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

5162

2015-2016 Regular Sessions

I N S E N A T E

May 5, 2015

Introduced by Sen. BOYLE -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to requiring wholesalers of motor fuel to register and file returns

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

Section 1. Section 282 of the tax law is amended by adding a new subdivision 27 to read as follows:

27. "WHOLESALER OF MOTOR FUEL" MEANS ANY PERSON, FIRM, ASSOCIATION OR CORPORATION WHO OR WHICH: (1) IS NOT A DISTRIBUTOR OF MOTOR FUEL; (2) MAKES A SALE OF MOTOR FUEL IN THIS STATE OTHER THAN A RETAIL SALE NOT IN BULK; AND (3)(A) MAKES ANY PURCHASES OF MOTOR FUEL FOR RESALE WITHIN THE REGION SET FORTH IN SUBPARAGRAPH (I) OR (II) OF PARAGRAPH ONE OF SUBDIVISION (E) OF SECTION ELEVEN HUNDRED ELEVEN OF THIS CHAPTER; OR (B) MAKES ANY SALES OF MOTOR FUEL, OTHER THAN RETAIL SALES NOT IN BULK, WITHIN THE REGION SET FORTH IN SUBPARAGRAPH (I) OR (II) OF PARAGRAPH ONE OF SUBDIVISION (E) OF SECTION ELEVEN HUNDRED ELEVEN OF THIS CHAPTER. FOR THE PURPOSES OF THIS ARTICLE WHEN USED WITH RESPECT TO MOTOR FUEL, A "RETAIL SALE NOT IN BULK" MEANS THE MAKING OR OFFERING TO MAKE ANY SALE OF MOTOR FUEL TO A CONSUMER OF SUCH FUEL WHICH IS DELIVERED DIRECTLY INTO A MOTOR VEHICLE FOR USE IN THE OPERATION OF SUCH VEHICLE. A "RETAIL SALE IN BULK" MEANS THE MAKING OR OFFERING TO MAKE ANY SALE OF MOTOR FUEL TO A CONSUMER WHICH IS OTHER THAN A "RETAIL SALE NOT IN BULK".

S 2. The tax law is amended by adding a new section 283-d to read as follows:

S 283-D. REGISTRATION OF WHOLESALERS OF MOTOR FUEL. (A) REGISTRATION REQUIRED. EACH WHOLESALER OF MOTOR FUEL MUST BE REGISTERED WITH THE DEPARTMENT UNDER THIS SECTION. NO WHOLESALER OF MOTOR FUEL SHALL MAKE A SALE OF MOTOR FUEL IN THIS STATE OTHER THAN A RETAIL SALE NOT IN BULK UNLESS SUCH WHOLESALER IS SO REGISTERED. THE DEPARTMENT, UPON THE

