

# STATE OF NEW YORK

9827

## IN ASSEMBLY

April 19, 2022

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

AN ACT to amend the tax law, the general business law and the state finance law, in relation to providing for the deposit into the dedicated highway and bridge trust fund of a portion of the sales tax revenue from the sale of motor fuel and establishing a temporary fuel tax holiday; and to repeal certain provisions of the state finance law relating thereto

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

1 Section 1. Section 1148 of the tax law, as amended by section 6-a of  
2 part G of chapter 59 of the laws of 2019, is amended to read as follows:

3 § 1148. Deposit and disposition of revenue. (a) All taxes, interest  
4 and penalties collected or received by the commissioner under this arti-  
5 cle shall be deposited and disposed of pursuant to the provisions of  
6 section one hundred seventy-one-a of this chapter; provided however, the  
7 comptroller shall on or before the twelfth day of each month, pay all  
8 such taxes, interest and penalties collected under this article and  
9 remaining to the comptroller's credit in such banks, banking houses or  
10 trust companies at the close of business on the last day of the preced-  
11 ing month, into the general fund of the state treasury.

12 (a-1) Provided however, before the funds may be distributed pursuant  
13 to subdivision (a) of this section, one cent of the taxes collected or  
14 received by the commissioner under this article for the retail sale of  
15 each gallon of motor fuel shall be deposited in the special obligation  
16 reserve and payment account of the dedicated highway and bridge trust  
17 fund, established by section eighty-nine-b of the state finance law.

18 (b) Provided however, [~~before~~] after the funds [~~may be~~] are distrib-  
19 uted pursuant to subdivision [~~(a)~~] (a-1) of this section but before such  
20 funds are distributed pursuant to subdivision (a) of this section, such  
21 funds shall be distributed as otherwise provided in sections  
22 ninety-two-d, ninety-two-h, and ninety-two-r of the state finance law  
23 and sections eleven hundred two, eleven hundred four and eleven hundred  
24 nine of this article.

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

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(c) Provided however, after funds are distributed pursuant to ~~[subdivision]~~ subdivisions (a-1) and (b) of this section but before such funds are distributed pursuant to subdivision (a) of this section, funds shall be deposited by the comptroller into the New York central business district trust fund established pursuant to section ninety-nine-ff of the state finance law in accordance with the following schedule: (1) in state fiscal year two thousand nineteen - two thousand twenty, one hundred twelve million five hundred thousand dollars; (2) in state fiscal year two thousand twenty - two thousand twenty-one, one hundred fifty million dollars; and (3) in state fiscal year two thousand twenty-one - two thousand twenty-two and every succeeding state fiscal year, an amount equal to one hundred one percent of the amount deposited in the immediately preceding state fiscal year. The funds deposited into the New York central business district trust fund shall be deposited monthly in equal installments.

§ 2. Subdivision (a-1) of section 1148 of the tax law, as added by section one of this act, is amended to read as follows:

(a-1) Provided however, before the funds may be distributed pursuant to subdivision (a) of this section, ~~[one-cent]~~ two cents of the taxes collected or received by the commissioner under this article for the retail sale of each gallon of motor fuel shall be deposited in the special obligation reserve and payment account of the dedicated highway and bridge trust fund, established by section eighty-nine-b of the state finance law.

§ 3. Subdivision (a-1) of section 1148 of the tax law, as amended by section two of this act, is amended to read as follows:

(a-1) Provided however, before the funds may be distributed pursuant to subdivision (a) of this section, ~~[two]~~ three cents of the taxes collected or received by the commissioner under this article for the retail sale of each gallon of motor fuel shall be deposited in the special obligation reserve and payment account of the dedicated highway and bridge trust fund, established by section eighty-nine-b of the state finance law.

§ 4. Subdivision (a-1) of section 1148 of the tax law, as amended by section three of this act, is amended to read as follows:

(a-1) Provided however, before the funds may be distributed pursuant to subdivision (a) of this section, ~~[three]~~ four cents of the taxes collected or received by the commissioner under this article for the retail sale of each gallon of motor fuel shall be deposited in the special obligation reserve and payment account of the dedicated highway and bridge trust fund, established by section eighty-nine-b of the state finance law.

