

# STATE OF NEW YORK

8728

## IN SENATE

April 5, 2022

Introduced by Sens. TEDISCO, JORDAN -- read twice and ordered printed,  
and when printed to be committed to the Committee on Budget and Revenue

AN ACT to amend the tax law, in relation to establishing limitations on excise and sales taxes on diesel motor fuel and motor fuel and to authorize cities having a population of one million or more and counties to adopt local laws limiting taxes on diesel motor fuel and motor fuel

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

1 Section 1. Subdivision 1 of section 282-a of the tax law, as amended  
2 by section 2 of part W of chapter 59 of the laws of 2013, is amended and  
3 a new subdivision 1-a is added to read as follows:

4 1. [~~There~~] Subject to the provisions of subdivision one-a of this  
5 section, there is hereby levied and imposed with respect to Diesel motor  
6 fuel an excise tax of four cents per gallon upon the sale or use of  
7 Diesel motor fuel in this state.

8 The excise tax is imposed on the first sale or use of Diesel motor  
9 fuel to occur which is not exempt from tax under this article. Provided,  
10 however, if the tax has not been imposed prior thereto, it shall be  
11 imposed on the removal of highway Diesel motor fuel from a terminal,  
12 other than by pipeline, barge, tanker or other vessel, or the delivery  
13 of Diesel motor fuel to a filling station or into the fuel tank connect-  
14 ing with the engine of a motor vehicle for use in the operation thereof  
15 whichever event shall be first to occur. The tax shall be computed based  
16 upon the number of gallons of Diesel motor fuel sold, removed or used or  
17 the number of gallons of Diesel fuel delivered into the fuel tank of a  
18 motor vehicle, as the case may be. Nothing in this article shall be  
19 construed to require the payment of such excise tax more than once upon  
20 the same Diesel motor fuel. Nor shall the collection of such tax be made  
21 applicable to the sale or use of Diesel motor fuel under circumstances  
22 which preclude the collection of such tax by reason of the United States  
23 constitution and of laws of the United States enacted pursuant thereto.  
24 Provided, further, no Diesel motor fuel shall be included in the measure

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

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1 of the tax unless it shall have previously come to rest within the mean-  
2 ing of federal decisional law interpreting the United States constitu-  
3 tion. All tax for the period for which a return is required to be filed  
4 shall be due on the date limited for the filing of the return for such  
5 period, regardless of whether a return is filed as required by this  
6 article or whether the return which is filed correctly shows the amount  
7 of tax due.

8 1-a. The full amount of the tax imposed by this section shall apply to  
9 sales of motor fuel at prices up to two dollars and twenty-five cents  
10 per gallon. If the average price of motor fuel in the state exceeds two  
11 dollars and twenty-five cents per gallon, the amount of tax imposed by  
12 this section shall be reduced by one-quarter of a percentage point  
13 (.0025) for every increment of five cents increase in the cost of motor  
14 fuel per gallon. The tax imposed by this section shall be suspended  
15 entirely if the average price of motor fuel in the state equals or  
16 exceeds three dollars per gallon. If the average price of motor fuel in  
17 the state falls below three dollars per gallon, the tax imposed by this  
18 section shall be assessed in increases of one-quarter of a percentage  
19 point (.0025) for every increment of five cents increase in the cost of  
20 motor fuel per gallon until the average price of motor fuel in the state  
21 decreases to two dollars and twenty-five cents per gallon, at which time  
22 the full amount of tax imposed by this section shall apply to sales of  
23 motor fuel.

