

8552

2011-2012 Regular Sessions

I N A S S E M B L Y

July 20, 2011

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

AN ACT to amend the tax law, in relation to the tax on motor fuels and
providing for the temporary exemption from state sales tax of motor
fuel and diesel motor fuel

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

1 Section 1. Subdivision 1 of section 284 of the tax law, as amended by
2 chapter 276 of the laws of 1986, is amended to read as follows:
3 1. There is hereby levied and imposed an excise tax of [four] THREE
4 AND ONE-HALF cents per gallon upon motor fuel (a) imported into or
5 caused to be imported into the state by a distributor for use, distrib-
6 ution, storage or sale in the state or upon motor fuel which is
7 produced, refined, manufactured or compounded by a distributor in the
8 state (which acts shall hereinafter in this subdivision be encompassed
9 by the phrase "imported or manufactured") or (b) if the tax has not been
10 imposed prior to its sale in this state, which is sold by a distributor
11 (which act, in conjunction with the acts described in paragraph (a) of
12 this subdivision, shall hereinafter in this article be encompassed by
13 the phrase "imported, manufactured or sold"), except when imported,
14 manufactured or sold under circumstances which preclude the collection
15 of such tax by reason of the United States constitution and of laws of
16 the United States enacted pursuant thereto or when imported or manufac-
17 tured by an organization described in paragraph one or two of subdivi-
18 sion (a) of section eleven hundred sixteen of this chapter or a hospital
19 included in the organizations described in paragraph four of such subdivi-
20 sion for its own use or consumption and except kero-jet fuel when
21 imported or manufactured by an airline for use in its airplanes.
22 Provided, further, no motor fuel shall be included in the measure of the
23 tax unless it shall have previously come to rest within the meaning of
24 federal decisional law interpreting the United States constitution. All

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

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1 tax for the period for which a return is required to be filed shall be
2 due on the date limited for the filing of the return for such period,
3 regardless of whether a return is filed by such distributor as required
4 by this article or whether the return which is filed correctly shows the
5 amount of tax due.

6 S 2. Section 284-a of the tax law, as amended by section 3 of part EE
7 of chapter 63 of the laws of 2000, is amended to read as follows:

8 S 284-a. Additional motor fuel tax. In addition to the tax imposed by
9 section two hundred eighty-four of this [chapter] ARTICLE, a like tax
10 shall be imposed at the rate of [three] TWO AND FIVE-EIGHTHS cents per
11 gallon upon motor fuel imported, manufactured or sold within this state
12 by a distributor. Except as otherwise provided in this section, all the
13 provisions of this article except subdivision two of section two hundred
14 eighty-nine-e of this article shall apply with respect to the additional
15 tax imposed by this section to the same extent as if it were imposed by
16 said section two hundred eighty-four. [Beginning on April first, nine-
17 teen hundred ninety-one, four and one-sixth per centum of the moneys
18 received by the department pursuant to the provisions of this section
19 shall be deposited to the credit of the emergency highway reconditioning
20 and preservation fund reserve account established pursuant to the
21 provisions of paragraph (b) of subdivision two of section eighty-nine of
22 the state finance law. Beginning on April first, nineteen hundred nine-
23 ty-one, four and one-sixth per centum of the moneys received by the
24 department pursuant to the provisions of this section shall be deposited
25 to the credit of the emergency highway construction and reconstruction
26 fund reserve account established pursuant to the provisions of paragraph
27 (b) of subdivision two of section eighty-nine-a of the state finance
28 law. Beginning on April first, nineteen hundred ninety-two, an addi-
29 tional eight and one-third per centum of the moneys received by the
30 department pursuant to the provisions of this section shall be deposited
31 to the credit of the emergency highway reconditioning and preservation
32 fund reserve account established pursuant to the provisions of paragraph
33 (b) of subdivision two of section eighty-nine of the state finance law.
34 Beginning on April first, nineteen hundred ninety-two, an additional
35 eight and one-third per centum of the moneys received by the department
36 pursuant to the provisions of this section shall be deposited to the
37 credit of the emergency highway construction and reconstruction fund
38 reserve account established pursuant to the provisions of paragraph (b)
39 of subdivision two of section eighty-nine-a of the state finance law.
40 Beginning on April first, two thousand, seventy-five per centum of the
41 moneys received by the department pursuant to the provisions of this
42 section shall be deposited in the dedicated fund accounts pursuant to
43 subdivision (d) of section three hundred one-j of this chapter.] Begin-
44 ning on April first, two thousand three, all of the moneys received by
45 the department pursuant to the provisions of this section shall be
46 deposited in the dedicated fund accounts pursuant to subdivision (d) of
47 section three hundred one-j of this chapter.

