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

6879

I N S E N A T E

April 4, 2012

Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to providing an exemption from the payment of the motor fuels tax and the sales tax on motor fuels used in the operation of commercial fishing vessels; and to amend the tax law, in relation to exempting fuel used in vessels used directly and predominantly in a business providing sport fishing opportunities for hire to the general public from the tax on petroleum businesses and from sales and compensating use taxes

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

Section 1. Paragraph (b) of subdivision 3 of section 282-a of the tax law, as amended by section 5 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(b) The tax on the incidence of sale or use imposed by subdivision one of this section shall not apply to: (i) the sale or use of non-highway Diesel motor fuel, but only if all of such fuel is consumed other than on the public highways of this state (except for the use of the public highway by farmers to reach adjacent farmlands); provided, however, this exemption shall in no event apply to a sale of non-highway Diesel motor fuel which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle (except for delivery at a farm site which qualifies for the exemption under subdivision (g) of section three hundred one-b of this chapter); or (ii) a sale to the consumer consisting of not more than twenty gallons of water-white kerosene to be used and consumed exclusively for heating purposes; or (iii) the sale to or delivery at a filling station or other retail vendor of water-white kerosene provided such filling station or other retail vendor only sells such water-white kerosene exclusively for heating purposes in containers of no more than twenty gallons; or (iv) a sale of kero-jet fuel to an airline for use in its airplanes or a use of kero-jet fuel by an airline in its airplanes; or (v) a sale of kero-jet fuel

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

LBD10686-02-1

by a registered distributor of Diesel motor fuel to a fixed base operator registered under this article as a distributor of kero-jet fuel only where such fixed base operator is engaged solely in making or offering to make retail sales not in bulk of kero-jet fuel directly into the fuel tank of an airplane for the purpose of operating such airplane; or (vi) a retail sale not in bulk of kero-jet fuel by a fixed base operator registered under this article as a distributor of kero-jet fuel only where such fuel is delivered directly into the fuel tank of an airplane for use in the operation of such airplane; OR (VII) A SALE OF DIESEL MOTOR FUEL TO A "COMMERCIAL FISHERMAN", AS SUCH TERM IS DEFINED IN SUBDIVISION (I) OF SECTION THREE HUNDRED OF THIS CHAPTER, AT RETAIL UNDER THE CIRCUMSTANCES SET FORTH IN PARAGRAPH ONE OF SUBDIVISION (G) OF SECTION THREE HUNDRED ONE-C OF THIS CHAPTER, AND WHERE SUCH COMMERCIAL FISHING VESSEL IS OPERATED BY A COMMERCIAL FISHERMAN.

S 2. Subdivision 4 of section 282-a of the tax law, as amended by section 5 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

4. The tax imposed by this section on Diesel motor fuel shall be passed through by the seller and included as part of the selling price to each purchaser of such fuel. Provided, however, the amount of the tax imposed by this section may be excluded from the selling price of Diesel motor fuel where (i) a sale of Diesel motor fuel is made to an organization described in paragraph (a) of subdivision three of this section solely for the purpose stated therein; (ii) a sale of non-highway Diesel motor fuel is made to a consumer but only if such non-highway Diesel motor fuel is not delivered to a filling station, nor delivered into a storage tank which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle; or (iii) the sale to or delivery at a filling station or other retail vendor of water-white kerosene provided such filling station or other retail vendor only sells such water-white kerosene exclusively for heating purposes in containers of no more than twenty gallons; or (iv) a sale of kero-jet fuel is made to an airline for use in its airplanes; OR (V) A SALE OF DIESEL MOTOR FUEL IS MADE TO A "COMMERCIAL FISHERMAN", AS SUCH TERM IS DEFINED IN SUBDIVISION (I) OF SECTION THREE HUNDRED OF THIS CHAPTER, AT RETAIL UNDER THE CIRCUMSTANCES SET FORTH IN PARAGRAPH ONE OF SUBDIVISION (G) OF SECTION THREE HUNDRED ONE-C OF THIS CHAPTER, AND WHERE SUCH COMMERCIAL FISHING VESSEL IS OPERATED BY A COMMERCIAL FISHERMAN.

S 3. Section 301-b of the tax law is amended by adding a new subdivision (k) to read as follows:

(K) SALES OR USES OF DIESEL MOTOR FUEL AND RESIDUAL PETROLEUM PRODUCT FOR COMMERCIAL FISHING. DIESEL MOTOR FUEL OR RESIDUAL PETROLEUM PRODUCT SOLD TO OR USED BY A "COMMERCIAL FISHERMAN", AS SUCH TERM IS DEFINED IN SUBDIVISION (I) OF SECTION THREE HUNDRED OF THIS ARTICLE, AT RETAIL UNDER THE CIRCUMSTANCES SET FORTH IN PARAGRAPH ONE OF SUBDIVISION (G) OF SECTION THREE HUNDRED ONE-C OF THIS ARTICLE, AND WHERE SUCH COMMERCIAL FISHING VESSEL IS OPERATED BY A COMMERCIAL FISHERMAN.

