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

1379

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. CAHILL -- Multi-Sponsored by -- M. of A. BROOK-KRASNY, CASTRO, COOK, CRESPO, CUSICK, DenDEKKER, ENGLEBRIGHT, LAVINE, MORELLE, RAMOS, STEVENSON, THIELE, WEPRIN -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to computing sales and compensating use tax on motor fuel and diesel motor fuel; and to amend the tax law and the general business law, in relation to requiring retail dealers of motor fuel and diesel motor fuel to reduce prices for such fuel

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

Section 1. The tax law is amended by adding a new section 282-d to read as follows:

S 282-D. EXEMPT RETAIL SALES PERIODS. NOTWITHSTANDING ANY PROVISION OF THE LAW TO THE CONTRARY, EXCISE TAXES IMPOSED ON DIESEL MOTOR FUEL PURSUANT TO SECTIONS TWO HUNDRED EIGHTY-TWO-A, TWO HUNDRED EIGHTY-TWO-B, AND TWO HUNDRED EIGHTY-TWO-C OF THIS ARTICLE SHALL NOT BE IMPOSED ON RETAIL SALES MADE DURING THE PERIOD COMMENCING FRIDAY, MAY TWENTY-SEVENTH, TWO THOUSAND THIRTEEN THROUGH MONDAY, MAY THIRTIETH, TWO THOUSAND THIRTEEN, FRIDAY, JULY FIRST, TWO THOUSAND THIRTEEN THROUGH MONDAY, JULY FOURTH, TWO THOUSAND THIRTEEN, AND FRIDAY, SEPTEMBER SECOND, TWO THOUSAND THIRTEEN THROUGH MONDAY, SEPTEMBER FIFTH, TWO THOUSAND THIRTEEN TO THE EXTENT SUCH RETAIL SALES OF SUCH DIESEL MOTOR FUEL WAS MADE PURSUANT TO SUBDIVISION (S) OF SECTION ELEVEN HUNDRED ELEVEN OF THIS CHAPTER. PROVIDED, HOWEVER, SUCH RETAIL SALES SHALL NOT INCLUDE SALES MADE TO VEHICLES SUBJECT TO HIGHWAY USE TAX UNDER ARTICLE TWENTY-ONE OF THIS CHAPTER.

S 2. The tax law is amended by adding a new section 284-f to read as follows:

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

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S 284-F. EXEMPT RETAIL SALES PERIODS. NOTWITHSTANDING ANY PROVISION OF THE LAW TO THE CONTRARY, EXCISE TAXES IMPOSED ON MOTOR FUEL PURSUANT TO SECTIONS TWO HUNDRED EIGHTY-FOUR, TWO HUNDRED EIGHTY-FOUR-A, AND TWO HUNDRED EIGHTY-FOUR-C OF THIS ARTICLE SHALL NOT BE IMPOSED ON RETAIL SALES MADE DURING THE PERIOD COMMENCING FRIDAY, MAY TWENTY-SEVENTH, TWO THOUSAND THIRTEEN THROUGH MONDAY, MAY THIRTIETH, TWO THOUSAND THIRTEEN, FRIDAY, JULY FIRST, TWO THOUSAND THIRTEEN THROUGH MONDAY, JULY FOURTH, TWO THOUSAND THIRTEEN AND FRIDAY, SEPTEMBER SECOND, TWO THOUSAND THIRTEEN THROUGH MONDAY, SEPTEMBER FIFTH, TWO THOUSAND THIRTEEN TO THE EXTENT SUCH SALES OF MOTOR FUEL WAS MADE PURSUANT TO SUBDIVISION (S) OF SECTION ELEVEN HUNDRED ELEVEN OF THIS CHAPTER. PROVIDED, HOWEVER, SUCH RETAIL SALES SHALL NOT INCLUDE SALES MADE TO VEHICLES SUBJECT TO HIGHWAY USE TAX UNDER ARTICLE TWENTY-ONE OF THIS CHAPTER.

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

(N) NOTWITHSTANDING ANY PROVISION OF THE LAW TO THE CONTRARY, TAXES IMPOSED ON DIESEL MOTOR FUEL AND MOTOR FUEL FOR THE PRIVILEGE OF ENGAGING IN BUSINESS, DOING BUSINESS, EMPLOYING CAPITAL, OWNING OR LEASING PROPERTY, OR MAINTAINING AN OFFICE IN THIS STATE UNDER THIS SECTION SHALL NOT BE IMPOSED ON RETAIL SALES MADE DURING THE PERIOD COMMENCING FRIDAY, MAY TWENTY-SEVENTH, TWO THOUSAND THIRTEEN THROUGH MONDAY, MAY THIRTIETH, TWO THOUSAND THIRTEEN, FRIDAY, JULY FIRST, TWO THOUSAND THIRTEEN THROUGH MONDAY, JULY FOURTH, TWO THOUSAND THIRTEEN AND FRIDAY, SEPTEMBER SECOND, TWO THOUSAND THIRTEEN THROUGH MONDAY, SEPTEMBER FIFTH, TWO THOUSAND THIRTEEN TO THE EXTENT SUCH SALES OF DIESEL MOTOR FUEL OR MOTOR FUEL WAS MADE PURSUANT TO SUBDIVISION (S) OF SECTION ELEVEN HUNDRED ELEVEN OF THIS CHAPTER. PROVIDED, HOWEVER, SUCH RETAIL SALES SHALL NOT INCLUDE SALES MADE TO VEHICLES SUBJECT TO HIGHWAY USE TAX UNDER ARTICLE TWENTY-ONE OF THIS CHAPTER.