§ 5. Paragraph (a) of subdivision 3 of section 89-b of the state finance law, as amended by section 4 of chapter 368 of the laws of 2019, is amended to read as follows:

(a) The special obligation reserve and payment account shall consist (i) of all moneys required to be deposited in the dedicated highway and bridge trust fund pursuant to the provisions of sections two hundred five, two hundred eighty-nine-e, three hundred one-j, five hundred fifteen, eleven hundred forty-eight and eleven hundred sixty-seven of the tax law, section four hundred one and article ~~[twelve-d]~~ twelve-D of the vehicle and traffic law, and section thirty-one of chapter fifty-six of the laws of nineteen hundred ninety-three, (ii) all fees, fines or penalties collected by the commissioner of transportation and the commissioner of motor vehicles pursuant to section fifty-two, section three hundred twenty-six, section eighty-eight of the highway law,

subdivision fifteen of section three hundred eighty-five of the vehicle and traffic law, section two of part U1 of chapter sixty-two of the laws of two thousand three, subdivision (d) of section three hundred four-a, paragraph one of subdivision (a) and subdivision (d) of section three hundred five, subdivision six-a of section four hundred fifteen and subdivision (g) of section twenty-one hundred twenty-five of the vehicle and traffic law, section fifteen of this chapter, excepting moneys deposited with the state on account of betterments performed pursuant to subdivision twenty-seven or subdivision thirty-five of section ten of the highway law, and section one hundred forty-five of the transportation law, (iii) any moneys collected by the department of transportation for services provided pursuant to agreements entered into in accordance with section ninety-nine-r of the general municipal law, and (iv) any other moneys collected therefor or credited or transferred thereto from any other fund, account or source.

§ 6. Paragraph (a) of subdivision 3 of section 89-b of the state finance law, as amended by section 5 of chapter 368 of the laws of 2019, is amended to read as follows:

(a) The special obligation reserve and payment account shall consist (i) of all moneys required to be deposited in the dedicated highway and bridge trust fund pursuant to the provisions of sections two hundred eighty-nine-e, three hundred one-j, five hundred fifteen, eleven hundred forty-eight and eleven hundred sixty-seven of the tax law, section four hundred one and article ~~[twelve-d]~~ twelve-D of the vehicle and traffic law, and section thirty-one of chapter fifty-six of the laws of nineteen hundred ninety-three, (ii) all fees, fines or penalties collected by the commissioner of transportation and the commissioner of motor vehicles pursuant to section fifty-two, section three hundred twenty-six, section eighty-eight of the highway law, subdivision fifteen of section three hundred eighty-five of the vehicle and traffic law, section fifteen of this chapter, excepting moneys deposited with the state on account of betterments performed pursuant to subdivision twenty-seven or subdivision thirty-five of section ten of the highway law, and section one hundred forty-five of the transportation law, (iii) any moneys collected by the department of transportation for services provided pursuant to agreements entered into in accordance with section ninety-nine-r of the general municipal law, and (iv) any other moneys collected therefor or credited or transferred thereto from any other fund, account or source.

§ 7. Paragraph (a) of subdivision 3 of section 89-b of the state finance law, as amended by section 8 of part UU of chapter 59 of the laws of 2018, is REPEALED.

§ 8. The tax law is amended by adding a new section 47 to read as follows:

§ 47. Fuel tax holiday. (a) Definitions. For purposes of this section,

(1) "Applicable period" shall mean fourteen days after the effective date of this section through September first, two thousand twenty-two.

(2) "Diesel motor fuel" and "motor fuel" shall have the same meaning as section two hundred eighty-two of this chapter.

(3) "Filling station" shall have the same meaning as section two hundred eighty-two of this chapter.

(4) "Retail sale" and "sold at retail" shall mean any sale of motor fuel or diesel motor fuel at a filling station to a person for use in a motor vehicle.

(5) "Retail seller" shall mean any person who sells motor fuel or diesel motor fuel at retail.

1 (6) "Sale" shall have the same meaning as section two hundred eighty-  
2 two of this chapter.

