

# STATE OF NEW YORK

3459

2019-2020 Regular Sessions

## IN ASSEMBLY

January 29, 2019

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

AN ACT to amend the tax law, in relation to establishing a tax on carbon emissions; and to amend the state finance law, in relation to establishing the carbon tax revenue fund

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

1 Section 1. The tax law is amended by adding a new article 21-B to read  
2 as follows:

3 ARTICLE 21-B

4 TAX ON CARBON EMISSION

5 Section 530. Definitions.

6 531. Imposition and rate of tax.

7 532. Exemptions.

8 533. Penalties and interest.

9 534. Deposit and disposition of revenue.

10 § 530. Definitions. As used in this article, the following terms shall  
11 have the following meanings:

12 (a) "Carbon-based fuel" means coal, natural gas, petroleum products  
13 and any other product used for fuel that contains carbon and emits  
14 carbon dioxide when combusted; provided, however, that carbon-based fuel  
15 shall not include any product used for fuel that is derived from a  
16 resource that is less than one thousand years old in its natural state.

17 (b) "Distributor" means a person who imports or causes to be imported  
18 carbon-based fuel for use, distribution, or sale within the state, or a  
19 person who produces, refines, manufactures, or compounds carbon-based  
20 fuel within the state for use, distribution, or sale.

21 (c) "Petroleum products" means propane, gasoline, unleaded gasoline,  
22 kerosene, number 2 heating oil, diesel fuel, kerosene base jet fuel, and  
23 number 4, number 5 and number 6 residual oil for utility and non-utility  
24 uses, and all petroleum derivatives, whether in bond or not, which are

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

LBD07529-01-9

1 commonly burned to produce heat, power, electricity or motion or which  
2 are commonly processed to produce synthetic gas for burning.

3 (d) "Retail Customer" means a person who purchases carbon-based fuel  
4 for his or her own consumption.

5 (e) "Retail Purchase" means a purchase of carbon-based fuel made by a  
6 person for his or her own consumption.

7 § 531. Imposition and rate of tax. (a) There is hereby levied and  
8 imposed a tax at a rate of five dollars per ton of carbon in any  
9 carbon-based fuel that is sold to retail customers in the state. The tax  
10 shall increase by at least the rate of annual inflation plus one percent  
11 for the first ten years that this section is in effect, and by at least  
12 the rate of annual inflation thereafter. The department shall calculate  
13 the tax liability associated with any retail purchase by multiplying the  
14 rate designated in this section by the total amount of carbon in each  
15 carbon-based fuel sold to retail consumers in the state. For the purpose  
16 of calculating the tax, the department of environmental conservation  
17 shall determine the percentage of carbon in each carbon-based fuel and  
18 report those percentages to the department.

19 (b) A distributor shall pay to the commissioner an excise tax per  
20 gallon determined by the department pursuant to subdivision (a) of this  
21 section upon each gallon of carbon-based fuel sold by such distributor  
22 in the state during the calendar month covered by the return required  
23 pursuant to subdivision (c) of this section. The tax imposed under this  
24 section shall be collected by the distributor upon completion of any  
25 sale or delivery of fuel.

26 (c) Every distributor that makes sales subject to the tax imposed by  
27 this section shall, on or before the twentieth day of each month, file  
28 with the commissioner a return on forms to be prescribed by the commis-  
29 sioner, showing its receipts from the retail sale of carbon-based fuel  
30 during the preceding calendar month and the amount of tax due thereon.  
31 Such returns shall contain such further information as the commissioner  
32 may require. Every distributor required to file a return under this  
33 section shall, at the time of filing such return, pay to the commission-  
34 er the total amount of tax due on its retail sales of carbon-based fuel  
35 for the period covered by such return. If a return is not filed when  
36 due, the tax shall be due on the day on which the return is required to  
37 be filed.

38 § 532. Exemptions. The following shall be exempt from the tax imposed  
39 by section five hundred thirty-one of this article:

40 (a) carbon-based fuel sold to the United States government, its subdi-  
41 visions, or under any other circumstances in which the state is without  
42 power to impose the tax; and

43 (b) carbon-based fuel sold by a distributor that has already been  
44 subjected to the tax imposed by section five hundred thirty-one of this  
45 article, if the sales invoice clearly indicates the amount of fuel that  
46 has already been subjected to the tax.

