

5596--A

2011-2012 Regular Sessions

I N S E N A T E

June 6, 2011

Introduced by Sens. ZELDIN, MARTINS, BALL, BONACIC, CARLUCCI, JOHNSON, LARKIN, LAVALLE, SALAND -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to creating regions one and two for the metropolitan commuter transportation mobility tax; to amend the state finance law, in relation to aid and incentives for municipalities; to amend the state finance law, in relation to transfer of moneys in the metropolitan mass transportation operating assistance account; to amend the tax law and the state finance law, in relation to the deposit of certain motor fuel and diesel fuel taxes; to dedicate certain monies to the metropolitan transportation authority; and to repeal section 3609-g of the education law

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

1 Section 1. Section 800 of the tax law, as added by section 1 of part C
2 of chapter 25 of the laws of 2009, is amended to read as follows:
3 S 800. Definitions. For the purposes of this article:
4 (a) Metropolitan commuter transportation district. The metropolitan
5 commuter transportation district ("MCTD") means [the area] THE COMBINA-
6 TION OF REGION ONE AND REGION TWO of the state included in the district
7 created and governed by section twelve hundred sixty-two of the public
8 authorities law.
9 (b) REGION ONE. REGION ONE MEANS COUNTIES CONTAINED WHOLLY WITHIN A
10 CITY WITH A POPULATION OF ONE MILLION OR MORE.
11 (c) REGION TWO. REGION TWO MEANS THE COUNTIES OF DUTCHESS, NASSAU,
12 ORANGE, PUTNAM, ROCKLAND, SUFFOLK, AND WESTCHESTER.
13 (D) Employer. Employer means an employer required by section six
14 hundred seventy-one of this chapter to deduct and withhold tax from

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

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wages, that has a payroll expense in excess of two thousand five hundred dollars in any calendar quarter; other than

(1) any agency or instrumentality of the United States;

(2) the United Nations; [or]

(3) an interstate agency or public corporation created pursuant to an agreement or compact with another state or the Dominion of Canada[.];

(4) A NON-PUBLIC PRIMARY OR SECONDARY SCHOOL THAT SATISFIES THE REQUIREMENTS PRESCRIBED BY LAW FOR NON-PUBLIC SCHOOLS IN THIS STATE, AND THAT HAS QUALIFIED FOR FEDERAL TAX EXEMPTION UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE;

(5) ANY PUBLIC SCHOOL DISTRICT, BOARD OF COOPERATIVE EDUCATIONAL SERVICES, OR SPECIAL ACT SCHOOL DISTRICT, AS DEFINED IN SECTION FOUR THOUSAND ONE OF THE EDUCATION LAW; OR

(6) AN EMPLOYER THAT IS LOCATED IN THE MCTD WITH TWENTY-FIVE OR LESS COVERED EMPLOYEES OR AN INDIVIDUAL HAVING NET EARNINGS FROM SELF EMPLOYMENT FROM ACTIVITY WITHIN THE MCTD.

[(c)] (E) Payroll expense. Payroll expense means wages and compensation as defined in sections 3121 and 3231 of the internal revenue code (without regard to section 3121(a)(1) and section 3231(e)(2)(A)(i)), paid to all covered employees.

[(d)] (F) Covered employee. Covered employee means an employee who is employed within REGION ONE OR REGION TWO OF the MCTD.

[(e)] (G) Net earnings from self-employment. Net earnings from self-employment has the same meaning as in section 1402 of the internal revenue code.

