

2924

2011-2012 Regular Sessions

I N S E N A T E

February 3, 2011

Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to exempting dyed Diesel motor fuel used in farming or manufacturing

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

1 Section 1. Paragraph (c) of subdivision 3 of section 282-a of the tax
2 law, as added by chapter 302 of the laws of 2006, is amended to read as
3 follows:
4 (c) Limited exemptions for dyed Diesel motor fuel. (i) The tax imposed
5 by this section shall not apply to: (A) the sale of dyed Diesel motor
6 fuel by the importer to a purchaser under the circumstances and subject
7 to the terms and conditions as follows: (1) the importer and purchaser
8 are each registered under this article as a full Diesel motor fuel
9 distributor; (2) such importer has imported the enhanced Diesel motor
10 fuel, which is the subject of the sale, into the state and has dyed such
11 fuel to comply with the provisions of 26 USC S 4082(a) and the regu-
12 lations thereunder, as may be amended from time to time; (3) the
13 purchaser is a holder of a currently valid direct payment permit issued
14 pursuant to section two hundred eighty-three-d of this article; and
15 (4)(I) such purchaser is primarily engaged in the retail heating oil
16 business and such dyed Diesel motor fuel will be sold by such purchaser
17 in a retail sale to a consumer for use [solely as] BY THAT CONSUMER
18 DIRECTLY AND EXCLUSIVELY FOR residential or commercial heating [oil], OR
19 (II) SUCH DYED DIESEL MOTOR FUEL WILL BE SOLD BY SUCH PURCHASER IN A
20 RETAIL SALE TO A CONSUMER FOR USE BY THAT CONSUMER DIRECTLY AND EXCLU-
21 SIVELY IN THE PRODUCTION OF TANGIBLE PERSONAL PROPERTY FOR SALE BY FARM-
22 ING, BUT ONLY IF ALL OF THAT FUEL IS DELIVERED ON THE FARMING SITE AND
23 IS CONSUMED OTHER THAN ON THE HIGHWAYS OF THIS STATE (EXCEPT FOR USE OF
24 THE HIGHWAY TO REACH ADJACENT FARMLANDS); PROVIDED, HOWEVER, THAT A

