

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

7271--A

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 -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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 2 of part E of chapter 59 of the laws of
3 2012, 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
21 kero-jet fuel to an airline for use in its airplanes or a use of kero-

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

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1 jet fuel by an airline in its airplanes; or (v) a sale of kero-jet fuel
2 by a registered distributor of Diesel motor fuel to a fixed base opera-
3 tor registered under this article as a distributor of kero-jet fuel only
4 where such fixed base operator is engaged solely in making or offering
5 to make retail sales not in bulk of kero-jet fuel directly into the fuel
6 tank of an airplane for the purpose of operating such airplane; (vi) a
7 retail sale not in bulk of kero-jet fuel by a fixed base operator regis-
8 tered under this article as a distributor of kero-jet fuel only where
9 such fuel is delivered directly into the fuel tank of an airplane for
10 use in the operation of such airplane; or (vii) the sale of previously
11 untaxed qualified biodiesel to a person registered under this article as
12 a distributor of Diesel motor fuel other than (A) a retail sale to such
13 person or (B) a sale to such person which involves a delivery at a fill-
14 ing station or into a repository which is equipped with a hose or other
15 apparatus by which such qualified biodiesel can be dispensed into the
16 fuel tank of a motor vehicle; OR (VIII) A SALE OF DIESEL MOTOR FUEL TO A
17 "COMMERCIAL FISHERMAN", AS SUCH TERM IS DEFINED IN SUBDIVISION (I) OF
18 SECTION THREE HUNDRED OF THIS CHAPTER, AT RETAIL UNDER THE CIRCUMSTANCES
19 SET FORTH IN PARAGRAPH ONE OF SUBDIVISION (G) OF SECTION THREE HUNDRED
20 ONE-C OF THIS CHAPTER, AND WHERE SUCH COMMERCIAL FISHING VESSEL IS OPER-
21 ATED BY A COMMERCIAL FISHERMAN.

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

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

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

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

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

4 (j) The exemptions provided in this section shall not apply to the tax
5 required to be prepaid pursuant to the provisions of section eleven
6 hundred two of this article nor to the taxes imposed by sections eleven
7 hundred five and eleven hundred ten of this article with respect to
8 receipts from sales and uses of motor fuel or diesel motor fuel, except
9 that the exemptions provided in paragraphs nine and forty-two of subdivi-
10 sion (a) of this section shall apply to the tax required to be prepaid
11 pursuant to the provisions of section eleven hundred two of this article
12 and to the taxes imposed by sections eleven hundred five and eleven
13 hundred ten of this article with respect to sales and uses of kero-jet
14 fuel, CNG, hydrogen and E85, provided, however, the exemption allowed
15 for E85 shall be subject to the additional requirements provided in
16 section eleven hundred two of this article with respect to E85 AND
17 EXCEPT THAT THE EXEMPTION PROVIDED IN PARAGRAPH TWENTY-FOUR OF SUBDIVI-
18 SION (A) OF THIS SECTION SHALL APPLY TO THE TAXES IMPOSED BY SECTIONS
19 ELEVEN HUNDRED FIVE AND ELEVEN HUNDRED TEN OF THIS ARTICLE WITH RESPECT
20 TO SALES AND USES OF DIESEL MOTOR FUEL USED IN THE OPERATION OF A FISH-
21 ING VESSEL AS DESCRIBED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A) OF
22 THIS SECTION. The exemption provided in subdivision (c) of this section
23 shall apply to sales and uses of non-highway diesel motor fuel but only
24 if all of such fuel is consumed other than on the public highways of
25 this state. The exemption provided in subdivision (c) of this section
26 shall apply to sales and uses of non-highway diesel motor fuel for use
27 or consumption either in the production for sale of tangible personal
28 property by farming or in a commercial horse boarding operation, or in
29 both but only if all of such fuel is consumed other than on the public
30 highways of this state (except for the use of the public highways to
31 reach adjacent farmlands or adjacent lands used in a commercial horse
32 boarding operation, or both).

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

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

1 property by farming or in a commercial horse boarding operation, or in
2 both but only if all of such fuel is consumed other than on the public
3 highways of this state (except for the use of the public highways to
4 reach adjacent farmlands or adjacent lands used in a commercial horse
5 boarding operation, or both).
6 S 6. This act shall take effect on the first day of a sales tax quar-
7 terly period, as described in subdivision (b) of section 1136 of the tax
8 law, next commencing at least ninety days after this act shall have
9 become a law; sections four and five of this act shall apply to sales
10 made under and uses occurring on or after the dates such sections four
11 and five shall have taken effect, respectively, although made or occur-
12 ring under a prior contract; and provided further that such amendments
13 made by section four of this act shall be subject to the expiration and
14 reversion of such subdivision pursuant to section 19 of part W-1 of
15 chapter 109 of the laws of 2006, as amended, when upon such date the
16 provisions of section five of this act shall take effect.