

STATE OF NEW YORK

9491

IN SENATE

June 29, 2022

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the tax law and the state finance law, in relation to enacting the "New York Oil Windfall Profits Tax Act of 2023"

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

1 Section 1. This act may be cited as the "New York Oil Windfall Profits
2 Tax Act of 2023".

3 § 2. The tax law is amended by adding a new section 301-n to read as
4 follows:

5 § 301-n. Windfall profits tax. (a) Imposition of tax. Notwithstanding
6 any other provision of law, rule or regulation to the contrary, in addi-
7 tion to any other tax imposed under this article, in each calendar quar-
8 ter there is hereby imposed on any covered taxpayer an excise tax at the
9 rate determined under subdivision (b) of this section on:

10 (1) Each barrel of taxable crude oil extracted by the taxpayer within
11 the state and removed from the property of such taxpayer during the
12 calendar quarter, and

13 (2) Each barrel of taxable crude oil entered into the state during the
14 calendar quarter by the taxpayer for consumption, use or warehousing.

15 (b) Rate of tax. The rate of tax imposed by this section on any barrel
16 of taxable crude oil for any calendar quarter is the product of:

17 (1) Fifty percent, and

18 (2) The excess, if any, of:

19 (A) the average price of a barrel of Brent crude oil over the covered
20 calendar quarter, over

21 (B) the average price of a barrel of Brent crude oil over the period
22 beginning on January first, two thousand fifteen, and ending on December
23 thirty-first, two thousand nineteen.

24 (c) Withholding and deposit of tax. The commissioner shall provide
25 such rules as are necessary for the withholding and deposit of the tax
26 imposed under this section on any taxable crude oil.

27 (d) Records and information. Each taxpayer liable for tax under this
28 section shall keep such records, make such returns, and furnish such

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

LBD16063-02-2

1 information to the commissioner and to such other persons having an
2 interest in the taxable crude oil with respect to such oil as the
3 commissioner may by regulations prescribe.

4 (e) Return of windfall profit tax. The commissioner shall provide for
5 the filing and the time of such filing of the return of the tax imposed
6 under this section.

7 (f) Regulations. The commissioner shall prescribe such rules and regu-
8 lations as may be necessary or appropriate to carry out the purposes of
9 this section.

10 (g) Inflation adjustment. (1) In general. In the case of a calendar
11 quarter in any taxable year beginning after two thousand twenty-two, the
12 amount determined under subdivision (b) of this section shall be
13 increased by an amount equal to: (i) such dollar amount, multiplied by
14 (ii) the cost-of-living adjustment determined under subsection (f) of
15 section one of the internal revenue code for the calendar year in which
16 the taxable year begins, determined by substituting two thousand twen-
17 ty-one for "2016" in section 1 (f)(3)(A)(ii) of the internal revenue
18 code.

19 (2) Rounding. If any dollar amount after being increased under para-
20 graph one of this subdivision, is not a multiple of fifty cents, such
21 dollar amount shall be rounded to the next lowest multiple of one cent.

22 (h) Fractional part of barrel. In the case of a fraction of a barrel,
23 the tax imposed by this section shall be the same fraction of the amount
24 of such tax imposed on the whole barrel.

25 (i) Definitions and special rules. As used in this section, the
26 following terms shall have the following meanings:

27 (1) "Applicable period" shall mean from the first of the month next
28 succeeding the effective date of this section until December thirty-
29 first, two thousand twenty-three.

30 (2) "Covered taxpayer" shall mean:

31 (A) Any taxpayer if, with respect to any calendar quarter:

32 (i) the average daily number of barrels of taxable crude oil extracted
33 and imported by such taxpayer for calendar year two thousand nineteen
34 exceeded three hundred thousand barrels, or

35 (ii) the average daily number of barrels of taxable crude oil
36 extracted and imported by the taxpayer for the calendar quarter exceeds
37 three hundred thousand barrels; and

38 (B) Every petroleum business subject to the tax imposed pursuant to
39 section three hundred one-a of this article for the privilege of engag-
40 ing in business, doing business, employing capital, owning or leasing
41 property, or maintaining an office in this state.

42 (3) "Taxable crude oil" shall include crude oil and crude oil conden-
43 sates.

44 (4) "Barrel" shall mean forty-two United States gallons.

45 (5) "Sale" shall have the same meaning as such term is defined in
46 section two hundred eighty-two of this chapter.

47 (j) Rebates and credits. (1) Income tax credit. In the case of an
48 eligible individual, there shall be allowed an income tax credit for
49 each taxable year beginning after the date of the enactment of this
50 section, an amount equal to the sum of the gasoline price rebate amount
51 for calendar quarters beginning in such taxable year.

