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

8401

2015-2016 Regular Sessions

I N A S S E M B L Y

October 2, 2015

Introduced by M. of A. ORTIZ -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to establishing a tax on carbon emissions; and to amend the state finance law, in relation to establishing the carbon tax revenue fund

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 article 21-C to read as follows:

ARTICLE 21-C
TAX ON CARBON EMISSION

SECTION 530. DEFINITIONS.
531. IMPOSITION AND RATE OF TAX.
532. EXEMPTIONS.
533. PENALTIES AND INTEREST.
534. DEPOSIT AND DISPOSITION OF REVENUE.

S 530. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "CARBON-BASED FUEL" MEANS COAL, NATURAL GAS, PETROLEUM PRODUCTS AND ANY OTHER PRODUCT USED FOR FUEL THAT CONTAINS CARBON AND EMITS CARBON DIOXIDE WHEN COMBUSTED; PROVIDED, HOWEVER, THAT CARBON-BASED FUEL SHALL NOT INCLUDE ANY PRODUCT USED FOR FUEL THAT IS DERIVED FROM A RESOURCE THAT IS LESS THAN ONE THOUSAND YEARS OLD IN ITS NATURAL STATE.

(B) "DISTRIBUTOR" MEANS A PERSON WHO IMPORTS OR CAUSES TO BE IMPORTED CARBON-BASED FUEL FOR USE, DISTRIBUTION, OR SALE WITHIN THE STATE, OR A PERSON WHO PRODUCES, REFINES, MANUFACTURES, OR COMPOUNDS CARBON-BASED FUEL WITHIN THE STATE FOR USE, DISTRIBUTION, OR SALE.

(C) "PETROLEUM PRODUCTS" MEANS PROPANE, GASOLINE, UNLEADED GASOLINE, KEROSENE, NUMBER 2 HEATING OIL, DIESEL FUEL, KEROSENE BASE JET FUEL, AND NUMBER 4, NUMBER 5 AND NUMBER 6 RESIDUAL OIL FOR UTILITY AND NON-UTILITY USES, AND ALL PETROLEUM DERIVATIVES, WHETHER IN BOND OR NOT, WHICH ARE

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

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COMMONLY BURNED TO PRODUCE HEAT, POWER, ELECTRICITY OR MOTION OR WHICH ARE COMMONLY PROCESSED TO PRODUCE SYNTHETIC GAS FOR BURNING.

(D) "RETAIL CUSTOMER" MEANS A PERSON WHO PURCHASES CARBON-BASED FUEL FOR HIS OR HER OWN CONSUMPTION.

(E) "RETAIL PURCHASE" MEANS A PURCHASE OF CARBON-BASED FUEL MADE BY A PERSON FOR HIS OR HER OWN CONSUMPTION.

S 531. IMPOSITION AND RATE OF TAX. (A) THERE IS HEREBY LEVIED AND IMPOSED A TAX AT A RATE OF FIVE DOLLARS PER TON OF CARBON IN ANY CARBON-BASED FUEL THAT IS SOLD TO RETAIL CUSTOMERS IN THE STATE. THE TAX SHALL INCREASE BY AT LEAST THE RATE OF ANNUAL INFLATION PLUS ONE PERCENT FOR THE FIRST TEN YEARS THAT THIS SECTION IS IN EFFECT, AND BY AT LEAST THE RATE OF ANNUAL INFLATION THEREAFTER. THE DEPARTMENT SHALL CALCULATE THE TAX LIABILITY ASSOCIATED WITH ANY RETAIL PURCHASE BY MULTIPLYING THE RATE DESIGNATED IN THIS SECTION BY THE TOTAL AMOUNT OF CARBON IN EACH CARBON-BASED FUEL SOLD TO RETAIL CONSUMERS IN THE STATE. FOR THE PURPOSE OF CALCULATING THE TAX, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL DETERMINE THE PERCENTAGE OF CARBON IN EACH CARBON-BASED FUEL AND REPORT THOSE PERCENTAGES TO THE DEPARTMENT.

