

STATE OF NEW YORK

9503

IN ASSEMBLY

March 10, 2022

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

AN ACT to amend the tax law, the general business law and the state finance law, in relation to establishing a temporary fuel tax holiday

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

1 Section 1. The tax law is amended by adding a new section 47 to read
2 as follows:

3 § 47. Fuel tax holiday. (a) Definitions. For purposes of this section,

4 (1) "Applicable period" shall mean the period beginning fourteen days
5 after the effective date of this section and ending one year after such
6 beginning date.

7 (2) "Diesel motor fuel" and "motor fuel" shall have the same meaning
8 as section two hundred eighty-two of this chapter.

9 (3) "Filling station" shall have the same meaning as section two
10 hundred eighty-two of this chapter.

11 (4) "Retail sale" and "sold at retail" shall mean any sale of motor
12 fuel or diesel motor fuel at a filling station to a person for use in a
13 motor vehicle.

14 (5) "Retail seller" shall mean any person who sells motor fuel or
15 diesel motor fuel at retail.

16 (6) "Sale" shall have the same meaning as section two hundred eighty-
17 two of this chapter.

18 (b) Exemption from taxation. Notwithstanding any other provision of
19 law, rule or regulation to the contrary, the taxes imposed on retail
20 sales of motor fuel and diesel motor fuel made during the applicable
21 period shall be exempt from the taxes imposed by articles twelve-A,
22 thirteen-A, and twenty-eight of this chapter. If the retail seller is
23 located within a municipality that has elected to eliminate the tax
24 imposed pursuant to article twenty-nine of this chapter, such taxes
25 shall not be imposed on the retail sale of motor fuel or diesel motor
26 fuel during the applicable period.

27 (c) Price reduction. During the applicable period, each retail seller
28 shall reduce the price per gallon of motor fuel and diesel motor fuel

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

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1 offered for sale by the amount of the taxes that the retail seller
2 prepaid on the gallon of motor fuel and diesel motor fuel and the amount
3 of tax in excess of the prepaid amount that would have been collected
4 from the consumer if the sale of the motor fuel or diesel motor fuel had
5 not been exempt from tax pursuant to subdivision (b) of this section.

6 (d) Advertising. Notwithstanding any other provision of law to the
7 contrary, a retail seller may advertise that the motor fuel and/or
8 diesel motor fuel is being or will be sold without the state taxes. Such
9 advertisement may commence no earlier than three days before the appli-
10 cable period and must end by the end of the applicable period.

11 (e) Refunds and credits. (1) Notwithstanding any other provision of
12 law to the contrary, the retail seller shall be entitled to receive a
13 credit against the taxes due pursuant to article twenty-eight of this
14 chapter for the amount of tax that the retail seller prepaid pursuant to
15 articles twelve-A, thirteen-A, twenty-eight and, if applicable, twenty-
16 nine of this chapter. If the retail seller is located within a munici-
17 pality that has elected to eliminate the tax imposed pursuant to article
18 twenty-nine of this chapter, the retail seller shall be entitled to
19 claim a credit against the taxes due pursuant to article twenty-eight of
20 this chapter for such prepaid taxes. The amount of credit shall equal
21 the amount of tax that was prepaid pursuant to articles twelve-A, thir-
22 teen-A, twenty-eight and, if applicable, twenty-nine of this chapter for
23 each gallon of motor fuel and diesel motor fuel sold at retail during
24 the applicable period. Such credit shall not be allowed for sales that
25 would have otherwise been exempt from tax.

26 (2) A retail seller may claim the credit prescribed in paragraph one
27 of this subdivision when the retail seller files its return of tax for
28 the sales of motor fuel and diesel motor fuel for the period that
29 includes the applicable period. Notwithstanding the foregoing, if a
30 retailer seller is required to file its return more than thirty days
31 after the close of the applicable period defined in paragraph one of
32 subdivision (a) of this section, such retailer shall be authorized to
33 file an amendment to its most recently filed return to claim such cred-
34 it. No credit may be claimed for the taxes prepaid pursuant to article
35 twelve-A, thirteen-A, twenty-eight or, if applicable, twenty-nine of
36 this chapter pursuant to this section if the claim would have been
37 barred pursuant to the article that required prepayment of such taxes.
38 No interest shall be paid on any claims for credit made pursuant to this
39 section.

40 § 2. Section 88-a of the state finance law is amended by adding a new
41 subdivision 8 to read as follows:

42 8. By March thirty-first, two thousand twenty-three, the comptroller
43 shall transfer from the general fund to the mass transportation operat-
44 ing assistance fund an amount no greater than the amount that would have
45 otherwise been deposited in the mass transportation operating assistance
46 fund pursuant to this section if the exemption defined in subdivision
47 (b) of section forty-seven of the tax law had not been authorized;
48 provided however that the comptroller shall make such transfer only
49 after the director of the budget has determined in his or her discretion
50 that the transfer is necessary to ensure a positive fund balance of the
51 mass transportation operating assistance fund at the end of the two
52 thousand eleven-two thousand twelve state fiscal year.