S 4. Subdivision (j) of section 1115 of the tax law, as amended by section 41 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(j) The exemptions provided in this section shall not apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article nor to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to receipts from sales and uses of motor fuel or diesel motor fuel, except that the exemptions provided in paragraphs nine and forty-two of subdivision (a) of this section shall apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article and to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to sales and uses of kero-jet fuel, CNG, hydrogen and E85, provided, however, the exemption allowed for E85 shall be subject to the additional requirements provided in section eleven hundred two of this article with respect to E85 AND EXCEPT THAT THE EXEMPTION PROVIDED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A) OF THIS SECTION SHALL APPLY TO THE TAXES IMPOSED BY SECTIONS ELEVEN HUNDRED FIVE AND ELEVEN HUNDRED TEN OF THIS ARTICLE WITH RESPECT TO SALES AND USES OF DIESEL MOTOR FUEL USED IN THE OPERATION OF A FISHING VESSEL AS DESCRIBED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A) OF THIS SECTION. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel but only if all of such fuel is consumed other than on the public highways of this state. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel for use or consumption either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation, or in both but only if all of such fuel is consumed other than on the public highways of this state (except for the use of the public highways to reach adjacent farmlands or adjacent lands used in a commercial horse boarding operation, or both).

S 5. Subdivision (j) of section 1115 of the tax law, as amended by section 41-a of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(j) The exemptions provided in this section shall not apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article nor to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to receipts from sales and uses of motor fuel or diesel motor fuel, except that the exemption provided in paragraph nine of subdivision (a) of this section shall apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article and to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to sales and uses of kero-jet fuel AND EXCEPT THAT THE EXEMPTION PROVIDED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A) OF THIS SECTION SHALL APPLY TO THE TAXES IMPOSED BY SECTIONS ELEVEN HUNDRED FIVE AND ELEVEN HUNDRED TEN OF THIS ARTICLE WITH RESPECT TO SALES AND USES OF DIESEL MOTOR FUEL USED IN THE OPERATION OF A FISHING VESSEL AS DESCRIBED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A) OF THIS SECTION. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel but only if all of such fuel is consumed other than on the public highways of this state. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel for use or consumption either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation, or in both but only if all of such fuel is consumed other than on the public highways of this state (except for the use of the public highways to reach adjacent farmlands or adjacent lands used in a commercial horse boarding operation, or both).

S 6. Section 300 of the tax law is amended by adding a new subdivision (j-1) to read as follows:

(J-1) "COMMERCIAL SPORT FISHING VESSEL" MEANS A VESSEL OWNED BY A PERSON DOMICILED IN THIS STATE, WHO HAS BEEN ISSUED AND HOLDS A MARINE AND COASTAL DISTRICT PARTY AND CHARTER BOAT LICENSE PURSUANT TO SECTION 13-0336 OF THE ENVIRONMENTAL CONSERVATION LAW.

S 7. Paragraph 2 of subdivision (b) of section 301-a of the tax law, as added by section 154 of part A of chapter 389 of the laws of 1997, is amended to read as follows:

(2) Motor fuel brought into this state in the fuel tank connecting with the engine of a vessel propelled by the use of such motor fuel shall be deemed to constitute a taxable use of motor fuel for the purposes of this subdivision to the extent that the fuel is consumed in the operation of the vessel in this state. Provided, however, that this paragraph shall not apply to (i) a recreational motor boat or (ii) subsequent to August thirty-first, nineteen hundred ninety-four, a commercial fishing vessel (as defined in subdivision (j) of section three hundred of this article) if the motor fuel imported and consumed in this state is used to operate such vessel while it is engaged in the harvesting of fish for sale OR (III) A COMMERCIAL SPORT FISHING VESSEL, IF SUCH VESSEL PROVIDES ITS OWNER WITH AT LEAST FIFTY PERCENT OF HIS OR HER TOTAL ANNUAL INCOME. Provided, further, that tax liability for gallonage that a vessel consumes shall be the tax liability with respect to the positive difference between the gallonage consumed in this state during the reporting period and the gallonage purchased in this state (upon which the tax imposed by this section has been paid) during such period. A credit or refund shall be available for any excess of tax liability for gallonage purchased in this state during the period over tax liability on gallonage so consumed in this state during such period, which excess shall be presumed to have been used outside this state.