S 4. Section 1111 of the tax law is amended by adding a new subdivision (s) to read as follows:

(S)(1) THE SALES TAX IMPOSED BY SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIVE OF THIS ARTICLE AND THE COMPENSATING USE TAX IMPOSED BY SECTION ELEVEN HUNDRED TEN OF THIS ARTICLE, IN REGARD TO RETAIL SALES OF MOTOR FUEL AND DIESEL MOTOR FUEL SHALL NOT BE IMPOSED DURING THE PERIOD COMMENCING FRIDAY, MAY TWENTY-SEVENTH, TWO THOUSAND THIRTEEN THROUGH MONDAY, MAY THIRTIETH, TWO THOUSAND THIRTEEN, FRIDAY, JULY FIRST, TWO THOUSAND THIRTEEN THROUGH MONDAY, JULY FOURTH, TWO THOUSAND THIRTEEN AND FRIDAY, SEPTEMBER SECOND, TWO THOUSAND THIRTEEN THROUGH MONDAY, SEPTEMBER FIFTH, TWO THOUSAND THIRTEEN. PROVIDED, HOWEVER, SUCH RETAIL SALES SHALL NOT INCLUDE SALES MADE TO VEHICLES SUBJECT TO HIGHWAY USE TAX UNDER ARTICLE TWENTY-ONE OF THIS CHAPTER.

(2) THE SALES AND COMPENSATING USE TAXES IMPOSED BY SUBDIVISION (A) OF SECTION ELEVEN HUNDRED NINE OF THIS ARTICLE, IN REGARD TO RETAIL SALES OF MOTOR FUEL AND DIESEL MOTOR FUEL SHALL NOT BE IMPOSED DURING THE PERIOD COMMENCING FRIDAY, MAY TWENTY-SEVENTH, TWO THOUSAND THIRTEEN THROUGH MONDAY, MAY THIRTIETH, TWO THOUSAND THIRTEEN, FRIDAY, JULY FIRST, TWO THOUSAND THIRTEEN THROUGH MONDAY, JULY FOURTH, TWO THOUSAND THIRTEEN AND FRIDAY, SEPTEMBER SECOND, TWO THOUSAND THIRTEEN THROUGH MONDAY, SEPTEMBER FIFTH, TWO THOUSAND THIRTEEN. PROVIDED, HOWEVER, SUCH RETAIL SALES SHALL NOT INCLUDE SALES MADE TO VEHICLES SUBJECT TO HIGHWAY USE TAX UNDER ARTICLE TWENTY-ONE OF THIS CHAPTER.

(3) PARAGRAPH ONE OF THIS SUBDIVISION SHALL APPLY TO THE SALE AND COMPENSATING USE TAXES IMPOSED UNDER LOCAL LAWS, ORDINANCES OR RESOLUTIONS BY A MUNICIPALITY OR CITY PURSUANT TO AUTHORIZATION UNDER THIS CHAPTER, IN REGARD TO MOTOR FUEL AND DIESEL MOTOR FUEL. PROVIDED,

HOWEVER, THE LOCAL LEGISLATIVE BODY OF A MUNICIPALITY OR CITY PURSUANT TO AUTHORIZATION UNDER THIS CHAPTER, BY LOCAL LAW, ORDINANCE OR RESOLUTION IN THE FORM PREPARED BY THE COMMISSIONER, MAY ELECT NOT TO EXEMPT TAXES IMPOSED ON RETAIL SALES OF MOTOR AND DIESEL MOTOR FUEL PURSUANT TO SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIVE AND ELEVEN HUNDRED TEN OF THIS ARTICLE.

S 5. Section 1817 of the tax law is amended by adding a new subdivision (o) to read as follows:

(O) (1) EVERY PERSON ENGAGED IN THE RETAIL SALE OF MOTOR FUEL AND/OR DIESEL MOTOR FUEL SHALL COMPLY WITH THE PROVISIONS OF SECTION THREE HUNDRED NINETY-TWO-J OF THE GENERAL BUSINESS LAW BY REDUCING THE PRICES CHARGED FOR MOTOR FUEL AND DIESEL MOTOR FUEL IN AN AMOUNT EQUAL TO ANY REDUCTION IN TAXES IMPOSED ON RETAIL CUSTOMERS RESULTING FROM TAX EXEMPTIONS PURSUANT TO SECTIONS TWO HUNDRED EIGHTY-TWO-D AND TWO HUNDRED EIGHTY-FOUR-F, SUBDIVISION (N) OF SECTION THREE HUNDRED ONE-A AND PARAGRAPHS ONE, TWO, AND THREE OF SUBDIVISION (S) OF SECTION ELEVEN HUNDRED ELEVEN OF THIS CHAPTER.

