

S. 782

A. 138

2013-2014 Regular Sessions

S E N A T E - A S S E M B L Y

(PREFILED)

January 9, 2013

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

IN ASSEMBLY -- 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 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

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

1     Section 1. Paragraph (b) of subdivision 3 of section 282-a of the tax  
2     law, as amended by section 2 of part E of chapter 59 of the laws of  
3     2012, is amended to read as follows:  
4     (b) The tax on the incidence of sale or use imposed by subdivision one  
5     of this section shall not apply to: (i) the sale or use of non-highway  
6     Diesel motor fuel, but only if all of such fuel is consumed other than  
7     on the public highways of this state (except for the use of the public  
8     highway by farmers to reach adjacent farmlands); provided, however, this  
9     exemption shall in no event apply to a sale of non-highway Diesel motor  
10    fuel which involves a delivery at a filling station or into a repository  
11    which is equipped with a hose or other apparatus by which such fuel can  
12    be dispensed into the fuel tank of a motor vehicle (except for delivery  
13    at a farm site which qualifies for the exemption under subdivision (g)  
14    of section three hundred one-b of this chapter); or (ii) a sale to the  
15    consumer consisting of not more than twenty gallons of water-white kero-  
16    sene to be used and consumed exclusively for heating purposes; or (iii)  
17    the sale to or delivery at a filling station or other retail vendor of  
18    water-white kerosene provided such filling station or other retail  
19    vendor only sells such water-white kerosene exclusively for heating

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

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1 purposes in containers of no more than twenty gallons; or (iv) a sale of  
2 kero-jet fuel to an airline for use in its airplanes or a use of kero-  
3 jet fuel by an airline in its airplanes; or (v) a sale of kero-jet fuel  
4 by a registered distributor of Diesel motor fuel to a fixed base opera-  
5 tor registered under this article as a distributor of kero-jet fuel only  
6 where such fixed base operator is engaged solely in making or offering  
7 to make retail sales not in bulk of kero-jet fuel directly into the fuel  
8 tank of an airplane for the purpose of operating such airplane; (vi) a  
9 retail sale not in bulk of kero-jet fuel by a fixed base operator regis-  
10 tered under this article as a distributor of kero-jet fuel only where  
11 such fuel is delivered directly into the fuel tank of an airplane for  
12 use in the operation of such airplane; or (vii) the sale of previously  
13 untaxed qualified biodiesel to a person registered under this article as  
14 a distributor of Diesel motor fuel other than (A) a retail sale to such  
15 person or (B) a sale to such person which involves a delivery at a fill-  
16 ing station or into a repository which is equipped with a hose or other  
17 apparatus by which such qualified biodiesel can be dispensed into the  
18 fuel tank of a motor vehicle; OR (VIII) A SALE OF DIESEL MOTOR FUEL TO A  
19 "COMMERCIAL FISHERMAN", AS SUCH TERM IS DEFINED IN SUBDIVISION (I) OF  
20 SECTION THREE HUNDRED OF THIS CHAPTER, AT RETAIL UNDER THE CIRCUMSTANCES  
21 SET FORTH IN PARAGRAPH ONE OF SUBDIVISION (G) OF SECTION THREE HUNDRED  
22 ONE-C OF THIS CHAPTER, AND WHERE SUCH COMMERCIAL FISHING VESSEL IS OPER-  
23 ATED BY A COMMERCIAL FISHERMAN.

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

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

49 S 3. Section 301-b of the tax law is amended by adding a new subdivi-  
50 sion (j) to read as follows:

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

1 SECTION THREE HUNDRED ONE-C OF THIS ARTICLE, AND WHERE SUCH COMMERCIAL  
2 FISHING VESSEL IS OPERATED BY A COMMERCIAL FISHERMAN.