S 8. Subparagraph (B) of paragraph 1 of subdivision (c) of section 301-a of the tax law, as amended by section 19 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(B) Highway diesel motor fuel brought into this state in the fuel tank connecting with the engine of a vessel propelled by the use of such diesel motor fuel shall be deemed to constitute a taxable use of diesel motor fuel for the purpose of this paragraph to the extent of the fuel that is consumed in the operation of the vessel in this state. Provided, however, this paragraph shall not apply to (i) a recreational motor boat or (ii) a commercial fishing vessel (as defined in subdivision (j) of section three hundred of this article) if the highway diesel motor fuel imported into and consumed in this state is used to operate such commercial fishing vessel while it is engaged in the harvesting of fish for sale OR (III) A COMMERCIAL SPORT FISHING VESSEL, IF SUCH VESSEL PROVIDES ITS OWNER WITH AT LEAST FIFTY PERCENT OF HIS OR HER TOTAL ANNUAL INCOME. Provided, further, that tax liability for gallonage that a vessel consumes in this state shall be the tax liability with respect to the positive difference between the gallonage consumed in this state during the reporting period and the gallonage purchased in this state (upon which the tax imposed by this section has been paid) during such period. A credit or refund shall be available for any excess of tax liability for gallonage purchased in this state during the period over tax liability on gallonage so consumed in this state during such period, which excess shall be presumed to have been used outside this state.

S 9. The opening paragraph of section 301-c of the tax law, as amended by section 5 of part W-1 of chapter 109 of the laws of 2006, is amended to read as follows:

A subsequent purchaser shall be eligible for reimbursement of tax with respect to the following gallonage, subsequently sold by such purchaser in accordance with subdivision (a), (b), (e), (h), (j), (k), (n) or (o) of this section or used by such purchaser in accordance with subdivision (c), (d), (f), (g), (G-1), (i), (l) or (m) of this section, which gallonage has been included in the measure of the tax imposed by this article on a petroleum business:

S 10. The opening paragraph of section 301-c of the tax law, as amended by chapter 468 of the laws of 2000, is amended to read as follows:

A subsequent purchaser shall be eligible for reimbursement of tax with respect to the following gallonage, subsequently sold by such purchaser in accordance with subdivision (a), (b), (e), (h), (j) or (k) of this section or used by such purchaser in accordance with subdivision (c), (d), (f), (g), (G-1), (i), (l) or (m) of this section, which gallonage has been included in the measure of the tax imposed by this article on a petroleum business:

S 11. Section 301-c of the tax law is amended by adding a new subdivision (g-1) to read as follows:

(G-1) DIESEL MOTOR FUEL AND MOTOR FUEL USED IN THE OPERATION OF COMMERCIAL SPORT FISHING VESSELS. DIESEL MOTOR FUEL OR MOTOR FUEL PURCHASED IN THIS STATE BY THE OPERATOR OF A COMMERCIAL SPORT FISHING VESSEL AT RETAIL WHEREIN SUCH DIESEL MOTOR FUEL OR SUCH MOTOR FUEL IS DELIVERED BY A PUMP EQUIPPED WITH A HOSE DIRECTLY INTO THE FUEL TANK OF A COMMERCIAL SPORT FISHING VESSEL TO BE USED AS FUEL IN THE OPERATION OF SUCH VESSEL FOR THE PURPOSE OF PROVIDING SPORT FISHING OPPORTUNITIES FOR HIRE TO THE GENERAL PUBLIC; BUT ONLY WHERE (1) THE TAX IMPOSED PURSUANT TO THIS ARTICLE HAS BEEN PAID WITH RESPECT TO SUCH DIESEL MOTOR FUEL OR SUCH MOTOR FUEL AND THE ENTIRE AMOUNT OF SUCH TAX HAS BEEN ABSORBED BY SUCH PURCHASER, (2) 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, AND (3) THE VESSEL PROVIDES ITS OWNER WITH AT LEAST FIFTY PERCENT OF HIS OR HER TOTAL ANNUAL INCOME. PROVIDED, HOWEVER, THAT THE COMMISSIONER SHALL REQUIRE SUCH DOCUMENTARY PROOF TO QUALIFY FOR ANY REIMBURSEMENT OF TAX PROVIDED BY THIS SECTION AS THE COMMISSIONER DEEMS APPROPRIATE.

S 12. Subdivision (a) of section 1115 of the tax law is amended by adding a new paragraph 24-a to read as follows:

(24-A) FUEL USED IN VESSELS USED DIRECTLY AND PREDOMINANTLY IN A BUSINESS PROVIDING SPORT FISHING OPPORTUNITIES FOR HIRE TO THE GENERAL PUBLIC; PROVIDED THAT SUCH VESSEL PROVIDES ITS OWNER WITH AT LEAST FIFTY PERCENT OF HIS OR HER TOTAL ANNUAL INCOME.