S 2. Section 801 of the tax law, as added by section 1 of part C of chapter 25 of the laws of 2009, is amended to read as follows:

S 801. Imposition of tax and rate. (a) For the sole purpose of providing an additional stable and reliable dedicated funding source for the metropolitan transportation authority and its subsidiaries and affiliates to preserve, operate and improve essential transit and transportation services in the metropolitan commuter transportation district, a tax is hereby imposed [at a rate of thirty-four hundredths (.34) percent of] ON: (1) the payroll expense of every employer who engages in business within the MCTD and (2) PRIOR TO JANUARY FIRST, TWO THOUSAND TWELVE, the net earnings from self-employment of individuals that are attributable to the MCTD if such earnings attributable to the MCTD exceed ten thousand dollars for the tax year[.] AT THE FOLLOWING RATES:

(I) FOR REGION ONE, ON OR AFTER JANUARY FIRST, TWO THOUSAND NINE AND BEFORE JANUARY FIRST, TWO THOUSAND THIRTEEN, THIRTY-FOUR HUNDREDTHS (.34) PERCENT; ON OR AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN AND BEFORE JANUARY FIRST, TWO THOUSAND FOURTEEN, TWENTY-EIGHT HUNDREDTHS (.28) PERCENT; AND ON JANUARY FIRST, TWO THOUSAND FOURTEEN AND THEREAFTER, TWENTY-ONE HUNDREDTHS (.21) PERCENT.

(II) FOR REGION TWO, ON OR AFTER JANUARY FIRST, TWO THOUSAND NINE AND BEFORE JANUARY FIRST, TWO THOUSAND TWELVE, THIRTY-FOUR HUNDREDTHS (.34) PERCENT; ON OR AFTER JANUARY FIRST, TWO THOUSAND TWELVE AND BEFORE JANUARY FIRST, TWO THOUSAND THIRTEEN, TWENTY-THREE HUNDREDTHS (.23) PERCENT; ON OR AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN AND BEFORE JANUARY FIRST, TWO THOUSAND FOURTEEN, TWELVE HUNDREDTHS (.12) PERCENT; AND ON JANUARY FIRST, TWO THOUSAND FOURTEEN AND THEREAFTER, ZERO (0) PERCENT.

(b)(1) [An] PRIOR TO JANUARY FIRST, TWO THOUSAND TWELVE, AN individual having net earnings from self-employment from activity both within and without the metropolitan commuter transportation district is required to allocate and apportion such net earnings to the MCTD in the manner

1 required for allocation and apportionment of income under article twen-
2 ty-two of this chapter.

3 (2) [In] PRIOR TO JANUARY FIRST, TWO THOUSAND TWELVE, IN the case of
4 individuals with earnings from self-employment, the net earnings from
5 self employment threshold in paragraph two of subsection (a) of this
6 section will be computed on an individual basis regardless of whether
7 that individual filed a joint personal income tax return.

8 (c) The determination of whether a covered employee is employed within
9 REGION ONE OR REGION TWO OF the MCTD will be made by utilizing the rules
10 applicable to the jurisdiction of employment for purposes of the state-
11 wide wage reporting system under section one hundred seventy-one-a of
12 this chapter, AS ADDED BY CHAPTER FIVE HUNDRED FORTY-FIVE OF THE LAWS OF
13 NINETEEN HUNDRED SEVENTY-EIGHT, and substituting REGION ONE OR REGION
14 TWO OF the MCTD for the state in that application.

15 S 3. Section 3609-g of the education law is REPEALED.

16 S 4. Subdivision 10 of section 54 of the state finance law is amended
17 by adding a new paragraph j-1 to read as follows:

18 J-1. SPECIAL AID AND INCENTIVES FOR MUNICIPALITIES TO THE CITY OF NEW
19 YORK. IN THE STATE FISCAL YEAR COMMENCING APRIL FIRST, TWO THOUSAND
20 FOURTEEN AND IN EACH STATE FISCAL YEAR THEREAFTER, A CITY WITH A POPU-
21 LATION OF ONE MILLION OR MORE SHALL RECEIVE ONE HUNDRED FIFTY MILLION
22 DOLLARS PAYABLE ON OR BEFORE DECEMBER FIFTEENTH. SPECIAL AID AND INCEN-
23 TIVES FOR MUNICIPALITIES TO THE CITY OF NEW YORK SHALL BE APPORTIONED
24 AND PAID TO THE NEW YORK CITY TRANSIT AUTHORITY FOR THE PURPOSE OF THE
25 SUPPORT OF MASS TRANSIT IN THE CITY OF NEW YORK.

