

S. 330

A. 151

2015-2016 Regular Sessions

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

(PREFILED)

January 7, 2015

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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, GRAF, GARBARINO, SALADINO -- 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, WHO HAS BEEN ISSUED AND HOLDS A MARINE AND COASTAL DISTRICT  
5     PARTY AND CHARTER BOAT LICENSE PURSUANT TO SECTION 13-0336 OF THE ENVI-  
6     RONMENTAL 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.

LBD00718-01-5

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 13 of the laws of 2013, 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 ninetieth day after it shall  
22 have become a law; provided, further, that the amendments to the opening  
23 paragraph of section 301-c of the tax law, made by section four of this  
24 act shall not affect the expiration and repeal of such paragraph pursu-  
25 ant to section 19 of part W-1 of chapter 109 of the laws of 2006, as  
26 amended, and shall expire and be deemed repealed therewith, when upon  
27 such date the provisions of section five of this act shall take effect.