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

LBD10769-02-5

APPLICATION OF A PERSON, SHALL REGISTER SUCH PERSON AS A WHOLESALER OF MOTOR FUEL EXCEPT THAT THE COMMISSIONER MAY REFUSE TO REGISTER AN APPLICANT FOR ANY OF THE GROUNDS SPECIFIED IN SUBDIVISION TWO OR FIVE OF SECTION TWO HUNDRED EIGHTY-THREE OF THIS ARTICLE OR IN SUBDIVISION (C) OF THIS SECTION. THE APPLICATION SHALL BE IN SUCH FORM AND CONTAIN SUCH INFORMATION AS THE COMMISSIONER SHALL PRESCRIBE. ALL OF THE PROVISIONS OF SUBDIVISIONS TWO, FOUR, FIVE, SIX, SEVEN, EIGHT, NINE AND TEN OF SECTION TWO HUNDRED EIGHTY-THREE OF THIS ARTICLE RELATING TO REGISTRATION OF DISTRIBUTORS SHALL BE APPLICABLE TO THE REGISTRATION OF WHOLESALERS OF MOTOR FUEL UNDER THIS SECTION WITH THE SAME FORCE AND EFFECT AS IF THE LANGUAGE OF SUCH SUBDIVISIONS HAD BEEN INCORPORATED IN FULL IN THIS SECTION AND HAD EXPRESSLY REFERRED TO THE REGISTRATION OF WHOLESALERS OF MOTOR FUEL, WITH SUCH MODIFICATION AS MAY BE NECESSARY IN ORDER TO ADAPT THE LANGUAGE OF SUCH PROVISIONS TO THE PROVISIONS OF THIS SECTION, PROVIDED, SPECIFICALLY, THAT THE TERM "DISTRIBUTOR" SHALL BE READ AS "WHOLESALER OF MOTOR FUEL." PROVIDED, HOWEVER, THAT IF THE COMMISSIONER IS SATISFIED THAT THE REQUIREMENTS OF SUCH PROVISIONS FOR REGISTRATION ARE NOT NECESSARY IN ORDER TO PROTECT TAX REVENUES, THE COMMISSIONER MAY LIMIT OR MODIFY SUCH REQUIREMENTS WITH RESPECT TO ANY PERSON NOT REQUIRED TO BE REGISTERED AS A DISTRIBUTOR OF MOTOR FUEL.

(B) BOND OR OTHER SECURITY. THE COMMISSIONER MAY REQUIRE A WHOLESALER OF MOTOR FUEL SEEKING A REGISTRATION TO FILE WITH THE DEPARTMENT A BOND ISSUED BY A SURETY COMPANY APPROVED BY THE SUPERINTENDENT OF FINANCIAL SERVICES AS TO SOLVENCY AND RESPONSIBILITY AND AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE OR OTHER SECURITY ACCEPTABLE TO THE COMMISSIONER, IN SUCH AMOUNT AS THE COMMISSIONER MAY FIX TO SECURE THE PERFORMANCE BY SUCH WHOLESALER OF MOTOR FUEL OF THE DUTIES AND RESPONSIBILITIES REQUIRED (I) PURSUANT TO THIS ARTICLE AND (II) PURSUANT TO ARTICLES TWENTY-EIGHT AND TWENTY-NINE OF THIS CHAPTER WITH RESPECT TO MOTOR FUEL. THE COMMISSIONER MAY REQUIRE THAT SUCH A BOND OR OTHER SECURITY BE FILED BEFORE A WHOLESALER OF MOTOR FUEL IS REGISTERED, AND THE AMOUNT THEREOF MAY BE INCREASED AT ANY TIME WHEN IN THE COMMISSIONER'S JUDGMENT THE SAME IS NECESSARY. IF SECURITIES ARE DEPOSITED AS SECURITY UNDER THIS SUBDIVISION, SUCH SECURITIES SHALL BE KEPT IN THE JOINT CUSTODY OF THE COMPTROLLER AND THE COMMISSIONER AND MAY BE SOLD BY THE COMMISSIONER IF IT BECOMES NECESSARY SO TO DO IN ORDER TO RECOVER AGAINST SUCH WHOLESALER OF MOTOR FUEL BUT NO SUCH SALE SHALL BE HAD UNTIL AFTER SUCH WHOLESALER OF MOTOR FUEL SHALL HAVE HAD OPPORTUNITY TO LITIGATE THE VALIDITY OF THE LIABILITY IF IT ELECTS TO DO SO. UPON ANY SUCH SALE THE SURPLUS, IF ANY, ABOVE THE SUMS DUE SHALL BE RETURNED TO SUCH WHOLESALER OF MOTOR FUEL. THE DEPARTMENT, WHEN AUTHORIZED BY THE WHOLESALER OF MOTOR FUEL, SHALL FURNISH INFORMATION REGARDING THE REGISTRATION OF THE WHOLESALER OF MOTOR FUEL AND ANY OTHER INFORMATION WHICH THE WHOLESALER OF MOTOR FUEL AUTHORIZES IT TO DISCLOSE.