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

6 (j) The exemptions provided in this section shall not apply to the tax  
7 required to be prepaid pursuant to the provisions of section eleven  
8 hundred two of this article nor to the taxes imposed by sections eleven  
9 hundred five and eleven hundred ten of this article with respect to  
10 receipts from sales and uses of motor fuel or diesel motor fuel, except  
11 that the exemptions provided in paragraphs nine and forty-two of subdi-  
12 vision (a) of this section shall apply to the tax required to be prepaid  
13 pursuant to the provisions of section eleven hundred two of this article  
14 and to the taxes imposed by sections eleven hundred five and eleven  
15 hundred ten of this article with respect to sales and uses of kero-jet  
16 fuel, CNG, hydrogen and E85, provided, however, the exemption allowed  
17 for E85 shall be subject to the additional requirements provided in  
18 section eleven hundred two of this article with respect to E85 AND  
19 EXCEPT THAT THE EXEMPTION PROVIDED IN PARAGRAPH TWENTY-FOUR OF SUBDIVI-  
20 SION (A) OF THIS SECTION SHALL APPLY TO THE TAXES IMPOSED BY SECTIONS  
21 ELEVEN HUNDRED FIVE AND ELEVEN HUNDRED TEN OF THIS ARTICLE WITH RESPECT  
22 TO SALES AND USES OF DIESEL MOTOR FUEL USED IN THE OPERATION OF A FISH-  
23 ING VESSEL AS DESCRIBED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A) OF  
24 THIS SECTION. The exemption provided in subdivision (c) of this section  
25 shall apply to sales and uses of non-highway diesel motor fuel but only  
26 if all of such fuel is consumed other than on the public highways of  
27 this state. The exemption provided in subdivision (c) of this section  
28 shall apply to sales and uses of non-highway diesel motor fuel for use  
29 or consumption either in the production for sale of tangible personal  
30 property by farming or in a commercial horse boarding operation, or in  
31 both but only if all of such fuel is consumed other than on the public  
32 highways of this state (except for the use of the public highways to  
33 reach adjacent farmlands or adjacent lands used in a commercial horse  
34 boarding operation, or both).

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

38 (j) The exemptions provided in this section shall not apply to the tax  
39 required to be prepaid pursuant to the provisions of section eleven  
40 hundred two of this article nor to the taxes imposed by sections eleven  
41 hundred five and eleven hundred ten of this article with respect to  
42 receipts from sales and uses of motor fuel or diesel motor fuel, except  
43 that the exemption provided in paragraph nine of subdivision (a) of this  
44 section shall apply to the tax required to be prepaid pursuant to the  
45 provisions of section eleven hundred two of this article and to the  
46 taxes imposed by sections eleven hundred five and eleven hundred ten of  
47 this article with respect to sales and uses of kero-jet fuel AND EXCEPT  
48 THAT THE EXEMPTION PROVIDED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A)  
49 OF THIS SECTION SHALL APPLY TO THE TAXES IMPOSED BY SECTIONS ELEVEN  
50 HUNDRED FIVE AND ELEVEN HUNDRED TEN OF THIS ARTICLE WITH RESPECT TO  
51 SALES AND USES OF DIESEL MOTOR FUEL USED IN THE OPERATION OF A FISHING  
52 VESSEL AS DESCRIBED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A) OF THIS  
53 SECTION. The exemption provided in subdivision (c) of this section  
54 shall apply to sales and uses of non-highway diesel motor fuel but only  
55 if all of such fuel is consumed other than on the public highways of  
56 this state. The exemption provided in subdivision (c) of this section

1 shall apply to sales and uses of non-highway diesel motor fuel for use  
2 or consumption either in the production for sale of tangible personal  
3 property by farming or in a commercial horse boarding operation, or in  
4 both but only if all of such fuel is consumed other than on the public  
5 highways of this state (except for the use of the public highways to  
6 reach adjacent farmlands or adjacent lands used in a commercial horse  
7 boarding operation, or both).

8 S 6. This act shall take effect on the first day of a sales tax quar-  
9 terly period, as described in subdivision (b) of section 1136 of the tax  
10 law, next commencing at least ninety days after this act shall have  
11 become a law; sections four and five of this act shall apply to sales  
12 made under and uses occurring on or after the dates such sections four  
13 and five shall have taken effect, respectively, although made or occur-  
14 ring under a prior contract; and provided further that such amendments  
15 made by section four of this act shall be subject to the expiration and  
16 reversion of such subdivision pursuant to section 19 of part W-1 of  
17 chapter 109 of the laws of 2006, as amended, when upon such date the  
18 provisions of section five of this act shall take effect.