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

LBD08917-01-1

1 FARMER MAY PURCHASE NO MORE THAN FOUR THOUSAND FIVE HUNDRED GALLONS OF
2 DIESEL MOTOR FUEL AND DYED DIESEL MOTOR FUEL COMBINED IN A THIRTY-DAY
3 PERIOD FOR SUCH USE OR CONSUMPTION EXEMPT FROM THE MEASURE OF THE TAX
4 IMPOSED BY THIS SECTION, EXCEPT IN ACCORDANCE WITH PRIOR CLEARANCE GIVEN
5 BY THE COMMISSIONER, OR (III) SUCH DYED DIESEL MOTOR FUEL WILL BE SOLD
6 BY SUCH PURCHASER IN A RETAIL SALE TO A CONSUMER FOR USE BY THAT CONSUM-
7 ER DIRECTLY AND EXCLUSIVELY IN THE PRODUCTION OF TANGIBLE PERSONAL PROP-
8 ERTY FOR SALE BY MANUFACTURING, PROCESSING, OR ASSEMBLY, BUT ONLY IF ALL
9 OF THAT FUEL IS DELIVERED ON THE MANUFACTURING SITE AND IS CONSUMED
10 OTHER THAN ON THE HIGHWAYS OF THIS STATE; (B) a first sale of the dyed
11 Diesel motor fuel, which [as] WAS the subject of an exempt sale
12 described in clause (A) of this subparagraph, by the purchaser described
13 therein to a purchaser likewise holding a currently valid direct pay
14 permit under the circumstances and subject to the terms and conditions
15 as follows: (1) the sale [of] TO such second purchaser by such first
16 purchaser is the first and only sale of such dyed Diesel motor fuel by
17 such first purchaser; (2) (I) such second purchaser is primarily engaged
18 in the retail heating oil business and such dyed Diesel motor fuel will
19 be sold by such second purchaser in a retail sale to a consumer for use
20 [solely as] BY THAT CONSUMER DIRECTLY AND EXCLUSIVELY FOR residential or
21 commercial heating [oil], OR (II) SUCH DYED DIESEL MOTOR FUEL WILL BE
22 SOLD BY SUCH SECOND PURCHASER IN A RETAIL SALE TO A CONSUMER FOR USE BY
23 THAT CONSUMER DIRECTLY AND EXCLUSIVELY IN THE PRODUCTION OF TANGIBLE
24 PERSONAL PROPERTY FOR SALE BY FARMING, BUT ONLY IF ALL OF THAT FUEL IS
25 DELIVERED ON THE FARMING SITE AND IS CONSUMED OTHER THAN ON THE HIGHWAYS
26 OF THIS STATE (EXCEPT FOR USE OF THE HIGHWAY TO REACH ADJACENT FARM-
27 LANDS); PROVIDED, HOWEVER, THAT A FARMER MAY PURCHASE NO MORE THAN FOUR
28 THOUSAND FIVE HUNDRED GALLONS OF DIESEL MOTOR FUEL AND DYED DIESEL MOTOR
29 FUEL COMBINED IN A THIRTY-DAY PERIOD FOR SUCH USE OR CONSUMPTION EXEMPT
30 FROM THE MEASURE OF THE TAX IMPOSED BY THIS SECTION, EXCEPT IN ACCORD-
31 ANCE WITH PRIOR CLEARANCE GIVEN BY THE COMMISSIONER, OR (III) SUCH DYED
32 DIESEL MOTOR FUEL WILL BE SOLD BY SUCH SECOND PURCHASER IN A RETAIL SALE
33 TO A CONSUMER FOR USE BY THAT CONSUMER DIRECTLY AND EXCLUSIVELY IN THE
34 PRODUCTION OF TANGIBLE PERSONAL PROPERTY FOR SALE BY MANUFACTURING,
35 PROCESSING, OR ASSEMBLY, BUT ONLY IF ALL OF THAT FUEL IS DELIVERED ON
36 THE MANUFACTURING SITE AND IS CONSUMED OTHER THAN ON THE HIGHWAYS OF
37 THIS STATE; (3) on the sale to the second purchaser, such first purchas-
38 er described in such clause (A) attaches to the invoice a copy of the
39 invoice given by the importer on the exempt sale described in such
40 clause (A), so as to identify the origin of the dyed Diesel fuel [which]
41 THAT is the subject of the sale to such second purchaser; and (4) such
42 second purchaser certifies that such dyed Diesel motor fuel is to be
43 sold by it only to a consumer for use [solely as] BY THAT CONSUMER
44 DIRECTLY AND EXCLUSIVELY (I) FOR residential or commercial heating
45 [oil], (II) IN THE PRODUCTION OF TANGIBLE PERSONAL PROPERTY FOR SALE BY
46 FARMING, BUT ONLY IF ALL OF THAT FUEL IS DELIVERED ON THE FARMING SITE
47 AND IS CONSUMED OTHER THAN ON THE HIGHWAYS OF THIS STATE (EXCEPT FOR USE
48 OF THE HIGHWAY TO REACH ADJACENT FARMLANDS); PROVIDED, HOWEVER, THAT A
49 FARMER MAY PURCHASE NO MORE THAN FOUR THOUSAND FIVE HUNDRED GALLONS OF
50 DIESEL MOTOR FUEL AND DYED DIESEL MOTOR FUEL COMBINED IN A THIRTY-DAY
51 PERIOD FOR SUCH USE OR CONSUMPTION EXEMPT FROM THE MEASURE OF THE TAX
52 IMPOSED BY THIS SECTION, EXCEPT IN ACCORDANCE WITH PRIOR CLEARANCE GIVEN
53 BY THE COMMISSIONER, OR (III) IN THE PRODUCTION OF TANGIBLE PERSONAL
54 PROPERTY FOR SALE BY MANUFACTURING, PROCESSING, OR ASSEMBLY, BUT ONLY IF
55 ALL OF THAT FUEL IS DELIVERED ON THE MANUFACTURING SITE AND IS CONSUMED
56 OTHER THAN ON THE HIGHWAYS OF THIS STATE. (ii) Prior to, or at the time

