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

(PREFILED)

January 7, 2015

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 3 of part W of chapter 59 of the laws of
3 2013, 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; or (vi)
9 a retail sale not in bulk of kero-jet fuel by a fixed base operator
10 registered under this article as a distributor of kero-jet fuel only
11 where such fuel is delivered directly into the fuel tank of an airplane
12 for use in the operation of such airplane; or (vii) the sale of previ-
13 ously untaxed qualified biodiesel to a person registered under this
14 article as a distributor of Diesel motor fuel other than (A) a retail
15 sale to such person or (B) a sale to such person which involves a deliv-
16 ery at a filling station or into a repository which is equipped with a
17 hose or other apparatus by which such qualified biodiesel can be
18 dispensed into the fuel tank of a motor vehicle; or (viii) the sale of
19 previously untaxed highway Diesel motor fuel by a person registered
20 under this article as a distributor of Diesel motor fuel to a person
21 registered under this article as a distributor of Diesel motor fuel
22 where the highway Diesel motor fuel is either: (A) being delivered by
23 pipeline, railcar, barge, tanker or other vessel to a terminal, the
24 operator of which terminal is registered under section two hundred
25 eighty-three-b of this article, or (B) within such a terminal where it
26 has been so delivered. Provided, however, that the exemption set forth
27 in this subparagraph shall not apply to any highway Diesel motor fuel if
28 it is removed from a terminal, other than by pipeline, barge, tanker or
29 other vessel; OR (IX) A SALE OF DIESEL MOTOR FUEL TO A "COMMERCIAL FISH-
30 ERMAN", AS SUCH TERM IS DEFINED IN SUBDIVISION (I) OF SECTION THREE
31 HUNDRED OF THIS CHAPTER, AT RETAIL UNDER THE CIRCUMSTANCES SET FORTH IN
32 PARAGRAPH ONE OF SUBDIVISION (G) OF SECTION THREE HUNDRED ONE-C OF THIS
33 CHAPTER, AND WHERE SUCH COMMERCIAL FISHING VESSEL IS OPERATED BY A
34 COMMERCIAL FISHERMAN.

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

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

1 SUBDIVISION (G) OF SECTION THREE HUNDRED ONE-C OF THIS CHAPTER, AND
2 WHERE SUCH COMMERCIAL FISHING VESSEL IS OPERATED BY A COMMERCIAL FISHER-
3 MAN.

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

6 (J) SALES OR USES OF DIESEL MOTOR FUEL AND RESIDUAL PETROLEUM PRODUCT
7 FOR COMMERCIAL FISHING. DIESEL MOTOR FUEL OR RESIDUAL PETROLEUM PRODUCT
8 SOLD TO OR USED BY A "COMMERCIAL FISHERMAN", AS SUCH TERM IS DEFINED IN
9 SUBDIVISION (I) OF SECTION THREE HUNDRED OF THIS ARTICLE, AT RETAIL
10 UNDER THE CIRCUMSTANCES SET FORTH IN PARAGRAPH ONE OF SUBDIVISION (G) OF
11 SECTION THREE HUNDRED ONE-C OF THIS ARTICLE, AND WHERE SUCH COMMERCIAL
12 FISHING VESSEL IS OPERATED BY A COMMERCIAL FISHERMAN.

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

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

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

48 (j) The exemptions provided in this section shall not apply to the tax
49 required to be prepaid pursuant to the provisions of section eleven
50 hundred two of this article nor to the taxes imposed by sections eleven
51 hundred five and eleven hundred ten of this article with respect to
52 receipts from sales and uses of motor fuel or diesel motor fuel, except
53 that the exemption provided in paragraph nine of subdivision (a) of this
54 section shall apply to the tax required to be prepaid pursuant to the
55 provisions of section eleven hundred two of this article and to the
56 taxes imposed by sections eleven hundred five and eleven hundred ten of

1 this article with respect to sales and uses of kero-jet fuel AND EXCEPT
2 THAT THE EXEMPTION PROVIDED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A)
3 OF THIS SECTION SHALL APPLY TO THE TAXES IMPOSED BY SECTIONS ELEVEN
4 HUNDRED FIVE AND ELEVEN HUNDRED TEN OF THIS ARTICLE WITH RESPECT TO
5 SALES AND USES OF DIESEL MOTOR FUEL USED IN THE OPERATION OF A FISHING
6 VESSEL AS DESCRIBED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (A) OF THIS
7 SECTION. The exemption provided in subdivision (c) of this section
8 shall apply to sales and uses of non-highway diesel motor fuel but only
9 if all of such fuel is consumed other than on the public highways of
10 this state. The exemption provided in subdivision (c) of this section
11 shall apply to sales and uses of non-highway diesel motor fuel for use
12 or consumption either in the production for sale of tangible personal
13 property by farming or in a commercial horse boarding operation, or in
14 both but only if all of such fuel is consumed other than on the public
15 highways of this state (except for the use of the public highways to
16 reach adjacent farmlands or adjacent lands used in a commercial horse
17 boarding operation, or both).

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