STATE OF NEW YORK

2413

2017-2018 Regular Sessions

IN ASSEMBLY

January 20, 2017

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

AN ACT to amend the tax law, the public authorities law and the highway law, in relation to limiting the tax on motor fuels to the national average; and to repeal sections 282-b, 282-c, 284-a and 284-c of the tax law relating to additional and supplemental fuel taxes

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

Section 1. Subdivision 1 of section 284 of the tax law, as amended by chapter 276 of the laws of 1986, is amended and a new subdivision 3 is added to read as follows:

1. There is hereby levied and imposed an excise tax [~~of four cents per gallon~~] **as determined annually by a majority of the legislature no later than April first, not to exceed the national average of taxes on motor fuel by states and the district of Columbia, including any taxes and fees imposed by local governments, as compiled annually by the department,** upon motor fuel (a) imported into or caused to be imported into the state by a distributor for use, distribution, storage or sale in the state or upon motor fuel which is produced, refined, manufactured or compounded by a distributor in the state (which acts shall hereinafter in this subdivision be encompassed by the phrase "imported or manufactured") or (b) if the tax has not been imposed prior to its sale in this state, which is sold by a distributor (which act, in conjunction with the acts described in paragraph (a) of this subdivision, shall hereinafter in this article be encompassed by the phrase "imported, manufactured or sold"), except when imported, manufactured or sold under circumstances which preclude the collection of such tax by reason of the United States constitution and of laws of the United States enacted pursuant thereto or when imported or manufactured by an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter or a hospital included in the organiza-

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

LBD07637-01-7

tions described in paragraph four of such subdivision for its own use or consumption and except kero-jet fuel when imported or manufactured by an airline for use in its airplanes. Provided, further, no motor fuel shall be included in the measure of the tax unless it shall have previously come to rest within the meaning of federal decisional law interpreting the United States constitution. All tax for the period for which a return is required to be filed shall be due on the date limited for the filing of the return for such period, regardless of whether a return is filed by such distributor as required by this article or whether the return which is filed correctly shows the amount of tax due.

3. The methodology by which the department computes the national average of sales taxes imposed on motor fuel by states and the district of Columbia for the purposes of limiting the annual excise tax imposed by subdivision one of this section shall be subject to the review and approval of a majority of the legislature every four years no later than April first.

§ 2. Subdivision 1 of section 282-a of the tax law, as amended by section 2 of part W of chapter 59 of the laws of 2013, is amended and a new subdivision 1-a is added to read as follows:

1. There is hereby levied and imposed with respect to Diesel motor fuel an excise tax [~~of four cents per gallon~~] **as determined annually by a majority of the legislature no later than April first, not to exceed the national average of taxes on Diesel fuel by states and the district of Columbia including any taxes and fees imposed by local governments as compiled annually by the department,** upon the sale or use of Diesel motor fuel in this state.

The excise tax is imposed on the first sale or use of Diesel motor fuel to occur which is not exempt from tax under this article. Provided, however, if the tax has not been imposed prior thereto, it shall be imposed on the removal of highway Diesel motor fuel from a terminal, other than by pipeline, barge, tanker or other vessel, or the delivery of Diesel motor fuel to a filling station or into the fuel tank connecting with the engine of a motor vehicle for use in the operation thereof whichever event shall be first to occur. The tax shall be computed based upon the number of gallons of Diesel motor fuel sold, removed or used or the number of gallons of Diesel fuel delivered into the fuel tank of a motor vehicle, as the case may be. Nothing in this article shall be construed to require the payment of such excise tax more than once upon the same Diesel motor fuel. Nor shall the collection of such tax be made applicable to the sale or use of Diesel motor fuel under circumstances which preclude the collection of such tax by reason of the United States constitution and of laws of the United States enacted pursuant thereto. Provided, further, no Diesel motor fuel shall be included in the measure of the tax unless it shall have previously come to rest within the meaning of federal decisional law interpreting the United States constitution. All tax for the period for which a return is required to be filed shall be due on the date limited for the filing of the return for such period, regardless of whether a return is filed as required by this article or whether the return which is filed correctly shows the amount of tax due.

1-a. The methodology by which the department computes the national average of sales taxes imposed on Diesel fuel by states and the district of Columbia for the purposes of limiting the annual excise tax imposed by subdivision one of this section shall be subject to the review and approval of a majority of the legislature every four years no later than April first.

§ 3. Sections 282-b, 282-c, 284-a and 284-c of the tax law are REPEALED.

