

STATE OF NEW YORK

341

2017-2018 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2017

Introduced by Sen. PERALTA -- 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 taxation of aviation fuel businesses; and to repeal subdivision (f) of section 301-e of such law relating thereto

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

1 Section 1. Subdivisions (c), (d) and (e) of section 301-e of the tax
2 law, subdivision (c) as amended by section 25 of part K of chapter 61 of
3 the laws of 2011, subdivision (d) as amended by chapter 309 of the laws
4 of 1996, subdivision (e) as added by chapter 190 of the laws of 1990 and
5 paragraph 2 of subdivision (e) as amended by section 1 of part J of
6 chapter 60 of the laws of 2004, are amended to read as follows:
7 (c) Kero-jet fuel component. The kero-jet fuel component shall be
8 determined by multiplying the kero-jet fuel rate times the number of
9 gallons of (1) kero-jet fuel imported or caused to be imported into this
10 state by an aviation fuel business and consumed [~~in this state~~] by such
11 business in the operation of its aircraft; and (2) kero-jet fuel, which
12 has not been previously included in the measure of the tax imposed by
13 this section, (i) which is sold in this state by an aviation fuel busi-
14 ness to persons other than those registered under this article as
15 aviation fuel businesses or (ii) which is consumed in this state by an
16 aviation fuel business in the operation of its aircraft. Provided that
17 importation of kero-jet fuel in the fuel tanks of aircraft shall be
18 importation for the purposes of this section. The basic kero-jet fuel
19 rate shall be six and eight-tenths cents per gallon. The rate shall be
20 adjusted at the same time as the rates of the components of the petrole-
21 um business tax imposed by section three hundred one-a of this article,

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

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1 and the method of making adjustments to the kero-jet fuel rate shall be
2 the same as the method used for such rates.

3 (d) (1) An aviation fuel business shall be entitled to reimbursement
4 of the tax imposed by this section, less any credit allowed or refund
5 granted, with respect to aviation gasoline purchased in this state and
6 consumed by such business exclusively as aviation fuel in the operation
7 of its aircraft where such aviation gasoline is not consumed in this
8 state, provided that the amount of such tax, less any credit or refund,
9 has been absorbed by such aviation fuel business. Provided, further, an
10 aviation fuel business which has imported aviation gasoline into this
11 state and consumed such aviation gasoline in the operation of its
12 aircraft where a portion of such aviation gasoline is not consumed in
13 this state shall be allowed a credit for such gallonage not consumed in
14 this state in computing the tax imposed by such section.

15 ~~(2) [An aviation fuel business shall be entitled to reimbursement of~~
16 ~~the tax imposed by this section with respect to kero-jet fuel purchased~~
17 ~~in this state and consumed by such business exclusively as aviation fuel~~
18 ~~in the operation of its aircraft where such kero-jet fuel is not~~
19 ~~consumed in this state, provided that the entire amount of such tax has~~
20 ~~been absorbed by such aviation fuel business.~~

21 ~~(3)~~ Any purchaser of aviation gasoline in this state who consumes
22 such aviation gasoline exclusively as aviation fuel in the operation of
23 its aircraft shall be entitled to a partial reimbursement of the tax
24 imposed by this section with respect to aviation gasoline which was
25 purchased by such purchaser and upon which such purchaser paid or
26 absorbed the full amount of the tax imposed by this section (where no
27 partial credit or refund under paragraph two of subdivision (b) of this
28 section was provided with respect to such aviation gasoline) where: (i)
29 such purchaser purchases the aviation gasoline from a fixed base opera-
30 tor which qualifies as a retail seller of aviation gasoline but is not
31 so registered under article twelve-A of this chapter, or (ii) such
32 purchaser purchases the aviation gasoline in bulk from a distributor of
33 motor fuel registered under article twelve-A of this chapter where such
34 distributor delivers such aviation gasoline directly into a bulk storage
35 facility of the purchaser which is at a fixed and permanent place at an
36 airport within this state and is used solely to fill the fuel tanks of
37 its aircraft for use in the operations thereof. The amount of the
38 reimbursement allowable under this paragraph shall be equal to the
39 amount of the partial credit or refund allowable under paragraph two of
40 subdivision (b) of this section.

41 ~~(4)~~ (3) The commissioner shall require such documentary proof to
42 qualify for any credit, refund or reimbursement of tax provided under
43 this subdivision as the commissioner deems appropriate.

44 (e) All the provisions of this article relating to the administration,
45 collection and disposition of the tax imposed on petroleum businesses,
46 including the registration provisions of section three hundred two of
47 this article applicable to residual petroleum product businesses, shall
48 apply to the tax imposed by this section and the registration under this
49 article of aviation fuel businesses with such modification as may be
50 necessary in order to adapt the language of such provisions to the tax
51 imposed by this section. When reference in this article is made to "the
52 tax imposed under this article" or where words of similar import are
53 used, unless the context indicates otherwise, such reference shall be to
54 the tax imposed under section three hundred one-a of this article and
55 this section. The tax imposed by this section shall be administered
56 jointly in conjunction with, and as a part of, the tax imposed on petro-

1 leum businesses as if the provisions of subdivision (a) of this section,
2 imposing the tax under this section, were made a part of the imposition
3 provisions of section three hundred one-a, except where contrary or not
4 applicable to or inconsistent with the provisions of this section.
5 Provided, further, for the purpose of this section:

6 (1) the term "aviation fuel business" shall mean a "petroleum busi-
7 ness" as described in paragraph one or paragraph two of subdivision (b)
8 of section three hundred of this article except that the activities
9 described therein shall separately relate to aviation gasoline (such
10 paragraph one) and kero-jet fuel (such paragraph two) and such term
11 shall also include every corporation or unincorporated business import-
12 ing or causing to be imported aviation fuel into this state [~~for~~
13 ~~consumption by it in this state~~] by bringing such aviation fuel into
14 this state in aircraft fuel tanks which connect to the engines propel-
15 ling such aircraft.

16 (2) [~~kero-jet fuel and~~] aviation gasoline consumed in this state shall
17 be presumed to mean all such fuel consumed during takeoffs from points
18 in this state;

19 (3) where the commissioner [~~of taxation and finance~~] decides that with
20 respect to a certain petroleum business any of the methods prescribed in
21 paragraph two of this subdivision do not fairly and equitably reflect
22 fuel consumed in this state, the commissioner shall prescribe methods of
23 attribution which fairly and equitably reflect fuel consumed in this
24 state.

25 (4) "aviation fuel" means kero-jet fuel and aviation gasoline (as
26 described in paragraph three of subdivision (a) of section three hundred
27 one-b of this article). Provided, further the term kero-jet shall not
28 include naphtha based aviation fuel refined and used solely for propel-
29 ling military jet airplanes of the United States Armed Forces.

30 § 2. Subdivision (f) of section 301-e of the tax law is REPEALED.

31 § 3. This act shall take effect on the first of January next succeed-
32 ing the date on which it shall have become a law.