

# STATE OF NEW YORK

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4816

2021-2022 Regular Sessions

## IN SENATE

February 12, 2021

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Introduced by Sen. KRUEGER -- 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 tax on sales of motor fuel and petroleum products; to repeal paragraph 3 of subdivision (f) and paragraph 4 of subdivision (g) of section 301-a of the tax law, relating to manufacturing gallonage for purposes of the imposition of certain taxes; to repeal subdivisions (i), (j), and (l) of section 301-c of the tax law relating to reimbursement; to repeal section 301-d of the tax law relating to a utility credit or reimbursement; to repeal subdivision (f) of section 301-e of the tax law relating to an aviation fuel business which services four or more cities; to repeal subparagraph (xi) of paragraph 3 of subdivision (c) of section 1105 of the tax law relating to services rendered with respect to certain property; to repeal paragraph 9 of subdivision (a) of section 1115 of the tax law relating to fuel sold to an airline for use in its airplanes; and to amend the tax law, in relation to making conforming technical changes

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

1 Section 1. Subdivision (m) of section 301-a of the tax law, as added  
2 by section 20 of part K of chapter 61 of the laws of 2011, is amended to  
3 read as follows:  
4 (m) Special rate adjustment for certain vessels. Notwithstanding any  
5 provision of this section to the contrary, the use of non-highway diesel  
6 motor fuel in the engine of a vessel to propel such vessel shall be  
7 subject to tax at the motor fuel and highway diesel motor fuel rate  
8 provided for in this section, and shall be subject to the provisions of  
9 section three hundred one-j of this article, including the adjustment  
10 set forth in paragraph [~~four~~ three] of subdivision (a) of such section  
11 three hundred one-j. A credit or refund shall be available to the extent  
12 tax paid on gallonage used to propel any such vessel exceeds the amount

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

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1 of tax due based on the tax rate set forth herein. Provided, however,  
2 that the commissioner shall require such documentary proof to qualify  
3 for any credit or reimbursement provided hereunder as the commissioner  
4 deems appropriate.

5 § 2. Paragraph 3 of subdivision (f) and paragraph 4 of subdivision (g)  
6 of section 301-a of the tax law are REPEALED.

7 § 3. Subdivisions (a) and (d) of section 301-b of the tax law, subdivi-  
8 sion (a) as added by chapter 190 of the laws of 1990, paragraph 5 of  
9 subdivision (a) as amended by section 3 of part E of chapter 59 of the  
10 laws of 2012, paragraphs 6, 7 and 8 of subdivision (a) as added by  
11 section 4 of part W-1 of chapter 109 of the laws of 2006, and subdivi-  
12 sion (d) as amended by section 21 of part K of chapter 61 of the laws of  
13 2011, are amended to read as follows:

14 (a) Products. (1) ~~[Kerosene sold or used by a petroleum business which~~  
15 ~~is registered under article twelve A of this chapter as a distributor of~~  
16 ~~diesel motor fuel so long as (i) such product has not been blended or~~  
17 ~~mixed with any other product constituting diesel motor fuel or motor~~  
18 ~~fuel or a residual petroleum product and (ii) such product is not used~~  
19 ~~by the petroleum business as fuel to operate a motor vehicle or sold by~~  
20 ~~such petroleum business to a consumer for use as fuel to operate a motor~~  
21 ~~vehicle.~~

22 ~~(2) Kero-jet fuel (i) sold by a petroleum business which is registered~~  
23 ~~under article twelve A of this chapter as a distributor of diesel motor~~  
24 ~~fuel to a consumer for use exclusively as jet aircraft fuel or to a~~  
25 ~~petroleum business registered under such article twelve A as a "distrib-~~  
26 ~~utor of kero-jet fuel only" where such fixed base operator is engaged~~  
27 ~~solely in making or offering to make retail sales not in bulk of kero-~~  
28 ~~jet fuel directly into the fuel tank of an airplane for the purpose of~~  
29 ~~operating such airplane, (ii) used by a petroleum business, registered~~  
30 ~~under article twelve A of this chapter as a distributor of diesel motor~~  
31 ~~fuel, exclusively as jet aircraft fuel, or (iii) sold at retail not in~~  
32 ~~bulk by a petroleum business registered under article twelve A of this~~  
33 ~~chapter as a "distributor of kero-jet fuel only" where such fuel is~~  
34 ~~delivered directly into the fuel tank of a jet airplane for use in the~~  
35 ~~operation of such airplane.~~