(2) THE COMMISSIONER, IN COOPERATION WITH THE STATE CONSUMER PROTECTION BOARD, SHALL MONITOR THE PRICES CHARGED BY PERSONS ENGAGED IN THE RETAIL SALE OR DISTRIBUTION OF MOTOR FUEL AND DIESEL MOTOR FUEL.

(3) UPON A FINDING BY THE COMMISSIONER THAT A PERSON ENGAGED IN THE RETAIL SALE OF MOTOR FUEL AND/OR DIESEL MOTOR FUEL HAS VIOLATED THE PROVISIONS OF SECTION THREE HUNDRED NINETY-TWO-J OF THE GENERAL BUSINESS LAW, THE COMMISSIONER SHALL PROVIDE NOTICE OF SUCH VIOLATION TO SUCH PERSON AND HOLD A HEARING ON SUCH VIOLATION, WITH AN OPPORTUNITY FOR THE ACCUSED TO BE HEARD, NOT LESS THAN TEN DAYS AFTER NOTICE IS PROVIDED. A VIOLATION OF SECTION THREE HUNDRED NINETY-TWO-J OF THE GENERAL BUSINESS LAW SHALL SUBJECT THE PERSON VIOLATING SUCH SECTION TO A CIVIL PENALTY OF UP TO FIVE THOUSAND DOLLARS FOR EACH DAY SUCH VIOLATION OCCURS.

S 6. The general business law is amended by adding a new section 392-j to read as follows:

S 392-J. PRICES REDUCED TO REFLECT CHANGE IN TAX COMPUTATION. EVERY PERSON ENGAGED IN THE RETAIL SALE OF MOTOR FUEL AND/OR DIESEL MOTOR FUEL SHALL REDUCE THE PRICE SUCH PERSON CHARGES FOR MOTOR FUEL AND/OR DIESEL MOTOR FUEL IN AN AMOUNT EQUAL TO ANY REDUCTION IN TAXES PAID BY RETAIL CUSTOMERS RESULTING FROM TAX EXEMPTIONS PURSUANT TO SECTIONS TWO HUNDRED EIGHTY-TWO-D AND TWO HUNDRED EIGHTY-FOUR-F, SUBDIVISION (N) OF SECTION THREE HUNDRED ONE-A AND PARAGRAPHS ONE, TWO, AND THREE OF SUBDIVISION (S) OF SECTION ELEVEN HUNDRED ELEVEN OF THE TAX LAW.

S 7. Notwithstanding any other provision of this act, exemptions provided under this act shall apply only to (a) motor fuel or diesel motor fuel sold for use directly and exclusively in the engine of a motor vehicle and (b) motor fuel or diesel motor fuel sold by a retail gas station. For purposes of this act and such other provisions of law, "retail gas station" shall mean a filling station where such fuel is stored primarily for sale by delivery directly into the ordinary fuel tank connected with the engine of a motor vehicle to be consumed in the operation of such motor vehicle or where such fuel is stored primarily for sale by delivery directly into the ordinary fuel tank connected with the engine of a vessel to be consumed in the operation of such vessel.

S 8. The commissioner of taxation and finance is hereby authorized to require the use of certificates or other documents, and procedures related thereto, to effect the purposes of this act. Provided, further, such purpose shall include refunds of the taxes prepaid by vendors, distributors, and petroleum businesses to the extent retail sales were exempted under this act, and the commissioner shall be required to

administer such refund of taxes as soon as practicable. Notwithstanding any other provisions of this act, the vendor shall not be required to collect the taxes imposed on retail sales of motor fuel and diesel motor fuel made to vehicles subject to highway use tax under article 21 of the tax law, and the commissioner shall collect such taxes if such sales made to vehicles subject to highway use tax under article 21 of the tax law were not collected during the exempt sales period under this act.

S 9. A municipality may make the election pursuant to paragraph (3) of subdivision (s) of section 1111 of the tax law, as the case may be, by local law, ordinance or resolution. Provided, however, the minimum notice requirements to the commissioner of taxation and finance shall be deemed complied with if such municipality or city mails by certified or registered mail, a certified copy of such local law, ordinance or resolution to such commissioner prior to the retail sale period exempted under this act. Notwithstanding any other provisions of law, the commissioner shall establish emergency regulation to comply with the notice requirements.

S 10. Notwithstanding any provision of law to the contrary, the commissioner of taxation and finance shall determine and certify to the comptroller the amount of revenue foregone as a result of tax exemptions under this act and shall deposit the amounts certified by such commissioner as such revenue foregone to the credit of the funds and accounts affected by this act to the debit of the general fund. Provided, however, the commissioner shall not deposit the amount of revenue foregone in regard to sales and use taxes exempted on motor fuel and diesel motor fuel pursuant to paragraph (3) of subdivision (s) of section 1111 of the tax law.

S 11. This act shall take effect immediately.