(B) A DISTRIBUTOR SHALL PAY TO THE COMMISSIONER AN EXCISE TAX PER GALLON DETERMINED BY THE DEPARTMENT PURSUANT TO SUBDIVISION (A) OF THIS SECTION UPON EACH GALLON OF CARBON-BASED FUEL SOLD BY SUCH DISTRIBUTOR IN THE STATE DURING THE CALENDAR MONTH COVERED BY THE RETURN REQUIRED PURSUANT TO SUBDIVISION (C) OF THIS SECTION. THE TAX IMPOSED UNDER THIS SECTION SHALL BE COLLECTED BY THE DISTRIBUTOR UPON COMPLETION OF ANY SALE OR DELIVERY OF FUEL.

(C) EVERY DISTRIBUTOR THAT MAKES SALES SUBJECT TO THE TAX IMPOSED BY THIS SECTION SHALL, ON OR BEFORE THE TWENTIETH DAY OF EACH MONTH, FILE WITH THE COMMISSIONER A RETURN ON FORMS TO BE PRESCRIBED BY THE COMMISSIONER, SHOWING ITS RECEIPTS FROM THE RETAIL SALE OF CARBON-BASED FUEL DURING THE PRECEDING CALENDAR MONTH AND THE AMOUNT OF TAX DUE THEREON. SUCH RETURNS SHALL CONTAIN SUCH FURTHER INFORMATION AS THE COMMISSIONER MAY REQUIRE. EVERY DISTRIBUTOR REQUIRED TO FILE A RETURN UNDER THIS SECTION SHALL, AT THE TIME OF FILING SUCH RETURN, PAY TO THE COMMISSIONER THE TOTAL AMOUNT OF TAX DUE ON ITS RETAIL SALES OF CARBON-BASED FUEL FOR THE PERIOD COVERED BY SUCH RETURN. IF A RETURN IS NOT FILED WHEN DUE, THE TAX SHALL BE DUE ON THE DAY ON WHICH THE RETURN IS REQUIRED TO BE FILED.

S 532. EXEMPTIONS. THE FOLLOWING SHALL BE EXEMPT FROM THE TAX IMPOSED BY SECTION FIVE HUNDRED THIRTY-ONE OF THIS ARTICLE:

(A) CARBON-BASED FUEL SOLD TO THE UNITED STATES GOVERNMENT, ITS SUBDIVISIONS, OR UNDER ANY OTHER CIRCUMSTANCES IN WHICH THE STATE IS WITHOUT POWER TO IMPOSE THE TAX; AND

(B) CARBON-BASED FUEL SOLD BY A DISTRIBUTOR THAT HAS ALREADY BEEN SUBJECTED TO THE TAX IMPOSED BY SECTION FIVE HUNDRED THIRTY-ONE OF THIS ARTICLE, IF THE SALES INVOICE CLEARLY INDICATES THE AMOUNT OF FUEL THAT HAS ALREADY BEEN SUBJECTED TO THE TAX.

S 533. PENALTIES AND INTEREST. (A) A DISTRIBUTOR WHO FAILS TO FILE A RETURN OR TO PAY ANY TAX WITHIN THE TIME REQUIRED BY OR PURSUANT TO THIS ARTICLE (DETERMINED WITH REGARD TO ANY EXTENSION OF TIME FOR FILING OR PAYING) SHALL BE SUBJECT TO A PENALTY OF TEN PER CENTUM OF THE AMOUNT OF TAX DETERMINED TO BE DUE AS PROVIDED IN THIS ARTICLE PLUS ONE PER CENTUM OF SUCH AMOUNT FOR EACH MONTH OR FRACTION THEREOF DURING WHICH SUCH FAILURE CONTINUES AFTER THE EXPIRATION OF THE FIRST MONTH AFTER SUCH STATEMENT WAS REQUIRED TO BE FILED OR SUCH TAX BECAME DUE, NOT EXCEEDING THIRTY PER CENTUM IN THE AGGREGATE.