53 § 3. Subdivision 3 of section 89-b of the state finance law is amended
54 by adding a new paragraph (g) to read as follows:

55 (g) Within forty-five days after an applicable period as defined by
56 subdivision (a) of section forty-seven of the tax law, the comptroller,

1 in consultation with the director of the division of the budget, shall
2 transfer from the general fund to the special obligation reserve and
3 payment account an amount equal to the amount that would have otherwise
4 been deposited in the special obligation reserve and payment account
5 pursuant to this section if the exemption defined in subdivision (b) of
6 section forty-seven of the tax law had not been authorized.

7 § 4. Section 89-c of the state finance law is amended by adding a new
8 subdivision 4 to read as follows:

9 4. Within forty-five days after an applicable period as defined by
10 subdivision (a) of section forty-seven of the tax law, the comptroller,
11 in consultation with the director of the division of the budget, shall
12 transfer from the general fund to the dedicated mass transportation
13 trust fund an amount equal to the amount that would have otherwise been
14 deposited in the dedicated mass transportation trust fund pursuant to
15 this section if the exemption defined in subdivision (b) of section
16 forty-seven of the tax law had not been authorized.

17 § 5. Section 392-i of the general business law, as amended by section
18 5 of part M-1 of chapter 109 of the laws of 2006, is amended to read as
19 follows:

20 § 392-i. Prices reduced to reflect change in sales tax computation.
21 Every person engaged in the retail sale of motor fuel and/or diesel
22 motor fuel or a distributor of such fuels, as defined in article
23 twelve-A of the tax law, shall reduce the price such person charges for
24 motor fuel and/or diesel motor fuel in an amount equal to any reduction
25 in taxes prepaid by the distributor, credit for the amount of taxes
26 prepaid by the retail seller allowable pursuant to section forty-seven
27 of the tax law, exemption from taxation pursuant to section forty-seven
28 of the tax law to the extent that the tax that would have been otherwise
29 due exceeds the amount of tax prepaid, or paid by retail customers
30 resulting from computing sales and compensating use and other taxes at a
31 cents per gallon rate pursuant to the provisions of paragraph two of
32 subdivision (e) and subdivision (m) of section eleven hundred eleven of
33 the tax law.

34 § 6. Paragraph 1 of subdivision (n) of section 1817 of the tax law, as
35 amended by section 30 of subpart I of part V-1 of chapter 57 of the laws
36 of 2009, is amended to read as follows:

37 (1) Every person engaged in the retail sale of motor fuel and/or
38 diesel motor fuel or a distributor of such fuels, as defined in article
39 twelve-A of this chapter, shall comply with the provisions of section
40 three hundred ninety-two-i of the general business law by reducing the
41 prices charged for motor fuel and diesel motor fuel in an amount equal
42 to any reduction in taxes prepaid by the distributor, credit for the
43 amount of taxes prepaid by the retail seller allowable pursuant to
44 section forty-seven of the tax law, exemption from taxation pursuant to
45 section forty-seven of the tax law to the extent that the tax that would
46 have been otherwise due exceeds the amount of tax prepaid, or imposed on
47 retail customers resulting from computing sales and compensating use
48 taxes at a cents per gallon rate pursuant to the provisions of paragraph
49 two of subdivision (e) and subdivision (m) of section one thousand one
50 hundred eleven of this chapter.

51 § 7. Notwithstanding any law to the contrary, a municipality may make
52 the election to eliminate all taxes on motor fuel and diesel motor fuel
53 pursuant to sections eleven hundred seven and eleven hundred eight of
54 the tax law or article twenty-nine of the tax law beginning fourteen
55 days after the effective date of this section and ending one year after
56 such beginning date, by local law, ordinance or resolution, if such

1 municipality mails, by certified or registered mail, a certified copy of
2 such local law, ordinance or resolution to the commissioner of taxation
3 and finance at his or her office in Albany no later than the Wednesday
4 immediately preceding the applicable period as defined by paragraph one
5 of subdivision (a) of section forty-seven of the tax law.

6 § 8. The commissioner of taxation and finance shall (a) on an emergen-
7 cy basis, promulgate and/or amend any rules and regulations necessary to
8 provide for the tax free sales of motor fuel and diesel motor fuel and
9 refunds of prepaid tax to retail sellers; and

10 (b) immediately make provisions for retail sellers to apply for credit
11 for the taxes prepaid pursuant to articles twelve-A, thirteen-A,
12 twenty-eight, and, if applicable, twenty-nine of the tax law.

13 § 9. This act shall take effect immediately.