48 S 3. Section 284-c of the tax law, as amended by section 4 of part EE
49 of chapter 63 of the laws of 2000, is amended to read as follows:

50 S 284-c. Supplemental motor fuel tax. In addition to the taxes imposed
51 by sections two hundred eighty-four and two hundred eighty-four-a of
52 this [chapter] ARTICLE, a like tax shall be imposed at the rate of
53 SEVEN-EIGHTHS OF one cent per gallon upon motor fuel imported, manufac-
54 tured or sold within this state by a distributor. Except for paragraph
55 (b) of subdivision three of section two hundred eighty-nine-c OF THIS
56 ARTICLE, all the provisions of this article shall apply with respect to

1 the supplemental tax imposed by this section to the same extent as if it
2 were imposed by said section two hundred eighty-four. [On and after the
3 first day of October, nineteen hundred seventy-two, twenty-five per
4 centum of the monies received by the department pursuant to the
5 provisions of this section shall be deposited to the credit of the emer-
6 gency highway reconditioning and preservation fund established pursuant
7 to the provisions of section eighty-nine of the state finance law.
8 Beginning on April first, nineteen hundred eighty-three, twenty-five per
9 centum of the monies received by the department pursuant to the
10 provisions of this section shall be deposited to the credit of the emer-
11 gency highway construction and reconstruction fund established pursuant
12 to the provisions of section eighty-nine-a of the state finance law.
13 Beginning on April first, nineteen hundred ninety, an additional twelve
14 and one-half per centum of the monies received by the department pursu-
15 ant to the provisions of this section shall be deposited to the credit
16 of the emergency highway reconditioning and preservation fund reserve
17 account established pursuant to the provisions of paragraph (b) of
18 subdivision two of section eighty-nine of the state finance law. Begin-
19 ning on April first, nineteen hundred ninety, an additional twelve and
20 one-half per centum of the moneys received by the department pursuant to
21 the provisions of this section shall be deposited to the credit of the
22 emergency highway construction and reconstruction fund reserve account
23 established pursuant to the provisions of paragraph (b) of subdivision
24 two of section eighty-nine-a of the state finance law. Beginning on
25 April first, nineteen hundred ninety-one, an additional twelve and one-
26 half per centum of the moneys received by the department pursuant to the
27 provisions of this section shall be deposited to the credit of the emer-
28 gency highway reconditioning and preservation fund reserve account
29 established pursuant to the provisions of paragraph (b) of subdivision
30 two of section eighty-nine of the state finance law. Beginning on April
31 first, nineteen hundred ninety-one, an additional twelve and one-half
32 per centum of the moneys received by the department pursuant to the
33 provisions of this section shall be deposited to the credit of the emer-
34 gency highway construction and reconstruction fund reserve account
35 established pursuant to the provisions of paragraph (b) of subdivision
36 two of section eighty-nine-a of the state finance law.] Beginning on
37 April first, two thousand three, all of the moneys received by the
38 department pursuant to the provisions of this section shall be deposited
39 in the dedicated fund accounts pursuant to subdivision (d) of section
40 three hundred one-j of this chapter.