52 (2) Rebate amount. For the purposes of this subdivision, "gasoline
53 price rebate amount" means, with respect to any taxpayer for any calen-
54 dar quarter beginning in a taxable year, an amount determined by the
55 commissioner not later than thirty days after the end of such calendar
56 quarter taking into account the number of eligible individuals and the

1 amount of revenue in the "protect New Yorkers from gas price surges
2 fund" established pursuant to section ninety-nine-pp of the state
3 finance law and resulting from the tax imposed by this section for the
4 preceding calendar quarter.

5 (3) Identification requirements. Notwithstanding any contrary
6 provision of this subdivision, the rebate amount authorized hereunder
7 shall be treated as being zero unless the taxpayer includes such taxpay-
8 er's full valid identification number on the return filed for the taxa-
9 ble year.

10 (4) Filing. Solely for purposes of this subdivision, a return of tax
11 shall not be treated as filed until such return has been processed by
12 the internal revenue service.

13 (5) Special rule for joint returns. In the case of an eligible indi-
14 vidual filing a joint return, the gasoline price rebate amount shall be
15 one hundred fifty percent of the amount determined under paragraph two
16 of this subdivision with respect to other taxpayers.

17 (6) Application to certain individuals. In the case of any individual
18 who, at the time of any determination made pursuant to paragraph three
19 of this subdivision, has not filed a tax return for the applicable taxa-
20 ble year or for the year following the applicable taxable year the
21 commissioner shall determine the rebate amount on the basis of informa-
22 tion available to the commissioner, and shall, on the basis of such
23 information, determine the advance refund amount with respect to such
24 individual without regard to paragraph two of subdivision (b) of this
25 section, unless the commissioner has reason to know that such amount
26 would otherwise be reduced by reason of such subdivision.

27 (7) Limitation based on adjusted gross income. The amount of the cred-
28 it allowed by this subdivision shall be reduced, but not below zero, by
29 five percent of so much of the eligible individual's adjusted gross
30 income as exceeds:

31 (A) \$160,000 in the case of a joint return;

32 (B) \$115,000 in the case of a head of household; and

33 (C) \$80,000 in any other case.

34 (8) Eligible individuals. (A) For the purposes of this section, the
35 term "eligible individual" shall mean any individual state resident
36 other than: (i) a nonresident alien individual, (ii) an individual who
37 is a dependent of another taxpayer for a taxable year beginning in the
38 calendar year in which the individual's taxable year begins, and (iii)
39 an estate or trust.

40 (B) The term "dependent" shall have the same as such term is defined
41 in section one hundred fifty-two of the internal revenue code.

42 (k) Special rules; credit treated as refundable. The credit allowed by
43 subdivision (m) of this section shall be treated as refundable pursuant
44 to the applicable provisions of subpart C of part IV of subchapter A of
45 chapter 1 of subtitle A of title twenty-six of the internal revenue
46 code.

47 (l) Joint returns. Except as provided by the commissioner, in the case
48 of a refund or credit made or allowed pursuant to subdivision (m) of
49 this section with respect to a joint return, half of such refund or
50 credit shall be treated as having been made or allowed to each individ-
51 ual filing such return.

52 (m) Advance refunds and credits. (1) Subject to paragraph four of this
53 subdivision, for any rebate taxable year, each individual who was an
54 eligible individual for the applicable taxable year shall be treated as
55 having made a payment against the tax imposed by article twenty-two of

1 this chapter for such applicable taxable year in an amount equal to the
2 advance refund amount for such rebate taxable year.

3 (2) Advance refund amount. For purposes of paragraph one of this
4 subdivision, the advance refund amount for any rebate taxable year is
5 the amount that would be allowed as a credit under this section for the
6 applicable taxable year if this section were applied to such applicable
7 taxable year, without regard to any effective date, using the gasoline
8 price rebate amount for the refund taxable year.

9 (3) Timing and manner of payments. The commissioner shall, subject to
10 the provisions of this section, refund or credit any overpayment attrib-
11 utable to this section and determined with respect to any calendar quar-
12 ter not later than ninety days after the end of such calendar quarter.
13 No refund or credit shall be made or allowed under this subdivision with
14 respect to any applicable taxable year after the last day of the rebate
15 taxable year.

16 (4) Application to individuals who have filed a return of tax for the
17 year after the applicable taxable year. (A) Returns filed at time of
18 initial determination. If, at the time of any determination made pursu-
19 ant to paragraph three of this subdivision, the individual referred to
20 in paragraph one of this subdivision has filed a return of tax for the
21 individual's first taxable year beginning after the applicable taxable
22 year, the provisions of paragraph one of this subdivision shall be
23 applied with respect to such individual by substituting "taxable year
24 following the applicable taxable year" for "applicable taxable year".

25 (B) Additional payment. (i) In the case of any individual who files,
26 before the additional payment determination date, a return of tax for
27 such individual's first taxable year beginning after the applicable
28 taxable year, the commissioner shall make a payment, in addition to any
29 payment made under paragraph one of this subdivision, to such individual
30 equal to the excess, if any, of:

31 a. the amount which would be determined under paragraph one of this
32 subdivision, after the application of subparagraph (A) of this paragraph
33 by applying paragraph one of this subdivision as of the additional
34 payment determination date, over

35 b. the amount of any payment made with respect to such individual
36 under paragraph one of this subdivision.

