

2910

2011-2012 Regular Sessions

I N A S S E M B L Y

January 21, 2011

Introduced by M. of A. P. LOPEZ, AMEDORE, MOLINARO, DUPREY, BURLING,
RAIA, FINCH, THIELE, CROUCH, SPANO, KOLB, OAKS, TOBACCO, HAYES, HAWLEY
-- Multi-Sponsored by -- M. of A. BARCLAY, GIGLIO, MAGEE, McKEVITT --
read once and referred to the Committee on Libraries and Education
Technology

AN ACT to amend the tax law, in relation to eliminating state sales and
compensating use taxes on bio diesel products produced, processed
and/or distributed in New York state and authorizing localities to
eliminate such taxes at the local level

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

1 Section 1. Subdivision 1-a of section 289-c of the tax law is amended
2 by adding a new paragraph (e) to read as follows:
3 (E) (I) ANY PERSON MAY EXCLUDE THE AMOUNT OF THE TAX OR TAXES IMPOSED
4 BY THIS ARTICLE ON BIO DIESEL PRODUCTS PRODUCED, PROCESSED AND/OR
5 DISTRIBUTED IN NEW YORK STATE FROM THE SELLING PRICE THEREOF IF SUCH BIO
6 DIESEL PRODUCT IS DELIVERED TO A FILLING STATION AND PLACED IN A STORAGE
7 TANK OF SUCH FILLING STATION FOR SUCH BIO DIESEL PRODUCT TO BE DISPENSED
8 DIRECTLY INTO A MOTOR VEHICLE FOR USE IN THE OPERATION OF SUCH VEHICLE.
9 ANY PERSON MAKING A SALE OF SUCH BIO DIESEL PRODUCT UNDER THE CIRCUM-
10 STANCES DESCRIBED HEREIN, WHEREBY THE TAX OR TAXES OTHERWISE IMPOSED BY
11 THIS ARTICLE HAVE NOT BEEN PASSED THROUGH TO THE PURCHASER, SHALL BE
12 ALLOWED A REFUND OR CREDIT OF THE TAXES IMPOSED BY THIS ARTICLE IN THE
13 AMOUNT OF SUCH TAX OR TAXES PAID BY SUCH PERSON ON SUCH BIO DIESEL PROD-
14 UCT BEING SOLD OR INCLUDED IN THE PRICE PAID BY SUCH PERSON FOR SUCH
15 FUEL. CLAIMS FOR REFUNDS OR CREDITS SHALL BE PRESENTED, AND REFUNDS OR
16 CREDITS SHALL BE MADE, ONLY AS AUTHORIZED BY THE COMMISSIONER UNDER SUCH
17 RULES AND REGULATIONS AS THE COMMISSIONER MAY PRESCRIBE.
18 (II) ANY PERSON MAY EXCLUDE THE AMOUNT OF THE TAX OR TAXES IMPOSED BY
19 THIS ARTICLE FROM THE SELLING PRICE WITH RESPECT TO ANY SALE OF SUCH BIO
20 DIESEL PRODUCT. ANY PERSON MAKING A SALE OF SUCH BIO DIESEL PRODUCT UPON

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

LBD05990-01-1

1 WHICH SUCH PERSON DOES NOT PASS ON MORE THAN EIGHTY PERCENT OF THE TAXES
2 OTHERWISE IMPOSED BY THIS ARTICLE, WHERE SUCH PERSON HAS PURCHASED SUCH
3 BIO DIESEL PRODUCT WITH THE ENTIRE AMOUNT OF THE TAXES IMPOSED BY THIS
4 ARTICLE INCLUDED IN SUCH PERSON'S PURCHASE PRICE, SHALL BE ENTITLED TO A
5 REFUND OR CREDIT EQUAL TO THE AMOUNT OF THE TAX OR TAXES PAID UNDER THIS
6 ARTICLE ON SUCH BIO DIESEL PRODUCT IN EXCESS OF EIGHTY PERCENT OF THE
7 TAX OR TAXES IMPOSED BY THIS ARTICLE ON DIESEL MOTOR FUEL. CLAIMS FOR
8 REFUNDS OR CREDITS SHALL BE PRESENTED, AND REFUNDS OR CREDITS SHALL BE
9 MADE, ONLY AS AUTHORIZED BY THE COMMISSIONER UNDER SUCH RULES AND REGU-
10 LATIONS AS THE COMMISSIONER MAY PRESCRIBE.

