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

5596--A

2011-2012 Regular Sessions

I N S E N A T E

June 6, 2011

Introduced by Sens. ZELDIN, MARTINS, BALL, BONACIC, CARLUCCI, JOHNSON, LARKIN, LAVALLE, SALAND -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to creating regions one and two for the metropolitan commuter transportation mobility tax; to amend the state finance law, in relation to aid and incentives for municipalities; to amend the state finance law, in relation to transfer of moneys in the metropolitan mass transportation operating assistance account; to amend the tax law and the state finance law, in relation to the deposit of certain motor fuel and diesel fuel taxes; to dedicate certain monies to the metropolitan transportation authority; and to repeal section 3609-g of the education law

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

Section 1. Section 800 of the tax law, as added by section 1 of part C of chapter 25 of the laws of 2009, is amended to read as follows:

S 800. Definitions. For the purposes of this article:

(a) Metropolitan commuter transportation district. The metropolitan commuter transportation district ("MCTD") means [the area] THE COMBINATION OF REGION ONE AND REGION TWO of the state included in the district created and governed by section twelve hundred sixty-two of the public authorities law.

(b) REGION ONE. REGION ONE MEANS COUNTIES CONTAINED WHOLLY WITHIN A CITY WITH A POPULATION OF ONE MILLION OR MORE.

(C) REGION TWO. REGION TWO MEANS THE COUNTIES OF DUTCHESS, NASSAU, ORANGE, PUTNAM, ROCKLAND, SUFFOLK, AND WESTCHESTER.

(D) Employer. Employer means an employer required by section six hundred seventy-one of this chapter to deduct and withhold tax from

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

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wages, that has a payroll expense in excess of two thousand five hundred dollars in any calendar quarter; other than

(1) any agency or instrumentality of the United States;

(2) the United Nations; [or]

(3) an interstate agency or public corporation created pursuant to an agreement or compact with another state or the Dominion of Canada[.];

(4) A NON-PUBLIC PRIMARY OR SECONDARY SCHOOL THAT SATISFIES THE REQUIREMENTS PRESCRIBED BY LAW FOR NON-PUBLIC SCHOOLS IN THIS STATE, AND THAT HAS QUALIFIED FOR FEDERAL TAX EXEMPTION UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE;

(5) ANY PUBLIC SCHOOL DISTRICT, BOARD OF COOPERATIVE EDUCATIONAL SERVICES, OR SPECIAL ACT SCHOOL DISTRICT, AS DEFINED IN SECTION FOUR THOUSAND ONE OF THE EDUCATION LAW; OR

(6) AN EMPLOYER THAT IS LOCATED IN THE MCTD WITH TWENTY-FIVE OR LESS COVERED EMPLOYEES OR AN INDIVIDUAL HAVING NET EARNINGS FROM SELF EMPLOYMENT FROM ACTIVITY WITHIN THE MCTD.

[(c)] (E) Payroll expense. Payroll expense means wages and compensation as defined in sections 3121 and 3231 of the internal revenue code (without regard to section 3121(a)(1) and section 3231(e)(2)(A)(i)), paid to all covered employees.

[(d)] (F) Covered employee. Covered employee means an employee who is employed within REGION ONE OR REGION TWO OF the MCTD.

[(e)] (G) Net earnings from self-employment. Net earnings from self-employment has the same meaning as in section 1402 of the internal revenue code.

S 2. Section 801 of the tax law, as added by section 1 of part C of chapter 25 of the laws of 2009, is amended to read as follows:

S 801. Imposition of tax and rate. (a) For the sole purpose of providing an additional stable and reliable dedicated funding source for the metropolitan transportation authority and its subsidiaries and affiliates to preserve, operate and improve essential transit and transportation services in the metropolitan commuter transportation district, a tax is hereby imposed [at a rate of thirty-four hundredths (.34) percent of] ON: (1) the payroll expense of every employer who engages in business within the MCTD and (2) PRIOR TO JANUARY FIRST, TWO THOUSAND TWELVE, the net earnings from self-employment of individuals that are attributable to the MCTD if such earnings attributable to the MCTD exceed ten thousand dollars for the tax year[.] AT THE FOLLOWING RATES:

(I) FOR REGION ONE, ON OR AFTER JANUARY FIRST, TWO THOUSAND NINE AND BEFORE JANUARY FIRST, TWO THOUSAND THIRTEEN, THIRTY-FOUR HUNDREDTHS (.34) PERCENT; ON OR AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN AND BEFORE JANUARY FIRST, TWO THOUSAND FOURTEEN, TWENTY-EIGHT HUNDREDTHS (.28) PERCENT; AND ON JANUARY FIRST, TWO THOUSAND FOURTEEN AND THEREAFTER, TWENTY-ONE HUNDREDTHS (.21) PERCENT.

