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

33

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I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. CAHILL, MORELLE, DESTITO, LUPARDO, GUNTHER, ROSENTHAL, PHEFFER -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to eliminating the residential restriction for heating exemptions

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

Section 1. Subdivision (d) of section 301-b of the tax law, as amended by section 2 of part H of chapter 407 of the laws of 1999, subparagraph (C) of paragraph 2 as amended by section 1 of part X of chapter 63 of the laws of 2000, is amended to read as follows:

(d) Sales to consumers for heating purposes. [(1) Total residential heating] HEATING exemption. (A) Unenhanced diesel motor fuel sold by a petroleum business registered under article twelve-A of this chapter as a distributor of diesel motor fuel or residual petroleum product sold by a petroleum business registered under this article as a residual petroleum product business to the consumer exclusively for [residential] heating purposes.

(B) Enhanced diesel motor fuel sold by a petroleum business registered under article twelve-A of this chapter as a distributor of diesel motor fuel to the consumer exclusively for [residential] heating purposes but only if such enhanced diesel motor fuel is delivered into a storage tank which is not equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such fuel, provided, that with respect to each delivery of such fuel over four thousand five hundred gallons, to obtain this exemption there shall be required a certificate signed by the purchaser stating that the product will be used exclusively for [residential] heating purposes.

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

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[(2) Partial non-residential heating exemption. (A) Unenhanced diesel motor fuel sold by a petroleum business registered under article twelve-A of this chapter as a distributor of diesel motor fuel or residual petroleum product sold by a petroleum business registered under this article as a residual petroleum product business to the consumer exclusively for heating, other than residential heating purposes.

(B) Enhanced diesel motor fuel sold by a petroleum business registered under article twelve-A of this chapter as a distributor of diesel motor fuel to the consumer exclusively for heating, other than residential heating purposes, but only if such enhanced diesel motor fuel is delivered into a storage tank which is not equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such fuel, provided, that with respect to each delivery of such fuel over four thousand five hundred gallons, to obtain this exemption there shall be required a certificate signed by the purchaser stating that the product will be used exclusively for heating, other than residential heating purposes.

(C) Calculation of partial exemption. Notwithstanding any other provision of this article, commencing April first, two thousand one and ending August thirty-first, two thousand two, the amount of the partial exemption under this paragraph shall be determined by multiplying the quantity of diesel motor fuel and residual petroleum product eligible for the exemption times the sum of the then current rate of the supplemental tax imposed by section three hundred one-j of this article and twenty percent of the then current rate of the tax imposed by section three hundred one-a of this article, with respect to the specific diesel motor fuel or residual petroleum product rate, as the case may be, and commencing September first, two thousand two, the amount of the partial exemption under this paragraph shall be determined by multiplying the quantity of diesel motor fuel and residual petroleum product eligible for the exemption times the sum of the then current rate of the supplemental tax imposed by section three hundred one-j of this article and forty-six percent of the then current rate of the tax imposed by section three hundred one-a of this article, with respect to the specific diesel motor fuel or residual petroleum product rate, as the case may be.]

S 2. Subdivision (a) of section 301-c of the tax law, as amended by section 4 of part H of chapter 407 of the laws of 1999 and subparagraph (B) of paragraph 2 as amended by section 2 of part X of chapter 63 of the laws of 2000, is amended to read as follows:

(a) Diesel motor fuel used for heating purposes. [(1) Total residential heating] HEATING reimbursement. Diesel motor fuel purchased in this state and sold by such purchaser to a consumer for use exclusively for [residential] heating purposes but only where (i) such diesel motor fuel is delivered into a storage tank which is not equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such fuel, (ii) the tax imposed pursuant to this article has been paid with respect to such diesel motor fuel and the entire amount of such tax has been absorbed by such purchaser, and (iii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that the commissioner is authorized, in the event that the commissioner determines that it would not threaten the integrity of the administration and enforcement of the tax imposed by this article, to provide a reimbursement with respect to

a retail sale to a consumer for [residential] heating purposes of less than ten gallons of diesel motor fuel provided such fuel is not dispensed into the tank of a motor vehicle. Provided, further, that with respect to each delivery of enhanced diesel motor fuel of over four thousand five hundred gallons, to obtain this reimbursement there shall be required a certificate signed by the consumer stating that the product will be used exclusively for [residential] heating purposes.

[(2) Partial non-residential heating reimbursement. (A) Diesel motor fuel purchased in this state and sold by such purchaser to a consumer for use exclusively for heating, other than for residential heating purposes, but only where (i) such diesel motor fuel is delivered into a storage tank which is not equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such fuel, (ii) the tax imposed pursuant to this article has been paid with respect to such diesel motor fuel and the entire amount of such tax has been absorbed by such purchaser, and (iii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that with respect to each delivery of enhanced diesel motor fuel of over four thousand five hundred gallons, to obtain this reimbursement there shall be required a certificate signed by the consumer stating that the product will be used exclusively for heating, other than for residential heating purposes.

(B) Calculation of partial reimbursement. Notwithstanding any other provision of this article, commencing April first, two thousand one and ending August thirty-first, two thousand two, the amount of the reimbursement under this paragraph shall be determined by multiplying the quantity of diesel motor fuel eligible for the reimbursement times the sum of the then current rate of the supplemental tax imposed by section three hundred one-j of this article and twenty percent of the then current rate of the tax imposed by section three hundred one-a of this article, with respect to the specific diesel motor fuel rate, as the case may be, and commencing September first, two thousand two, the amount of the reimbursement under this paragraph shall be determined by multiplying the quantity of diesel motor fuel eligible for the reimbursement times the sum of the then current rate of the supplemental tax imposed by section three hundred one-j of this article and forty-six percent of the then current rate of the tax imposed by section three hundred one-a of this article, with respect to the specific diesel motor fuel rate, as the case may be.]

S 3. This act shall take effect April 1, 2011; provided, however, if this act shall become a law after such date it shall be deemed to have been in full force and effect on and after April 1, 2011.