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

S. 4723--A A. 6895--A

2015-2016 Regular Sessions

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

April 10, 2015

IN SENATE -- Introduced by Sens. LAVALLE, DeFRANCISCO, FUNKE -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. THIELE, COLTON, COOK, CURRAN, FITZPATRICK, GRAF, HOOPER, LAWRENCE, LUPINACCI, McKEVITT, RAIA, PALUMBO -- Multi-Sponsored by -- M. of A. MAGEE, MALLIOTAKIS, PEOPLES-STOKES, ROBINSON -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to the state sales and compensating use tax on the retail sales of motor fuel and diesel motor fuel

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

Section 1. Subdivision (m) of section 1111 of the tax law, as amended by section 1 of part M1 of chapter 109 of the laws of 2006 and paragraph 7 as amended by section 11 of subpart I of part VI of chapter 57 of the laws of 2009, is amended to read as follows:

(m) Notwithstanding any provision of law to the contrary:

(1) The sales tax imposed by subdivision (a) of section eleven hundred five of this [article] PART and the compensating use tax imposed by section eleven hundred ten of this [article] PART, in regard to retail sales of motor fuel and diesel motor fuel, shall be eight cents per gallon OR FOUR PERCENT, WHICHEVER IS LESS, AS COMPUTED PURSUANT TO PARAGRAPH FIVE OF THIS SUBDIVISION.

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

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(2) The sales and compensating use taxes imposed by subdivision (a) of section eleven hundred nine of this article, in regard to retail sales of motor fuel and diesel motor fuel, shall be three-quarters of one cent per gallon, OR THREE-EIGHTHS OF A PERCENT, WHICHEVER IS LESS, AS COMPUTED PURSUANT TO PARAGRAPH FIVE OF THIS SUBDIVISION.

(3) Paragraph one of this subdivision shall not apply to the sales and compensating use taxes imposed by subdivision (a) of section eleven hundred seven of this article in regard to retail sales of motor fuel and diesel motor fuel. However, the legislative body of a city in which the taxes imposed by such section eleven hundred seven are in effect, by local law, ordinance, or resolution in exactly the form prepared by the commissioner, may elect that such taxes, in regard to retail sales of motor fuel and diesel motor fuel, shall be computed, as determined by the commissioner, at a rate of cents per gallon, rounded to the nearest cent, equal to two or three dollars, as determined by the municipality, multiplied by the percentage rate of such taxes within the municipality.

(4) Paragraph one of this subdivision shall not apply to the sales and compensating use taxes imposed by a local law, ordinance or resolution of a municipality pursuant to the authority of subpart B of part one of article twenty-nine of this chapter, in regard to retail sales of motor fuel and diesel motor fuel. The legislative body of such a municipality, by local law, ordinance or resolution in exactly the form prepared by the commissioner, may elect that its sales and compensating use taxes, in regard to the retail sale of motor fuel and diesel motor fuel, shall be computed, as determined by the commissioner, at a rate of cents per gallon, rounded to the nearest cent, equal to two or three dollars, as determined by the municipality, multiplied by the percentage rate of such taxes within the municipality.

(5)(i) Prior to the start of any sales tax quarter, the commissioner shall apply the local percentage sales tax rate of each county or city that has elected a cents per gallon rate pursuant to paragraph three or four of this subdivision to the [average] LOWEST price of motor fuel and diesel motor fuel, not including sales tax and the motor fuel excise tax[, for three consecutive months beginning four months prior to the start of any sales tax quarter]. THE COMMISSIONER SHALL FOR EACH CALENDAR QUARTER ESTABLISH THE LOWEST PRICE FOR MOTOR FUEL AND DIESEL MOTOR FUEL BASED ON THE LOWEST PRICE BEING CHARGED ON ANY GIVEN DAY DURING THE THREE CONSECUTIVE MONTHS BEGINNING FOUR MONTHS PRIOR TO THE START OF ANY SALES TAX QUARTER BY SURVEYING A MINIMUM OF TEN SELECTED TRUCK STOPS WIDELY SCATTERED THROUGHOUT THE STATE. If the result of this computation is less than the elected cents per gallon rate for a county or city, the cents per gallon rate for such county or city shall be adjusted to be equal to such computation, rounded to the nearest one cent. Such rates shall be published by the commissioner and effective in the next succeeding sales tax quarter.

(ii) Prior to the start of any sales tax quarter, the commissioner shall also adjust in a like manner the cents per gallon rates prescribed by paragraphs one and two of this subdivision based on percentage sales tax rates of four percent and three-eighths of a percent respectively. Provided, however, adjustments made to the cents per gallon rate prescribed by [paragraph] PARAGRAPHS ONE AND two of this subdivision shall be rounded to the nearest one-tenth of one cent.

(6) A local law, ordinance or resolution making or revoking the election made pursuant to paragraph three or four of this subdivision must go into effect in accordance with the provisions of subdivisions (d) and (e) of section twelve hundred ten of this chapter.

(7) Notwithstanding any foregoing provision of this subdivision or other law to the contrary, this subdivision, subdivision (h) of section eleven hundred nine of this part and subdivision (n) of section eighteen hundred seventeen of this chapter, section three hundred ninety-two-i of the general business law and other provisions of law which refer or relate to this subdivision shall apply only to (A) motor fuel or diesel motor fuel sold for use directly and exclusively in the engine of a motor vehicle and (B) motor fuel or diesel motor fuel, other than water-white kerosene sold exclusively for heating purposes in containers of no more than twenty gallons, sold by a retail gas station. For purposes of this subdivision and such other provisions of law, "retail gas station" shall mean a filling station where such fuel is stored primarily for sale by delivery directly into the ordinary fuel tank connected with the engine of a motor vehicle to be consumed in the operation of such motor vehicle or where such fuel is stored primarily for sale by delivery directly into the ordinary fuel tank connected with the engine of a vessel to be consumed in the operation of such vessel. The commissioner is hereby authorized to require the use of certificates or other documents, and procedures related thereto, to effect the purposes of this subdivision; and any such certificate or other document so required by the commissioner for a purchaser to tender to a vendor to purchase such fuel subject to tax on the reduced base established by or pursuant to this subdivision is hereby deemed to be an exemption certificate as such term is used in subdivision (c) of section eleven hundred thirty-two of this article and as if the provisions of such subdivision (c) referred to such a certificate or document required pursuant to this subdivision.

S 2. This act shall take effect immediately.