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

6173

I N S E N A T E

(PREFILED)

January 8, 2014

Introduced by Sen. TKACZYK -- 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 modifications increasing federalized itemized deductions for removing underground home heating oil storage tanks; and to amend the navigation law, in relation to claims against insurers for oil spills from underground heating oil tanks and to amend the tax law, in relation to establishing a residential fund oil storage tank credit and providing for the repeal of certain provisions upon expiration thereof

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

Section 1. Subsection (d) of section 615 of the tax law is amended by adding a new paragraph 5 to read as follows:

(5) AN AMOUNT, NOT TO EXCEED FIFTY PERCENT OF THE AMOUNT EXPENDED BY A TAXPAYER WHO IS THE OWNER OF A ONE, TWO OR THREE FAMILY HOME WHO PROMOTES ENVIRONMENTAL QUALITY THROUGH THE REMOVAL OF AN UNDERGROUND HOME HEATING OIL STORAGE TANK AND THE REPLACEMENT OF SUCH TANK WITH AN ABOVE GROUND HOME HEATING OIL STORAGE TANK OR ANOTHER SOURCE OF HOME HEATING. THIS DEDUCTION IS LIMITED TO ONE THOUSAND DOLLARS IN ANY ONE YEAR.

S 2. Section 190 of the navigation law, as added by chapter 845 of the laws of 1977, is amended to read as follows:

S 190. Claims against insurers. (A) Any claims for costs of cleanup and removal, civil penalties or damages by the state and any claim for damages by any injured person, may be brought directly against the bond, the insurer, or any other person providing evidence of financial responsibility.

(B) ALL HOMEOWNERS' POLICIES OF INSURANCE IN THIS STATE WHICH SHALL INSURE AGAINST DAMAGE TO PROPERTY SHALL CLEARLY PROVIDE THAT THE ATTENDANT COSTS OF REMEDIATING THE CONSEQUENCES OF AN OIL SPILL OR LEAKAGE FROM THE INSURED'S UNDERGROUND HEATING OIL TANK SHALL CONSTITUTE PROPERTY DAMAGE AND SHALL BE INSURABLE WITHIN THE MEANING OF THE GENERAL

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

LBD13108-01-3

LIABILITY PORTIONS OF SUCH INSURANCE POLICY AND THE RISK OF DAMAGES CAUSED BY SUCH OIL SPILLS MAY NOT BE AN EXCLUSION IN ANY SUCH POLICY ISSUED IN THE STATE EXCEPT IF IT IS A NAMED PERILS ONLY POLICY.

(C) ALL HOMEOWNERS' POLICIES OF INSURANCE IN THIS STATE WHICH SHALL INSURE AGAINST DAMAGE TO PROPERTY SHALL CLEARLY PROVIDE THAT THE ATTENDANT COSTS OF REMEDIATING THE CONSEQUENCES OF AN OIL SPILL OR LEAKAGE FROM THE INSURED'S HEATING OIL TANK WHICH IS NOT UNDERGROUND WHEN THE DAMAGE IS NOT THE RESULT OF THE FAILURE OF THE HOMEOWNER TO REASONABLY INSPECT OR TO HIRE SOMEONE TO REASONABLY INSPECT HIS OR HER OIL TANK WHEN THE OPPORTUNITY TO DO SO EXISTS, SHALL CONSTITUTE PROPERTY DAMAGE AND SHALL BE INSURABLE WITHIN THE MEANING OF THE GENERAL LIABILITY PORTIONS OF SUCH INSURANCE POLICY AND THE RISK OF DAMAGES CAUSED BY SUCH OIL SPILLS MAY NOT BE AN EXCLUSION IN ANY SUCH POLICY ISSUED IN THE STATE EXCEPT IF IT IS A NAMED PERILS ONLY POLICY.

(D) NON-COMPLIANCE WITH THE PROVISIONS OF THIS SUBDIVISION REQUIRING THE REASONABLE INSPECTION OF A RESIDENTIAL OIL TANK SHALL NOT BE ADMISSIBLE AS EVIDENCE IN ANY CIVIL ACTION IN A COURT OF LAW IN REGARD TO THE ISSUE OF LIABILITY BUT MAY BE INTRODUCED INTO EVIDENCE IN MITIGATION OF DAMAGES PROVIDED THE PARTY INTRODUCING SAID EVIDENCE HAS PLEADED SUCH NON-COMPLIANCE AS AN AFFIRMATIVE DEFENSE.

(E) NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED TO LIMIT ANY PRE-EXISTING RIGHT, WHETHER ACTUAL OR IMPLIED, IN WHICH THE INSURED MAY HAVE HAD COMPENSATION FROM THE INSURER FOR DAMAGE TO PROPERTY FROM AN OIL SPILL OR LEAKAGE FROM AN UNDERGROUND HEATING OIL TANK AND THE ATTENDANT COSTS OF REMEDIATING THE CONSEQUENCES OF SUCH OIL SPILL OR LEAKAGE.

S 3. Subsections (yy) and (zz) of section 606 of the tax law, as relettered by section 5 of part H of chapter 1 of the laws of 2003, are relettered subsections (yyy) and (zzz) and a new subsection (xx) is added to read as follows:

(XX) RESIDENTIAL FUEL OIL STORAGE TANK CREDIT. (1) A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE IN AN AMOUNT NOT TO EXCEED FIVE HUNDRED DOLLARS, FOR THE REMOVAL OF AN EXISTING UNPROTECTED BURIED FUEL OIL TANK AND THE INSTALLATION OF A FIBERGLASS OR FIBERGLASS LINED BURIED HEATING FUEL OIL STORAGE TANK, OR AN ABOVE GROUND OR INTERIOR TANK, USED TO PROVIDE HEATING FUEL FOR A SINGLE FAMILY HOME, WHICH MEETS THE REQUIREMENTS OF ARTICLE TWELVE OF THE NAVIGATION LAW RELATING TO THE CONTAINMENT OF PETROLEUM.

(2) THE HOMEOWNER CREDIT DESCRIBED IN PARAGRAPH ONE OF THIS SUBSECTION MAY ONLY BE TAKEN ONCE AND SHALL BE ALLOWED ONLY FOR A RESIDENT'S PRIMARY DOMICILE.

S 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law; provided, however, that sections two and three of this act shall expire and be deemed repealed two years after such effective date.