37 (ii) Determination date. The term additional payment determination
38 date means the earlier of:

39 a. the date which is ninety days after the date specified in section
40 6072 (a) of the internal revenue code with respect to returns for the
41 taxable year following the applicable taxable year, or

42 b. September first of the calendar year following the applicable taxa-
43 ble year as defined in subdivision (n) of this section.

44 (n) Applicable taxable year. For the purposes of this section:

45 (1) The term "rebate taxable year" means the taxable year for which a
46 credit is allowed under this section.

47 (2) The term "applicable taxable year" means the second taxable year
48 preceding the rebate taxable year.

49 (o) Regulations. The commissioner shall prescribe such regulations or
50 other guidance as may be necessary or appropriate to carry out the
51 purposes of this section, including, but not limited to:

52 (1) regulations or other guidance providing taxpayers the opportunity
53 to provide the commissioner information sufficient to allow the commis-
54 sioner to make payments to such taxpayers under subdivision (m) of this
55 section, including the determination of the amount of such payment, if
56 such information is not otherwise available to the commissioner; and

1 (2) regulations or other guidance to ensure to the maximum extent
2 administratively practicable that, in determining the amount of any
3 credit under subdivision (j) of this section and any credit or refund
4 under subdivision (m) of this section, an individual is not taken into
5 account more than once, including by different taxpayers and including
6 by reason of a change in joint return status or dependent status between
7 the taxable year for which an advance refund amount is determined and
8 the taxable year for which a credit under this section is determined.

9 (p) Outreach. The commissioner shall carry out a robust and comprehen-
10 sive outreach program to ensure that all covered taxpayers, as defined
11 in subdivision (i) of this section learn of their eligibility for the
12 advance refunds and credits under subdivision (m) of this section, are
13 advised of the opportunity to receive such advance refunds and credits
14 as provided under subdivision (o) of this section, and are provided
15 assistance in applying for such advance refunds and credits.

16 (q) Protect New Yorkers from gas price surges fund. All taxes, and any
17 interest and penalties relating thereto, collected or received with
18 respect to the oil windfall profits tax imposed by this section shall be
19 deposited into the "protect New Yorkers from gas price surges fund"
20 established pursuant to section ninety-nine-pp of the state finance law
21 and shall be administered in accordance with the applicable provisions
22 thereof.

23 (r) Local option. Notwithstanding any contrary provision of law, a
24 municipality may make the election to impose an excise tax on any
25 covered taxpayer, for the applicable period, at the rate as determined
26 under subdivision (b) of this section by local law, ordinance or resol-
27 ution, if such municipality mails, by certified or registered mail, a
28 certified copy of such local law, ordinance or resolution to the commis-
29 sioner at his or her office in Albany no later than the Wednesday imme-
30 diately preceding the first day of the applicable period.

31 § 3. The state finance law is amended by adding a new section 99-pp to
32 read as follows:

33 § 99-pp. Protect New Yorkers from gas price surges fund. 1. There is
34 hereby established in the joint custody of the commissioner of taxation
35 and finance and the comptroller, a special fund to be known as the
36 "protect New Yorkers from gas price surges fund".

37 2. Such fund shall consist of all revenues received by the department
38 of taxation and finance, pursuant to the provisions of section three
39 hundred one-n of the tax law, and all other moneys appropriated, credit-
40 ed, or transferred thereto from any other fund or source pursuant to
41 law. For each state fiscal year, there shall be appropriated to the fund
42 by the state, in addition to all other moneys required to be deposited
43 into such fund, an amount equal to the amounts of moneys collected and
44 deposited into the fund pursuant to section three hundred one-n of the
45 tax law, and the amounts of moneys received and deposited into the fund
46 from grants, gifts and bequests during the preceding calendar year, as
47 certified by the comptroller. Nothing in this section shall prevent the
48 state from soliciting and receiving grants, gifts or bequests for the
49 purposes of the fund as defined in this section and depositing them into
50 the fund according to law.

51 3. Moneys shall be paid out of the fund on the audit and warrant of
52 the comptroller on vouchers approved and certified by the commissioner
53 of taxation and finance. Any interest received by the comptroller on
54 moneys on deposit in the "protect New Yorkers from gas price surges
55 fund" shall be retained in and become part of such fund.

1 4. Notwithstanding any contrary provision of this section, the commis-
2 sioner of taxation and finance shall pay from time to time moneys of the
3 fund to the dedicated highway and bridge trust fund established pursuant
4 to section eighty-nine-b of this article in an amount equal to the
5 amount of refunds provided under section three hundred one-n of the tax
6 law.

7 § 4. This act shall take effect immediately and shall apply to calen-
8 dar quarters commencing on and after such date.