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

5751

2011-2012 Regular Sessions

I N A S S E M B L Y

February 28, 2011

Introduced by M. of A. MAGEE -- read once and referred to the Committee on Ways and Means

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:

Section 1. Paragraph (c) of subdivision 3 of section 282-a of the tax law, as added by chapter 302 of the laws of 2006, is amended to read as follows:

(c) Limited exemptions for dyed Diesel motor fuel. (i) The tax imposed by this section shall not apply to: (A) the sale of dyed Diesel motor fuel by the importer to a purchaser under the circumstances and subject to the terms and conditions as follows: (1) the importer and purchaser are each registered under this article as a full Diesel motor fuel distributor; (2) such importer has imported the enhanced Diesel motor fuel, which is the subject of the sale, into the state and has dyed such fuel to comply with the provisions of 26 USC S 4082(a) and the regulations thereunder, as may be amended from time to time; (3) the purchaser is a holder of a currently valid direct payment permit issued pursuant to section two hundred eighty-three-d of this article; and (4)(I) such purchaser is primarily engaged in the retail heating oil business and such dyed Diesel motor fuel will be sold by such purchaser in a retail sale to a consumer for use [solely as] BY THAT CONSUMER DIRECTLY AND EXCLUSIVELY FOR residential or commercial heating [oil], OR (II) SUCH DYED DIESEL MOTOR FUEL WILL BE SOLD BY SUCH PURCHASER IN A RETAIL SALE TO A CONSUMER FOR USE BY THAT CONSUMER DIRECTLY AND EXCLUSIVELY IN THE PRODUCTION OF TANGIBLE PERSONAL PROPERTY FOR SALE BY FARMING, BUT ONLY IF ALL OF THAT FUEL IS DELIVERED ON THE FARMING SITE AND IS CONSUMED OTHER THAN ON THE HIGHWAYS OF THIS STATE (EXCEPT FOR USE OF THE HIGHWAY TO REACH ADJACENT FARMLANDS); PROVIDED, HOWEVER, THAT A FARMER MAY PURCHASE NO MORE THAN FOUR THOUSAND FIVE HUNDRED GALLONS OF