11 (III) ANY PERSON MAY EXCLUDE THE AMOUNT OF THE TAX OR TAXES IMPOSED BY
12 THIS ARTICLE ON SUCH BIO DIESEL PRODUCT FROM THE SELLING PRICE THEREOF.
13 ANY PERSON MAKING A SALE OF SUCH BIO DIESEL PRODUCT, WHEREBY THE TAX OR
14 TAXES OTHERWISE IMPOSED BY THIS ARTICLE HAVE NOT BEEN PASSED THROUGH TO
15 THE PURCHASER, SHALL BE ALLOWED A REFUND OR CREDIT OF ANY TAXES IMPOSED
16 BY THIS ARTICLE IN THE AMOUNT OF SUCH TAX OR TAXES PAID BY SUCH PERSON
17 ON SUCH BIO DIESEL PRODUCT BEING SOLD OR INCLUDED IN THE PRICE PAID BY
18 SUCH PERSON FOR SUCH BIO DIESEL PRODUCT. CLAIMS FOR REFUNDS OR CREDITS
19 SHALL BE PRESENTED, AND REFUNDS OR CREDITS SHALL BE MADE, ONLY AS
20 AUTHORIZED BY THE COMMISSIONER UNDER SUCH RULES AND REGULATIONS AS THE
21 COMMISSIONER MAY PRESCRIBE.

22 S 2. Section 300 of the tax law is amended by adding a new subdivision
23 (s) to read as follows:

24 (S) THE TERM "BIODIESEL" SHALL MEAN A DIESEL MOTOR FUEL SUBSTITUTE
25 PRODUCED FROM NONPETROLEUM RENEWABLE RESOURCES THAT MEETS THE REGISTRA-
26 TION REQUIREMENTS FOR FUELS AND FUEL ADDITIVES ESTABLISHED BY THE ENVI-
27 RONMENTAL PROTECTION AGENCY UNDER SECTION 211 OF THE CLEAN AIR ACT (42
28 U.S.C. 7545) AND THAT MEETS THE AMERICAN SOCIETY FOR TESTING AND MATERI-
29 ALS D6751-02A STANDARD SPECIFICATION FOR BIODIESEL FUEL (B100) BLEND
30 STOCK FOR DISTILLATE FUELS THAT HAS BEEN PRODUCED, PROCESSED AND/OR
31 DISTRIBUTED IN NEW YORK STATE.

32 S 3. Subdivision (a) of section 301-b of the tax law is amended by
33 adding a new paragraph 9 to read as follows:

34 (9)(I) BIO DIESEL EXEMPTION. BIO DIESEL PRODUCTS IMPORTED OR CAUSED TO
35 BE IMPORTED INTO THIS STATE OR PRODUCED, REFINED, MANUFACTURED OR
36 COMPOUNDED IN THIS STATE BY A PETROLEUM BUSINESS REGISTERED UNDER ARTI-
37 CLE TWELVE-A OF THIS CHAPTER, AS A DISTRIBUTOR OF DIESEL MOTOR FUEL, AND
38 THEN SOLD BY SUCH PETROLEUM BUSINESS.

39 (II) CALCULATION OF EXEMPTION. THE AMOUNT OF THE EXEMPTION UNDER THIS
40 PARAGRAPH SHALL BE DETERMINED BY THE APPLICABLE TAXES OTHERWISE IMPOSED
41 BY THIS ARTICLE ON SUCH FUEL.