(II) FOR REGION TWO, ON OR AFTER JANUARY FIRST, TWO THOUSAND NINE AND BEFORE JANUARY FIRST, TWO THOUSAND TWELVE, THIRTY-FOUR HUNDREDTHS (.34) PERCENT; ON OR AFTER JANUARY FIRST, TWO THOUSAND TWELVE AND BEFORE JANUARY FIRST, TWO THOUSAND THIRTEEN, TWENTY-THREE HUNDREDTHS (.23) PERCENT; ON OR AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN AND BEFORE JANUARY FIRST, TWO THOUSAND FOURTEEN, TWELVE HUNDREDTHS (.12) PERCENT; AND ON JANUARY FIRST, TWO THOUSAND FOURTEEN AND THEREAFTER, ZERO (0) PERCENT.

(b)(1) [An] PRIOR TO JANUARY FIRST, TWO THOUSAND TWELVE, AN individual having net earnings from self-employment from activity both within and without the metropolitan commuter transportation district is required to allocate and apportion such net earnings to the MCTD in the manner

required for allocation and apportionment of income under article twenty-two of this chapter.

(2) [In] PRIOR TO JANUARY FIRST, TWO THOUSAND TWELVE, IN the case of individuals with earnings from self-employment, the net earnings from self employment threshold in paragraph two of subsection (a) of this section will be computed on an individual basis regardless of whether that individual filed a joint personal income tax return.

(c) The determination of whether a covered employee is employed within REGION ONE OR REGION TWO OF the MCTD will be made by utilizing the rules applicable to the jurisdiction of employment for purposes of the statewide wage reporting system under section one hundred seventy-one-a of this chapter, AS ADDED BY CHAPTER FIVE HUNDRED FORTY-FIVE OF THE LAWS OF NINETEEN HUNDRED SEVENTY-EIGHT, and substituting REGION ONE OR REGION TWO OF the MCTD for the state in that application.

S 3. Section 3609-g of the education law is REPEALED.

S 4. Subdivision 10 of section 54 of the state finance law is amended by adding a new paragraph j-1 to read as follows:

J-1. SPECIAL AID AND INCENTIVES FOR MUNICIPALITIES TO THE CITY OF NEW YORK. IN THE STATE FISCAL YEAR COMMENCING APRIL FIRST, TWO THOUSAND FOURTEEN AND IN EACH STATE FISCAL YEAR THEREAFTER, A CITY WITH A POPULATION OF ONE MILLION OR MORE SHALL RECEIVE ONE HUNDRED FIFTY MILLION DOLLARS PAYABLE ON OR BEFORE DECEMBER FIFTEENTH. SPECIAL AID AND INCENTIVES FOR MUNICIPALITIES TO THE CITY OF NEW YORK SHALL BE APPORTIONED AND PAID TO THE NEW YORK CITY TRANSIT AUTHORITY FOR THE PURPOSE OF THE SUPPORT OF MASS TRANSIT IN THE CITY OF NEW YORK.

S 5. Subdivision 7 of section 88-a of the state finance law is amended by adding a new paragraph (c) to read as follows:

(C) IN THE STATE FISCAL YEAR COMMENCING APRIL FIRST, TWO THOUSAND TWELVE, AND IN EACH STATE FISCAL YEAR THEREAFTER, MONEYS IN THE METROPOLITAN MASS TRANSPORTATION OPERATING ASSISTANCE ACCOUNT SHALL NOT BE TRANSFERRED TO THE GENERAL FUND OR OTHER STATE FUNDS OR ACCOUNTS EXCEPT FOR THE PUBLIC TRANSPORTATION SYSTEMS OPERATING ASSISTANCE ACCOUNT PROVIDED THAT ANY MONEYS TRANSFERRED TO THE PUBLIC TRANSPORTATION SYSTEMS OPERATING ASSISTANCE ACCOUNT SHALL ONLY BE USED TO SUPPORT TRANSIT SYSTEMS. IN ADDITION, MONEYS IN THE METROPOLITAN MASS TRANSPORTATION OPERATING ASSISTANCE ACCOUNT AND PUBLIC TRANSPORTATION SYSTEMS OPERATING ASSISTANCE ACCOUNT SHALL NOT BE APPROPRIATED FOR ANY OTHER PURPOSE EXCEPT FOR THE SUPPORT OF TRANSIT SYSTEMS.