3 (b) Exemption from taxation. Notwithstanding any other provision of  
4 law, rule or regulation to the contrary, the taxes imposed on retail  
5 sales of motor fuel and diesel motor fuel made during the applicable  
6 period shall be exempt from the taxes imposed by articles twelve-A,  
7 thirteen-A, and twenty-eight of this chapter. If the retail seller is  
8 located within a municipality that has elected to eliminate the tax  
9 imposed pursuant to article twenty-nine of this chapter, such taxes  
10 shall not be imposed on the retail sale of motor fuel or diesel motor  
11 fuel during the applicable period.

12 (c) Price reduction. During the applicable period, each retail seller  
13 shall reduce the price per gallon of motor fuel and diesel motor fuel  
14 offered for sale by the amount of the taxes that the retail seller  
15 prepaid on the gallon of motor fuel and diesel motor fuel and the amount  
16 of tax in excess of the prepaid amount that would have been collected  
17 from the consumer if the sale of the motor fuel or diesel motor fuel had  
18 not been exempt from tax pursuant to subdivision (b) of this section.

19 (d) Advertising. Notwithstanding any other provision of law to the  
20 contrary, a retail seller may advertise that the motor fuel and/or  
21 diesel motor fuel is being or will be sold without the state taxes. Such  
22 advertisement may commence no earlier than three days before the appli-  
23 cable period and must end by the end of the applicable period.

24 (e) Refunds and credits. (1) Notwithstanding any other provision of  
25 law to the contrary, the retail seller shall be entitled to receive a  
26 credit against the taxes due pursuant to article twenty-eight of this  
27 chapter for the amount of tax that the retail seller prepaid pursuant to  
28 articles twelve-A, thirteen-A, twenty-eight and, if applicable, twenty-  
29 nine of this chapter. If the retail seller is located within a munici-  
30 pality that has elected to eliminate the tax imposed pursuant to article  
31 twenty-nine of this chapter, the retail seller shall be entitled to  
32 claim a credit against the taxes due pursuant to article twenty-eight of  
33 this chapter for such prepaid taxes. The amount of credit shall equal  
34 the amount of tax that was prepaid pursuant to articles twelve-A, thir-  
35 teen-A, twenty-eight and, if applicable, twenty-nine of this chapter for  
36 each gallon of motor fuel and diesel motor fuel sold at retail during  
37 the applicable period. Such credit shall not be allowed for sales that  
38 would have otherwise been exempt from tax.

39 (2) A retail seller may claim the credit prescribed in paragraph one  
40 of this subdivision when the retail seller files its return of tax for  
41 the sales of motor fuel and diesel motor fuel for the period that  
42 includes the applicable period. Notwithstanding the foregoing, if a  
43 retailer seller is required to file its return more than thirty days  
44 after the close of the applicable period defined in paragraph one of  
45 subdivision (a) of this section, such retailer shall be authorized to  
46 file an amendment to its most recently filed return to claim such cred-  
47 it. No credit may be claimed for the taxes prepaid pursuant to article  
48 twelve-A, thirteen-A, twenty-eight or, if applicable, twenty-nine of  
49 this chapter pursuant to this section if the claim would have been  
50 barred pursuant to the article that required prepayment of such taxes.  
51 No interest shall be paid on any claims for credit made pursuant to this  
52 section.

53 § 9. Section 88-a of the state finance law is amended by adding a new  
54 subdivision 8 to read as follows:

55 8. By March thirty-first, two thousand twenty-three, the comptroller  
56 shall transfer from the general fund to the mass transportation operat-

ing assistance fund an amount no greater than the amount that would have otherwise been deposited in the mass transportation operating assistance fund pursuant to this section if the exemption defined in subdivision (b) of section forty-seven of the tax law had not been authorized; provided however that the comptroller shall make such transfer only after the director of the budget has determined in his or her discretion that the transfer is necessary to ensure a positive fund balance of the mass transportation operating assistance fund at the end of the two thousand eleven-two thousand twelve state fiscal year.

§ 10. Subdivision 3 of section 89-b of the state finance law is amended by adding a new paragraph (g) to read as follows:

(g) Within forty-five days after an applicable period as defined by subdivision (a) of section forty-seven of the tax law, the comptroller, in consultation with the director of the division of the budget, shall transfer from the general fund to the special obligation reserve and payment account an amount equal to the amount that would have otherwise been deposited in the special obligation reserve and payment account pursuant to this section if the exemption defined in subdivision (b) of section forty-seven of the tax law had not been authorized.