42 S 4. Section 301-c of the tax law is amended by adding a new subdivi-
43 sion (p) to read as follows:

44 (P) REIMBURSEMENT FOR BIO DIESEL PRODUCTS. (1) BIO DIESEL PRODUCTS
45 PURCHASED IN THIS STATE AND SOLD BY SUCH PURCHASER IN THIS STATE WHERE
46 (I) THE TAX IMPOSED PURSUANT TO THIS ARTICLE HAS BEEN PAID WITH RESPECT
47 TO SUCH BIO DIESEL PRODUCTS AND THE ENTIRE AMOUNT OF SUCH TAX HAS BEEN
48 ABSORBED BY SUCH PURCHASER, AND (II) SUCH PURCHASER POSSESSES DOCUMENTA-
49 RY PROOF SATISFACTORY TO THE COMMISSIONER EVIDENCING THE ABSORPTION BY
50 IT OF THE ENTIRE AMOUNT OF THE TAX IMPOSED PURSUANT TO THIS ARTICLE.
51 PROVIDED, THAT THE COMMISSIONER SHALL REQUIRE SUCH DOCUMENTARY PROOF TO
52 QUALIFY FOR ANY REIMBURSEMENT PROVIDED HEREUNDER AS THE COMMISSIONER
53 DEEMS APPROPRIATE.

54 (2) CALCULATION OF REIMBURSEMENT. THE AMOUNT OF THE REIMBURSEMENT
55 UNDER THIS SUBDIVISION SHALL BE DETERMINED BY THE AMOUNT OF THE APPLICA-
56 BLE TAXES OTHERWISE IMPOSED BY THIS ARTICLE ON SUCH FUEL.

1 S 5. Subdivision (b) of section 1101 of the tax law is amended by
2 adding a new paragraph 37 to read as follows:

3 (37) THE TERM "BIODIESEL" SHALL MEAN A DIESEL MOTOR FUEL SUBSTITUTE
4 PRODUCED FROM NONPETROLEUM RENEWABLE RESOURCES THAT MEETS THE REGISTRA-
5 TION REQUIREMENTS FOR FUELS AND FUEL ADDITIVES ESTABLISHED BY THE ENVI-
6 RONMENTAL PROTECTION AGENCY UNDER SECTION 211 OF THE CLEAN AIR ACT (42
7 U.S.C. 7545) AND THAT MEETS THE AMERICAN SOCIETY FOR TESTING AND MATERI-
8 ALS D6751-02A STANDARD SPECIFICATION FOR BIODIESEL FUEL (B100) BLEND
9 STOCK FOR DISTILLATE FUELS THAT HAS BEEN PRODUCED, PROCESSED AND/OR
10 DISTRIBUTED IN NEW YORK STATE.

11 S 6. Subdivision (b) of section 1107 of the tax law is amended by
12 adding a new clause 12 to read as follows:

13 (12) EXCEPT AS OTHERWISE PROVIDED BY LAW, THE EXEMPTION PROVIDED IN
14 PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED
15 FIFTEEN OF THIS ARTICLE RELATING TO BIO DIESEL PRODUCTS PRODUCED, PROC-
16 ESSED AND/OR DISTRIBUTED IN NEW YORK STATE SHALL BE APPLICABLE PURSUANT
17 TO A LOCAL LAW, ORDINANCE OR RESOLUTION ADOPTED BY A CITY SUBJECT TO THE
18 PROVISIONS OF THIS SECTION. SUCH CITY IS EMPOWERED TO ADOPT OR REPEAL
19 SUCH A LOCAL LAW, ORDINANCE OR RESOLUTION. SUCH ADOPTION OR REPEAL SHALL
20 ALSO BE DEEMED TO AMEND ANY LOCAL LAW, ORDINANCE OR RESOLUTION ENACTED
21 BY SUCH A CITY IMPOSING TAXES PURSUANT TO THE AUTHORITY OF SUBDIVISION
22 (A) OF SECTION TWELVE HUNDRED TEN OF THIS CHAPTER.

23 S 7. Subdivision (a) of section 1115 of the tax law is amended by
24 adding a new paragraph 44 to read as follows:

25 (44) BIO DIESEL PRODUCTS PRODUCED, PROCESSED AND/OR DISTRIBUTED IN NEW
26 YORK STATE.

