

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

6879--A

I N S E N A T E

April 4, 2012

Introduced by Sen. LAVALLE -- 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 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-
22 jet fuel by an airline in its airplanes; or (v) a sale of kero-jet fuel
23 by a registered distributor of Diesel motor fuel to a fixed base opera-
24 tor registered under this article as a distributor of kero-jet fuel only
25 where such fixed base operator is engaged solely in making or offering

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

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

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

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

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

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

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

55 (j) The exemptions provided in this section shall not apply to the tax
56 required to be prepaid pursuant to the provisions of section eleven

1 hundred two of this article nor to the taxes imposed by sections eleven
2 hundred five and eleven hundred ten of this article with respect to
3 receipts from sales and uses of motor fuel or diesel motor fuel, except
4 that the exemptions provided in paragraphs nine and forty-two of subdivi-
5 sion (a) of this section shall apply to the tax required to be prepaid
6 pursuant to the provisions of section eleven hundred two of this article
7 and to the taxes imposed by sections eleven hundred five and eleven
8 hundred ten of this article with respect to sales and uses of kero-jet
9 fuel, CNG, hydrogen and E85, provided, however, the exemption allowed
10 for E85 shall be subject to the additional requirements provided in
11 section eleven hundred two of this article with respect to E85 AND
12 EXCEPT THAT THE EXEMPTION PROVIDED IN PARAGRAPH TWENTY-FOUR OF SUBDIVI-
13 SION (A) OF THIS SECTION SHALL APPLY TO THE TAXES IMPOSED BY SECTIONS
14 ELEVEN HUNDRED FIVE AND ELEVEN HUNDRED TEN OF THIS ARTICLE WITH RESPECT
15 TO SALES AND USES OF DIESEL MOTOR FUEL USED IN THE OPERATION OF A FISH-
16 ING VESSEL AS DESCRIBED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A) OF
17 THIS SECTION. The exemption provided in subdivision (c) of this section
18 shall apply to sales and uses of non-highway diesel motor fuel but only
19 if all of such fuel is consumed other than on the public highways of
20 this state. The exemption provided in subdivision (c) of this section
21 shall apply to sales and uses of non-highway diesel motor fuel for use
22 or consumption either in the production for sale of tangible personal
23 property by farming or in a commercial horse boarding operation, or in
24 both but only if all of such fuel is consumed other than on the public
25 highways of this state (except for the use of the public highways to
26 reach adjacent farmlands or adjacent lands used in a commercial horse
27 boarding operation, or both).

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

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

1 S 6. This act shall take effect on the first day of a sales tax quar-
2 terly period, as described in subdivision (b) of section 1136 of the tax
3 law, next commencing at least ninety days after this act shall have
4 become a law; sections four and five of this act shall apply to sales
5 made under and uses occurring on or after the dates such sections four
6 and five shall have taken effect, respectively, although made or occur-
7 ring under a prior contract; and provided further that such amendments
8 made by section four of this act shall be subject to the expiration and
9 reversion of such subdivision pursuant to section 19 of part W-1 of
10 chapter 109 of the laws of 2006, as amended, when upon such date the
11 provisions of section five of this act shall take effect.