(C) REFUSAL TO REGISTER. FOR THE PURPOSES OF DETERMINING WHETHER TO REFUSE AN APPLICATION FOR REGISTRATION UNDER THIS SECTION, THE REFERENCES IN SUBDIVISION TWO OF SECTION TWO HUNDRED EIGHTY-THREE OF THIS ARTICLE TO EMPLOYEES OR SHAREHOLDERS UNDER A DUTY TO FILE A RETURN UNDER OR PURSUANT TO THE AUTHORITY OF THIS ARTICLE OR PAY THE TAXES IMPOSED BY OR PURSUANT TO THE AUTHORITY OF THIS ARTICLE ON BEHALF OF THE APPLICANT OR ANOTHER PERSON SHALL BE DEEMED TO ALSO INCLUDE AN EMPLOYEE UNDER A DUTY TO FILE A RETURN OR PAY TAXES UNDER OR PURSUANT TO THE AUTHORITY OF THIS ARTICLE ON BEHALF OF SUCH APPLICANT OR OTHER PERSON. IN ADDITION TO THE GROUNDS SPECIFIED IN SECTION TWO HUNDRED EIGHTY-THREE OF THIS ARTICLE, THE COMMISSIONER MAY REFUSE TO REGISTER AN APPLICANT WHERE THE COMMISSIONER ASCERTAINS THAT THE APPLICANT, AN OFFICER, DIRECTOR OR

PARTNER OF THE APPLICANT, A SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF SUCH APPLICANT (WHERE SUCH APPLICANT IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES, OR AN EMPLOYEE OR SHAREHOLDER OF SUCH APPLICANT WHO, AS SUCH EMPLOYEE OR SHAREHOLDER IS UNDER A DUTY TO FILE A RETURN UNDER OR PURSUANT TO THE AUTHORITY OF THIS ARTICLE OR TO PAY THE TAXES IMPOSED BY OR PURSUANT TO THE AUTHORITY OF THIS ARTICLE ON BEHALF OF THE APPLICANT; (1) HAS COMMITTED ANY OF THE ACTS OR OMISSIONS WHICH ARE, OR WAS CONVICTED AS, SPECIFIED IN SUBDIVISION (D) OF THIS SECTION WITHIN THE PRECEDING FIVE YEARS; OR (2) WAS AN OFFICER, DIRECTOR OR PARTNER OF ANOTHER PERSON, OR WHO DIRECTLY OR INDIRECTLY OWNED MORE THAN TEN PERCENT OF THE SHARES OF STOCK OF ANOTHER PERSON (WHERE SUCH OTHER PERSON IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES, OR WHO WAS AN EMPLOYEE OR SHAREHOLDER OF ANOTHER PERSON UNDER A DUTY TO FILE A RETURN UNDER OR PURSUANT TO THE AUTHORITY OF THIS ARTICLE OR PAY THE TAXES IMPOSED BY OR PURSUANT TO THE AUTHORITY OF THIS ARTICLE ON BEHALF OF SUCH OTHER PERSON AT THE TIME SUCH OTHER PERSON COMMITTED ANY OF THE ACTS OR OMISSIONS WHICH ARE, OR WAS CONVICTED AS, SPECIFIED IN SUBDIVISION (D) OF THIS SECTION WITHIN THE PRECEDING FIVE YEARS.

(D) CANCELLATION OR SUSPENSION OF REGISTRATION. THE GROUNDS FOR A CANCELLATION OR SUSPENSION OF A REGISTRATION UNDER THIS SECTION AS A WHOLESALER OF MOTOR FUEL ARE THE SAME AS THOSE GROUNDS SPECIFIED IN SECTION TWO HUNDRED EIGHTY-THREE OF THIS ARTICLE AND, IN ADDITION TO SUCH GROUNDS, THE FOLLOWING GROUNDS RELATING TO THIS ARTICLE SHALL APPLY:

