

STATE OF NEW YORK

S. 5164

A. 5815

2021-2022 Regular Sessions

SENATE - ASSEMBLY

February 25, 2021

IN SENATE -- Introduced by Sen. PALUMBO -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue

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

AN ACT to amend the tax law, in relation to providing an exemption from the payment of the motor fuels tax and the sales tax on motor fuels used in the operation of commercial fishing vessels

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

1 Section 1. Paragraph (b) of subdivision 3 of section 282-a of the tax
2 law, as amended by section 3 of part W of chapter 59 of the laws of
3 2013, is amended to read as follows:
4 (b) The tax on the incidence of sale or use imposed by subdivision one
5 of this section shall not apply to: (i) the sale or use of non-highway
6 Diesel motor fuel, but only if all of such fuel is consumed other than
7 on the public highways of this state (except for the use of the public
8 highway by farmers to reach adjacent farmlands); provided, however, this
9 exemption shall in no event apply to a sale of non-highway Diesel motor
10 fuel which involves a delivery at a filling station or into a repository
11 which is equipped with a hose or other apparatus by which such fuel can
12 be dispensed into the fuel tank of a motor vehicle (except for delivery
13 at a farm site which qualifies for the exemption under subdivision (g)
14 of section three hundred one-b of this chapter); or (ii) a sale to the
15 consumer consisting of not more than twenty gallons of water-white kero-
16 sene to be used and consumed exclusively for heating purposes; or (iii)
17 the sale to or delivery at a filling station or other retail vendor of
18 water-white kerosene provided such filling station or other retail
19 vendor only sells such water-white kerosene exclusively for heating
20 purposes in containers of no more than twenty gallons; or (iv) a sale of

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

LBD05695-01-1

1 kero-jet fuel to an airline for use in its airplanes or a use of kero-
2 jet fuel by an airline in its airplanes; or (v) a sale of kero-jet fuel
3 by a registered distributor of Diesel motor fuel to a fixed base opera-
4 tor registered under this article as a distributor of kero-jet fuel only
5 where such fixed base operator is engaged solely in making or offering
6 to make retail sales not in bulk of kero-jet fuel directly into the fuel
7 tank of an airplane for the purpose of operating such airplane; or (vi)
8 a retail sale not in bulk of kero-jet fuel by a fixed base operator
9 registered under this article as a distributor of kero-jet fuel only
10 where such fuel is delivered directly into the fuel tank of an airplane
11 for use in the operation of such airplane; or (vii) the sale of previ-
12 ously untaxed qualified biodiesel to a person registered under this
13 article as a distributor of Diesel motor fuel other than (A) a retail
14 sale to such person or (B) a sale to such person which involves a deliv-
15 ery at a filling station or into a repository which is equipped with a
16 hose or other apparatus by which such qualified biodiesel can be
17 dispensed into the fuel tank of a motor vehicle; or (viii) the sale of
18 previously untaxed highway Diesel motor fuel by a person registered
19 under this article as a distributor of Diesel motor fuel to a person
20 registered under this article as a distributor of Diesel motor fuel
21 where the highway Diesel motor fuel is either: (A) being delivered by
22 pipeline, railcar, barge, tanker or other vessel to a terminal, the
23 operator of which terminal is registered under section two hundred
24 eighty-three-b of this article, or (B) within such a terminal where it
25 has been so delivered. Provided, however, that the exemption set forth
26 in this subparagraph shall not apply to any highway Diesel motor fuel if
27 it is removed from a terminal, other than by pipeline, barge, tanker or
28 other vessel; or (ix) a sale of Diesel motor fuel to a "commercial fish-
29 erman", as such term is defined in subdivision (i) of section three
30 hundred of this chapter, at retail under the circumstances set forth in
31 paragraph one of subdivision (g) of section three hundred one-c of this
32 chapter, and where such commercial fishing vessel is operated by a
33 commercial fisherman.

34 § 2. Subdivision 4 of section 282-a of the tax law, as amended by
35 section 5 of part K of chapter 61 of the laws of 2011, is amended to
36 read as follows:

37 4. The tax imposed by this section on Diesel motor fuel shall be
38 passed through by the seller and included as part of the selling price
39 to each purchaser of such fuel. Provided, however, the amount of the tax
40 imposed by this section may be excluded from the selling price of Diesel
41 motor fuel where (i) a sale of Diesel motor fuel is made to an organiza-
42 tion described in paragraph (a) of subdivision three of this section
43 solely for the purpose stated therein; (ii) a sale of non-highway Diesel
44 motor fuel is made to a consumer but only if such non-highway Diesel
45 motor fuel is not delivered to a filling station, nor delivered into a
46 storage tank which is equipped with a hose or other apparatus by which
47 such fuel can be dispensed into the fuel tank of a motor vehicle; or
48 (iii) the sale to or delivery at a filling station or other retail
49 vendor of water-white kerosene provided such filling station or other
50 retail vendor only sells such water-white kerosene exclusively for heat-
51 ing purposes in containers of no more than twenty gallons; or (iv) a
52 sale of kero-jet fuel is made to an airline for use in its airplanes; or
53 (v) a sale of Diesel motor fuel is made to a "commercial fisherman", as
54 such term is defined in subdivision (i) of section three hundred of this
55 chapter, at retail under the circumstances set forth in paragraph one of
56 subdivision (g) of section three hundred one-c of this chapter, and

1 where such commercial fishing vessel is operated by a commercial fisher-
2 man.

