passed through by the seller and included as part of the selling price
22 to each purchaser of such fuel. Provided, however, the amount of the tax
23 imposed by this section may be excluded from the selling price of Diesel
24 motor fuel where (i) a sale of Diesel motor fuel is made to an organiza-
25 tion described in paragraph (a) of subdivision three of this section
26 solely for the purpose stated therein; (ii) a sale of non-highway Diesel
27 motor fuel is made to a consumer but only if such non-highway Diesel
28 motor fuel is not delivered to a filling station, nor delivered into a
29 storage tank which is equipped with a hose or other apparatus by which
30 such fuel can be dispensed into the fuel tank of a motor vehicle; or
31 (iii) the sale to or delivery at a filling station or other retail
32 vendor of water-white kerosene provided such filling station or other
33 retail vendor only sells such water-white kerosene exclusively for heat-
34 ing purposes in containers of no more than twenty gallons; or (iv) a
35 sale of kero-jet fuel is made to an airline for use in its airplanes; OR
36 (V) A SALE OF DIESEL MOTOR FUEL IS MADE TO A "COMMERCIAL FISHERMAN", AS
37 SUCH TERM IS DEFINED IN SUBDIVISION (I) OF SECTION THREE HUNDRED OF THIS
38 CHAPTER, AT RETAIL UNDER THE CIRCUMSTANCES SET FORTH IN PARAGRAPH ONE OF
39 SUBDIVISION (G) OF SECTION THREE HUNDRED ONE-C OF THIS CHAPTER, AND
40 WHERE SUCH COMMERCIAL FISHING VESSEL IS OPERATED BY A COMMERCIAL FISHER-
41 MAN.

42 S 3. Section 301-b of the tax law is amended by adding a new subdivi-
43 sion (k) to read as follows:

44 (K) SALES OR USES OF DIESEL MOTOR FUEL AND RESIDUAL PETROLEUM PRODUCT
45 FOR COMMERCIAL FISHING. DIESEL MOTOR FUEL OR RESIDUAL PETROLEUM PRODUCT
46 SOLD TO OR USED BY A "COMMERCIAL FISHERMAN", AS SUCH TERM IS DEFINED IN
47 SUBDIVISION (I) OF SECTION THREE HUNDRED OF THIS ARTICLE, AT RETAIL
48 UNDER THE CIRCUMSTANCES SET FORTH IN PARAGRAPH ONE OF SUBDIVISION (G) OF
49 SECTION THREE HUNDRED ONE-C OF THIS ARTICLE, AND WHERE SUCH COMMERCIAL
50 FISHING VESSEL IS OPERATED BY A COMMERCIAL FISHERMAN.

51 S 4. Subdivision (j) of section 1115 of the tax law, as amended by
52 section 41 of part K of chapter 61 of the laws of 2011, is amended to
53 read as follows:

54 (j) The exemptions provided in this section shall not apply to the tax
55 required to be prepaid pursuant to the provisions of section eleven
56 hundred two of this article nor to the taxes imposed by sections eleven

1 hundred five and eleven hundred ten of this article with respect to
2 receipts from sales and uses of motor fuel or diesel motor fuel, except
3 that the exemptions provided in paragraphs nine and forty-two of subdivi-
4 sion (a) of this section shall apply to the tax required to be prepaid
5 pursuant to the provisions of section eleven hundred two of this article
6 and to the taxes imposed by sections eleven hundred five and eleven
7 hundred ten of this article with respect to sales and uses of kero-jet
8 fuel, CNG, hydrogen and E85, provided, however, the exemption allowed
9 for E85 shall be subject to the additional requirements provided in
10 section eleven hundred two of this article with respect to E85 AND
11 EXCEPT THAT THE EXEMPTION PROVIDED IN PARAGRAPH TWENTY-FOUR OF SUBDIVI-
12 SION (A) OF THIS SECTION SHALL APPLY TO THE TAXES IMPOSED BY SECTIONS
13 ELEVEN HUNDRED FIVE AND ELEVEN HUNDRED TEN OF THIS ARTICLE WITH RESPECT
14 TO SALES AND USES OF DIESEL MOTOR FUEL USED IN THE OPERATION OF A FISH-
15 ING VESSEL AS DESCRIBED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A) OF
16 THIS SECTION. The exemption provided in subdivision (c) of this section
17 shall apply to sales and uses of non-highway diesel motor fuel but only
18 if all of such fuel is consumed other than on the public highways of
19 this state. The exemption provided in subdivision (c) of this section
20 shall apply to sales and uses of non-highway diesel motor fuel for use
21 or consumption either in the production for sale of tangible personal
22 property by farming or in a commercial horse boarding operation, or in
23 both but only if all of such fuel is consumed other than on the public
24 highways of this state (except for the use of the public highways to
25 reach adjacent farmlands or adjacent lands used in a commercial horse
26 boarding operation, or both).