(1) A REGISTRATION AS A WHOLESALER OF MOTOR FUEL MAY BE CANCELLED OR SUSPENDED IF THE COMMISSIONER DETERMINES THAT A REGISTRANT OR AN OFFICER, DIRECTOR OR PARTNER OF THE REGISTRANT, A SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF SUCH REGISTRANT (WHERE SUCH REGISTRANT IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES, OR AN EMPLOYEE OR SHAREHOLDER OF SUCH REGISTRANT UNDER A DUTY TO FILE A RETURN UNDER OR PURSUANT TO THE AUTHORITY OF THIS ARTICLE OR TO PAY THE TAXES IMPOSED BY OR PURSUANT TO THE AUTHORITY OF THIS ARTICLE ON BEHALF OF THE REGISTRANT

(A) FAILS TO FILE OR MAINTAIN IN FULL FORCE AND EFFECT A BOND OR OTHER SECURITY WHEN REQUIRED PURSUANT TO SUBDIVISION (B) OF THIS SECTION OR WHEN THE AMOUNT THEREOF IS INCREASED,

(B) FAILS TO COMPLY WITH ANY OF THE PROVISIONS OF THIS ARTICLE OR ANY RULE OR REGULATION ADOPTED PURSUANT TO THIS ARTICLE BY THE COMMISSIONER,

(C) KNOWINGLY AIDS AND ABETS ANOTHER PERSON IN VIOLATING ANY OF THE PROVISIONS OF THIS ARTICLE OR ANY RULE OR REGULATION ADOPTED PURSUANT TO THIS ARTICLE BY THE COMMISSIONER,

(D) TRANSFERS ITS REGISTRATION AS A WHOLESALER OF MOTOR FUEL WITHOUT THE PRIOR WRITTEN APPROVAL OF THE COMMISSIONER,

(E) WITH RESPECT TO A WHOLESALER OF MOTOR FUEL WHICH IS A CORPORATION, HAS BEEN DISSOLVED PURSUANT TO SECTION TWO HUNDRED THREE-A AND SUBDIVISION (D) OF SECTION THREE HUNDRED TEN OF THIS CHAPTER,

(F) COMMITS FRAUD OR DECEIT IN HIS, HER OR ITS OPERATIONS AS A WHOLESALER OF MOTOR FUEL OR HAS COMMITTED FRAUD OR DECEIT IN PROCURING HIS, HER OR ITS REGISTRATION,

(G) HAS IMPERSONATED ANY PERSON REPRESENTED TO BE A WHOLESALER OF MOTOR FUEL UNDER THIS ARTICLE BUT NOT IN FACT REGISTERED AS A WHOLESALER OF MOTOR FUEL, OR

(H) HAS KNOWINGLY AIDED AND ABETTED THE DISTRIBUTION OF MOTOR FUEL, BY ANY PERSON WHICH SUCH REGISTRANT OR SUCH OTHER PERSON KNOWS HAS NOT BEEN REGISTERED BY THE COMMISSIONER AS REQUIRED UNDER THIS ARTICLE.