S 13. Subparagraph (i) of 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:

(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 FUEL USED IN COMMERCIAL SPORT FISHING VESSELS EXEMPTION PROVIDED FOR IN PARAGRAPH TWENTY-FOUR-A OF SUBDIVISION (A), the provision for credit or refund contained in clause six of subdivision (a) or subdivision (d) of section eleven hundred nineteen of this chapter.

S 14. Section 1210 of the tax law is amended by adding a new subdivision (p) to read as follows:

(P) NOTWITHSTANDING ANY OTHER PROVISION OF STATE OR LOCAL LAW, ORDINANCE OR RESOLUTION TO THE CONTRARY:

(1) ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE IN WHICH THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED SEVEN OF THIS CHAPTER ARE IN EFFECT, ACTING THROUGH ITS LOCAL LEGISLATIVE BODY, IS HEREBY AUTHORIZED AND EMPOWERED TO ELECT TO PROVIDE THE SAME EXEMPTIONS FROM SUCH TAXES AS THE FUEL USED IN COMMERCIAL SPORT FISHING VESSELS EXEMPTION FROM STATE SALES AND COMPENSATING USE TAXES DESCRIBED IN PARAGRAPH TWENTY-FOUR-A OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER BY ENACTING A RESOLUTION IN THE FORM SET FORTH IN PARAGRAPH TWO OF THIS SUBDIVISION; WHEREUPON, UPON COMPLIANCE WITH THE PROVISIONS OF SUBDIVISIONS (D) AND (E) OF THIS SECTION, SUCH ENACTMENT OF SUCH RESOLUTION SHALL BE DEEMED TO BE AN AMENDMENT TO SUCH SECTION ELEVEN HUNDRED SEVEN AND SUCH SECTION ELEVEN HUNDRED SEVEN SHALL BE DEEMED TO INCORPORATE SUCH EXEMPTIONS AS IF THEY HAD BEEN DULY ENACTED BY THE STATE LEGISLATURE AND APPROVED BY THE GOVERNOR.

(2) FORM OF RESOLUTION: BE IT ENACTED BY THE (INSERT PROPER TITLE OF LOCAL LEGISLATIVE BODY) AS FOLLOWS:

SECTION ONE. RECEIPTS FROM SALES OF AND CONSIDERATION GIVEN OR CONTRACTED TO BE GIVEN FOR, OR FOR THE USE OF, PROPERTY AND SERVICES EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES PURSUANT TO PARAGRAPH TWENTY-FOUR-A OF SUBDIVISION (A) OF SECTION 1115 OF THE TAX LAW SHALL ALSO BE EXEMPT FROM SALES AND COMPENSATING USE TAXES IMPOSED IN THIS JURISDICTION.

SECTION TWO. THIS RESOLUTION SHALL TAKE EFFECT JUNE 1, (INSERT THE YEAR, BUT NOT EARLIER THAN THE YEAR 2010) AND SHALL APPLY TO SALES MADE, SERVICES RENDERED AND USES OCCURRING ON AND AFTER THAT DATE IN ACCORDANCE WITH THE APPLICABLE TRANSITIONAL PROVISIONS IN SECTIONS 1106, 1216 AND 1217 OF THE NEW YORK TAX LAW.

S 15. This act shall take effect on the first day of a 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 shall have become a law, provided, however, that the amendments made to paragraph (b) of subdivision 3 and subdivision 4, made by sections one and two of this act, respectively, shall take effect on the same date and in the same manner as section 5 of part K of chapter 61 of the laws of 2011, takes effect; and sections four and five of this act shall apply to sales made under and uses occurring on or after the dates such sections four and five shall have taken effect, respectively, although made or occurring under a prior contract, provided that the amendments to subdivision (j) of section 1115 of the tax law made by sections four and five of this act, respectively, shall take effect on the same date and in the same manner as section 41 of part K of chapter 61 of the laws of 2011, takes effect; provided further that such amendments made by section four of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 19 of part W-1 of chapter 109 of the laws of 2006, as amended, when upon such date the provisions of section five of this act shall take effect; provided, further, that sections six, seven, nine, ten and eleven of this act shall take effect June 1, 2011; provided, further, that the amendments made to subparagraph (B) of paragraph 1 of subdivision (c) of section 301-a of the tax law made by section eight of this act shall take effect on the same date and in the same manner as section 19 of part K of chapter 61 of the laws of 2011, takes effect; provided, further, that the amendments to the opening paragraph of section 301-c of the tax law, made by section nine of this act shall not affect the expiration and repeal of such paragraph pursuant to section 19 of part W-1 of chapter 109 of the laws of 2006, as amended, and shall expire and be deemed repealed therewith, when upon such date the provisions of section ten of this act shall take effect.