24 § 2. Section 282-b of the tax law, as amended by section 1 of part EE  
25 of chapter 63 of the laws of 2000, is amended to read as follows:

26 § 282-b. Additional Diesel motor fuel tax. 1. In addition to the tax  
27 imposed by section two hundred eighty-two-a of this [~~chapter~~] article, a  
28 like tax shall be imposed at the rate of three cents per gallon upon  
29 sale or use within the state of Diesel motor fuel or upon the delivery  
30 of Diesel motor fuel to a filling station or into the fuel tank of a  
31 motor vehicle for use in the operation thereof. Except as otherwise  
32 provided in this section, all of the provisions of this article shall  
33 apply with respect to the additional tax imposed by this section to the  
34 same extent as if it were imposed by said section two hundred eighty-  
35 two-a. Beginning on April first, nineteen hundred ninety-one, four and  
36 one-sixth per centum of the moneys received by the department pursuant  
37 to the provisions of this section shall be deposited to the credit of  
38 the emergency highway reconditioning and preservation fund reserve  
39 account established pursuant to the provisions of paragraph (b) of  
40 subdivision two of former section eighty-nine of the state finance law.  
41 Beginning on April first, nineteen hundred ninety-one, four and one-  
42 sixth per centum of the moneys received by the department pursuant to  
43 the provisions of this section shall be deposited to the credit of the  
44 emergency highway construction and reconstruction fund reserve account  
45 established pursuant to the provisions of paragraph (b) of subdivision  
46 two of former section eighty-nine-a of the state finance law. Beginning  
47 on April first, nineteen hundred ninety-two, an additional eight and  
48 one-third per centum of the moneys received by the department pursuant  
49 to the provisions of this section shall be deposited to the credit of  
50 the emergency highway reconditioning and preservation fund reserve  
51 account established pursuant to the provisions of paragraph (b) of  
52 subdivision two of former section eighty-nine of the state finance law.  
53 Beginning on April first, nineteen hundred ninety-two, an additional  
54 eight and one-third per centum of the moneys received by the department  
55 pursuant to the provisions of this section shall be deposited to the  
56 credit of the emergency highway construction and reconstruction fund

1 reserve account established pursuant to the provisions of paragraph (b)  
2 of subdivision two of former section eighty-nine-a of the state finance  
3 law. Beginning on April first, two thousand one, seventy-five per centum  
4 of the moneys received by the department pursuant to the provisions of  
5 this section shall be deposited in the dedicated fund accounts pursuant  
6 to subdivision (d) of section three hundred one-j of this chapter.  
7 Beginning on April first, two thousand three, all of the moneys received  
8 by the department pursuant to the provisions of this section shall be  
9 deposited in the dedicated fund accounts pursuant to subdivision (d) of  
10 section three hundred one-j of this chapter.

11 2. The full amount of the tax imposed by this section shall apply to  
12 sales of motor fuel at prices up to two dollars and twenty-five cents  
13 per gallon. If the average price of motor fuel in the state exceeds two  
14 dollars and twenty-five cents per gallon, the amount of tax imposed by  
15 this section shall be reduced by two-tenths of a percentage point (.002)  
16 for every increment of five cents increase in the cost of motor fuel per  
17 gallon. The tax imposed by this section shall be suspended entirely if  
18 the average price of motor fuel in the state equals or exceeds three  
19 dollars per gallon. If the average price of motor fuel in the state  
20 falls below three dollars per gallon, the tax imposed by this section  
21 shall be assessed in increases of two-tenths of a percentage point  
22 (.002) for every increment of five cents increase in the cost of motor  
23 fuel per gallon until the average price of motor fuel in the state  
24 decreases to two dollars and twenty-five cents per gallon, at which time  
25 the full amount of tax imposed by this section shall apply to sales of  
26 motor fuel.

27 § 3. Section 282-c of the tax law, as amended by section 2 of part EE  
28 of chapter 63 of the laws of 2000, is amended to read as follows:

29 § 282-c. Supplemental Diesel motor fuel tax. 1. In addition to the  
30 taxes imposed by sections two hundred eighty-two-a and two hundred  
31 eighty-two-b of this [~~chapter~~] article, a like tax shall be imposed at  
32 the rate of one cent per gallon upon the sale or use within the state of  
33 Diesel motor fuel or upon the delivery of Diesel motor fuel to a filling  
34 station or into the fuel tank of a motor vehicle for use in the opera-  
35 tion thereof. Except for paragraph (b) of subdivision three of section  
36 two hundred eighty-nine-c of this article, all the provisions of this  
37 article shall apply with respect to the supplemental tax imposed by this  
38 section to the same extent as if it were imposed by said section two  
39 hundred eighty-two-a. On and after the first day of October, nineteen  
40 hundred seventy-two, twenty-five per centum of the monies received by  
41 the department pursuant to the provisions of this section shall be  
42 deposited to the credit of the emergency highway reconditioning and  
43 preservation fund established pursuant to the provisions of former  
44 section eighty-nine of the state finance law. Beginning on April first,  
45 nineteen hundred eighty-three, twenty-five per centum of the monies  
46 received by the department pursuant to the provisions of this section  
47 shall be deposited to the credit of the emergency highway construction  
48 and reconstruction fund established pursuant to the provisions of former  
49 section eighty-nine-a of the state finance law. Beginning on April  
50 first, nineteen hundred ninety, an additional twelve and one-half per  
51 centum of the moneys received by the department pursuant to the  
52 provisions of this section shall be deposited to the credit of the emer-  
53 gency highway reconditioning and preservation fund reserve account  
54 established pursuant to the provisions of paragraph (b) of subdivision  
55 two of former section eighty-nine of the state finance law. Beginning on  
56 April first, nineteen hundred ninety, an additional twelve and one-half

1 per centum of the moneys received by the department pursuant to the  
2 provisions of this section shall be deposited to the credit of the emer-  
3 gency highway construction and reconstruction fund reserve account  
4 established pursuant to the provisions of paragraph (b) of subdivision  
5 two of former section eighty-nine-a of the state finance law. Beginning  
6 on April first, nineteen hundred ninety-one, an additional twelve and  
7 one-half per centum of the moneys received by the department pursuant to  
8 the provisions of this section shall be deposited to the credit of the  
9 emergency highway reconditioning and preservation fund reserve account  
10 established pursuant to the provisions of paragraph (b) of subdivision  
11 two of former section eighty-nine of the state finance law. Beginning on  
12 April first, nineteen hundred ninety-one, an additional twelve and one-  
13 half per centum of the moneys received by the department pursuant to the  
14 provisions of this section shall be deposited to the credit of the emer-  
15 gency construction and reconstruction fund reserve account established  
16 pursuant to the provisions of paragraph (b) of subdivision two of former  
17 section eighty-nine-a of the state finance law. Beginning on April  
18 first, two thousand three, all of the moneys received by the department  
19 pursuant to the provisions of this section shall be deposited in the  
20 dedicated fund accounts pursuant to subdivision (d) of section three  
21 hundred one-j of this chapter.

22 2. The full amount of the tax imposed by this section shall apply to  
23 sales of motor fuel at prices up to two dollars and twenty-five cents  
24 per gallon. If the average price of motor fuel in the state exceeds two  
25 dollars and twenty-five cents per gallon, the amount of tax imposed by  
26 this section shall be reduced by sixty-six hundredths of a percentage  
27 point (.0066) for every increment of five cents increase in the cost of  
28 motor fuel per gallon. The tax imposed by this section shall be  
29 suspended entirely if the average price of motor fuel in the state  
30 equals or exceeds three dollars per gallon. If the average price of  
31 motor fuel in the state falls below three dollars per gallon, the tax  
32 imposed by this section shall be assessed in increases of sixty-six  
33 hundredths of a percentage point (.0066) for every increment of five  
34 cents increase in the cost of motor fuel per gallon until the average  
35 price of motor fuel in the state decreases to two dollars and twenty-  
36 five cents per gallon, at which time the full amount of tax imposed by  
37 this section shall apply to sales of motor fuel.

38 § 4. Subdivision 1 of section 284 of the tax law, as amended by chap-  
39 ter 276 of the laws of 1986, is amended and a new subdivision 3 is added  
40 to read as follows:

41 1. [~~There~~] Subject to the provisions of subdivision three of this  
42 section, there is hereby levied and imposed an excise tax of four cents  
43 per gallon upon motor fuel (a) imported into or caused to be imported  
44 into the state by a distributor for use, distribution, storage or sale  
45 in the state or upon motor fuel which is produced, refined, manufactured  
46 or compounded by a distributor in the state (which acts shall hereinaft-  
47 er in this subdivision be encompassed by the phrase "imported or manu-  
48 factured") or (b) if the tax has not been imposed prior to its sale in  
49 this state, which is sold by a distributor (which act, in conjunction  
50 with the acts described in paragraph (a) of this subdivision, shall  
51 hereinafter in this article be encompassed by the phrase "imported,  
52 manufactured or sold"), except when imported, manufactured or sold under  
53 circumstances which preclude the collection of such tax by reason of the  
54 United States constitution and of laws of the United States enacted  
55 pursuant thereto or when imported or manufactured by an organization  
56 described in paragraph one or two of subdivision (a) of section eleven

1 hundred sixteen of this chapter or a hospital included in the organiza-  
2 tions described in paragraph four of such subdivision for its own use or  
3 consumption and except kero-jet fuel when imported or manufactured by an  
4 airline for use in its airplanes. Provided, further, no motor fuel shall  
5 be included in the measure of the tax unless it shall have previously  
6 come to rest within the meaning of federal decisional law interpreting  
7 the United States constitution. All tax for the period for which a  
8 return is required to be filed shall be due on the date limited for the  
9 filing of the return for such period, regardless of whether a return is  
10 filed by such distributor as required by this article or whether the  
11 return which is filed correctly shows the amount of tax due.

12 3. The full amount of the tax imposed by this section shall apply to  
13 sales of motor fuel at prices up to two dollars and twenty-five cents  
14 per gallon. If the average price of motor fuel in the state exceeds two  
15 dollars and twenty-five cents per gallon, the amount of tax imposed by  
16 this section shall be reduced by one-quarter of a percentage point  
17 (.0025) for every increment of five cents increase in the cost of motor  
18 fuel per gallon. The tax imposed by this section shall be suspended  
19 entirely if the average price of motor fuel in the state equals or  
20 exceeds three dollars per gallon. If the average price of motor fuel in  
21 the state falls below three dollars per gallon, the tax imposed by this  
22 section shall be assessed in increases of one-quarter of a percentage  
23 point (.0025) for every increment of five cents increase in the cost of  
24 motor fuel per gallon until the average price of motor fuel in the state  
25 decreases to two dollars and twenty-five cents per gallon, at which time  
26 the full amount of tax imposed by this section shall apply to sales of  
27 motor fuel.

28 § 5. Section 284-a of the tax law, as amended by section 3 of part EE  
29 of chapter 63 of the laws of 2000, is amended to read as follows:

30 § 284-a. Additional motor fuel tax. 1. In addition to the tax imposed  
31 by section two hundred eighty-four of this [~~chapter~~ article], a like tax  
32 shall be imposed at the rate of three cents per gallon upon motor fuel  
33 imported, manufactured or sold within this state by a distributor.  
34 Except as otherwise provided in this section, all the provisions of this  
35 article except subdivision two of section two hundred eighty-nine-e of  
36 this article shall apply with respect to the additional tax imposed by  
37 this section to the same extent as if it were imposed by said section  
38 two hundred eighty-four. Beginning on April first, nineteen hundred  
39 ninety-one, four and one-sixth per centum of the moneys received by the  
40 department pursuant to the provisions of this section shall be deposited  
41 to the credit of the emergency highway reconditioning and preservation  
42 fund reserve account established pursuant to the provisions of paragraph  
43 (b) of subdivision two of former section eighty-nine of the state  
44 finance law. Beginning on April first, nineteen hundred ninety-one,  
45 four and one-sixth per centum of the moneys received by the department  
46 pursuant to the provisions of this section shall be deposited to the  
47 credit of the emergency highway construction and reconstruction fund  
48 reserve account established pursuant to the provisions of paragraph (b)  
49 of subdivision two of former section eighty-nine-a of the state finance  
50 law. Beginning on April first, nineteen hundred ninety-two, an addi-  
51 tional eight and one-third per centum of the moneys received by the  
52 department pursuant to the provisions of this section shall be deposited  
53 to the credit of the emergency highway reconditioning and preservation  
54 fund reserve account established pursuant to the provisions of paragraph  
55 (b) of subdivision two of former section eighty-nine of the state  
56 finance law. Beginning on April first, nineteen hundred ninety-two, an