S 6. Subdivision (d) of section 1102 of the tax law is amended by adding a new paragraph 1-a to read as follows:

(1-A) EXCEPT AS OTHERWISE PROVIDED, ONE CENT PER GALLON OF THE TAXES COLLECTED OR RECEIVED IN ANY MONTH WITH RESPECT TO SUCH PREPAYMENT PER GALLON TAX IMPOSED BY THIS SECTION SHALL BE DEPOSITED PROPORTIONATELY AS FOLLOWS: (I) FOR MOTOR FUEL, EIGHTY-ONE AND FIVE-TENTHS PERCENT IN THE SPECIAL OBLIGATIONS AND RESERVE AND PAYMENT ACCOUNT OF THE DEDICATED HIGHWAY AND BRIDGE TRUST FUND ESTABLISHED PURSUANT TO SECTION EIGHTY-NINE-B OF THE STATE FINANCE LAW AND EIGHTEEN AND FIVE-TENTHS PERCENT IN THE METROPOLITAN MASS TRANSPORTATION OPERATING ASSISTANCE ACCOUNT ESTABLISHED PURSUANT TO SUBDIVISION SEVEN OF SECTION EIGHTY-EIGHT-A OF THE STATE FINANCE LAW; (II) FOR DIESEL MOTOR FUEL, SIXTY-THREE PERCENT IN THE SPECIAL OBLIGATIONS AND RESERVE AND PAYMENT ACCOUNT OF THE DEDICATED HIGHWAY AND BRIDGE TRUST FUND ESTABLISHED PURSUANT TO SECTION EIGHTY-NINE-B OF THE STATE FINANCE LAW AND THIRTY-SEVEN PERCENT IN THE METROPOLITAN MASS TRANSPORTATION OPERATING ASSISTANCE ACCOUNT ESTABLISHED PURSUANT TO SUBDIVISION SEVEN OF SECTION EIGHTY-EIGHT-A OF THE STATE FINANCE LAW.

S 7. Paragraph 1-a of subdivision (d) of section 1102 of the tax law, as added by section six of this act, is amended to read as follows:

(1-a) Except as otherwise provided, [one cent] TWO CENTS per gallon of the taxes collected or received in any month with respect to such prepayment per gallon tax imposed by this section shall be deposited proportionately as follows: (i) for motor fuel, eighty-one and five-tenths percent in the special obligations and reserve and payment account of the dedicated highway and bridge trust fund established pursuant to section eighty-nine-b of the state finance law and eighteen and five-tenths percent in the metropolitan mass transportation operating assistance account established pursuant to subdivision seven of section eighty-eight-a of the state finance law; (ii) for diesel motor fuel, sixty-three percent in the special obligations and reserve and payment account of the dedicated highway and bridge trust fund established pursuant to section eighty-nine-b of the state finance law and thirty-seven percent in the metropolitan mass transportation operating assistance account established pursuant to subdivision seven of section eighty-eight-a of the state finance law.

S 8. Paragraph 1-a of subdivision (d) of section 1102 of the tax law, as amended by section seven of this act, is amended to read as follows:

(1-a) Except as otherwise provided, [two cents] FOUR CENTS per gallon of the taxes collected or received in any month with respect to such prepayment per gallon tax imposed by this section shall be deposited proportionately as follows: (i) for motor fuel, eighty-one and five-tenths percent in the special obligations and reserve and payment account of the dedicated highway and bridge trust fund established pursuant to section eighty-nine-b of the state finance law and eighteen and five-tenths percent in the metropolitan mass transportation operating assistance account established pursuant to subdivision seven of section eighty-eight-a of the state finance law; (ii) for diesel motor fuel, sixty-three percent in the special obligations and reserve and payment account of the dedicated highway and bridge trust fund established pursuant to section eighty-nine-b of the state finance law and thirty-seven percent in the metropolitan mass transportation operating assistance account established pursuant to subdivision seven of section eighty-eight-a of the state finance law.