27 S 5. Subdivision (j) of section 1115 of the tax law, as amended by
28 section 41-a of part K of chapter 61 of the laws of 2011, is amended to
29 read as follows:

30 (j) The exemptions provided in this section shall not apply to the tax
31 required to be prepaid pursuant to the provisions of section eleven
32 hundred two of this article nor to the taxes imposed by sections eleven
33 hundred five and eleven hundred ten of this article with respect to
34 receipts from sales and uses of motor fuel or diesel motor fuel, except
35 that the exemption provided in paragraph nine of subdivision (a) of this
36 section shall apply to the tax required to be prepaid pursuant to the
37 provisions of section eleven hundred two of this article and to the
38 taxes imposed by sections eleven hundred five and eleven hundred ten of
39 this article with respect to sales and uses of kero-jet fuel AND EXCEPT
40 THAT THE EXEMPTION PROVIDED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A)
41 OF THIS SECTION SHALL APPLY TO THE TAXES IMPOSED BY SECTIONS ELEVEN
42 HUNDRED FIVE AND ELEVEN HUNDRED TEN OF THIS ARTICLE WITH RESPECT TO
43 SALES AND USES OF DIESEL MOTOR FUEL USED IN THE OPERATION OF A FISHING
44 VESSEL AS DESCRIBED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A) OF THIS
45 SECTION. The exemption provided in subdivision (c) of this section
46 shall apply to sales and uses of non-highway diesel motor fuel but only
47 if all of such fuel is consumed other than on the public highways of
48 this state. The exemption provided in subdivision (c) of this section
49 shall apply to sales and uses of non-highway diesel motor fuel for use
50 or consumption either in the production for sale of tangible personal
51 property by farming or in a commercial horse boarding operation, or in
52 both but only if all of such fuel is consumed other than on the public
53 highways of this state (except for the use of the public highways to
54 reach adjacent farmlands or adjacent lands used in a commercial horse
55 boarding operation, or both).

1 S 6. Section 300 of the tax law is amended by adding a new subdivision
2 (j-1) to read as follows:

3 (J-1) "COMMERCIAL SPORT FISHING VESSEL" MEANS A VESSEL OWNED BY A
4 PERSON DOMICILED IN THIS STATE, WHO HAS BEEN ISSUED AND HOLDS A MARINE
5 AND COASTAL DISTRICT PARTY AND CHARTER BOAT LICENSE PURSUANT TO SECTION
6 13-0336 OF THE ENVIRONMENTAL CONSERVATION LAW.

7 S 7. Paragraph 2 of subdivision (b) of section 301-a of the tax law,
8 as added by section 154 of part A of chapter 389 of the laws of 1997, is
9 amended to read as follows:

10 (2) Motor fuel brought into this state in the fuel tank connecting
11 with the engine of a vessel propelled by the use of such motor fuel
12 shall be deemed to constitute a taxable use of motor fuel for the
13 purposes of this subdivision to the extent that the fuel is consumed in
14 the operation of the vessel in this state. Provided, however, that this
15 paragraph shall not apply to (i) a recreational motor boat or (ii)
16 subsequent to August thirty-first, nineteen hundred ninety-four, a
17 commercial fishing vessel (as defined in subdivision (j) of section
18 three hundred of this article) if the motor fuel imported and consumed
19 in this state is used to operate such vessel while it is engaged in the
20 harvesting of fish for sale OR (III) A COMMERCIAL SPORT FISHING VESSEL,
21 IF SUCH VESSEL PROVIDES ITS OWNER WITH AT LEAST FIFTY PERCENT OF HIS OR
22 HER TOTAL ANNUAL INCOME. Provided, further, that tax liability for
23 gallonage that a vessel consumes shall be the tax liability with respect
24 to the positive difference between the gallonage consumed in this state
25 during the reporting period and the gallonage purchased in this state
26 (upon which the tax imposed by this section has been paid) during such
27 period. A credit or refund shall be available for any excess of tax
28 liability for gallonage purchased in this state during the period over
29 tax liability on gallonage so consumed in this state during such period,
30 which excess shall be presumed to have been used outside this state.