§ 11. Section 89-c of the state finance law is amended by adding a new subdivision 4 to read as follows:

4. Within forty-five days after an applicable period as defined by subdivision (a) of section forty-seven of the tax law, the comptroller, in consultation with the director of the division of the budget, shall transfer from the general fund to the dedicated mass transportation trust fund an amount equal to the amount that would have otherwise been deposited in the dedicated mass transportation trust fund pursuant to this section if the exemption defined in subdivision (b) of section forty-seven of the tax law had not been authorized.

§ 12. Section 392-i of the general business law, as amended by section 5 of part M-1 of chapter 109 of the laws of 2006, is amended to read as follows:

§ 392-i. Prices reduced to reflect change in sales tax computation. Every person engaged in the retail sale of motor fuel and/or diesel motor fuel or a distributor of such fuels, as defined in article twelve-A of the tax law, shall reduce the price such person charges for motor fuel and/or diesel motor fuel in an amount equal to any reduction in taxes prepaid by the distributor, credit for the amount of taxes prepaid by the retail seller allowable pursuant to section forty-seven of the tax law, exemption from taxation pursuant to section forty-seven of the tax law to the extent that the tax that would have been otherwise due exceeds the amount of tax prepaid, or paid by retail customers resulting from computing sales and compensating use and other taxes at a cents per gallon rate pursuant to the provisions of paragraph two of subdivision (e) and subdivision (m) of section eleven hundred eleven of the tax law.

§ 13. Paragraph 1 of subdivision (n) of section 1817 of the tax law, as amended by section 30 of subpart I of part V-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(1) Every person engaged in the retail sale of motor fuel and/or diesel motor fuel or a distributor of such fuels, as defined in article twelve-A of this chapter, shall comply with the provisions of section three hundred ninety-two-i of the general business law by reducing the prices charged for motor fuel and diesel motor fuel in an amount equal to any reduction in taxes prepaid by the distributor, credit for the amount of taxes prepaid by the retail seller allowable pursuant to

1 section forty-seven of the tax law, exemption from taxation pursuant to  
2 section forty-seven of the tax law to the extent that the tax that would  
3 have been otherwise due exceeds the amount of tax prepaid, or imposed on  
4 retail customers resulting from computing sales and compensating use  
5 taxes at a cents per gallon rate pursuant to the provisions of paragraph  
6 two of subdivision (e) and subdivision (m) of section one thousand one  
7 hundred eleven of this chapter.

8 § 14. Notwithstanding any law to the contrary, a municipality may make  
9 the election to eliminate all taxes on motor fuel and diesel motor fuel  
10 pursuant to sections eleven hundred seven and eleven hundred eight of  
11 the tax law or article twenty-nine of the tax law fourteen days after  
12 the effective date of this section through September first, two thousand  
13 twenty-two, by local law, ordinance or resolution, if such municipality  
14 mails, by certified or registered mail, a certified copy of such local  
15 law, ordinance or resolution to the commissioner of taxation and finance  
16 at his or her office in Albany no later than the Wednesday immediately  
17 preceding the applicable period as defined by paragraph one of subdivi-  
18 sion (a) of section forty-seven of the tax law.

19 § 15. The commissioner of taxation and finance shall (a) on an emer-  
20 gency basis, promulgate and/or amend any rules and regulations necessary  
21 to provide for the tax free sales of motor fuel and diesel motor fuel  
22 and refunds of prepaid tax to retail sellers; and

23 (b) immediately make provisions for retail sellers to apply for credit  
24 for the taxes prepaid pursuant to articles twelve-A, thirteen-A,  
25 twenty-eight, and, if applicable, twenty-nine of the tax law.

26 § 16. This act shall take effect immediately; provided, however, that:

27 (a) section one of this act shall take effect April 1, 2022;

28 (b) section two of this act shall take effect April 1, 2023;

29 (c) section three of this act shall take effect April 1, 2024;

30 (d) section four of this act shall take effect April 1, 2025; and

31 (e) the amendments to paragraph (a) of subdivision 3 of section 89-b  
32 of the state finance law, made by section five of this act, shall be  
33 subject to the expiration and reversion of such paragraph pursuant to  
34 section 13 of part Ul of chapter 62 of the laws of 2003, as amended,  
35 when upon such date the provisions of section six of this act shall take  
36 effect.