3 § 3. Section 301-b of the tax law is amended by adding a new subdivi-
4 sion (j) to read as follows:

5 (j) Sales or uses of diesel motor fuel and residual petroleum product
6 for commercial fishing. Diesel motor fuel or residual petroleum product
7 sold to or used by a "commercial fisherman", as such term is defined in
8 subdivision (i) of section three hundred of this article, at retail
9 under the circumstances set forth in paragraph one of subdivision (g) of
10 section three hundred one-c of this article, and where such commercial
11 fishing vessel is operated by a commercial fisherman.

12 § 4. Subdivision (j) of section 1115 of the tax law, as amended by
13 section 41 of part K of chapter 61 of the laws of 2011, is amended to
14 read as follows:

15 (j) The exemptions provided in this section shall not apply to the tax
16 required to be prepaid pursuant to the provisions of section eleven
17 hundred two of this article nor to the taxes imposed by sections eleven
18 hundred five and eleven hundred ten of this article with respect to
19 receipts from sales and uses of motor fuel or diesel motor fuel, except
20 that the exemptions provided in paragraphs nine and forty-two of subdivi-
21 sion (a) of this section shall apply to the tax required to be prepaid
22 pursuant to the provisions of section eleven hundred two of this article
23 and to the taxes imposed by sections eleven hundred five and eleven
24 hundred ten of this article with respect to sales and uses of kero-jet
25 fuel, CNG, hydrogen and E85, provided, however, the exemption allowed
26 for E85 shall be subject to the additional requirements provided in
27 section eleven hundred two of this article with respect to E85 and
28 except that the exemption provided in paragraph twenty-four of subdivi-
29 sion (a) of this section shall apply to the taxes imposed by sections
30 eleven hundred five and eleven hundred ten of this article with respect
31 to sales and uses of diesel motor fuel used in the operation of a fish-
32 ing vessel as described in paragraph twenty-four of subdivision (a) of
33 this section. The exemption provided in subdivision (c) of this section
34 shall apply to sales and uses of non-highway diesel motor fuel but only
35 if all of such fuel is consumed other than on the public highways of
36 this state. The exemption provided in subdivision (c) of this section
37 shall apply to sales and uses of non-highway diesel motor fuel for use
38 or consumption either in the production for sale of tangible personal
39 property by farming or in a commercial horse boarding operation, or in
40 both but only if all of such fuel is consumed other than on the public
41 highways of this state (except for the use of the public highways to
42 reach adjacent farmlands or adjacent lands used in a commercial horse
43 boarding operation, or both).

44 § 5. Subdivision (j) of section 1115 of the tax law, as amended by
45 section 41-a of part K of chapter 61 of the laws of 2011, is amended to
46 read as follows:

47 (j) The exemptions provided in this section shall not apply to the tax
48 required to be prepaid pursuant to the provisions of section eleven
49 hundred two of this article nor to the taxes imposed by sections eleven
50 hundred five and eleven hundred ten of this article with respect to
51 receipts from sales and uses of motor fuel or diesel motor fuel, except
52 that the exemption provided in paragraph nine of subdivision (a) of this
53 section shall apply to the tax required to be prepaid pursuant to the
54 provisions of section eleven hundred two of this article and to the
55 taxes imposed by sections eleven hundred five and eleven hundred ten of
56 this article with respect to sales and uses of kero-jet fuel and except

1 that the exemption provided in paragraph twenty-four of subdivision (a)
2 of this section shall apply to the taxes imposed by sections eleven
3 hundred five and eleven hundred ten of this article with respect to
4 sales and uses of diesel motor fuel used in the operation of a fishing
5 vessel as described in paragraph twenty-four of subdivision (a) of this
6 section. The exemption provided in subdivision (c) of this section

7 shall apply to sales and uses of non-highway diesel motor fuel but only
8 if all of such fuel is consumed other than on the public highways of
9 this state. The exemption provided in subdivision (c) of this section
10 shall apply to sales and uses of non-highway diesel motor fuel for use
11 or consumption either in the production for sale of tangible personal
12 property by farming or in a commercial horse boarding operation, or in
13 both but only if all of such fuel is consumed other than on the public
14 highways of this state (except for the use of the public highways to
15 reach adjacent farmlands or adjacent lands used in a commercial horse
16 boarding operation, or both).

17 § 6. This act shall take effect on the first day of a sales tax quar-
18 terly period, as described in subdivision (b) of section 1136 of the tax
19 law, next commencing at least ninety days after this act shall have
20 become a law; sections four and five of this act shall apply to sales
21 made under and uses occurring on or after the dates such sections four
22 and five shall have taken effect, respectively, although made or occur-
23 ring under a prior contract; and provided further that such amendments
24 made by section four of this act shall be subject to the expiration and
25 reversion of such subdivision pursuant to section 19 of part W-1 of
26 chapter 109 of the laws of 2006, as amended, when upon such date the
27 provisions of section five of this act shall take effect.