

# STATE OF NEW YORK

S. 5166

A. 5812

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 exempting fuel used in vessels used directly and predominantly in a business providing sport fishing opportunities for hire to the general public from the tax on petroleum businesses and from sales and compensating use taxes

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

Section 1. Section 300 of the tax law is amended by adding a new subdivision (j-1) to read as follows:

(j-1) "commercial sport fishing vessel" means a vessel owned by a person, who has been issued and holds a marine and coastal district party and charter boat license pursuant to section 13-0336 of the environmental conservation law.

§ 2. Paragraph 2 of subdivision (b) of section 301-a of the tax law, as added by section 154 of part A of chapter 389 of the laws of 1997, is amended to read as follows:

(2) Motor fuel brought into this state in the fuel tank connecting with the engine of a vessel propelled by the use of such motor fuel shall be deemed to constitute a taxable use of motor fuel for the purposes of this subdivision to the extent that the fuel is consumed in the operation of the vessel in this state. Provided, however, that this paragraph shall not apply to (i) a recreational motor boat or (ii) subsequent to August thirty-first, nineteen hundred ninety-four, a commercial fishing vessel (as defined in subdivision (j) of section three hundred of this article) if the motor fuel imported and consumed in this state is used to operate such vessel while it is engaged in the

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

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1 harvesting of fish for sale or (iii) a commercial sport fishing vessel,  
2 if such vessel provides its owner with at least fifty percent of his or  
3 her total annual income. Provided, further, that tax liability for  
4 gallonage that a vessel consumes shall be the tax liability with respect  
5 to the positive difference between the gallonage consumed in this state  
6 during the reporting period and the gallonage purchased in this state  
7 (upon which the tax imposed by this section has been paid) during such  
8 period. A credit or refund shall be available for any excess of tax  
9 liability for gallonage purchased in this state during the period over  
10 tax liability on gallonage so consumed in this state during such period,  
11 which excess shall be presumed to have been used outside this state.

12 § 3. Subparagraph (B) of paragraph 1 of subdivision (c) of section  
13 301-a of the tax law, as amended by section 19 of part K of chapter 61  
14 of the laws of 2011, is amended to read as follows:

15 (B) Highway diesel motor fuel brought into this state in the fuel tank  
16 connecting with the engine of a vessel propelled by the use of such  
17 diesel motor fuel shall be deemed to constitute a taxable use of diesel  
18 motor fuel for the purpose of this paragraph to the extent of the fuel  
19 that is consumed in the operation of the vessel in this state. Provided,  
20 however, this paragraph shall not apply to (i) a recreational motor boat  
21 or (ii) a commercial fishing vessel (as defined in subdivision (j) of  
22 section three hundred of this article) if the highway diesel motor fuel  
23 imported into and consumed in this state is used to operate such commer-  
24 cial fishing vessel while it is engaged in the harvesting of fish for  
25 sale or (iii) a commercial sport fishing vessel, if such vessel provides  
26 its owner with at least fifty percent of his or her total annual income.  
27 Provided, further, that tax liability for gallonage that a vessel  
28 consumes in this state shall be the tax liability with respect to the  
29 positive difference between the gallonage consumed in this state during  
30 the reporting period and the gallonage purchased in this state (upon  
31 which the tax imposed by this section has been paid) during such period.  
32 A credit or refund shall be available for any excess of tax liability  
33 for gallonage purchased in this state during the period over tax liabil-  
34 ity on gallonage so consumed in this state during such period, which  
35 excess shall be presumed to have been used outside this state.

36 § 4. The opening paragraph of section 301-c of the tax law, as amended  
37 by section 5 of part W-1 of chapter 109 of the laws of 2006, is amended  
38 to read as follows:

39 A subsequent purchaser shall be eligible for reimbursement of tax with  
40 respect to the following gallonage, subsequently sold by such purchaser  
41 in accordance with subdivision (a), (b), (e), (h), (j), (k), (n) or (o)  
42 of this section or used by such purchaser in accordance with subdivision  
43 (c), (d), (f), (g), (g-1), (i), (l) or (m) of this section, which gallo-  
44 nage has been included in the measure of the tax imposed by this article  
45 on a petroleum business:

46 § 5. The opening paragraph of section 301-c of the tax law, as amended  
47 by chapter 468 of the laws of 2000, is amended to read as follows:

48 A subsequent purchaser shall be eligible for reimbursement of tax with  
49 respect to the following gallonage, subsequently sold by such purchaser  
50 in accordance with subdivision (a), (b), (e), (h), (j) or (k) of this  
51 section or used by such purchaser in accordance with subdivision (c),  
52 (d), (f), (g), (g-1), (i), (l) or (m) of this section, which gallonage  
53 has been included in the measure of the tax imposed by this article on a  
54 petroleum business:

55 § 6. Section 301-c of the tax law is amended by adding a new subdivi-  
56 sion (g-1) to read as follows:

(g-1) Diesel motor fuel and motor fuel used in the operation of commercial sport fishing vessels. Diesel motor fuel or motor fuel purchased in this state by the operator of a commercial sport fishing vessel at retail wherein such diesel motor fuel or such motor fuel is delivered by a pump equipped with a hose directly into the fuel tank of a commercial sport fishing vessel to be used as fuel in the operation of such vessel for the purpose of providing sport fishing opportunities for hire to the general public; but only where (1) the tax imposed pursuant to this article has been paid with respect to such diesel motor fuel or such motor fuel and the entire amount of such tax has been absorbed by such purchaser, (2) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article, and (3) the vessel provides its owner with at least fifty percent of his or her total annual income. Provided, however, that the commissioner shall require such documentary proof to qualify for any reimbursement of tax provided by this section as the commissioner deems appropriate.

§ 7. Subdivision (a) of section 1115 of the tax law is amended by adding a new paragraph 24-a to read as follows:

(24-a) Fuel used in vessels used directly and predominantly in a business providing sport fishing opportunities for hire to the general public; provided that such vessel provides its owner with at least fifty percent of his or her total annual income.

§ 8. Subparagraph (i) of paragraph 1 of subdivision (a) of section 1210 of the tax law, as separately amended by section 2 of part WW and section 5 of part Z of chapter 60 of the laws of 2016, is amended to read as follows:

(i) Any local law, ordinance or resolution enacted by any city of less than one million or by any county or school district, imposing the taxes authorized by this subdivision, shall, notwithstanding any provision of law to the contrary, exclude from the operation of such local taxes all sales of tangible personal property for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam, for sale, by manufacturing, processing, generating, assembly, refining, mining or extracting; and all sales of tangible personal property for use or consumption predominantly either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both; and all sales of fuel sold for use in commercial aircraft and general aviation aircraft; and the fuel used in commercial sport fishing vessels exemption provided for in paragraph twenty-four-a of subdivision (a) of section eleven hundred fifteen of this chapter; and, unless such city, county or school district elects otherwise, shall omit the provision for credit or refund contained in clause six of subdivision (a) or subdivision (d) of section eleven hundred nineteen of this chapter.

§ 9. Section 1210 of the tax law is amended by adding a new subdivision (n) to read as follows:

(n) Notwithstanding any other provision of state or local law, ordinance or resolution to the contrary:

(1) Any city having a population of one million or more in which the taxes imposed by section eleven hundred seven of this chapter are in effect, acting through its local legislative body, is hereby authorized and empowered to elect to provide the same exemptions from such taxes as the fuel used in commercial sport fishing vessels exemption from state sales and compensating use taxes described in paragraph twenty-four-a of subdivision (a) of section eleven hundred fifteen of this chapter by

1 enacting a resolution in the form set forth in paragraph two of this  
2 subdivision; whereupon, upon compliance with the provisions of subdivi-  
3 sions (d) and (e) of this section, such enactment of such resolution  
4 shall be deemed to be an amendment to such section eleven hundred seven  
5 and such section eleven hundred seven shall be deemed to incorporate  
6 such exemptions as if they had been duly enacted by the state legisla-  
7 ture and approved by the governor.

8 (2) Form of Resolution: Be it enacted by the (insert proper title of  
9 local legislative body) as follows:

10 Section one. Receipts from sales of and consideration given or  
11 contracted to be given for, or for the use of, property and services  
12 exempt from state sales and compensating use taxes pursuant to paragraph  
13 twenty-four-a of subdivision (a) of section 1115 of the tax law shall  
14 also be exempt from sales and compensating use taxes imposed in this  
15 jurisdiction.

16 Section two. This resolution shall take effect June 1, (insert the  
17 year, but not earlier than the year 2021) and shall apply to sales made,  
18 services rendered and uses occurring on and after that date in accord-  
19 ance with the applicable transitional provisions in sections 1106, 1216  
20 and 1217 of the New York tax law.

21 § 10. This act shall take effect on the ninetieth day after it shall  
22 have become a law; provided, that the amendments to the opening para-  
23 graph of section 301-c of the tax law, made by section four of this act  
24 shall not affect the expiration and repeal of such paragraph pursuant to  
25 section 19 of part W-1 of chapter 109 of the laws of 2006, as amended,  
26 and shall expire and be deemed repealed therewith, when upon such date  
27 the provisions of section five of this act shall take effect.