1 of, such sale of such dyed Diesel motor fuel described in clause (A) or
2 (B) of subparagraph (i) of this paragraph, the purchaser shall give a
3 certificate to the seller setting forth the intended use of the dyed
4 Diesel motor fuel [which] THAT is sought to be qualified for exemption
5 under this paragraph, that the purchaser has been issued a direct
6 payment permit which is currently valid, that such permit has not been
7 suspended or revoked and that the purchaser otherwise meets the quali-
8 fications of this paragraph. (iii) The limited exemptions allowed under
9 this paragraph, EXCEPT THE EXEMPTIONS FOR SALES OF DYED DIESEL MOTOR
10 FUEL TO CONSUMERS FOR USE BY THOSE CONSUMERS IN THE PRODUCTION OF TANGI-
11 BLE PERSONAL PROPERTY FOR SALE BY FARMING, shall in no event apply to
12 any dyed Diesel motor fuel [which] THAT is delivered into a repository
13 equipped with hose or other apparatus capable of being used to dispense
14 fuel into the fuel tank of a motor vehicle, or where the purchaser's
15 direct payment permit has been suspended or revoked and the commissioner
16 has made generally available the identity of those persons whose direct
17 payment permits have been suspended or revoked.

18 S 2. The section heading and subdivision 1 of section 283-d of the tax
19 law, as added by chapter 302 of the laws of 2006, is amended to read as
20 follows:

21 Direct payment permit with respect to dyed Diesel motor fuel [used as
22 residential or commercial heating oil]. 1. The commissioner, upon the
23 application of a person registered under this article as a distributor
24 of Diesel motor fuel, may issue a direct payment permit to such person
25 for the payment of tax liability under this article with respect to dyed
26 Diesel motor fuel [which] THAT is certified to be used [solely] DIRECTLY
27 AND EXCLUSIVELY for ONE OF THE FOLLOWING PURPOSES: residential or
28 commercial heating [oil], PRODUCTION OF TANGIBLE PERSONAL PROPERTY FOR
29 SALE BY FARMING, OR PRODUCTION OF TANGIBLE PERSONAL PROPERTY FOR SALE BY
30 MANUFACTURING, PROCESSING, OR ASSEMBLY if: (a) such person, at the time
31 of application, meets all the requirements described in section two
32 hundred eighty-two-a of this article and any other requirements under
33 this article relating to Diesel motor fuel distributors, (b) there has
34 been timely filing and payment of tax liability with respect to taxes
35 under this chapter (excluding those taxes timely protested), by such
36 person, any officer, director or partner of such person, shareholder
37 directly or indirectly owning more than ten percent of the number of
38 shares of stock of such person entitling the holder thereof to vote for
39 the election of directors or trustees, or any shareholder or employee of
40 such person under a duty to file a return under or pursuant to the
41 authority of this article or pay the taxes imposed by or pursuant to the
42 authority of this article on behalf of such person (the provisions of
43 subdivision ten of section two hundred eighty-three of this article
44 shall apply to the provisions of this paragraph), AND (c) [such person
45 is engaged primarily in the retail sale of residential or commercial
46 heating oil and does not make wholesale sales of Diesel motor fuel other
47 than in the circumstances described in clause (B) of subparagraph (i) of
48 paragraph (c) of subdivision three of section two hundred eighty-two-a
49 of this article, and (d)] such person files a bond or other security
50 covering potential tax liability under this chapter with respect to such
51 dyed Diesel motor fuel.

