

STATE OF NEW YORK

10931

IN ASSEMBLY

May 29, 2018

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

AN ACT to amend the tax law, in relation to eliminating state sales and compensating use taxes on bio diesel products produced, processed and/or distributed in New York state and authorizing localities to eliminate such taxes at the local level

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 1-a of section 289-c of the tax law is amended
2 by adding a new paragraph (e) to read as follows:

3 (e) (i) Any person may exclude the amount of the tax or taxes imposed
4 by this article on bio diesel products produced, processed and/or
5 distributed in New York state from the selling price thereof if such bio
6 diesel product is delivered to a filling station and placed in a storage
7 tank of such filling station for such bio diesel product to be dispensed
8 directly into a motor vehicle for use in the operation of such vehicle.
9 Any person making a sale of such bio diesel product under the circum-
10 stances described herein, whereby the tax or taxes otherwise imposed by
11 this article have not been passed through to the purchaser, shall be
12 allowed a refund or credit of the taxes imposed by this article in the
13 amount of such tax or taxes paid by such person on such bio diesel prod-
14 uct being sold or included in the price paid by such person for such
15 fuel. Claims for refunds or credits shall be presented, and refunds or
16 credits shall be made, only as authorized by the commissioner under such
17 rules and regulations as the commissioner may prescribe.

18 (ii) Any person may exclude the amount of the tax or taxes imposed by
19 this article from the selling price with respect to any sale of such bio
20 diesel product. Any person making a sale of such bio diesel product upon
21 which such person does not pass on more than eighty percent of the taxes
22 otherwise imposed by this article, where such person has purchased such
23 bio diesel product with the entire amount of the taxes imposed by this
24 article included in such person's purchase price, shall be entitled to a
25 refund or credit equal to the amount of the tax or taxes paid under this
26 article on such bio diesel product in excess of eighty percent of the

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

LBD07948-02-8

1 tax or taxes imposed by this article on diesel motor fuel. Claims for
2 refunds or credits shall be presented, and refunds or credits shall be
3 made, only as authorized by the commissioner under such rules and regu-
4 lations as the commissioner may prescribe.

5 (iii) Any person may exclude the amount of the tax or taxes imposed by
6 this article on such bio diesel product from the selling price thereof.
7 Any person making a sale of such bio diesel product, whereby the tax or
8 taxes otherwise imposed by this article have not been passed through to
9 the purchaser, shall be allowed a refund or credit of any taxes imposed
10 by this article in the amount of such tax or taxes paid by such person
11 on such bio diesel product being sold or included in the price paid by
12 such person for such bio diesel product. Claims for refunds or credits
13 shall be presented, and refunds or credits shall be made, only as
14 authorized by the commissioner under such rules and regulations as the
15 commissioner may prescribe.

16 § 2. Section 300 of the tax law is amended by adding a new subdivision
17 (t) to read as follows:

18 (t) The term "bio diesel" shall mean a diesel motor fuel substitute
19 produced from nonpetroleum renewable resources that meets the registra-
20 tion requirements for fuels and fuel additives established by the Envi-
21 ronmental Protection Agency under section 211 of the Clean Air Act (42
22 U.S.C. 7545) and that meets the American Society for Testing and Materi-
23 als D6751-02a Standard Specification for Biodiesel Fuel (B100) Blend
24 Stock for Distillate Fuels that has been produced, processed and/or
25 distributed in New York state.

26 § 3. Subdivision (a) of section 301-b of the tax law is amended by
27 adding a new paragraph 9 to read as follows:

28 (9)(i) Bio diesel exemption. Bio diesel products imported or caused to
29 be imported into this state or produced, refined, manufactured or
30 compounded in this state by a petroleum business registered under arti-
31 cle twelve-A of this chapter, as a distributor of diesel motor fuel, and
32 then sold by such petroleum business.

33 (ii) Calculation of exemption. The amount of the exemption under this
34 paragraph shall be determined by the applicable taxes otherwise imposed
35 by this article on such fuel.