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

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DIESEL MOTOR FUEL AND DYED DIESEL MOTOR FUEL COMBINED IN A THIRTY-DAY PERIOD FOR SUCH USE OR CONSUMPTION EXEMPT FROM THE MEASURE OF THE TAX IMPOSED BY THIS SECTION, EXCEPT IN ACCORDANCE WITH PRIOR CLEARANCE GIVEN BY THE COMMISSIONER, OR (III) SUCH DYED DIESEL MOTOR FUEL WILL BE SOLD BY SUCH PURCHASER IN A RETAIL SALE TO A CONSUMER FOR USE BY THAT CONSUMER DIRECTLY AND EXCLUSIVELY IN THE PRODUCTION OF TANGIBLE PERSONAL PROPERTY FOR SALE BY MANUFACTURING, PROCESSING, OR ASSEMBLY, BUT ONLY IF ALL OF THAT FUEL IS DELIVERED ON THE MANUFACTURING SITE AND IS CONSUMED OTHER THAN ON THE HIGHWAYS OF THIS STATE; (B) a first sale of the dyed Diesel motor fuel, which [as] WAS the subject of an exempt sale described in clause (A) of this subparagraph, by the purchaser described therein to a purchaser likewise holding a currently valid direct pay permit under the circumstances and subject to the terms and conditions as follows: (1) the sale [of] TO such second purchaser by such first purchaser is the first and only sale of such dyed Diesel motor fuel by such first purchaser; (2) (I) such second purchaser is primarily engaged in the retail heating oil business and such dyed Diesel motor fuel will be sold by such second purchaser in a retail sale to a consumer for use [solely as] BY THAT CONSUMER DIRECTLY AND EXCLUSIVELY FOR residential or commercial heating [oil], OR (II) SUCH DYED DIESEL MOTOR FUEL WILL BE SOLD BY SUCH SECOND PURCHASER IN A RETAIL SALE TO A CONSUMER FOR USE BY THAT CONSUMER DIRECTLY AND EXCLUSIVELY IN THE PRODUCTION OF TANGIBLE PERSONAL PROPERTY FOR SALE BY FARMING, BUT ONLY IF ALL OF THAT FUEL IS DELIVERED ON THE FARMING SITE AND IS CONSUMED OTHER THAN ON THE HIGHWAYS OF THIS STATE (EXCEPT FOR USE OF THE HIGHWAY TO REACH ADJACENT FARMLANDS); PROVIDED, HOWEVER, THAT A FARMER MAY PURCHASE NO MORE THAN FOUR THOUSAND FIVE HUNDRED GALLONS OF DIESEL MOTOR FUEL AND DYED DIESEL MOTOR FUEL COMBINED IN A THIRTY-DAY PERIOD FOR SUCH USE OR CONSUMPTION EXEMPT FROM THE MEASURE OF THE TAX IMPOSED BY THIS SECTION, EXCEPT IN ACCORDANCE WITH PRIOR CLEARANCE GIVEN BY THE COMMISSIONER, OR (III) SUCH DYED DIESEL MOTOR FUEL WILL BE SOLD BY SUCH SECOND PURCHASER IN A RETAIL SALE TO A CONSUMER FOR USE BY THAT CONSUMER DIRECTLY AND EXCLUSIVELY IN THE PRODUCTION OF TANGIBLE PERSONAL PROPERTY FOR SALE BY MANUFACTURING, PROCESSING, OR ASSEMBLY, BUT ONLY IF ALL OF THAT FUEL IS DELIVERED ON THE MANUFACTURING SITE AND IS CONSUMED OTHER THAN ON THE HIGHWAYS OF THIS STATE; (3) on the sale to the second purchaser, such first purchaser described in such clause (A) attaches to the invoice a copy of the invoice given by the importer on the exempt sale described in such clause (A), so as to identify the origin of the dyed Diesel fuel [which] THAT is the subject of the sale to such second purchaser; and (4) such second purchaser certifies that such dyed Diesel motor fuel is to be sold by it only to a consumer for use [solely as] BY THAT CONSUMER DIRECTLY AND EXCLUSIVELY (I) FOR residential or commercial heating [oil], (II) IN THE PRODUCTION OF TANGIBLE PERSONAL PROPERTY FOR SALE BY FARMING, BUT ONLY IF ALL OF THAT FUEL IS DELIVERED ON THE FARMING SITE AND IS CONSUMED OTHER THAN ON THE HIGHWAYS OF THIS STATE (EXCEPT FOR USE OF THE HIGHWAY TO REACH ADJACENT FARMLANDS); PROVIDED, HOWEVER, THAT A FARMER MAY PURCHASE NO MORE THAN FOUR THOUSAND FIVE HUNDRED GALLONS OF DIESEL MOTOR FUEL AND DYED DIESEL MOTOR FUEL COMBINED IN A THIRTY-DAY PERIOD FOR SUCH USE OR CONSUMPTION EXEMPT FROM THE MEASURE OF THE TAX IMPOSED BY THIS SECTION, EXCEPT IN ACCORDANCE WITH PRIOR CLEARANCE GIVEN BY THE COMMISSIONER, OR (III) IN THE PRODUCTION OF TANGIBLE PERSONAL PROPERTY FOR SALE BY MANUFACTURING, PROCESSING, OR ASSEMBLY, BUT ONLY IF ALL OF THAT FUEL IS DELIVERED ON THE MANUFACTURING SITE AND IS CONSUMED OTHER THAN ON THE HIGHWAYS OF THIS STATE. (ii) Prior to, or at the time of, such sale of such dyed Diesel motor fuel described in clause (A) or

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

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

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

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

(i) ["nonautomotive type diesel] "NONAUTOMOTIVE-TYPE DIESEL motor fuel" as used in relation to the rates of the tax imposed by section three hundred one-a of this article means any diesel motor fuel, as

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

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

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

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

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

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