

S. 1766

A. 1218

2013-2014 Regular Sessions

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

(PREFILED)

January 9, 2013

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 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:

1 Section 1. Section 300 of the tax law is amended by adding a new
2 subdivision (j-1) to read as follows:
3 (J-1) "COMMERCIAL SPORT FISHING VESSEL" MEANS A VESSEL OWNED BY A
4 PERSON DOMICILED IN THIS STATE, WHO HAS BEEN ISSUED AND HOLDS A MARINE
5 AND COASTAL DISTRICT PARTY AND CHARTER BOAT LICENSE PURSUANT TO SECTION
6 13-0336 OF THE ENVIRONMENTAL CONSERVATION LAW.
7 S 2. Paragraph 2 of subdivision (b) of section 301-a of the tax law,
8 as added by section 154 of part A of chapter 389 of the laws of 1997, is
9 amended to read as follows:
10 (2) Motor fuel brought into this state in the fuel tank connecting
11 with the engine of a vessel propelled by the use of such motor fuel
12 shall be deemed to constitute a taxable use of motor fuel for the
13 purposes of this subdivision to the extent that the fuel is consumed in
14 the operation of the vessel in this state. Provided, however, that this
15 paragraph shall not apply to (i) a recreational motor boat or (ii)
16 subsequent to August thirty-first, nineteen hundred ninety-four, a
17 commercial fishing vessel (as defined in subdivision (j) of section
18 three hundred of this article) if the motor fuel imported and consumed

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

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1 in this state is used to operate such vessel while it is engaged in the
2 harvesting of fish for sale OR (III) A COMMERCIAL SPORT FISHING VESSEL,
3 IF SUCH VESSEL PROVIDES ITS OWNER WITH AT LEAST FIFTY PERCENT OF HIS OR
4 HER TOTAL ANNUAL INCOME. Provided, further, that tax liability for
5 gallonage that a vessel consumes shall be the tax liability with respect
6 to the positive difference between the gallonage consumed in this state
7 during the reporting period and the gallonage purchased in this state
8 (upon which the tax imposed by this section has been paid) during such
9 period. A credit or refund shall be available for any excess of tax
10 liability for gallonage purchased in this state during the period over
11 tax liability on gallonage so consumed in this state during such period,
12 which excess shall be presumed to have been used outside this state.

13 S 3. Subparagraph (B) of paragraph 1 of subdivision (c) of section
14 301-a of the tax law, as amended by section 19 of part K of chapter 61
15 of the laws of 2011, is amended to read as follows:

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

37 S 4. The opening paragraph of section 301-c of the tax law, as amended
38 by section 5 of part W-1 of chapter 109 of the laws of 2006, is amended
39 to read as follows:

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

47 S 5. The opening paragraph of section 301-c of the tax law, as amended
48 by chapter 468 of the laws of 2000, is amended to read as follows:

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

1 S 6. Section 301-c of the tax law is amended by adding a new subdivi-
2 sion (g-1) to read as follows:

3 (G-1) DIESEL MOTOR FUEL AND MOTOR FUEL USED IN THE OPERATION OF
4 COMMERCIAL SPORT FISHING VESSELS. DIESEL MOTOR FUEL OR MOTOR FUEL
5 PURCHASED IN THIS STATE BY THE OPERATOR OF A COMMERCIAL SPORT FISHING
6 VESSEL AT RETAIL WHEREIN SUCH DIESEL MOTOR FUEL OR SUCH MOTOR FUEL IS
7 DELIVERED BY A PUMP EQUIPPED WITH A HOSE DIRECTLY INTO THE FUEL TANK OF
8 A COMMERCIAL SPORT FISHING VESSEL TO BE USED AS FUEL IN THE OPERATION OF
9 SUCH VESSEL FOR THE PURPOSE OF PROVIDING SPORT FISHING OPPORTUNITIES FOR
10 HIRE TO THE GENERAL PUBLIC; BUT ONLY WHERE (1) THE TAX IMPOSED PURSUANT
11 TO THIS ARTICLE HAS BEEN PAID WITH RESPECT TO SUCH DIESEL MOTOR FUEL OR
12 SUCH MOTOR FUEL AND THE ENTIRE AMOUNT OF SUCH TAX HAS BEEN ABSORBED BY
13 SUCH PURCHASER, (2) SUCH PURCHASER POSSESSES DOCUMENTARY PROOF SATISFAC-
14 TORY TO THE COMMISSIONER EVIDENCING THE ABSORPTION BY IT OF THE ENTIRE
15 AMOUNT OF THE TAX IMPOSED PURSUANT TO THIS ARTICLE, AND (3) THE VESSEL
16 PROVIDES ITS OWNER WITH AT LEAST FIFTY PERCENT OF HIS OR HER TOTAL ANNU-
17 AL INCOME. PROVIDED, HOWEVER, THAT THE COMMISSIONER SHALL REQUIRE SUCH
18 DOCUMENTARY PROOF TO QUALIFY FOR ANY REIMBURSEMENT OF TAX PROVIDED BY
19 THIS SECTION AS THE COMMISSIONER DEEMS APPROPRIATE.