26 S 5. Subdivision 7 of section 88-a of the state finance law is amended
27 by adding a new paragraph (c) to read as follows:

28 (C) IN THE STATE FISCAL YEAR COMMENCING APRIL FIRST, TWO THOUSAND
29 TWELVE, AND IN EACH STATE FISCAL YEAR THEREAFTER, MONEYS IN THE METRO-
30 POLITAN MASS TRANSPORTATION OPERATING ASSISTANCE ACCOUNT SHALL NOT BE
31 TRANSFERRED TO THE GENERAL FUND OR OTHER STATE FUNDS OR ACCOUNTS EXCEPT
32 FOR THE PUBLIC TRANSPORTATION SYSTEMS OPERATING ASSISTANCE ACCOUNT
33 PROVIDED THAT ANY MONEYS TRANSFERRED TO THE PUBLIC TRANSPORTATION
34 SYSTEMS OPERATING ASSISTANCE ACCOUNT SHALL ONLY BE USED TO SUPPORT TRAN-
35 SIT SYSTEMS. IN ADDITION, MONEYS IN THE METROPOLITAN MASS TRANSPORTATION
36 OPERATING ASSISTANCE ACCOUNT AND PUBLIC TRANSPORTATION SYSTEMS OPERATING
37 ASSISTANCE ACCOUNT SHALL NOT BE APPROPRIATED FOR ANY OTHER PURPOSE
38 EXCEPT FOR THE SUPPORT OF TRANSIT SYSTEMS.

39 S 6. Subdivision (d) of section 1102 of the tax law is amended by
40 adding a new paragraph 1-a to read as follows:

41 (1-A) EXCEPT AS OTHERWISE PROVIDED, ONE CENT PER GALLON OF THE TAXES
42 COLLECTED OR RECEIVED IN ANY MONTH WITH RESPECT TO SUCH PREPAYMENT PER
43 GALLON TAX IMPOSED BY THIS SECTION SHALL BE DEPOSITED PROPORTIONATELY AS
44 FOLLOWS: (I) FOR MOTOR FUEL, EIGHTY-ONE AND FIVE-TENTHS PERCENT IN THE
45 SPECIAL OBLIGATIONS AND RESERVE AND PAYMENT ACCOUNT OF THE DEDICATED
46 HIGHWAY AND BRIDGE TRUST FUND ESTABLISHED PURSUANT TO SECTION
47 EIGHTY-NINE-B OF THE STATE FINANCE LAW AND EIGHTEEN AND FIVE-TENTHS
48 PERCENT IN THE METROPOLITAN MASS TRANSPORTATION OPERATING ASSISTANCE
49 ACCOUNT ESTABLISHED PURSUANT TO SUBDIVISION SEVEN OF SECTION
50 EIGHTY-EIGHT-A OF THE STATE FINANCE LAW; (II) FOR DIESEL MOTOR FUEL,
51 SIXTY-THREE PERCENT IN THE SPECIAL OBLIGATIONS AND RESERVE AND PAYMENT
52 ACCOUNT OF THE DEDICATED HIGHWAY AND BRIDGE TRUST FUND ESTABLISHED
53 PURSUANT TO SECTION EIGHTY-NINE-B OF THE STATE FINANCE LAW AND THIRTY-
54 SEVEN PERCENT IN THE METROPOLITAN MASS TRANSPORTATION OPERATING ASSIST-
55 ANCE ACCOUNT ESTABLISHED PURSUANT TO SUBDIVISION SEVEN OF SECTION EIGHT-
56 Y-EIGHT-A OF THE STATE FINANCE LAW.