(2) A REGISTRATION AS A WHOLESALER OF MOTOR FUEL MAY BE CANCELLED OR SUSPENDED IF THE COMMISSIONER DETERMINES THAT A REGISTRANT OR AN OFFICER, DIRECTOR OR PARTNER OF THE REGISTRANT, A SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF SUCH REGISTRANT (WHERE SUCH REGISTRANT IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES, OR AN EMPLOYEE OR SHAREHOLDER OF SUCH REGISTRANT UNDER A DUTY TO FILE A RETURN UNDER OR PURSUANT TO THE AUTHORITY OF THIS ARTICLE OR TO PAY THE TAXES IMPOSED BY OR PURSUANT TO THE AUTHORITY OF THIS ARTICLE ON BEHALF OF THE REGISTRANT, WAS AN OFFICER, DIRECTOR OR PARTNER OF ANOTHER PERSON OR WAS A SHAREHOLDER DIRECTLY OR INDIRECTLY OWNING MORE THAN TEN PERCENT OF THE NUMBER OF SHARES OF STOCK OF ANOTHER PERSON (WHERE SUCH OTHER PERSON IS A CORPORATION) ENTITLING THE HOLDER THEREOF TO VOTE FOR THE ELECTION OF DIRECTORS OR TRUSTEES, OR WAS AN EMPLOYEE OR SHAREHOLDER OF ANOTHER PERSON UNDER A DUTY TO FILE A RETURN UNDER OR PURSUANT TO THE AUTHORITY OF THIS ARTICLE OR TO PAY THE TAXES IMPOSED BY OR PURSUANT TO THE AUTHORITY OF THIS ARTICLE ON BEHALF OF SUCH OTHER PERSON AT THE TIME SUCH OTHER PERSON COMMITTED ANY OF THE ACTS SPECIFIED IN PARAGRAPH ONE OF THIS SUBDIVISION WITHIN THE PRECEDING FIVE YEARS.

(E) CANCELLATION OR SUSPENSION OF REGISTRATION PRIOR TO A HEARING. THE GROUNDS FOR CANCELLING OR SUSPENDING A REGISTRATION AS A WHOLESALER OF MOTOR FUEL PRIOR TO A HEARING SHALL BE THE SAME AS THOSE SPECIFIED IN SUBDIVISION FIVE OF SECTION TWO HUNDRED EIGHTY-THREE OF THIS ARTICLE AND, IN ADDITION TO SUCH GROUNDS, THE FOLLOWING GROUNDS RELATING TO THIS ARTICLE SHALL APPLY:

(1) THE FAILURE TO FILE A RETURN WITHIN TEN DAYS OF THE DATE PRESCRIBED FOR FILING A RETURN UNDER THIS ARTICLE IF THE REGISTRANT SHALL HAVE FAILED TO FILE SUCH RETURN WITHIN TEN DAYS AFTER THE DATE THE DEMAND THEREFOR IS SENT BY REGISTERED OR CERTIFIED MAIL TO THE ADDRESS OF THE WHOLESALER OF MOTOR FUEL GIVEN IN ITS APPLICATION, OR AN ADDRESS SUBSTITUTED THEREFOR AS PROVIDED IN SUBDIVISION FIVE OF SECTION TWO HUNDRED EIGHTY-THREE OF THIS ARTICLE,

(2) THE FAILURE TO CONTINUE TO MAINTAIN IN FULL FORCE AND EFFECT AT ALL TIMES THE BOND OR OTHER SECURITY REQUIRED TO BE FILED PURSUANT TO SUBDIVISION (B) OF THIS SECTION, PROVIDED, HOWEVER, THAT IF A SURETY BOND IS CANCELLED PRIOR TO EXPIRATION, THE COMMISSIONER MAY AFTER CONSIDERING ALL THE RELEVANT CIRCUMSTANCES MAKE SUCH OTHER ARRANGEMENTS, AND MAY REQUIRE THE FILING OF SUCH OTHER BOND OR OTHER SECURITY AS IT DEEMS APPROPRIATE,

(3) THE TRANSFER OF A REGISTRATION AS A WHOLESALER OF MOTOR FUEL WITHOUT THE PRIOR WRITTEN APPROVAL OF THE COMMISSIONER, OR

(4) WITH RESPECT TO A WHOLESALER OF MOTOR FUEL WHICH IS A CORPORATION, THE DISSOLUTION OR ANNULMENT OF SUCH CORPORATION PURSUANT TO SECTION THREE HUNDRED TEN OF THIS CHAPTER.