41 S 4. Subdivision 1 of section 284 of the tax law, as amended by
42 section one of this act, is amended to read as follows:

43 1. There is hereby levied and imposed an excise tax of three [and
44 one-half] cents per gallon upon motor fuel (a) imported into or caused
45 to be imported into the state by a distributor for use, distribution,
46 storage or sale in the state or upon motor fuel which is produced,
47 refined, manufactured or compounded by a distributor in the state (which
48 acts shall hereinafter in this subdivision be encompassed by the phrase
49 "imported or manufactured") or (b) if the tax has not been imposed prior
50 to its sale in this state, which is sold by a distributor (which act, in
51 conjunction with the acts described in paragraph (a) of this subdivi-
52 sion, shall hereinafter in this article be encompassed by the phrase
53 "imported, manufactured or sold"), except when imported, manufactured or
54 sold under circumstances which preclude the collection of such tax by
55 reason of the United States constitution and of laws of the United
56 States enacted pursuant thereto or when imported or manufactured by an

1 organization described in paragraph one or two of subdivision (a) of
2 section eleven hundred sixteen of this chapter or a hospital included in
3 the organizations described in paragraph four of such subdivision for
4 its own use or consumption and except kero-jet fuel when imported or
5 manufactured by an airline for use in its airplanes. Provided, further,
6 no motor fuel shall be included in the measure of the tax unless it
7 shall have previously come to rest within the meaning of federal deci-
8 sional law interpreting the United States constitution. All tax for the
9 period for which a return is required to be filed shall be due on the
10 date limited for the filing of the return for such period, regardless of
11 whether a return is filed by such distributor as required by this arti-
12 cle or whether the return which is filed correctly shows the amount of
13 tax due.

14 S 5. Section 284-a of the tax law, as amended by section two of this
15 act, is amended to read as follows:

16 S 284-a. Additional motor fuel tax. In addition to the tax imposed by
17 section two hundred eighty-four of this article, a like tax shall be
18 imposed at the rate of two and [five-eighths] ONE-FOURTH cents per
19 gallon upon motor fuel imported, manufactured or sold within this state
20 by a distributor. Except as otherwise provided in this section, all the
21 provisions of this article except subdivision two of section two hundred
22 eighty-nine-e of this article shall apply with respect to the additional
23 tax imposed by this section to the same extent as if it were imposed by
24 said section two hundred eighty-four. Beginning on April first, two
25 thousand three, all of the moneys received by the department pursuant to
26 the provisions of this section shall be deposited in the dedicated fund
27 accounts pursuant to subdivision (d) of section three hundred one-j of
28 this chapter.

29 S 6. Section 284-c of the tax law, as amended by section three of this
30 act, is amended to read as follows:

31 S 284-c. Supplemental motor fuel tax. In addition to the taxes imposed
32 by sections two hundred eighty-four and two hundred eighty-four-a of
33 this article, a like tax shall be imposed at the rate of [seven-eighths]
34 THREE-FOURTHS of one cent per gallon upon motor fuel imported, manufac-
35 tured or sold within this state by a distributor. Except for paragraph
36 (b) of subdivision three of section two hundred eighty-nine-c of this
37 article, all the provisions of this article shall apply with respect to
38 the supplemental tax imposed by this section to the same extent as if it
39 were imposed by said section two hundred eighty-four. Beginning on
40 April first, two thousand three, all of the moneys received by the
41 department pursuant to the provisions of this section shall be deposited
42 in the dedicated fund accounts pursuant to subdivision (d) of section
43 three hundred one-j of this chapter.

44 S 7. Subdivision 1 of section 284 of the tax law, as amended by
45 section four of this act, is amended to read as follows:

46 1. There is hereby levied and imposed an excise tax of [three] TWO
47 cents per gallon upon motor fuel (a) imported into or caused to be
48 imported into the state by a distributor for use, distribution, storage
49 or sale in the state or upon motor fuel which is produced, refined,
50 manufactured or compounded by a distributor in the state (which acts
51 shall hereinafter in this subdivision be encompassed by the phrase
52 "imported or manufactured") or (b) if the tax has not been imposed prior
53 to its sale in this state, which is sold by a distributor (which act, in
54 conjunction with the acts described in paragraph (a) of this subdivi-
55 sion, shall hereinafter in this article be encompassed by the phrase
56 "imported, manufactured or sold"), except when imported, manufactured or