47 § 533. Penalties and interest. (a) A distributor who fails to file a  
48 return or to pay any tax within the time required by or pursuant to this  
49 article (determined with regard to any extension of time for filing or  
50 paying) shall be subject to a penalty of ten per centum of the amount of  
51 tax determined to be due as provided in this article plus one per centum  
52 of such amount for each month or fraction thereof during which such  
53 failure continues after the expiration of the first month after such  
54 statement was required to be filed or such tax became due, not exceeding  
55 thirty per centum in the aggregate.

1 (b) If any amount of tax is not paid on or before the last date  
2 prescribed in this article for payment, interest on such amount at the  
3 underpayment rate set by the commissioner of taxation and finance pursu-  
4 ant to subdivision twenty-sixth of section one hundred seventy-one of  
5 this chapter shall be paid for the period from such last date to the  
6 date paid, whether or not any extension of time for payment was granted.  
7 Interest under this subsection shall not be paid if the amount thereof  
8 is less than one dollar.

9 § 534. Deposit and disposition of revenue. All taxes, interest, and  
10 penalties collected or received by the commissioner of taxation and  
11 finance under the taxes imposed by this article shall be deposited in  
12 the carbon tax revenue fund and disposed of pursuant to section ninety-  
13 nine-ff of the state finance law.

14 § 2. The state finance law is amended by adding a new section 99-ff to  
15 read as follows:

16 § 99-ff. Carbon tax revenue fund. 1. There is hereby established in  
17 the joint custody of the state comptroller and commissioner of taxation  
18 and finance a fund to be known as the "carbon tax revenue fund".

19 2. Such account shall consist of revenues from all taxes, interest,  
20 and penalties imposed by article twenty-one-B of the tax law.

21 3. On or before the first day of February each year, the comptroller  
22 shall certify to the governor, temporary president of the senate, speak-  
23 er of the assembly, chair of the senate finance committee and chair of  
24 the assembly ways and means committee, the amount of money deposited in  
25 the carbon tax revenue fund during the preceding calendar year as the  
26 result of revenue derived pursuant to article twenty-one-B of the tax  
27 law.

28 4. Moneys of the fund may be invested by the state comptroller and  
29 income from such investments shall be credited to the fund.

30 5. Moneys of the fund shall be appropriated by the legislature and  
31 paid out pursuant to the terms of such appropriation.

32 § 3. Paragraph a of subdivision 26th of section 171 of the tax law, as  
33 amended by section 1 of subpart D of part V-1 of chapter 57 of the laws  
34 of 2009, is amended to read as follows:

35 a. Set the overpayment and underpayment rates of interest for purposes  
36 of articles twelve-A, eighteen, twenty ~~[and]~~, twenty-one and  
37 twenty-one-B of this chapter. Such rates shall be the overpayment and  
38 underpayment rates of interest set pursuant to subsection (e) of section  
39 one thousand ninety-six of this chapter, but the underpayment rate shall  
40 not be less than seven and one-half percent per annum. Any such rates  
41 set by such commissioner shall apply to taxes, or any portion thereof,  
42 which remain or become due or overpaid (other than overpayments under  
43 such article twenty and not including reimbursements, if any, under any  
44 of such articles) on or after the date on which such rates become effec-  
45 tive and shall apply only with respect to interest computed or comput-  
46 able for periods or portions of periods occurring in the period during  
47 which such rates are in effect. In computing the amount of any interest  
48 required to be paid under such articles by such commissioner or by the  
49 taxpayer, or any other amount determined by reference to such amount of  
50 interest, such interest and such amount shall be compounded daily.

51 § 4. This act shall take effect on the one hundred twentieth day after  
52 it shall have become a law. Effective immediately, the addition, amend-  
53 ment and/or repeal of any rules or regulations necessary for the imple-  
54 mentation of this act on its effective date are authorized to be made on  
55 or before such date.