52 S 3. Clause (i) of subparagraph (C) of paragraph 1 of subdivision (c)
53 of section 300 of the tax law, as added by chapter 190 of the laws of
54 1990, is amended to read as follows:

55 (i) ["nonautomotive type diesel"] "NONAUTOMOTIVE-TYPE DIESEL motor
56 fuel" as used in relation to the rates of the tax imposed by section

1 three hundred one-a of this article means any diesel motor fuel, as
2 described in subparagraph (A) of this paragraph, which would be excluded
3 from the diesel motor fuel excise tax imposed by section two hundred
4 eighty-two-a of this chapter solely by reason of the enumerated exclu-
5 sions based on ultimate use of the product set forth in paragraph (b) of
6 subdivision three of such section, AND ANY DYED DIESEL MOTOR FUEL, AS
7 DESCRIBED IN SUBDIVISION EIGHTEEN OF SECTION TWO HUNDRED EIGHTY-TWO OF
8 THIS CHAPTER, WHICH WOULD BE EXCLUDED FROM THE DIESEL MOTOR FUEL EXCISE
9 TAX IMPOSED BY SECTION TWO HUNDRED EIGHTY-TWO-A OF THIS CHAPTER SOLELY
10 BY REASON OF THE ENUMERATED EXCLUSIONS BASED ON ULTIMATE USE OF THE
11 PRODUCT SET FORTH IN PARAGRAPH (C) OF SUBDIVISION THREE OF THAT SECTION,
12 and (ii) "automotive-type diesel motor fuel" as used in relation to the
13 rates of tax imposed by such section three hundred one-a means diesel
14 motor fuel [which] THAT is not nonautomotive-type diesel motor fuel.

15 S 4. Subdivision (m) of section 300 of the tax law, as added by chap-
16 ter 309 of the laws of 1996, is amended to read as follows:

17 (m) "Manufacturing gallonage" means residual petroleum product, DYED
18 DIESEL MOTOR FUEL, or diesel motor fuel (which is not enhanced diesel
19 motor fuel) THAT IS used and consumed directly and exclusively in the
20 production of tangible personal property for sale by manufacturing,
21 processing or assembly, but only if all of such fuel or product is
22 delivered on the manufacturing site and is consumed other than on the
23 highways of this state. "Manufacturing gallonage" shall in no event
24 include diesel motor fuel OR DYED DIESEL MOTOR FUEL delivered at a fill-
25 ing station or into a repository [which] THAT is equipped with a hose or
26 other apparatus by which such fuel can be dispensed into the fuel tank
27 of a motor vehicle. The commissioner shall require such documentary
28 proof to substantiate the classification of product as "manufacturing
29 gallonage" as the commissioner deems appropriate.

30 S 5. Subdivision (j) of section 301-c of the tax law, as added by
31 chapter 309 of the laws of 1996, is amended to read as follows:

32 (j) Reimbursement for manufacturing gallonage. Commencing January
33 first, nineteen hundred ninety-eight, a subsequent purchaser shall be
34 eligible for reimbursement of any taxes imposed under this article with
35 respect to gallonage of residual petroleum product, DYED DIESEL MOTOR
36 FUEL, and diesel motor fuel (which is not enhanced diesel motor fuel),
37 subsequently sold by such purchaser to a consumer as "manufacturing
38 gallonage." This reimbursement may be claimed only where (1) any tax
39 imposed pursuant to this article has been paid with respect to such
40 gallonage and the entire amount of such tax has been absorbed by such
41 purchaser, and (2) such purchaser possesses documentary proof satisfac-
42 tory to the commissioner evidencing the absorption by it of the entire
43 amount of such tax. Provided, however, that the commissioner shall
44 require such documentary proof to qualify for any reimbursement of tax
45 provided by this subdivision as the commissioner deems appropriate
46 including a certificate by the consumer that such product is to be used
47 and consumed exclusively as "manufacturing gallonage".

48 S 6. This act shall take effect on the first day of the sales tax
49 quarterly period, as described in subdivision (b) of section 1136 of the
50 tax law, next commencing at least ninety days after this act becomes a
51 law; provided, however, that registered distributors of Diesel motor
52 fuel may apply for direct payment permits thirty days after this act
53 becomes a law.