31 S 8. Subparagraph (B) of paragraph 1 of subdivision (c) of section
32 301-a of the tax law, as amended by section 19 of part K of chapter 61
33 of the laws of 2011, is amended to read as follows:

34 (B) Highway diesel motor fuel brought into this state in the fuel tank
35 connecting with the engine of a vessel propelled by the use of such
36 diesel motor fuel shall be deemed to constitute a taxable use of diesel
37 motor fuel for the purpose of this paragraph to the extent of the fuel
38 that is consumed in the operation of the vessel in this state. Provided,
39 however, this paragraph shall not apply to (i) a recreational motor boat
40 or (ii) a commercial fishing vessel (as defined in subdivision (j) of
41 section three hundred of this article) if the highway diesel motor fuel
42 imported into and consumed in this state is used to operate such commer-
43 cial fishing vessel while it is engaged in the harvesting of fish for
44 sale OR (III) A COMMERCIAL SPORT FISHING VESSEL, IF SUCH VESSEL PROVIDES
45 ITS OWNER WITH AT LEAST FIFTY PERCENT OF HIS OR HER TOTAL ANNUAL INCOME.
46 Provided, further, that tax liability for gallonage that a vessel
47 consumes in this state shall be the tax liability with respect to the
48 positive difference between the gallonage consumed in this state during
49 the reporting period and the gallonage purchased in this state (upon
50 which the tax imposed by this section has been paid) during such period.
51 A credit or refund shall be available for any excess of tax liability
52 for gallonage purchased in this state during the period over tax liabil-
53 ity on gallonage so consumed in this state during such period, which
54 excess shall be presumed to have been used outside this state.

1 S 9. The opening paragraph of section 301-c of the tax law, as amended
2 by section 5 of part W-1 of chapter 109 of the laws of 2006, is amended
3 to read as follows:

4 A subsequent purchaser shall be eligible for reimbursement of tax with
5 respect to the following gallonage, subsequently sold by such purchaser
6 in accordance with subdivision (a), (b), (e), (h), (j), (k), (n) or (o)
7 of this section or used by such purchaser in accordance with subdivision
8 (c), (d), (f), (g), (G-1), (i), (l) or (m) of this section, which gallo-
9 nage has been included in the measure of the tax imposed by this article
10 on a petroleum business:

11 S 10. The opening paragraph of section 301-c of the tax law, as
12 amended by chapter 468 of the laws of 2000, is amended to read as
13 follows:

14 A subsequent purchaser shall be eligible for reimbursement of tax with
15 respect to the following gallonage, subsequently sold by such purchaser
16 in accordance with subdivision (a), (b), (e), (h), (j) or (k) of this
17 section or used by such purchaser in accordance with subdivision (c),
18 (d), (f), (g), (G-1), (i), (l) or (m) of this section, which gallonage
19 has been included in the measure of the tax imposed by this article on a
20 petroleum business:

21 S 11. Section 301-c of the tax law is amended by adding a new subdivi-
22 sion (g-1) to read as follows:

23 (G-1) DIESEL MOTOR FUEL AND MOTOR FUEL USED IN THE OPERATION OF
24 COMMERCIAL SPORT FISHING VESSELS. DIESEL MOTOR FUEL OR MOTOR FUEL
25 PURCHASED IN THIS STATE BY THE OPERATOR OF A COMMERCIAL SPORT FISHING
26 VESSEL AT RETAIL WHEREIN SUCH DIESEL MOTOR FUEL OR SUCH MOTOR FUEL IS
27 DELIVERED BY A PUMP EQUIPPED WITH A HOSE DIRECTLY INTO THE FUEL TANK OF
28 A COMMERCIAL SPORT FISHING VESSEL TO BE USED AS FUEL IN THE OPERATION OF
29 SUCH VESSEL FOR THE PURPOSE OF PROVIDING SPORT FISHING OPPORTUNITIES FOR
30 HIRE TO THE GENERAL PUBLIC; BUT ONLY WHERE (1) THE TAX IMPOSED PURSUANT
31 TO THIS ARTICLE HAS BEEN PAID WITH RESPECT TO SUCH DIESEL MOTOR FUEL OR
32 SUCH MOTOR FUEL AND THE ENTIRE AMOUNT OF SUCH TAX HAS BEEN ABSORBED BY
33 SUCH PURCHASER, (2) SUCH PURCHASER POSSESSES DOCUMENTARY PROOF SATISFAC-
34 TORY TO THE COMMISSIONER EVIDENCING THE ABSORPTION BY IT OF THE ENTIRE
35 AMOUNT OF THE TAX IMPOSED PURSUANT TO THIS ARTICLE, AND (3) THE VESSEL
36 PROVIDES ITS OWNER WITH AT LEAST FIFTY PERCENT OF HIS OR HER TOTAL ANNU-
37 AL INCOME. PROVIDED, HOWEVER, THAT THE COMMISSIONER SHALL REQUIRE SUCH
38 DOCUMENTARY PROOF TO QUALIFY FOR ANY REIMBURSEMENT OF TAX PROVIDED BY
39 THIS SECTION AS THE COMMISSIONER DEEMS APPROPRIATE.

40 S 12. Subdivision (a) of section 1115 of the tax law is amended by
41 adding a new paragraph 24-a to read as follows:

42 (24-A) FUEL USED IN VESSELS USED DIRECTLY AND PREDOMINANTLY IN A BUSI-
43 NESS PROVIDING SPORT FISHING OPPORTUNITIES FOR HIRE TO THE GENERAL
44 PUBLIC; PROVIDED THAT SUCH VESSEL PROVIDES ITS OWNER WITH AT LEAST FIFTY
45 PERCENT OF HIS OR HER TOTAL ANNUAL INCOME.

46 S 13. Subparagraph (i) of paragraph 1 of subdivision (a) of section
47 1210 of the tax law, as amended by section 3 of part GG of chapter 57 of
48 the laws of 2010, is amended to read as follows:

49 (i) Any local law, ordinance or resolution enacted by any city of less
50 than one million or by any county or school district, imposing the taxes
51 authorized by this subdivision, shall, notwithstanding any provision of
52 law to the contrary, exclude from the operation of such local taxes all
53 sales of tangible personal property for use or consumption directly and
54 predominantly in the production of tangible personal property, gas,
55 electricity, refrigeration or steam, for sale, by manufacturing, proc-
56 essing, generating, assembly, refining, mining or extracting; and all

1 sales of tangible personal property for use or consumption predominantly
2 either in the production of tangible personal property, for sale, by
3 farming or in a commercial horse boarding operation, or in both; and,
4 unless such city, county or school district elects otherwise, shall omit
5 THE FUEL USED IN COMMERCIAL SPORT FISHING VESSELS EXEMPTION PROVIDED FOR
6 IN PARAGRAPH TWENTY-FOUR-A OF SUBDIVISION (A), the provision for credit
7 or refund contained in clause six of subdivision (a) or subdivision (d)
8 of section eleven hundred nineteen of this chapter.

9 S 14. Section 1210 of the tax law is amended by adding a new subdivi-
10 sion (p) to read as follows:

11 (P) NOTWITHSTANDING ANY OTHER PROVISION OF STATE OR LOCAL LAW, ORDI-
12 NANCE OR RESOLUTION TO THE CONTRARY:

13 (1) ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE IN WHICH THE
14 TAXES IMPOSED BY SECTION ELEVEN HUNDRED SEVEN OF THIS CHAPTER ARE IN
15 EFFECT, ACTING THROUGH ITS LOCAL LEGISLATIVE BODY, IS HEREBY AUTHORIZED
16 AND EMPOWERED TO ELECT TO PROVIDE THE SAME EXEMPTIONS FROM SUCH TAXES AS
17 THE FUEL USED IN COMMERCIAL SPORT FISHING VESSELS EXEMPTION FROM STATE
18 SALES AND COMPENSATING USE TAXES DESCRIBED IN PARAGRAPH TWENTY-FOUR-A OF
19 SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER BY
20 ENACTING A RESOLUTION IN THE FORM SET FORTH IN PARAGRAPH TWO OF THIS
21 SUBDIVISION; WHEREUPON, UPON COMPLIANCE WITH THE PROVISIONS OF SUBDIVI-
22 SIONS (D) AND (E) OF THIS SECTION, SUCH ENACTMENT OF SUCH RESOLUTION
23 SHALL BE DEEMED TO BE AN AMENDMENT TO SUCH SECTION ELEVEN HUNDRED SEVEN
24 AND SUCH SECTION ELEVEN HUNDRED SEVEN SHALL BE DEEMED TO INCORPORATE
25 SUCH EXEMPTIONS AS IF THEY HAD BEEN DULY ENACTED BY THE STATE LEGISLA-
26 TURE AND APPROVED BY THE GOVERNOR.

27 (2) FORM OF RESOLUTION: BE IT ENACTED BY THE (INSERT PROPER TITLE OF
28 LOCAL LEGISLATIVE BODY) AS FOLLOWS:

29 SECTION ONE. RECEIPTS FROM SALES OF AND CONSIDERATION GIVEN OR
30 CONTRACTED TO BE GIVEN FOR, OR FOR THE USE OF, PROPERTY AND SERVICES
31 EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES PURSUANT TO PARAGRAPH
32 TWENTY-FOUR-A OF SUBDIVISION (A) OF SECTION 1115 OF THE TAX LAW SHALL
33 ALSO BE EXEMPT FROM SALES AND COMPENSATING USE TAXES IMPOSED IN THIS
34 JURISDICTION.

35 SECTION TWO. THIS RESOLUTION SHALL TAKE EFFECT JUNE 1, (INSERT THE
36 YEAR, BUT NOT EARLIER THAN THE YEAR 2010) AND SHALL APPLY TO SALES MADE,
37 SERVICES RENDERED AND USES OCCURRING ON AND AFTER THAT DATE IN ACCORD-
38 ANCE WITH THE APPLICABLE TRANSITIONAL PROVISIONS IN SECTIONS 1106, 1216
39 AND 1217 OF THE NEW YORK TAX LAW.

40 S 15. This act shall take effect on the first day of a sales tax
41 quarterly period, as described in subdivision (b) of section 1136 of the
42 tax law, next commencing at least ninety days after this act shall have
43 become a law, provided, however, that the amendments made to paragraph
44 (b) of subdivision 3 and subdivision 4, made by sections one and two of
45 this act, respectively, shall take effect on the same date and in the
46 same manner as section 5 of part K of chapter 61 of the laws of 2011,
47 takes effect; and sections four and five of this act shall apply to
48 sales made under and uses occurring on or after the dates such sections
49 four and five shall have taken effect, respectively, although made or
50 occurring under a prior contract, provided that the amendments to subdivi-
51 sion (j) of section 1115 of the tax law made by sections four and five
52 of this act, respectively, shall take effect on the same date and in the
53 same manner as section 41 of part K of chapter 61 of the laws of 2011,
54 takes effect; provided further that such amendments made by section four
55 of this act shall be subject to the expiration and reversion of such
56 subdivision pursuant to section 19 of part W-1 of chapter 109 of the

1 laws of 2006, as amended, when upon such date the provisions of section
2 five of this act shall take effect; provided, further, that sections
3 six, seven, nine, ten and eleven of this act shall take effect June 1,
4 2011; provided, further, that the amendments made to subparagraph (B) of
5 paragraph 1 of subdivision (c) of section 301-a of the tax law made by
6 section eight of this act shall take effect on the same date and in the
7 same manner as section 19 of part K of chapter 61 of the laws of 2011,
8 takes effect; provided, further, that the amendments to the opening
9 paragraph of section 301-c of the tax law, made by section nine of this
10 act shall not affect the expiration and repeal of such paragraph pursu-
11 ant to section 19 of part W-1 of chapter 109 of the laws of 2006, as
12 amended, and shall expire and be deemed repealed therewith, when upon
13 such date the provisions of section ten of this act shall take effect.