1 sold under circumstances which preclude the collection of such tax by
2 reason of the United States constitution and of laws of the United
3 States enacted pursuant thereto or when imported or manufactured by an
4 organization described in paragraph one or two of subdivision (a) of
5 section eleven hundred sixteen of this chapter or a hospital included in
6 the organizations described in paragraph four of such subdivision for
7 its own use or consumption and except kero-jet fuel when imported or
8 manufactured by an airline for use in its airplanes. Provided, further,
9 no motor fuel shall be included in the measure of the tax unless it
10 shall have previously come to rest within the meaning of federal deci-
11 sional law interpreting the United States constitution. All tax for the
12 period for which a return is required to be filed shall be due on the
13 date limited for the filing of the return for such period, regardless of
14 whether a return is filed by such distributor as required by this arti-
15 cle or whether the return which is filed correctly shows the amount of
16 tax due.

17 S 8. Section 284-a of the tax law, as amended by section five of this
18 act, is amended to read as follows:

19 S 284-a. Additional motor fuel tax. In addition to the tax imposed by
20 section two hundred eighty-four of this article, a like tax shall be
21 imposed at the rate of [two and one-fourth] ONE AND ONE-HALF cents per
22 gallon upon motor fuel imported, manufactured or sold within this state
23 by a distributor. Except as otherwise provided in this section, all the
24 provisions of this article except subdivision two of section two hundred
25 eighty-nine-e of this article shall apply with respect to the additional
26 tax imposed by this section to the same extent as if it were imposed by
27 said section two hundred eighty-four. Beginning on April first, two
28 thousand three, all of the moneys received by the department pursuant to
29 the provisions of this section shall be deposited in the dedicated fund
30 accounts pursuant to subdivision (d) of section three hundred one-j of
31 this chapter.

32 S 9. Section 284-c of the tax law, as amended by section six of this
33 act, is amended to read as follows:

34 S 284-c. Supplemental motor fuel tax. In addition to the taxes imposed
35 by sections two hundred eighty-four and two hundred eighty-four-a of
36 this article, a like tax shall be imposed at the rate of [three-fourths]
37 ONE-HALF of one cent per gallon upon motor fuel imported, manufactured
38 or sold within this state by a distributor. Except for paragraph (b) of
39 subdivision three of section two hundred eighty-nine-c of this article,
40 all the provisions of this article shall apply with respect to the
41 supplemental tax imposed by this section to the same extent as if it
42 were imposed by said section two hundred eighty-four. Beginning on
43 April first, two thousand three, all of the moneys received by the
44 department pursuant to the provisions of this section shall be deposited
45 in the dedicated fund accounts pursuant to subdivision (d) of section
46 three hundred one-j of this chapter.

47 S 10. Subdivision (b) of section 1107 of the tax law is amended by
48 adding a new clause 12 to read as follows:

49 (12) EXCEPT AS OTHERWISE PROVIDED BY LAW, THE EXEMPTION PROVIDED IN
50 PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED
51 FIFTEEN OF THIS ARTICLE RELATING TO MOTOR FUEL AND DIESEL MOTOR FUEL
52 SHALL NOT APPLY.

53 S 11. Subdivision (a) of section 1115 of the tax law is amended by
54 adding a new paragraph 44 to read as follows:

(44) FOR THE PERIOD COMMENCING MAY THIRTY-FIRST, TWO THOUSAND TWELVE, AND ENDING SEPTEMBER SIXTH, TWO THOUSAND TWELVE, MOTOR FUEL AND DIESEL MOTOR FUEL.