§ 4. Subdivision 1 of section 289-e of the tax law, as amended by section 15 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

1. All taxes, interest, penalties and fees collected or received by the commissioner under the taxes imposed by this article, except as provided otherwise in subdivision two and subdivision three of this section [~~and sections two hundred eighty-two-b, two hundred eighty-two-c, two hundred eighty-four-a and two hundred eighty-four-c,~~] other than the fee imposed by section two hundred eighty-four-d and penalties and interest on such fee, shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter; provided that an amount equal to thirty-seven and one-half per centum of the moneys collected under section two hundred eighty-four of this [~~chapter~~] article shall be appropriated and used for the acquisition of property necessary for the construction and reconstruction of highways and bridges or culverts on the state highway system, and for the construction, maintenance and repair of such highways and bridges or culverts, all under the direction of the commissioner of transportation.

§ 5. Paragraphs (b), (d) and (e) of subdivision 3 of section 289-c of the tax law, paragraph (b) as amended by chapter 411 of the laws of 1971, paragraph (d) as amended by chapter 836 of the laws of 1974 and paragraph (e) as added by chapter 756 of the laws of 1974, are amended to read as follows:

(b) Any omnibus carrier which shall buy any motor fuel on which the [~~aggregate~~] tax imposed by section two hundred eighty-four [~~and section two hundred eighty-four-a~~] of this [~~chapter~~] article, or any diesel motor fuel on which the [~~aggregate~~] tax imposed by section two hundred eighty-two-a [~~and section two hundred eighty-two-b~~] of this [~~chapter~~] article, shall have been paid, shall be reimbursed, in the case of such motor fuel, the amount paid pursuant to such [~~sections~~] section two hundred eighty-four [~~and two hundred eighty-four-a~~] in excess of four cents per gallon, and in the case of diesel motor fuel, the amount paid pursuant to such [~~sections~~] section two hundred eighty-two-a [~~and two hundred eighty-two-b~~] in excess of six cents per gallon, provided such motor fuel or diesel motor fuel has been consumed by such carrier in the operation of an omnibus in this state. Any taxicab licensee, as defined by subdivision ten of section two hundred eighty-two of this [~~chapter~~] article, who or which shall buy any motor fuel on which the [~~aggregate~~] tax imposed by section two hundred eighty-four [~~and section two hundred eighty-four-a~~] of this [~~chapter~~] article or any diesel motor fuel on which the [~~aggregate~~] tax imposed by section two hundred eighty-two-a [~~and section two hundred eighty-two-b~~] of this [~~chapter~~] article, shall have been paid, shall be reimbursed, in the case of such motor fuel, the amount paid pursuant to such [~~sections~~] section two hundred eighty-four [~~and two hundred eighty-four-a~~] in excess of four cents per gallon, and in the case of diesel motor fuel, the amount paid pursuant to such [~~sections~~] section two hundred eighty-two-a [~~and two hundred eighty-two-b~~] in excess of six cents per gallon, provided such motor fuel or diesel fuel has been consumed by such licensee in the operation of a taxicab in this state.

(d) Any omnibus carrier which shall buy motor fuel on which the [~~aggregate~~] tax imposed by section two hundred eighty-four[~~, section two hundred eighty-four-a and section two hundred eighty-four-c~~] of this [~~chapter~~] article or any diesel motor fuel on which the [~~aggregate~~] tax

imposed by section two hundred eighty-two-a[~~, section two hundred eighty-two-b and section two hundred eighty-two-c~~] of this [~~chapter~~] **article** shall have been paid, shall be reimbursed the amount paid provided such motor fuel or diesel motor fuel has been consumed by such carrier in the operation of an omnibus in local transit service in this state pursuant to a certificate of convenience and necessity issued by the commissioner of transportation of this state or by the interstate commerce commission of the United States or pursuant to a contract, franchise or consent between such carrier and a city having a population of more than one million inhabitants, or any agency of such city.

(e) Any nonpublic school operator which shall buy motor fuel on which the [~~aggregate~~] tax imposed by section two hundred eighty-four[~~, section two hundred eighty-four-a and section two hundred eighty-four-c~~] of this [~~chapter~~] **article** or any diesel motor fuel on which the [~~aggregate~~] tax imposed by section two hundred eighty-two-a[~~, section two hundred eighty-two-b and section two hundred eighty-two-c~~] of this [~~chapter~~] **article** shall have been paid, shall be reimbursed the amount paid provided such motor fuel or diesel motor fuel has been consumed by such nonpublic school operator exclusively in educational related activities.

