

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (c) of subdivision 3 of section 282-a of the tax
2 law, as added by chapter 302 of the laws of 2006, is amended to read as
3 follows:
4 (c) Limited exemptions for dyed Diesel motor fuel. (i) The tax imposed
5 by this section shall not apply to: (A) the sale of dyed Diesel motor
6 fuel by the importer to a purchaser under the circumstances and subject
7 to the terms and conditions as follows: (1) the importer and purchaser
8 are each registered under this article as a full Diesel motor fuel
9 distributor; (2) such importer has imported the enhanced Diesel motor
10 fuel, which is the subject of the sale, into the state and has dyed such
11 fuel to comply with the provisions of 26 USC S 4082(a) and the regu-
12 lations thereunder, as may be amended from time to time; (3) the
13 purchaser is a holder of a currently valid direct payment permit issued
14 pursuant to section two hundred eighty-three-d of this article; and
15 (4)(I) such purchaser is primarily engaged in the retail heating oil
16 business and such dyed Diesel motor fuel will be sold by such purchaser
17 in a retail sale to a consumer for use [solely as] BY THAT CONSUMER
18 DIRECTLY AND EXCLUSIVELY FOR residential or commercial heating [oil], OR
19 (II) SUCH DYED DIESEL MOTOR FUEL WILL BE SOLD BY SUCH PURCHASER IN A
20 RETAIL SALE TO A CONSUMER FOR USE BY THAT CONSUMER DIRECTLY AND EXCLU-
21 SIVELY IN THE PRODUCTION OF TANGIBLE PERSONAL PROPERTY FOR SALE BY FARM-
22 ING, BUT ONLY IF ALL OF THAT FUEL IS DELIVERED ON THE FARMING SITE AND
23 IS CONSUMED OTHER THAN ON THE HIGHWAYS OF THIS STATE (EXCEPT FOR USE OF
24 THE HIGHWAY TO REACH ADJACENT FARMLANDS); PROVIDED, HOWEVER, THAT A
25 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.