1 S 7. Paragraph 1-a of subdivision (d) of section 1102 of the tax law,
2 as added by section six of this act, is amended to read as follows:

3 (1-a) Except as otherwise provided, [one cent] TWO CENTS per gallon of
4 the taxes collected or received in any month with respect to such
5 prepayment per gallon tax imposed by this section shall be deposited
6 proportionately as follows: (i) for motor fuel, eighty-one and five-
7 tenths percent in the special obligations and reserve and payment
8 account of the dedicated highway and bridge trust fund established
9 pursuant to section eighty-nine-b of the state finance law and eighteen
10 and five-tenths percent in the metropolitan mass transportation operat-
11 ing assistance account established pursuant to subdivision seven of
12 section eighty-eight-a of the state finance law; (ii) for diesel motor
13 fuel, sixty-three percent in the special obligations and reserve and
14 payment account of the dedicated highway and bridge trust fund estab-
15 lished pursuant to section eighty-nine-b of the state finance law and
16 thirty-seven percent in the metropolitan mass transportation operating
17 assistance account established pursuant to subdivision seven of section
18 eighty-eight-a of the state finance law.

19 S 8. Paragraph 1-a of subdivision (d) of section 1102 of the tax law,
20 as amended by section seven of this act, is amended to read as follows:

21 (1-a) Except as otherwise provided, [two cents] FOUR CENTS per gallon
22 of the taxes collected or received in any month with respect to such
23 prepayment per gallon tax imposed by this section shall be deposited
24 proportionately as follows: (i) for motor fuel, eighty-one and five-
25 tenths percent in the special obligations and reserve and payment
26 account of the dedicated highway and bridge trust fund established
27 pursuant to section eighty-nine-b of the state finance law and eighteen
28 and five-tenths percent in the metropolitan mass transportation operat-
29 ing assistance account established pursuant to subdivision seven of
30 section eighty-eight-a of the state finance law; (ii) for diesel motor
31 fuel, sixty-three percent in the special obligations and reserve and
32 payment account of the dedicated highway and bridge trust fund estab-
33 lished pursuant to section eighty-nine-b of the state finance law and
34 thirty-seven percent in the metropolitan mass transportation operating
35 assistance account established pursuant to subdivision seven of section
36 eighty-eight-a of the state finance law.

37 S 9. Paragraph (a) of subdivision 7 of section 88-a of the state
38 finance law, as added by chapter 481 of the laws of 1981, is amended to
39 read as follows:

40 (a) The "metropolitan mass transportation operating assistance
41 account" shall consist of the revenues derived from the taxes for the
42 metropolitan transportation district imposed by section eleven hundred
43 nine of the tax law and that proportion of the receipts received pursu-
44 ant to the tax imposed by article nine-a of such law as specified in
45 section one hundred seventy-one-a of such law, and that proportion of
46 the receipts received pursuant to the tax imposed by article nine of
47 such law as specified in section two hundred five of such law, and the
48 receipts required to be deposited pursuant to the provisions of section
49 one hundred eighty-two-a OF SUCH LAW, AND THAT PROPORTION OF THE
50 RECEIPTS RECEIVED PURSUANT TO THE TAX IMPOSED BY ARTICLE TWENTY-EIGHT OF
51 SUCH LAW AS SPECIFIED IN SECTION ELEVEN HUNDRED TWO OF SUCH LAW, and all
52 other moneys credited or transferred thereto from any other fund or
53 source pursuant to law.