S 12. Paragraph 1 of subdivision (a) of section 1210 of the tax law, as amended by section 3 of part GG of chapter 57 of the laws of 2010, is amended to read as follows:

(1) Either, all of the taxes described in article twenty-eight of this chapter, at the same uniform rate, as to which taxes all provisions of the local laws, ordinances or resolutions imposing such taxes shall be identical, except as to rate and except as otherwise provided, with the corresponding provisions in such article twenty-eight, including the definition and exemption provisions of such article, so far as the provisions of such article twenty-eight can be made applicable to the taxes imposed by such city or county and with such limitations and special provisions as are set forth in this article. The taxes authorized under this subdivision may not be imposed by a city or county unless the local law, ordinance or resolution imposes such taxes so as to include all portions and all types of receipts, charges or rents, subject to state tax under sections eleven hundred five and eleven hundred ten of this chapter, except as otherwise provided. (i) Any local law, ordinance or resolution enacted by any city of less than one million or by any county or school district, imposing the taxes authorized by this subdivision, shall, notwithstanding any provision of law to the contrary, exclude from the operation of such local taxes all sales of tangible personal property for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam, for sale, by manufacturing, processing, generating, assembly, refining, mining or extracting; and all sales of tangible personal property for use or consumption predominantly either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both; and, unless such city, county or school district elects otherwise, shall omit the provision for credit or refund contained in clause six of subdivision (a) or subdivision (d) of section eleven hundred nineteen of this chapter. (ii) Any local law, ordinance or resolution enacted by any city, county or school district, imposing the taxes authorized by this subdivision, shall omit the residential solar energy systems equipment exemption provided for in subdivision (ee) and the clothing and footwear exemption provided for in paragraph thirty of subdivision (a) of section eleven hundred fifteen of this chapter, unless such city, county or school district elects otherwise as to either such residential solar energy systems equipment exemption or such clothing and footwear exemption. EXCEPT AS OTHERWISE PROVIDED BY LAW, ANY LOCAL LAW, ORDINANCE OR RESOLUTION ENACTED BY ANY CITY OF LESS THAN ONE MILLION OR BY ANY COUNTY OR SCHOOL DISTRICT, IMPOSING THE TAXES AUTHORIZED BY THIS SUBDIVISION, SHALL OMIT THE MOTOR FUEL AND DIESEL MOTOR FUEL EXEMPTION PROVIDED FOR IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SUCH SECTION ELEVEN HUNDRED FIFTEEN.

S 13. Notwithstanding any other provision of state or local law, ordinance or resolution to the contrary: (a) any city, county or school district imposing sales and compensating use taxes pursuant to the authority of subpart B of part one of article 29 of the tax law, acting through its local legislative body, is hereby authorized and empowered to elect to provide the exemption from such taxes for the same motor fuel and diesel motor fuel exempt from state sales and compensating use taxes described in paragraph 44 of subdivision (a) of section 1115 of

1 the tax law, for the period commencing May 31, 2012, and ending Septem-
2 ber 6, 2012, whether such taxes are imposed by local law, ordinance or
3 resolution, by enacting a resolution in the form set forth in subdivi-
4 sion (c) of this section; whereupon, upon compliance with the provisions
5 of subdivision (d) of this section, such enactment of such resolution
6 shall be deemed to amend such local law, ordinance or resolution impos-
7 ing such taxes, and such local law, ordinance or resolution shall be
8 deemed to incorporate such exemption for such period.

9 (b) Any city of one million or more in which the taxes imposed by
10 section 1107 of the tax law are in effect, acting through its local
11 legislative body, is hereby authorized and empowered to elect to provide
12 the exemption from such taxes for the same motor fuel and diesel motor
13 fuel exempt from state sales tax and compensating use taxes described in
14 paragraph 44 of subdivision (a) of section 1115 of the tax law, for the
15 period commencing May 31, 2012, and ending September 6, 2012, by enact-
16 ing a resolution in the form set forth in subdivision (c) of this
17 section; whereupon, upon compliance with the provisions of subdivision
18 (d) of this section, such enactment of such resolution shall be deemed
19 to be an amendment to such section 1107 of the tax law and such section
20 1107 shall be deemed to incorporate such exemption as if it had been
21 duly enacted by the state legislature and approved by the governor.

22 (c) Form of Resolution: Be it enacted by the (insert proper title of
23 local legislative body) as follows:

24 Section one. Receipts from sales of and consideration given or
25 contracted to be given for purchases of motor fuel and diesel motor fuel
26 exempt from state sales and compensating use taxes pursuant to paragraph
27 44 of subdivision (a) of section 1115 of the tax law shall also be
28 exempt from sales and compensating use taxes imposed by this jurisdic-
29 tion.