LBD08917-01-1

1 DIESEL MOTOR FUEL AND DYED DIESEL MOTOR FUEL COMBINED IN A THIRTY-DAY
2 PERIOD FOR SUCH USE OR CONSUMPTION EXEMPT FROM THE MEASURE OF THE TAX
3 IMPOSED BY THIS SECTION, EXCEPT IN ACCORDANCE WITH PRIOR CLEARANCE GIVEN
4 BY THE COMMISSIONER, OR (III) SUCH DYED DIESEL MOTOR FUEL WILL BE SOLD
5 BY SUCH PURCHASER IN A RETAIL SALE TO A CONSUMER FOR USE BY THAT CONSUM-
6 ER DIRECTLY AND EXCLUSIVELY IN THE PRODUCTION OF TANGIBLE PERSONAL PROP-
7 ERTY FOR SALE BY MANUFACTURING, PROCESSING, OR ASSEMBLY, BUT ONLY IF ALL
8 OF THAT FUEL IS DELIVERED ON THE MANUFACTURING SITE AND IS CONSUMED
9 OTHER THAN ON THE HIGHWAYS OF THIS STATE; (B) a first sale of the dyed
10 Diesel motor fuel, which [as] WAS the subject of an exempt sale
11 described in clause (A) of this subparagraph, by the purchaser described
12 therein to a purchaser likewise holding a currently valid direct pay
13 permit under the circumstances and subject to the terms and conditions
14 as follows: (1) the sale [of] TO such second purchaser by such first
15 purchaser is the first and only sale of such dyed Diesel motor fuel by
16 such first purchaser; (2) (I) such second purchaser is primarily engaged
17 in the retail heating oil business and such dyed Diesel motor fuel will
18 be sold by such second purchaser in a retail sale to a consumer for use
19 [solely as] BY THAT CONSUMER DIRECTLY AND EXCLUSIVELY FOR residential or
20 commercial heating [oil], OR (II) SUCH DYED DIESEL MOTOR FUEL WILL BE
21 SOLD BY SUCH SECOND PURCHASER IN A RETAIL SALE TO A CONSUMER FOR USE BY
22 THAT CONSUMER DIRECTLY AND EXCLUSIVELY IN THE PRODUCTION OF TANGIBLE
23 PERSONAL PROPERTY FOR SALE BY FARMING, BUT ONLY IF ALL OF THAT FUEL IS
24 DELIVERED ON THE FARMING SITE AND IS CONSUMED OTHER THAN ON THE HIGHWAYS
25 OF THIS STATE (EXCEPT FOR USE OF THE HIGHWAY TO REACH ADJACENT FARM-
26 LANDS); PROVIDED, HOWEVER, THAT A FARMER MAY PURCHASE NO MORE THAN FOUR
27 THOUSAND FIVE HUNDRED GALLONS OF DIESEL MOTOR FUEL AND DYED DIESEL MOTOR
28 FUEL COMBINED IN A THIRTY-DAY PERIOD FOR SUCH USE OR CONSUMPTION EXEMPT
29 FROM THE MEASURE OF THE TAX IMPOSED BY THIS SECTION, EXCEPT IN ACCORD-
30 ANCE WITH PRIOR CLEARANCE GIVEN BY THE COMMISSIONER, OR (III) SUCH DYED
31 DIESEL MOTOR FUEL WILL BE SOLD BY SUCH SECOND PURCHASER IN A RETAIL SALE
32 TO A CONSUMER FOR USE BY THAT CONSUMER DIRECTLY AND EXCLUSIVELY IN THE
33 PRODUCTION OF TANGIBLE PERSONAL PROPERTY FOR SALE BY MANUFACTURING,
34 PROCESSING, OR ASSEMBLY, BUT ONLY IF ALL OF THAT FUEL IS DELIVERED ON
35 THE MANUFACTURING SITE AND IS CONSUMED OTHER THAN ON THE HIGHWAYS OF
36 THIS STATE; (3) on the sale to the second purchaser, such first purchas-
37 er described in such clause (A) attaches to the invoice a copy of the
38 invoice given by the importer on the exempt sale described in such
39 clause (A), so as to identify the origin of the dyed Diesel fuel [which]
40 THAT is the subject of the sale to such second purchaser; and (4) such
41 second purchaser certifies that such dyed Diesel motor fuel is to be
42 sold by it only to a consumer for use [solely as] BY THAT CONSUMER
43 DIRECTLY AND EXCLUSIVELY (I) FOR residential or commercial heating
44 [oil], (II) IN THE PRODUCTION OF TANGIBLE PERSONAL PROPERTY FOR SALE BY
45 FARMING, BUT ONLY IF ALL OF THAT FUEL IS DELIVERED ON THE FARMING SITE
46 AND IS CONSUMED OTHER THAN ON THE HIGHWAYS OF THIS STATE (EXCEPT FOR USE
47 OF THE HIGHWAY TO REACH ADJACENT FARMLANDS); PROVIDED, HOWEVER, THAT A
48 FARMER MAY PURCHASE NO MORE THAN FOUR THOUSAND FIVE HUNDRED GALLONS OF
49 DIESEL MOTOR FUEL AND DYED DIESEL MOTOR FUEL COMBINED IN A THIRTY-DAY
50 PERIOD FOR SUCH USE OR CONSUMPTION EXEMPT FROM THE MEASURE OF THE TAX
51 IMPOSED BY THIS SECTION, EXCEPT IN ACCORDANCE WITH PRIOR CLEARANCE GIVEN
52 BY THE COMMISSIONER, OR (III) IN THE PRODUCTION OF TANGIBLE PERSONAL
53 PROPERTY FOR SALE BY MANUFACTURING, PROCESSING, OR ASSEMBLY, BUT ONLY IF
54 ALL OF THAT FUEL IS DELIVERED ON THE MANUFACTURING SITE AND IS CONSUMED
55 OTHER THAN ON THE HIGHWAYS OF THIS STATE. (ii) Prior to, or at the time
56 of, such sale of such dyed Diesel motor fuel described in clause (A) or

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

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

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

51 S 3. Clause (i) of subparagraph (C) of paragraph 1 of subdivision (c)
52 of section 300 of the tax law, as added by chapter 190 of the laws of
53 1990, is amended to read as follows:

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

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

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

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

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

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

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