27 S 8. Paragraph 1 of subdivision (a) of section 1210 of the tax law is
28 amended by adding a new closing paragraph to read as follows:

29 ANY LOCAL LAW, ORDINANCE OR RESOLUTION ENACTED BY ANY CITY, COUNTY OR
30 SCHOOL DISTRICT, IMPOSING THE TAXES AUTHORIZED BY THIS SUBDIVISION,
31 SHALL OMIT THE BIO DIESEL PRODUCTS PRODUCED, PROCESSED AND/OR DISTRIB-
32 UTED IN NEW YORK STATE EXEMPTION PROVIDED FOR IN PARAGRAPH FORTY-FOUR OF
33 SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER,
34 UNLESS SUCH CITY, COUNTY OR SCHOOL DISTRICT ELECTS OTHERWISE; PROVIDED
35 THAT IF SUCH A CITY HAVING A POPULATION OF ONE MILLION OR MORE ENACTS
36 THE RESOLUTION DESCRIBED IN SUBDIVISION (P) OF THIS SECTION OR REPEALS
37 SUCH RESOLUTION, SUCH RESOLUTION OR REPEAL SHALL ALSO BE DEEMED TO AMEND
38 ANY LOCAL LAW, ORDINANCE OR RESOLUTION ENACTED BY SUCH A CITY IMPOSING
39 SUCH TAXES PURSUANT TO THE AUTHORITY OF THIS SUBDIVISION, WHETHER OR NOT
40 SUCH TAXES ARE SUSPENDED AT THE TIME SUCH CITY ENACTS ITS RESOLUTION
41 PURSUANT TO SUBDIVISION (P) OF THIS SECTION OR AT THE TIME OF ANY SUCH
42 REPEAL; PROVIDED, FURTHER, THAT ANY SUCH LOCAL LAW, ORDINANCE OR RESOL-
43 UTION AND SECTION ELEVEN HUNDRED SEVEN OF THIS CHAPTER, AS DEEMED TO BE
44 AMENDED IN THE EVENT A CITY OF ONE MILLION OR MORE ENACTS A RESOLUTION
45 PURSUANT TO THE AUTHORITY OF SUBDIVISION (P) OF THIS SECTION, SHALL BE
46 FURTHER AMENDED, AS PROVIDED IN SECTION TWELVE HUNDRED EIGHTEEN OF THIS
47 SUBPART, SO THAT THE BIO DIESEL PRODUCTS PRODUCED, PROCESSED AND/OR
48 DISTRIBUTED IN NEW YORK STATE EXEMPTION IN ANY SUCH LOCAL LAW, ORDINANCE
49 OR RESOLUTION OR IN SUCH SECTION ELEVEN HUNDRED SEVEN IS THE SAME AS THE
50 BIO DIESEL PRODUCTS PRODUCED, PROCESSED AND/OR DISTRIBUTED IN NEW YORK
51 STATE EXEMPTION IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION
52 ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER.

53 S 9. Subdivision (d) of section 1210 of the tax law, as amended by
54 section 37 of part S-1 of chapter 57 of the laws of 2009, is amended to
55 read as follows:

1 (d) A local law, ordinance or resolution imposing any tax pursuant to
2 this section, increasing or decreasing the rate of such tax, repealing
3 or suspending such tax, exempting from such tax the energy sources and
4 services described in paragraph three of subdivision (a) or of subdivi-
5 sion (b) of this section or changing the rate of tax imposed on such
6 energy sources and services or providing for the credit or refund
7 described in clause six of subdivision (a) of section eleven hundred
8 nineteen of this chapter must go into effect only on one of the follow-
9 ing dates: March first, June first, September first or December first;
10 provided, that a local law, ordinance or resolution providing for the
11 exemption described in paragraph thirty of subdivision (a) of section
12 eleven hundred fifteen of this chapter or repealing any such exemption
13 or a local law, ordinance or resolution providing for a refund or credit
14 described in subdivision (d) of section eleven hundred nineteen of this
15 chapter or repealing such provision so provided must go into effect only
16 on March first; PROVIDED, FURTHER, THAT A LOCAL LAW, ORDINANCE OR RESOL-
17 UTION PROVIDING FOR THE EXEMPTION DESCRIBED IN PARAGRAPH FORTY-FOUR OF
18 SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER OR
19 REPEALING ANY SUCH EXEMPTION SO PROVIDED AND A RESOLUTION ENACTED PURSU-
20 ANT TO THE AUTHORITY OF SUBDIVISION (P) OF THIS SECTION PROVIDING SUCH
21 EXEMPTION OR REPEALING SUCH EXEMPTION SO PROVIDED MAY GO INTO EFFECT
22 IMMEDIATELY. No such local law, ordinance or resolution shall be effec-
23 tive unless a certified copy of such law, ordinance or resolution is
24 mailed by registered or certified mail to the commissioner at the
25 commissioner's office in Albany at least ninety days prior to the date
26 it is to become effective. However, the commissioner may waive and
27 reduce such ninety-day minimum notice requirement to a mailing of such
28 certified copy by registered or certified mail within a period of not
29 less than thirty days prior to such effective date if the commissioner
30 deems such action to be consistent with the commissioner's duties under
31 section twelve hundred fifty of this article and the commissioner acts
32 by resolution. Where the restriction provided for in section twelve
33 hundred twenty-three of this article as to the effective date of a tax
34 and the notice requirement provided for therein are applicable and have
35 not been waived, the restriction and notice requirement in section
36 twelve hundred twenty-three of this article shall also apply.

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

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

41 (1) ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE IN WHICH THE
42 TAXES IMPOSED BY SECTION ELEVEN HUNDRED SEVEN OF THIS CHAPTER ARE IN
43 EFFECT, ACTING THROUGH ITS LOCAL LEGISLATIVE BODY, IS HEREBY AUTHORIZED
44 AND EMPOWERED TO ELECT TO PROVIDE THE EXEMPTION FROM SUCH TAXES FOR THE
45 SAME BIO DIESEL PRODUCTS PRODUCED, PROCESSED AND/OR DISTRIBUTED IN NEW
46 YORK STATE EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES DESCRIBED
47 IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED
48 FIFTEEN OF THIS CHAPTER BY ENACTING A RESOLUTION IN THE FORM SET FORTH
49 IN PARAGRAPH TWO OF THIS SUBDIVISION; WHEREUPON, UPON COMPLIANCE WITH
50 THE PROVISIONS OF SUBDIVISIONS (D) AND (E) OF THIS SECTION, SUCH ENACT-
51 MENT OF SUCH RESOLUTION SHALL BE DEEMED TO BE AN AMENDMENT TO SUCH
52 SECTION ELEVEN HUNDRED SEVEN AND SUCH SECTION ELEVEN HUNDRED SEVEN SHALL
53 BE DEEMED TO INCORPORATE SUCH EXEMPTION AS IF IT HAD BEEN DULY ENACTED
54 BY THE STATE LEGISLATURE AND APPROVED BY THE GOVERNOR.

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

1 SECTION ONE. RECEIPTS FROM SALES OF AND CONSIDERATION GIVEN OR
2 CONTRACTED TO BE GIVEN FOR PURCHASES OF BIO DIESEL PRODUCTS PRODUCED,
3 PROCESSED AND/OR DISTRIBUTED IN NEW YORK STATE EXEMPT FROM STATE SALES
4 AND COMPENSATING USE TAXES PURSUANT TO PARAGRAPH FORTY-FOUR OF SUBDIVI-
5 SION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THE TAX LAW SHALL ALSO BE
6 EXEMPT FROM SALES AND COMPENSATING USE TAXES IMPOSED IN THIS JURISDIC-
7 TION.

8 SECTION TWO. THIS RESOLUTION SHALL TAKE EFFECT, (INSERT THE DATE) AND
9 SHALL APPLY TO SALES MADE AND USES OCCURRING ON AND AFTER THAT DATE
10 ALTHOUGH MADE OR OCCURRING UNDER A PRIOR CONTRACT.

11 S 11. The commissioner of taxation and finance is hereby authorized to
12 implement the provisions of this act with respect to the elimination of
13 the imposition of sales tax, additional taxes, and supplemental taxes on
14 bio diesel products produced, processed and/or distributed in New York
15 state and all other taxes so addressed by this act.

16 S 12. This act shall take effect April 1, 2012.