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:

Section 1. Subdivisions (c), (d) and (e) of section 301-e of the tax law, subdivision (c) as amended by section 25 of part K of chapter 61 of the laws of 2011, subdivision (d) as amended by chapter 309 of the laws of 1996, subdivision (e) as added by chapter 190 of the laws of 1990 and paragraph 2 of subdivision (e) as amended by section 1 of part J of chapter 60 of the laws of 2004, are amended to read as follows:

(c) Kero-jet fuel component. The kero-jet fuel component shall be determined by multiplying the kero-jet fuel rate times the number of gallons of (1) kero-jet fuel imported or caused to be imported into this state by an aviation fuel business and consumed [~~in this state~~] by such business in the operation of its aircraft; and (2) kero-jet fuel, which has not been previously included in the measure of the tax imposed by this section, (i) which is sold in this state by an aviation fuel business to persons other than those registered under this article as aviation fuel businesses or (ii) which is consumed in this state by an aviation fuel business in the operation of its aircraft. Provided that importation of kero-jet fuel in the fuel tanks of aircraft shall be importation for the purposes of this section. The basic kero-jet fuel rate shall be six and eight-tenths cents per gallon. The rate shall be adjusted at the same time as the rates of the components of the petroleum 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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and the method of making adjustments to the kero-jet fuel rate shall be the same as the method used for such rates.

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

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

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

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

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

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

(1) the term "aviation fuel business" shall mean a "petroleum business" as described in paragraph one or paragraph two of subdivision (b) of section three hundred of this article except that the activities described therein shall separately relate to aviation gasoline (such paragraph one) and kero-jet fuel (such paragraph two) and such term shall also include every corporation or unincorporated business importing or causing to be imported aviation fuel into this state [~~for consumption by it in this state~~] by bringing such aviation fuel into this state in aircraft fuel tanks which connect to the engines propelling such aircraft.

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

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

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

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

§ 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.