S 3. Section 287 of the tax law is amended by adding a new subdivision 3 to read as follows:

3. EVERY WHOLESALER OF MOTOR FUEL SHALL, ON OR BEFORE THE TWENTIETH DAY OF EACH MONTH, FILE WITH THE DEPARTMENT A RETURN, ON FORMS PRESCRIBED BY THE COMMISSIONER STATING THE NUMBER OF GALLONS OF MOTOR FUEL PURCHASED AND SOLD BY SUCH WHOLESALER IN THE STATE DURING THE PRECEDING CALENDAR MONTH. FOR EACH PURCHASE AND SALE, THE DATE, NUMBER OF GALLONS OF MOTOR FUEL PURCHASED OR SOLD, AND THE NAME OF THE SELLER OR PURCHASER SHALL BE SET FORTH ON THE RETURN. SUCH RETURNS SHALL

CONTAIN SUCH FURTHER INFORMATION AS THE COMMISSIONER SHALL REQUIRE. THE FACT THAT A WHOLESALER'S NAME IS SIGNED TO A FILED RETURN SHALL BE PRIMA FACIE EVIDENCE FOR ALL PURPOSES THAT THE RETURN WAS ACTUALLY SIGNED BY SUCH WHOLESALER OF MOTOR FUEL.

S 4. Section 1102 of the tax law is amended by adding a new subdivision (f) to read as follows:

(F) EVERY WHOLESALER OF MOTOR FUEL, AS SUCH TERM IS DEFINED BY SUBDIVISION TWENTY-SEVEN OF SECTION TWO HUNDRED EIGHTY-TWO OF THIS CHAPTER, SHALL PAY OR BE ENTITLED TO A CREDIT OR REFUND OF THE TAX IMPOSED BY THIS SECTION ON GALLONS OF MOTOR FUEL UNDER THE CIRCUMSTANCES SET FORTH IN PARAGRAPH THREE OF SUBDIVISION (E) OF SECTION ELEVEN HUNDRED ELEVEN OF THIS ARTICLE.

S 5. Subdivision (e) of section 1111 of the tax law is amended by adding a new paragraph 3 to read as follows:

(3) WHEN A WHOLESALER OF MOTOR FUEL SELLS MOTOR FUEL IN A REGION, AS DEFINED IN PARAGRAPH ONE OF THIS SUBDIVISION, DIFFERENT FROM THE REGION IN WHICH SUCH MOTOR FUEL WAS PURCHASED:

(I) IF THE REGION IN WHICH IT SELLS THE MOTOR FUEL HAS A HIGHER PREPAID RATE AS SET FORTH IN THIS SUBDIVISION THAN THE REGION IN WHICH THE WHOLESALER PURCHASED THE MOTOR FUEL IN, THE WHOLESALER SHALL PAY TO THE DEPARTMENT THE DIFFERENCE IN THE RATES FOR THE GALLONAGE SOLD.

(II) IF THE REGION IN WHICH IT SELLS THE MOTOR FUEL HAS A LOWER PREPAID RATE AS SET FORTH IN THIS SUBDIVISION THAN THE REGION IN WHICH THE WHOLESALER PURCHASED THE MOTOR FUEL, THE WHOLESALER SHALL BE ENTITLED TO A CREDIT OR REFUND FOR THE DIFFERENCE IN THE RATES FOR THE GALLONAGE SOLD.

S 6. The tax law is amended by adding a new section 1812-g to read as follows:

S 1812-G. PERSON NOT REGISTERED AS A WHOLESALER OF MOTOR FUEL. ANY PERSON WHO, WHILE NOT REGISTERED AS A WHOLESALER OF MOTOR FUEL PURSUANT TO THE PROVISIONS OF ARTICLE TWELVE-A OF THIS CHAPTER, MAKES A SALE OF MOTOR FUEL IN THIS STATE OTHER THAN A RETAIL SALE NOT IN BULK, SHALL BE GUILTY OF A CLASS E FELONY.

S 7. This act shall take effect immediately; provided, however, that sections two, three, four, five and six of this act shall take effect December 1, 2015. Effective immediately, any rules, regulations and agreements necessary to implement the provisions of this act on its effective date are authorized and directed to be completed on or before such date.