1 additional eight and one-third per centum of the moneys received by the  
2 department pursuant to the provisions of this section shall be deposited  
3 to the credit of the emergency highway construction and reconstruction  
4 fund reserve account established pursuant to the provisions of paragraph  
5 (b) of subdivision two of former section eighty-nine-a of the state  
6 finance law. Beginning on April first, two thousand, seventy-five per  
7 centum of the moneys received by the department pursuant to the  
8 provisions of this section shall be deposited in the dedicated fund  
9 accounts pursuant to subdivision (d) of section three hundred one-j of  
10 this chapter. Beginning on April first, two thousand three, all of the  
11 moneys received by the department pursuant to the provisions of this  
12 section shall be deposited in the dedicated fund accounts pursuant to  
13 subdivision (d) of section three hundred one-j of this chapter.

14 2. The full amount of the tax imposed by this section shall apply to  
15 sales of motor fuel at prices up to two dollars and twenty-five cents  
16 per gallon. If the average price of motor fuel in the state exceeds two  
17 dollars and twenty-five cents per gallon, the amount of tax imposed by  
18 this section shall be reduced by two-tenths of a percentage point (.002)  
19 for every increment of five cents increase in the cost of motor fuel per  
20 gallon. The tax imposed by this section shall be suspended entirely if  
21 the average price of motor fuel in the state equals or exceeds three  
22 dollars per gallon. If the average price of motor fuel in the state  
23 falls below three dollars per gallon, the tax imposed by this section  
24 shall be assessed in increases of two-tenths of a percentage point  
25 (.002) for every increment of five cents increase in the cost of motor  
26 fuel per gallon until the average price of motor fuel in the state  
27 decreases to two dollars and twenty-five cents per gallon, at which time  
28 the full amount of tax imposed by this section shall apply to sales of  
29 motor fuel.

30 § 6. Section 284-c of the tax law, as amended by section 4 of part EE  
31 of chapter 63 of the laws of 2000, is amended to read as follows:

32 § 284-c. Supplemental motor fuel tax. 1. In addition to the taxes  
33 imposed by sections two hundred eighty-four and two hundred  
34 eighty-four-a of this [~~chapter~~ article], a like tax shall be imposed at  
35 the rate of one cent per gallon upon motor fuel imported, manufactured  
36 or sold within this state by a distributor. Except for paragraph (b) of  
37 subdivision three of section two hundred eighty-nine-c of this article,  
38 all the provisions of this article shall apply with respect to the  
39 supplemental tax imposed by this section to the same extent as if it  
40 were imposed by said section two hundred eighty-four. On and after the  
41 first day of October, nineteen hundred seventy-two, twenty-five per  
42 centum of the monies received by the department pursuant to the  
43 provisions of this section shall be deposited to the credit of the emer-  
44 gency highway reconditioning and preservation fund established pursuant  
45 to the provisions of former section eighty-nine of the state finance  
46 law. Beginning on April first, nineteen hundred eighty-three, twenty-  
47 five per centum of the monies received by the department pursuant to the  
48 provisions of this section shall be deposited to the credit of the emer-  
49 gency highway construction and reconstruction fund established pursuant  
50 to the provisions of former section eighty-nine-a of the state finance  
51 law. Beginning on April first, nineteen hundred ninety, an additional  
52 twelve and one-half per centum of the monies received by the department  
53 pursuant to the provisions of this section shall be deposited to the  
54 credit of the emergency highway reconditioning and preservation fund  
55 reserve account established pursuant to the provisions of paragraph (b)  
56 of subdivision two of former section eighty-nine of the state finance