20 S 7. Subdivision (a) of section 1115 of the tax law is amended by
21 adding a new paragraph 24-a to read as follows:

22 (24-A) FUEL USED IN VESSELS USED DIRECTLY AND PREDOMINANTLY IN A BUSI-
23 NESS PROVIDING SPORT FISHING OPPORTUNITIES FOR HIRE TO THE GENERAL
24 PUBLIC; PROVIDED THAT SUCH VESSEL PROVIDES ITS OWNER WITH AT LEAST FIFTY
25 PERCENT OF HIS OR HER TOTAL ANNUAL INCOME.

26 S 8. Subparagraph (i) of paragraph 1 of subdivision (a) of section
27 1210 of the tax law, as amended by chapter 406 of the laws of 2012, is
28 amended to read as follows:

29 (i) Any local law, ordinance or resolution enacted by any city of less
30 than one million or by any county or school district, imposing the taxes
31 authorized by this subdivision, shall, notwithstanding any provision of
32 law to the contrary, exclude from the operation of such local taxes all
33 sales of tangible personal property for use or consumption directly and
34 predominantly in the production of tangible personal property, gas,
35 electricity, refrigeration or steam, for sale, by manufacturing, proc-
36 essing, generating, assembly, refining, mining or extracting; and all
37 sales of tangible personal property for use or consumption predominantly
38 either in the production of tangible personal property, for sale, by
39 farming or in a commercial horse boarding operation, or in both; and,
40 unless such city, county or school district elects otherwise, shall omit
41 THE FUEL USED IN COMMERCIAL SPORT FISHING VESSELS EXEMPTION PROVIDED FOR
42 IN PARAGRAPH TWENTY-FOUR-A OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED
43 FIFTEEN OF THIS CHAPTER, the provision for credit or refund contained in
44 clause six of subdivision (a) or subdivision (d) of section eleven
45 hundred nineteen of this chapter.

46 S 9. Section 1210 of the tax law is amended by adding a new subdivi-
47 sion (q) to read as follows:

48 (Q) NOTWITHSTANDING ANY OTHER PROVISION OF STATE OR LOCAL LAW, ORDI-
49 NANCE OR RESOLUTION TO THE CONTRARY:

50 (1) ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE IN WHICH THE
51 TAXES IMPOSED BY SECTION ELEVEN HUNDRED SEVEN OF THIS CHAPTER ARE IN
52 EFFECT, ACTING THROUGH ITS LOCAL LEGISLATIVE BODY, IS HEREBY AUTHORIZED
53 AND EMPOWERED TO ELECT TO PROVIDE THE SAME EXEMPTIONS FROM SUCH TAXES AS
54 THE FUEL USED IN COMMERCIAL SPORT FISHING VESSELS EXEMPTION FROM STATE
55 SALES AND COMPENSATING USE TAXES DESCRIBED IN PARAGRAPH TWENTY-FOUR-A OF
56 SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER BY

1 ENACTING A RESOLUTION IN THE FORM SET FORTH IN PARAGRAPH TWO OF THIS
2 SUBDIVISION; WHEREUPON, UPON COMPLIANCE WITH THE PROVISIONS OF SUBDIVI-
3 SIONS (D) AND (E) OF THIS SECTION, SUCH ENACTMENT OF SUCH RESOLUTION
4 SHALL BE DEEMED TO BE AN AMENDMENT TO SUCH SECTION ELEVEN HUNDRED SEVEN
5 AND SUCH SECTION ELEVEN HUNDRED SEVEN SHALL BE DEEMED TO INCORPORATE
6 SUCH EXEMPTIONS AS IF THEY HAD BEEN DULY ENACTED BY THE STATE LEGISLA-
7 TURE AND APPROVED BY THE GOVERNOR.

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

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

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

21 S 10. This act shall take effect on the first day of a sales tax
22 quarterly period, as described in subdivision (b) of section 1136 of the
23 tax law, next commencing at least ninety days after this act shall have
24 become a law, provided, however, that sections one, two, four, five and
25 six of this act shall take effect June 1, 2013; provided, further, that
26 the amendments to the opening paragraph of section 301-c of the tax law,
27 made by section four of this act shall not affect the expiration and
28 repeal of such paragraph pursuant to section 19 of part W-1 of chapter
29 109 of the laws of 2006, as amended, and shall expire and be deemed
30 repealed therewith, when upon such date the provisions of section five
31 of this act shall take effect.