§ 6. Paragraph (b) of subdivision 5 of section 376 of the public authorities law, as amended by chapter 55 of the laws of 1992, is amended to read as follows:

(b) To assure the continued operation and solvency of the authority for the carrying out of the purposes relating to this section, provision is made in this section for the accumulation in the debt service reserve fund of an amount equal to the maximum amount of principal and interest maturing and becoming due in any succeeding calendar year on all bonds of the authority then outstanding and secured by such reserve fund; provided however for such bonds issued by the authority after April first, nineteen hundred ninety-two, such debt service reserve fund may in the discretion of the authority and consistent with any covenants with any existing bondholders and without impairing the rights of any existing bondholders be sized in an amount equal to not less than one-half of the maximum amount of principal and interest maturing and becoming due in any succeeding calendar year on such bonds of the authority then outstanding and secured by such debt service reserve fund. In order to further assure the maintenance of such debt service reserve fund, with respect to bonds of the authority issued pursuant to subdivisions two-a, two-b and two-c of this section after April first, nineteen hundred ninety, the authority shall create a special subaccount in each revenue fund established pursuant to any resolution or resolutions authorizing such bonds. [~~Such subaccounts shall consist of the moneys available after April first, nineteen hundred ninety, pursuant to sections two hundred eighty-two-b, two hundred eighty-two-c, two hundred eighty-four-a and two hundred eighty-four-c of the tax law, respectively, in the emergency highway reconditioning and preservation fund reserve account established pursuant to paragraph (b) of subdivision two of section eighty-nine of the state finance law and in the emergency highway construction and reconstruction fund reserve account established pursuant to paragraph (b) of subdivision two of section eighty-nine-a of the state finance law, apportioned and paid to the authority for deposit in such subaccount of the revenue fund.~~] Amounts in each such subaccount shall be kept separate and shall not be commingled with any other moneys in the custody of the authority. Amounts in each such subaccount shall be applied solely to pay such sum, if any, as shall semi-annually, (on such dates as are established under the terms of any cooperative highway

contractual agreement of the department of transportation with the New York state thruway authority entered into on or after April first, nineteen hundred ninety which is then in effect), be certified by the chairman of the authority to the governor and state director of the budget as necessary to provide funds in an amount sufficient together with other moneys available to the authority for such purpose, to pay one-half of the total annual principal and interest maturing and becoming due during the next succeeding twelve calendar months on all bonds of the authority issued pursuant to subdivisions two-a, two-b and two-c of this section after April first, nineteen hundred ninety and maintaining or funding debt service reserve funds therefor. [~~Any surplus of funds in excess of such certified amounts remaining in each such subaccount after such payments, if any, have been made shall on the dates established under the terms of such cooperative highway agreements, be paid over for deposit, respectively, in the emergency highway reconditioning and preservation fund reserve account established pursuant to paragraph (b) of subdivision two of section eighty-nine of the state finance law and in the emergency highway construction and reconstruction fund reserve account established pursuant to paragraph (b) of subdivision two of section eighty-nine-a of the state finance law.~~]

§ 7. Subdivision 5 of section 10-c of the highway law, as amended by chapter 20 of the laws of 1983, is amended to read as follows:

5. For amounts to be distributed pursuant to this section above the funding level, as defined in this subdivision, received by any municipality, such municipality shall use at least seventy-five percent of such apportioned moneys for the construction, reconstruction or improvement of local highways, bridges and/or highway-railroad crossings, including right of way acquisition, preliminary engineering, and construction supervision and inspection, where the service life of the project is at least ten years. Such moneys made available may be used to match other state and federal funds made available for such projects under federal-aid highway acts. The remainder of the apportionment, may be used for any highway purposes, except debt service, including but not limited to, the acquisition of materials and equipment devoted to operation and maintenance of local highways, bridges and/or highway-railroad crossings and the payment of any costs directly attributable to operation and maintenance of local highways, bridges and/or highway-railroad crossings. At the discretion of the commissioner, the requirement specified in this subdivision may be waived for assistance payments in amounts of less than five thousand dollars. For purposes of this section "funding level" shall mean the average amounts, calculated for each municipality, received over two years ending March thirty-first, nineteen hundred eighty-two from the provisions of the town highway improvement program, the distribution made by former section one hundred twelve of this chapter, as repealed by section twenty-one of the transportation systems assistance and financing act of 1981 of amounts collected from taxes on motor fuel imposed by [~~sections~~] **section** two hundred eighty-four [~~and two hundred eighty-four-a~~] of the tax law and on Diesel motor fuel imposed by [~~sections~~] **section** two hundred eighty-two-a [~~and two hundred eighty-two-b~~] of the tax law, and from motor vehicle fees collected from residents pursuant to the vehicle and traffic law, [~~and~~] the distribution made by former section two hundred seventy-nine of this chapter, as repealed by section twenty-one of the transportation systems assistance and financing act of 1981**, and the distributions made by former sections two hundred eighty-two-b and two hundred eight-four-a of**

the tax law, as repealed by the chapter of the laws of two thousand seventeen which amended this subdivision.

§ 8. This act shall take effect on the ninetieth day after it shall have become a law.