(B) IF ANY AMOUNT OF TAX IS NOT PAID ON OR BEFORE THE LAST DATE PRESCRIBED IN THIS ARTICLE FOR PAYMENT, INTEREST ON SUCH AMOUNT AT THE UNDERPAYMENT RATE SET BY THE COMMISSIONER OF TAXATION AND FINANCE PURSUANT TO SUBDIVISION TWENTY-SIXTH OF SECTION ONE HUNDRED SEVENTY-ONE OF THIS CHAPTER SHALL BE PAID FOR THE PERIOD FROM SUCH LAST DATE TO THE DATE PAID, WHETHER OR NOT ANY EXTENSION OF TIME FOR PAYMENT WAS GRANTED. INTEREST UNDER THIS SUBSECTION SHALL NOT BE PAID IF THE AMOUNT THEREOF IS LESS THAN ONE DOLLAR.

S 534. DEPOSIT AND DISPOSITION OF REVENUE. ALL TAXES, INTEREST, AND PENALTIES COLLECTED OR RECEIVED BY THE COMMISSIONER OF TAXATION AND FINANCE UNDER THE TAXES IMPOSED BY THIS ARTICLE SHALL BE DEPOSITED IN THE CARBON TAX REVENUE FUND AND DISPOSED OF PURSUANT TO SECTION NINETY-NINE-X OF THE STATE FINANCE LAW.

S 2. The state finance law is amended by adding a new section 99-x to read as follows:

S 99-X. CARBON TAX REVENUE FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND COMMISSIONER OF TAXATION AND FINANCE A FUND TO BE KNOWN AS THE "CARBON TAX REVENUE FUND".

2. SUCH ACCOUNT SHALL CONSIST OF REVENUES FROM ALL TAXES, INTEREST, AND PENALTIES IMPOSED BY ARTICLE TWENTY-ONE-C OF THE TAX LAW.

3. ON OR BEFORE THE FIRST DAY OF FEBRUARY EACH YEAR, THE COMPTROLLER SHALL CERTIFY TO THE GOVERNOR, TEMPORARY PRESIDENT OF THE SENATE, SPEAKER OF THE ASSEMBLY, CHAIR OF THE SENATE FINANCE COMMITTEE AND CHAIR OF THE ASSEMBLY WAYS AND MEANS COMMITTEE, THE AMOUNT OF MONEY DEPOSITED IN THE CARBON TAX REVENUE FUND DURING THE PRECEDING CALENDAR YEAR AS THE RESULT OF REVENUE DERIVED PURSUANT TO ARTICLE TWENTY-ONE-C OF THE TAX LAW.

4. MONEYS OF THE FUND MAY BE INVESTED BY THE STATE COMPTROLLER AND INCOME FROM SUCH INVESTMENTS SHALL BE CREDITED TO THE FUND.

5. MONEYS OF THE FUND SHALL BE APPROPRIATED BY THE LEGISLATURE AND PAID OUT PURSUANT TO THE TERMS OF SUCH APPROPRIATION.

S 3. Paragraph a of subsection 26th of section 171 of the tax law, as amended by section 1 of subpart D of part V1 of chapter 57 of the laws of 2009, is amended to read as follows:

a. Set the overpayment and underpayment rates of interest for purposes of articles twelve-A, eighteen, twenty [and], twenty-one AND TWENTY-ONE-C of this chapter. Such rates shall be the overpayment and underpayment rates of interest set pursuant to subsection (e) of section one thousand ninety-six of this chapter, but the underpayment rate shall not be less than seven and one-half percent per annum. Any such rates set by such commissioner shall apply to taxes, or any portion thereof, which remain or become due or overpaid (other than overpayments under such article twenty and not including reimbursements, if any, under any of such articles) on or after the date on which such rates become effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period during which such rates are in effect. In computing the amount of any interest required to be paid under such articles by such commissioner or by the taxpayer, or any other amount determined by reference to such amount of interest, such interest and such amount shall be compounded daily.

S 4. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rules or regulations necessary for the implementation of this act on its effective date are authorized to be made on or before such date.