

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:

1 Section 1. The tax law is amended by adding a new article 21-C to read
2 as follows:

3 ARTICLE 21-C

4 TAX ON CARBON EMISSION

5 SECTION 530. DEFINITIONS.

6 531. IMPOSITION AND RATE OF TAX.

7 532. EXEMPTIONS.

8 533. PENALTIES AND INTEREST.

9 534. DEPOSIT AND DISPOSITION OF REVENUE.

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

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

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

21 (C) "PETROLEUM PRODUCTS" MEANS PROPANE, GASOLINE, UNLEADED GASOLINE,
22 KEROSENE, NUMBER 2 HEATING OIL, DIESEL FUEL, KEROSENE BASE JET FUEL, AND
23 NUMBER 4, NUMBER 5 AND NUMBER 6 RESIDUAL OIL FOR UTILITY AND NON-UTILITY
24 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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1 COMMONLY BURNED TO PRODUCE HEAT, POWER, ELECTRICITY OR MOTION OR WHICH
2 ARE COMMONLY PROCESSED TO PRODUCE SYNTHETIC GAS FOR BURNING.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

51 S 4. This act shall take effect on the one hundred twentieth day after
 52 it shall have become a law. Effective immediately, the addition, amend-
 53 ment and/or repeal of any rules or regulations necessary for the imple-
 54 mentation of this act on its effective date are authorized to be made on
 55 or before such date.