36 § 4. Section 301-c of the tax law is amended by adding a new subdivi-
37 sion (q) to read as follows:

38 (q) Reimbursement for bio diesel products. (1) Bio diesel products
39 purchased in this state and sold by such purchaser in this state where
40 (i) the tax imposed pursuant to this article has been paid with respect
41 to such bio diesel products and the entire amount of such tax has been
42 absorbed by such purchaser, and (ii) such purchaser possesses documenta-
43 ry proof satisfactory to the commissioner evidencing the absorption by
44 it of the entire amount of the tax imposed pursuant to this article.
45 Provided, that the commissioner shall require such documentary proof to
46 qualify for any reimbursement provided hereunder as the commissioner
47 deems appropriate.

48 (2) Calculation of reimbursement. The amount of the reimbursement
49 under this subdivision shall be determined by the amount of the applica-
50 ble taxes otherwise imposed by this article on such fuel.

51 § 5. Subdivision (b) of section 1101 of the tax law is amended by
52 adding a new paragraph 39 to read as follows:

53 (39) Bio diesel. A diesel motor fuel substitute produced from nonpe-
54 troleum renewable resources that meets the registration requirements for
55 fuels and fuel additives established by the Environmental Protection
56 Agency under section 211 of the Clean Air Act (42 U.S.C. 7545) and that

1 meets the American Society for Testing and Materials D6751-02a Standard
2 Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels
3 that has been produced, processed and/or distributed in New York state.

4 § 6. Subdivision (b) of section 1107 of the tax law is amended by
5 adding a new clause 12 to read as follows:

6 (12) Except as otherwise provided by law, the exemption provided in
7 paragraph forty-five of subdivision (a) of section eleven hundred
8 fifteen of this article relating to bio diesel products produced, proc-
9 essed and/or distributed in New York state shall be applicable pursuant
10 to a local law, ordinance or resolution adopted by a city subject to the
11 provisions of this section. Such city is empowered to adopt or repeal
12 such a local law, ordinance or resolution. Such adoption or repeal shall
13 also be deemed to amend any local law, ordinance or resolution enacted
14 by such a city imposing taxes pursuant to the authority of subdivision
15 (a) of section twelve hundred ten of this chapter.

16 § 7. Subdivision (a) of section 1115 of the tax law is amended by
17 adding a new paragraph 45 to read as follows:

18 (45) Bio diesel products produced, processed and/or distributed in New
19 York state.

20 § 8. Paragraph 1 of subdivision (a) of section 1210 of the tax law is
21 amended by adding a new closing paragraph to read as follows:

22 Any local law, ordinance or resolution enacted by any city, county or
23 school district, imposing the taxes authorized by this subdivision,
24 shall omit the bio diesel products produced, processed and/or distrib-
25 uted in New York state exemption provided for in paragraph forty-five of
26 subdivision (a) of section eleven hundred fifteen of this chapter,
27 unless such city, county or school district elects otherwise; provided
28 that if such a city having a population of one million or more enacts
29 the resolution described in subdivision (p) of this section or repeals
30 such resolution, such resolution or repeal shall also be deemed to amend
31 any local law, ordinance or resolution enacted by such a city imposing
32 such taxes pursuant to the authority of this subdivision, whether or not
33 such taxes are suspended at the time such city enacts its resolution
34 pursuant to subdivision (p) of this section or at the time of any such
35 repeal; provided, further, that any such local law, ordinance or resol-
36 ution and section eleven hundred seven of this chapter, as deemed to be
37 amended in the event a city of one million or more enacts a resolution
38 pursuant to the authority of subdivision (p) of this section, shall be
39 further amended, as provided in section twelve hundred eighteen of this
40 subpart, so that the bio diesel products produced, processed and/or
41 distributed in New York state exemption in any such local law, ordinance
42 or resolution or in such section eleven hundred seven is the same as the
43 bio diesel products produced, processed and/or distributed in New York
44 state exemption in paragraph forty-five of subdivision (a) of section
45 eleven hundred fifteen of this chapter.

