

# 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.

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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.