1 law. Beginning on April first, nineteen hundred ninety, an additional  
2 twelve and one-half per centum of the moneys received by the department  
3 pursuant to the provisions of this section shall be deposited to the  
4 credit of the emergency highway construction and reconstruction fund  
5 reserve account established pursuant to the provisions of paragraph (b)  
6 of subdivision two of former section eighty-nine-a of the state finance  
7 law. Beginning on April first, nineteen hundred ninety-one, an addi-  
8 tional twelve and one-half per centum of the moneys received by the  
9 department pursuant to the provisions of this section shall be deposited  
10 to the credit of the emergency highway reconditioning and preservation  
11 fund reserve account established pursuant to the provisions of paragraph  
12 (b) of subdivision two of former section eighty-nine of the state  
13 finance law. Beginning on April first, nineteen hundred ninety-one, an  
14 additional twelve and one-half per centum of the moneys received by the  
15 department pursuant to the provisions of this section shall be deposited  
16 to the credit of the emergency highway construction and reconstruction  
17 fund reserve account established pursuant to the provisions of paragraph  
18 (b) of subdivision two of former section eighty-nine-a of the state  
19 finance law. Beginning on April first, two thousand three, all of the  
20 moneys received by the department pursuant to the provisions of this  
21 section shall be deposited in the dedicated fund accounts pursuant to  
22 subdivision (d) of section three hundred one-j of this chapter.

23 2. The full amount of the tax imposed by this section shall apply to  
24 sales of motor fuel at prices up to two dollars and twenty-five cents  
25 per gallon. If the average price of motor fuel in the state exceeds two  
26 dollars and twenty-five cents per gallon, the amount of tax imposed by  
27 this section shall be reduced by sixty-six hundredths of a percentage  
28 point (.0066) for every increment of five cents increase in the cost of  
29 motor fuel per gallon. The tax imposed by this section shall be  
30 suspended entirely if the average price of motor fuel in the state  
31 equals or exceeds three dollars per gallon. If the average price of  
32 motor fuel in the state falls below three dollars per gallon, the tax  
33 imposed by this section shall be assessed in increases of sixty-six  
34 hundredths of a percentage point (.0066) for every increment of five  
35 cents increase in the cost of motor fuel per gallon until the average  
36 price of motor fuel in the state decreases to two dollars and twenty-  
37 five cents per gallon, at which time the full amount of tax imposed by  
38 this section shall apply to sales of motor fuel.

39 § 7. Subdivision (b) of section 1105 of the tax law is amended by  
40 adding a new paragraph 5 to read as follows:

41 (5) Notwithstanding the provisions of of this subdivision, the full  
42 amount of the tax imposed by this section shall apply to sales of motor  
43 fuel at prices up to two dollars and twenty-five cents per gallon. If  
44 the average price of motor fuel in the state exceeds two dollars and  
45 twenty-five cents per gallon, the amount of tax imposed by this section  
46 shall be reduced by one-quarter of a percentage point (.0025) for every  
47 increment of five cents increase in the cost of motor fuel per gallon.  
48 The tax imposed by this section shall be suspended entirely if the aver-  
49 age price of motor fuel in the state equals or exceeds three dollars per  
50 gallon. If the average price of motor fuel in the state falls below  
51 three dollars per gallon, the tax imposed by this section shall be  
52 assessed in increases of one-quarter of a percentage point (.0025) for  
53 every increment of five cents increase in the cost of motor fuel per  
54 gallon until the average price of motor fuel in the state decreases to  
55 two dollars and twenty-five cents per gallon, at which time the full

1 amount of tax imposed by this section shall apply to sales of motor  
2 fuel.

3 § 8. Section 1201 of the tax law is amended by adding a new subdivi-  
4 sion (n) to read as follows:

5 (n) Any city in this state having a population of one million or more,  
6 acting through its local legislative body, may impose limitations on  
7 taxes on diesel motor fuel and motor fuel in accordance with the  
8 provisions of subdivision (b) of section eleven hundred five of this  
9 chapter.

10 § 9. Section 1202 of the tax law is amended by adding a new subdivi-  
11 sion (h) to read as follows:

12 (h) Any county in this state, except a county wholly within a city,  
13 acting through its local legislative body, may impose limitations on  
14 taxes on diesel motor fuel and motor fuel in accordance with the  
15 provisions of subdivision (b) of section eleven hundred five of this  
16 chapter.

17 § 10. This act shall take effect on the ninetieth day after it shall  
18 have become a law and shall apply to sales of diesel motor fuel and  
19 motor fuel occurring on and after such date.