46 § 9. Subdivision (d) of section 1210 of the tax law, as amended by
47 section 4 of part WW of chapter 60 of the laws of 2016, is amended to
48 read as follows:

49 (d) A local law, ordinance or resolution imposing any tax pursuant to
50 this section, increasing or decreasing the rate of such tax, repealing
51 or suspending such tax, exempting from such tax the energy sources and
52 services described in paragraph three of subdivision (a) or of subdivi-
53 sion (b) of this section or changing the rate of tax imposed on such
54 energy sources and services or providing for the credit or refund
55 described in clause six of subdivision (a) of section eleven hundred
56 nineteen of this chapter, or electing or repealing the exemption for

1 residential solar equipment and electricity in subdivision (ee) of
2 section eleven hundred fifteen of this article, or the exemption for
3 commercial solar equipment and electricity in subdivision (ii) of
4 section eleven hundred fifteen of this article, or electing or repealing
5 the exemption for commercial fuel cell electricity generating systems
6 equipment and electricity generated by such equipment in subdivision
7 (kk) of section eleven hundred fifteen of this article must go into
8 effect only on one of the following dates: March first, June first,
9 September first or December first; provided, that a local law, ordinance
10 or resolution providing for the exemption described in paragraph thirty
11 of subdivision (a) of section eleven hundred fifteen of this chapter or
12 repealing any such exemption or a local law, ordinance or resolution
13 providing for a refund or credit described in subdivision (d) of section
14 eleven hundred nineteen of this chapter or repealing such provision so
15 provided must go into effect only on March first; provided, further,
16 that a local law, ordinance or resolution providing for the exemption
17 described in paragraph forty-five of subdivision (a) of section eleven
18 hundred fifteen of this chapter or repealing any such exemption so
19 provided and a resolution enacted pursuant to the authority of subdivi-
20 sion (p) of this section providing such exemption or repealing such
21 exemption so provided may go into effect immediately. No such local
22 law, ordinance or resolution shall be effective unless a certified copy
23 of such law, ordinance or resolution is mailed by registered or certi-
24 fied mail to the commissioner at the commissioner's office in Albany at
25 least ninety days prior to the date it is to become effective. However,
26 the commissioner may waive and reduce such ninety-day minimum notice
27 requirement to a mailing of such certified copy by registered or certi-
28 fied mail within a period of not less than thirty days prior to such
29 effective date if the commissioner deems such action to be consistent
30 with the commissioner's duties under section twelve hundred fifty of
31 this article and the commissioner acts by resolution. Where the
32 restriction provided for in section twelve hundred twenty-three of this
33 article as to the effective date of a tax and the notice requirement
34 provided for therein are applicable and have not been waived, the
35 restriction and notice requirement in section twelve hundred twenty-
36 three of this article shall also apply.

37 § 10. Section 1210 of the tax law is amended by adding a new subdivi-
38 sion (p) to read as follows:

39 (p) Notwithstanding any other provision of state or local law, ordi-
40 nance or resolution to the contrary:

41 (1) Any city having a population of one million or more in which the
42 taxes imposed by section eleven hundred seven of this chapter are in
43 effect, acting through its local legislative body, is hereby authorized
44 and empowered to elect to provide the exemption from such taxes for the
45 same bio diesel products produced, processed and/or distributed in New
46 York state exempt from state sales and compensating use taxes described
47 in paragraph forty-five of subdivision (a) of section eleven hundred
48 fifteen of this chapter by enacting a resolution in the form set forth
49 in paragraph two of this subdivision; whereupon, upon compliance with
50 the provisions of subdivisions (d) and (e) of this section, such enact-
51 ment of such resolution shall be deemed to be an amendment to such
52 section eleven hundred seven and such section eleven hundred seven shall
53 be deemed to incorporate such exemption as if it had been duly enacted
54 by the state legislature and approved by the governor.

55 (2) Form of Resolution: Be it enacted by the (insert proper title of
56 local legislative body) as follows:

1 Section one. Receipts from sales of and consideration given or
2 contracted to be given for purchases of bio diesel products produced,
3 processed and/or distributed in New York state exempt from state sales
4 and compensating use taxes pursuant to paragraph forty-five of subdivi-
5 sion (a) of section eleven hundred fifteen of the tax law shall also be
6 exempt from sales and compensating use taxes imposed in this jurisdic-
7 tion.

8 Section two. This resolution shall take effect, (insert the date) and
9 shall apply to sales made and uses occurring on and after that date
10 although made or occurring under a prior contract.

11 § 11. The commissioner of taxation and finance is hereby authorized to
12 implement the provisions of this act with respect to the elimination of
13 the imposition of sales tax, additional taxes, and supplemental taxes on
14 bio diesel products produced, processed and/or distributed in New York
15 state and all other taxes so addressed by this act.

16 § 12. This act shall take effect April 1, 2019.