

STATE OF NEW YORK

8728--A

IN SENATE

April 5, 2022

Introduced by Sens. TEDISCO, JORDAN, BORRELLO, MARTUCCI, WEIK -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to establishing limitations on excise and sales taxes and petroleum business 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.

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

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1 Provided, further, no Diesel motor fuel shall be included in the measure
2 of the tax unless it shall have previously come to rest within the mean-
3 ing of federal decisional law interpreting the United States constitu-
4 tion. All tax for the period for which a return is required to be filed
5 shall be due on the date limited for the filing of the return for such
6 period, regardless of whether a return is filed as required by this
7 article or whether the return which is filed correctly shows the amount
8 of tax due.

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

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

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

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

12 2. 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 two-tenths of a percentage point (.002)
17 for every increment of five cents increase in the cost of motor fuel per
18 gallon. The tax imposed by this section shall be suspended entirely if
19 the average price of motor fuel in the state equals or exceeds three
20 dollars per gallon. If the average price of motor fuel in the state
21 falls below three dollars per gallon, the tax imposed by this section
22 shall be assessed in increases of two-tenths of a percentage point
23 (.002) for every increment of five cents increase in the cost of motor
24 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 § 3. Section 282-c of the tax law, as amended by section 2 of part EE
29 of chapter 63 of the laws of 2000, is amended to read as follows:

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

1 April first, nineteen hundred ninety, an additional twelve and one-half
2 per centum of the moneys received by the department pursuant to the
3 provisions of this section shall be deposited to the credit of the emer-
4 gency highway construction and reconstruction fund reserve account
5 established pursuant to the provisions of paragraph (b) of subdivision
6 two of former section eighty-nine-a of the state finance law. Beginning
7 on April first, nineteen hundred ninety-one, an additional twelve and
8 one-half per centum of the moneys received by the department pursuant to
9 the provisions of this section shall be deposited to the credit of the
10 emergency highway reconditioning and preservation fund reserve account
11 established pursuant to the provisions of paragraph (b) of subdivision
12 two of former section eighty-nine of the state finance law. Beginning on
13 April first, nineteen hundred ninety-one, an additional twelve and one-
14 half per centum of the moneys received by the department pursuant to the
15 provisions of this section shall be deposited to the credit of the emer-
16 gency construction and reconstruction fund reserve account established
17 pursuant to the provisions of paragraph (b) of subdivision two of former
18 section eighty-nine-a of the state finance law. Beginning on April
19 first, two thousand three, all of the moneys received by the department
20 pursuant to the provisions of this section shall be deposited in the
21 dedicated fund accounts pursuant to subdivision (d) of section three
22 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 § 4. Subdivision 1 of section 284 of the tax law, as amended by chap-
40 ter 276 of the laws of 1986, is amended and a new subdivision 3 is added
41 to read as follows:

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

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

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

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

§ 284-a. Additional motor fuel tax. 1. In addition to the tax imposed by section two hundred eighty-four of this ~~chapter~~ article, a like tax shall be imposed at the rate of three cents per gallon upon motor fuel imported, manufactured or sold within this state by a distributor. Except as otherwise provided in this section, all the provisions of this article except subdivision two of section two hundred eighty-nine-e of this article shall apply with respect to the additional tax imposed by this section to the same extent as if it were imposed by said section two hundred eighty-four. Beginning on April first, nineteen hundred ninety-one, four and one-sixth per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway reconditioning and preservation fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of former section eighty-nine of the state finance law. Beginning on April first, nineteen hundred ninety-one, four and one-sixth per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway construction and reconstruction fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of former section eighty-nine-a of the state finance law. Beginning on April first, nineteen hundred ninety-two, an additional eight and one-third per centum of the moneys received by the department pursuant to the provisions of this section shall be deposited to the credit of the emergency highway reconditioning and preservation fund reserve account established pursuant to the provisions of paragraph (b) of subdivision two of former section eighty-nine of the state

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

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

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

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

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

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

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

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

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

§ 8. Section 301-a of the tax law is amended by adding a new subdivision (n) to read as follows:

(n) Notwithstanding the provisions of this subdivision, the full amount of tax imposed by this section shall only apply when the average price of motor fuel in the state is two dollars and twenty-five cents or less. If the average price of motor fuel exceeds two dollars and twenty-five cents, the amount of tax imposed by this section shall be reduced by one-quarter of a percentage point (.0025) for every increment of five cents increase in the cost of motor fuel per gallon. The tax imposed by this section shall be suspended entirely if the average price of motor fuel in the state equals or exceeds three dollars per gallon. If the average price of motor fuel in the state falls below three dollars per gallon, the tax imposed by this section shall be assessed in increases of one-quarter of a percentage point (.0025) for every increment of five cents increase in the cost of motor fuel per gallon until the average price of motor fuel in the state decreases to two dollars and twenty-five cents per gallon, at which time the full amount of tax imposed by this article shall apply.

§ 9. Section 1201 of the tax law is amended by adding a new subdivision (n) to read as follows:

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

§ 10. Section 1202 of the tax law is amended by adding a new subdivision (h) to read as follows:

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

§ 11. The tax law is amended by adding a section 45 to read as follows:

§ 45. Every person engaged in the retail sale of motor fuel or diesel motor fuel or a distributor of such fuels, shall comply with the provisions of sections two hundred eighty-two-a, two hundred eighty-two-b, two hundred eighty-two-c, two hundred eighty-four, two hundred eighty-four-a, two hundred eighty-four-c, eleven hundred five, twelve hundred one, twelve hundred two, and three hundred one-a of this chapter 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 or imposed on retail customers resulting from the suspension of taxes on motor fuel and Diesel motor fuel under those sections.

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