

# STATE OF NEW YORK

194

2019-2020 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. CAHILL -- Multi-Sponsored by -- M. of A. ENGLE-BRIGHT, GUNTHER, LUPARDO, L. ROSENTHAL -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to eliminating the residential restriction for heating exemptions

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

1 Section 1. Subdivision (d) of section 301-b of the tax law, as amended  
2 by section 21 of part K of chapter 61 of the laws of 2011, is amended to  
3 read as follows:

4 (d) Sales to consumers for heating purposes. [~~(1) Total residential~~  
5 ~~heating~~] Heating exemption. Non-highway diesel motor fuel sold by a  
6 petroleum business registered under article twelve-A of this chapter as  
7 a distributor of diesel motor fuel or residual petroleum product sold by  
8 a petroleum business registered under this article as a residual petro-  
9 leum product business to the consumer exclusively for [~~residential~~]  
10 heating purposes only if such non-highway diesel motor fuel is delivered  
11 into a storage tank which is not equipped with a hose or other apparatus  
12 by which such fuel can be dispensed into the fuel tank of a motor vehi-  
13 cle and such storage tank is attached to the heating unit burning such  
14 fuel.

15 [~~(2) Partial non-residential heating exemption. (A) Non-highway diesel~~  
16 ~~motor fuel sold by a petroleum business registered under article~~  
17 ~~twelve-A of this chapter as a distributor of diesel motor fuel or resi-~~  
18 ~~dual petroleum product sold by a petroleum business registered under~~  
19 ~~this article as a residual petroleum product business to the consumer~~  
20 ~~exclusively for heating, other than residential heating purposes only if~~  
21 ~~such non-highway diesel motor fuel is delivered into a storage tank~~  
22 ~~which is not equipped with a hose or other apparatus by which such fuel~~

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

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1 ~~can be dispensed into the fuel tank of a motor vehicle and such storage~~  
2 ~~tank is attached to the heating unit burning such fuel~~

3 ~~(B) Calculation of partial exemption. The partial exemption under this~~  
4 ~~paragraph shall be determined by multiplying the quantity of non-highway~~  
5 ~~diesel motor fuel and residual petroleum product eligible for the~~  
6 ~~exemption times the sum of the then current rate of the supplemental tax~~  
7 ~~imposed by section three hundred one j of this article and forty six~~  
8 ~~percent of the then current rate of the tax imposed by section three~~  
9 ~~hundred one a of this article, with respect to the specific non-highway~~  
10 ~~diesel motor fuel or residual petroleum product rate, as the case may~~  
11 ~~be.]~~

12 § 2. Subdivision (a) of section 301-c of the tax law, as amended by  
13 section 23 of part K of chapter 61 of the laws of 2011, is amended to  
14 read as follows:

15 (a) Non-highway Diesel motor fuel used for heating purposes. [~~(1)~~  
16 ~~Total residential heating~~] Heating reimbursement. Non-highway Diesel  
17 motor fuel purchased in this state and sold by such purchaser to a  
18 consumer for use exclusively for [~~residential~~] heating purposes but only  
19 where (i) such non-highway diesel motor fuel is delivered into a storage  
20 tank which is not equipped with a hose or other apparatus by which such  
21 non-highway Diesel motor fuel can be dispensed into the fuel tank of a  
22 motor vehicle and such storage tank is attached to the heating unit  
23 burning such non-highway Diesel motor fuel, (ii) the tax imposed pursu-  
24 ant to this article has been paid with respect to such non-highway  
25 diesel motor fuel and the entire amount of such tax has been absorbed by  
26 such purchaser, and (iii) such purchaser possesses documentary proof  
27 satisfactory to the commissioner evidencing the absorption by it of the  
28 entire amount of the tax imposed pursuant to this article. Provided,  
29 however, that the commissioner is authorized, in the event that the  
30 commissioner determines that it would not threaten the integrity of the  
31 administration and enforcement of the tax imposed by this article, to  
32 provide a reimbursement with respect to a retail sale to a consumer for  
33 [~~residential~~] heating purposes of less than ten gallons of non-highway  
34 diesel motor fuel provided such fuel is not dispensed into the tank of a  
35 motor vehicle.

36 [~~(2) Partial non residential heating reimbursement. (A) Non highway~~  
37 ~~Diesel motor fuel purchased in this state and sold by such purchaser to~~  
38 ~~a consumer for use exclusively for heating, other than for residential~~  
39 ~~heating purposes, but only where (i) such non highway diesel motor fuel~~  
40 ~~is delivered into a storage tank which is not equipped with a hose or~~  
41 ~~other apparatus by which such non highway Diesel motor fuel can be~~  
42 ~~dispensed into the fuel tank of a motor vehicle and such storage tank is~~  
43 ~~attached to the heating unit burning such non highway Diesel motor fuel,~~  
44 ~~(ii) the tax imposed pursuant to this article has been paid with respect~~  
45 ~~to such non highway diesel motor fuel and the entire amount of such tax~~  
46 ~~has been absorbed by such purchaser, and (iii) such purchaser possesses~~  
47 ~~documentary proof satisfactory to the commissioner evidencing the~~  
48 ~~absorption by it of the entire amount of the tax imposed pursuant to~~  
49 ~~this article.~~

50 (B) Calculation of partial reimbursement. Notwithstanding any other  
51 provision of this article, the amount of the reimbursement under this  
52 paragraph shall be determined by multiplying the quantity of non highway  
53 diesel motor fuel eligible for the reimbursement times the sum of the  
54 then current rate of the supplemental tax imposed by section three  
55 hundred one j of this article and forty six percent of the then current  
56 rate of the tax imposed by section three hundred one a of this article,

1 ~~with respect to the non-highway diesel motor fuel rate, as the case may~~  
2 ~~be.]~~

3 § 3. This act shall take effect April 1, 2019; provided, however, if  
4 this act shall become a law after such date it shall be deemed to have  
5 been in full force and effect on and after April 1, 2019.