54 S 10. Paragraph (a) of subdivision 3 of section 89-b of the state
55 finance law, as amended by section 2 of chapter 165 of the laws of 2008,
56 is amended to read as follows:

1 (a) The special obligation reserve and payment account shall consist
2 (i) of all moneys required to be deposited in the dedicated highway and
3 bridge trust fund pursuant to the provisions of sections two hundred
4 five, two hundred eighty-nine-e, three hundred one-j, five hundred
5 fifteen, ELEVEN HUNDRED TWO and eleven hundred sixty-seven of the tax
6 law, section four hundred one of the vehicle and traffic law, and
7 section thirty-one of chapter fifty-six of the laws of nineteen hundred
8 ninety-three, (ii) all fees, fines or penalties collected by the commis-
9 sioner of transportation pursuant to section fifty-two and subdivisions
10 five, eight and twelve of section eighty-eight of the highway law,
11 subdivision fifteen of section three hundred eighty-five of the vehicle
12 and traffic law, section two of the chapter of the laws of two thousand
13 three that amended this paragraph, subdivision (d) of section three
14 hundred four-a, paragraph one of subdivision (a) and subdivision (d) of
15 section three hundred five, subdivision six-a of section four hundred
16 fifteen and subdivision (g) of section twenty-one hundred twenty-five of
17 the vehicle and traffic law, section fifteen of this chapter, excepting
18 moneys deposited with the state on account of betterments performed
19 pursuant to subdivision twenty-seven or subdivision thirty-five of
20 section ten of the highway law, (iii) any moneys collected by the
21 department of transportation for services provided pursuant to agree-
22 ments entered into in accordance with section ninety-nine-r of the
23 general municipal law, and (iv) any other moneys collected therefor or
24 credited or transferred thereto from any other fund, account or source.

25 S 11. Paragraph (a) of subdivision 3 of section 89-b of the state
26 finance law, as amended by section 3 of chapter 165 of the laws of 2008,
27 is amended to read as follows:

28 (a) The special obligation reserve and payment account shall consist
29 (i) of all moneys required to be deposited in the dedicated highway and
30 bridge trust fund pursuant to the provisions of sections two hundred
31 eighty-nine-e, three hundred one-j, five hundred fifteen, ELEVEN HUNDRED
32 TWO and eleven hundred sixty-seven of the tax law, section four hundred
33 one of the vehicle and traffic law, and section thirty-one of chapter
34 fifty-six of the laws of nineteen hundred ninety-three, (ii) all fees,
35 fines or penalties collected by the commissioner of transportation
36 pursuant to section fifty-two and subdivisions five, eight and twelve of
37 section eighty-eight of the highway law, subdivision fifteen of section
38 three hundred eighty-five of the vehicle and traffic law, section
39 fifteen of this chapter, excepting moneys deposited with the state on
40 account of betterments performed pursuant to subdivision twenty-seven or
41 subdivision thirty-five of section ten of the highway law, (iii) any
42 moneys collected by the department of transportation for services
43 provided pursuant to agreements entered into in accordance with section
44 ninety-nine-r of the general municipal law, and (iv) any other moneys
45 collected therefor or credited or transferred thereto from any other
46 fund, account or source.

47 S 12. A maximum of one hundred million dollars per annum from reven-
48 ues, fees or credits gathered from resources generated within the metro-
49 politan commuter transportation district by assumed authority under
50 sections 5 and 66 of the public service law shall be dedicated to the
51 metropolitan transportation authority in order to support energy effi-
52 cient public transportation in the state fiscal year commencing April 1,
53 2012 and in each state fiscal year thereafter.

54 S 13. This act shall take effect immediately; provided, however, that
55 the provisions of sections one, six, nine, ten and eleven of this act
56 shall take effect January 1, 2012; provided, further, that sections

1 three and seven of this act shall take effect on January 1, 2013;
2 provided, further, that section eight of this act shall take effect
3 January 1, 2014; provided, further, that the amendments to paragraph (a)
4 of subdivision 3 of section 89-b of the state finance law, made by
5 section ten of this act, shall be subject to the expiration and rever-
6 sion of such paragraph pursuant to section 13 of part U1 of chapter 62
7 of the laws of 2003, as amended, when upon such date the provisions of
8 section eleven of this act shall take effect.