30 Section two. This resolution shall take effect immediately and shall
31 apply to sales made and uses occurring during the period commencing May
32 31, 2012, and ending September 6, 2012, although made or occurring under
33 a prior contract.

34 (d) A resolution enacted pursuant to this section shall not be effec-
35 tive unless (1) it is enacted by May 15, 2012, (2) a certified copy of
36 such resolution is mailed by registered or certified mail no later than
37 May 20, 2012, to the commissioner of taxation and finance, and (3)
38 certified copies of such resolution shall also be filed with the city or
39 county clerk, the secretary of state and the state comptroller within
40 five business days after the date is enacted. The commissioner of taxa-
41 tion and finance shall accept and give effect to a resolution enacted
42 pursuant to the authority of this section which is in substantial
43 compliance with the provisions of this section so as to give notice to
44 the commissioner of taxation and finance of the intent of a county, city
45 or school district to provide the exemption authorized by this section.

46 (e) On and after September 7, 2012, any exemption enacted pursuant to
47 this section shall be deemed repealed; (1) any local law, ordinance or
48 resolution imposing sales and compensating use taxes of a city, county
49 or school district which enacted a resolution pursuant to this section
50 and (2) section 1107 of the tax law shall be given effect on and after
51 that date as if no such resolution had been enacted, except that all
52 provisions of any such local law, ordinance or resolution or section
53 1107, as deemed to be amended in the event that such a city enacts a
54 resolution pursuant to this section to provide such an exemption, in
55 respect to the assessment, payment, determination, collection and refund
56 of taxes imposed thereunder, the filing of returns and preservation of

1 records for the purposes of such taxes, the secrecy of returns, and the
2 disposition of revenues shall continue in effect with respect to all
3 such taxes accrued up to such date.

4 S 14. The provision of sections ten through thirteen of this act and
5 this section and of any resolution enacted pursuant thereto, taken sepa-
6 rately or together, shall not be construed by any person or any court or
7 other entity as either (i) a failure or refusal to continue to impose
8 the taxes imposed by section 1107 of the tax law, as such section may
9 from time to time be amended or (ii) as reduction in the rate at which
10 such taxes are imposed. After sections ten through thirteen of this act
11 and this section shall have become a law, the taxes imposed by such
12 section 1107 of the tax law on receipts from retail sales of and consid-
13 eration given or contracted to be given for purchases of such motor fuel
14 and diesel motor fuel shall, except as provided in section thirteen of
15 this act for the period commencing May 31, 2012, and ending September 6,
16 2012, if a city of one million or more enacts a resolution pursuant to
17 the authority of section thirteen of this act, continue to apply,
18 persons liable for such taxes on purchases of such motor fuel and diesel
19 motor fuel shall continue to be liable for such taxes, persons required
20 to collect such taxes on such motor fuel and diesel motor fuel shall
21 continue to be required to collect and pay over such taxes to the
22 commissioner of taxation and finance, such commissioner shall continue
23 to be required to certify such taxes on such motor fuel and diesel motor
24 fuel as provided by article 28 of the tax law and section 92-d of the
25 state finance law and the state comptroller shall continue to be
26 required to deposit, appropriate and pay over such taxes as required by
27 section 92-d of the state finance law, in the manner and to the extent
28 as if sections ten through thirteen of this act and this section had not
29 become a law.

30 S 15. This act shall take effect immediately, except that:

31 1. sections one, two and three of this act shall take effect January
32 1, 2013;

33 2. sections four, five and six of this act shall take effect January
34 1, 2014;

35 3. sections seven, eight and nine of this act shall take effect Janu-
36 ary 1, 2015; and

37 4. the exemption provided in section eleven of this act and any
38 exemption provided pursuant to the authority of section thirteen of this
39 act shall apply to sales made and uses occurring during the period
40 commencing May 31, 2012, and ending September 6, 2012, although made or
41 occurring under a prior contract.