S 9. Paragraph (a) of subdivision 7 of section 88-a of the state finance law, as added by chapter 481 of the laws of 1981, is amended to read as follows:

(a) The "metropolitan mass transportation operating assistance account" shall consist of the revenues derived from the taxes for the metropolitan transportation district imposed by section eleven hundred nine of the tax law and that proportion of the receipts received pursuant to the tax imposed by article nine-a of such law as specified in section one hundred seventy-one-a of such law, and that proportion of the receipts received pursuant to the tax imposed by article nine of such law as specified in section two hundred five of such law, and the receipts required to be deposited pursuant to the provisions of section one hundred eighty-two-a OF SUCH LAW, AND THAT PROPORTION OF THE RECEIPTS RECEIVED PURSUANT TO THE TAX IMPOSED BY ARTICLE TWENTY-EIGHT OF SUCH LAW AS SPECIFIED IN SECTION ELEVEN HUNDRED TWO OF SUCH LAW, and all other moneys credited or transferred thereto from any other fund or source pursuant to law.

S 10. Paragraph (a) of subdivision 3 of section 89-b of the state finance law, as amended by section 2 of chapter 165 of the laws of 2008, is amended to read as follows:

(a) The special obligation reserve and payment account shall consist (i) of all moneys required to be deposited in the dedicated highway and bridge trust fund pursuant to the provisions of sections two hundred five, two hundred eighty-nine-e, three hundred one-j, five hundred fifteen, ELEVEN HUNDRED TWO and eleven hundred sixty-seven of the tax law, section four hundred one of the vehicle and traffic law, and section thirty-one of chapter fifty-six of the laws of nineteen hundred ninety-three, (ii) all fees, fines or penalties collected by the commissioner of transportation pursuant to section fifty-two and subdivisions five, eight and twelve of section eighty-eight of the highway law, subdivision fifteen of section three hundred eighty-five of the vehicle and traffic law, section two of the chapter of the laws of two thousand three that amended this paragraph, subdivision (d) of section three hundred four-a, paragraph one of subdivision (a) and subdivision (d) of section three hundred five, subdivision six-a of section four hundred fifteen and subdivision (g) of section twenty-one hundred twenty-five of the vehicle and traffic law, section fifteen of this chapter, excepting moneys deposited with the state on account of betterments performed pursuant to subdivision twenty-seven or subdivision thirty-five of section ten of the highway law, (iii) any moneys collected by the department of transportation for services provided pursuant to agreements entered into in accordance with section ninety-nine-r of the general municipal law, and (iv) any other moneys collected therefor or credited or transferred thereto from any other fund, account or source.

S 11. Paragraph (a) of subdivision 3 of section 89-b of the state finance law, as amended by section 3 of chapter 165 of the laws of 2008, is amended to read as follows:

(a) The special obligation reserve and payment account shall consist (i) of all moneys required to be deposited in the dedicated highway and bridge trust fund pursuant to the provisions of sections two hundred eighty-nine-e, three hundred one-j, five hundred fifteen, ELEVEN HUNDRED TWO and eleven hundred sixty-seven of the tax law, section four hundred one of the vehicle and traffic law, and section thirty-one of chapter fifty-six of the laws of nineteen hundred ninety-three, (ii) all fees, fines or penalties collected by the commissioner of transportation pursuant to section fifty-two and subdivisions five, eight and twelve of section eighty-eight of the highway law, subdivision fifteen of section three hundred eighty-five of the vehicle and traffic law, section fifteen of this chapter, excepting moneys deposited with the state on account of betterments performed pursuant to subdivision twenty-seven or subdivision thirty-five of section ten of the highway law, (iii) any moneys collected by the department of transportation for services provided pursuant to agreements entered into in accordance with section ninety-nine-r of the general municipal law, and (iv) any other moneys collected therefor or credited or transferred thereto from any other fund, account or source.

S 12. A maximum of one hundred million dollars per annum from revenues, fees or credits gathered from resources generated within the metropolitan commuter transportation district by assumed authority under sections 5 and 66 of the public service law shall be dedicated to the metropolitan transportation authority in order to support energy efficient public transportation in the state fiscal year commencing April 1, 2012 and in each state fiscal year thereafter.

S 13. This act shall take effect immediately; provided, however, that the provisions of sections one, six, nine, ten and eleven of this act shall take effect January 1, 2012; provided, further, that sections

three and seven of this act shall take effect on January 1, 2013; provided, further, that section eight of this act shall take effect January 1, 2014; provided, further, that the amendments to paragraph (a) of subdivision 3 of section 89-b of the state finance law, made by section ten of this act, shall be subject to the expiration and reversion of such paragraph pursuant to section 13 of part U1 of chapter 62 of the laws of 2003, as amended, when upon such date the provisions of section eleven of this act shall take effect.