36 ~~(3) Aviation gasoline, meeting the specifications set forth in Ameri-~~  
37 ~~can Standard Testing Material Specification D910 or Military Specifica-~~  
38 ~~tion MIL-C-5572, which is imported or caused to be imported into this~~  
39 ~~state by a petroleum business which is registered under article twelve A~~  
40 ~~of this chapter as a distributor of motor fuel or produced, refined,~~  
41 ~~manufactured or compounded in this state by such a petroleum business.~~

42 ~~(4) Residual petroleum product sold by a petroleum business registered~~  
43 ~~under this article as a residual petroleum product business if such~~  
44 ~~product is sold by such petroleum business to a consumer for use exclu-~~  
45 ~~sively as bunker fuel for vessels or if such product is used by such~~  
46 ~~petroleum business exclusively as bunker fuel in its own vessels.~~

47 ~~(5) Liquefied petroleum gases, such as butane, ethane or propane.~~

48 ~~(6)] E85 imported or caused to be imported into this state or~~  
49 ~~produced, refined, manufactured or compounded in this state by a petro-~~  
50 ~~leum business registered under article twelve-A of this chapter, as a~~  
51 ~~distributor of motor fuel, and then sold by such petroleum business and~~  
52 ~~delivered to a filling station and placed in a storage tank of such~~  
53 ~~filling station for such E85 to be dispensed directly into a motor vehi-~~  
54 ~~cle for use in the operation of such vehicle.~~

55 ~~[(7)] (i) Partial B20 exemption. B20 imported or caused to be imported~~  
56 ~~into this state or produced, refined, manufactured or compounded in this~~

1 state by a petroleum business registered under article twelve-A of this  
2 chapter, as a distributor of diesel motor fuel, and then sold by such  
3 petroleum business.

4 (ii) Calculation of partial exemption. The amount of the partial  
5 exemption under this paragraph shall be determined by multiplying the  
6 quantity of B20 times twenty percent of the applicable taxes otherwise  
7 imposed by this article on such fuel.

8 [~~(8)~~] (2) CNG or hydrogen.

9 (d) Sales to consumers for heating purposes. [~~(1)~~] Total residential  
10 heating exemption. Non-highway diesel motor fuel sold by a petroleum  
11 business registered under article twelve-A of this chapter as a distrib-  
12 utor of diesel motor fuel or residual petroleum product sold by a petro-  
13 leum business registered under this article as a residual petroleum  
14 product business to the consumer exclusively for residential heating  
15 purposes only if such non-highway diesel motor fuel is delivered into a  
16 storage tank which is not equipped with a hose or other apparatus by  
17 which such fuel can be dispensed into the fuel tank of a motor vehicle  
18 and such storage tank is attached to the heating unit burning such fuel.

19 [~~(2) Partial non-residential heating exemption. (A) Non-highway diesel~~  
20 ~~motor fuel sold by a petroleum business registered under article~~  
21 ~~twelve-A of this chapter as a distributor of diesel motor fuel or resi-~~  
22 ~~dual petroleum product sold by a petroleum business registered under~~  
23 ~~this article as a residual petroleum product business to the consumer~~  
24 ~~exclusively for heating, other than residential heating purposes only if~~  
25 ~~such non-highway diesel motor fuel is delivered into a storage tank~~  
26 ~~which is not equipped with a hose or other apparatus by which such fuel~~  
27 ~~can be dispensed into the fuel tank of a motor vehicle and such storage~~  
28 ~~tank is attached to the heating unit burning such fuel (B) Calculation~~  
29 ~~of partial exemption. The partial exemption under this paragraph shall~~  
30 ~~be determined by multiplying the quantity of non-highway diesel motor~~  
31 ~~fuel and residual petroleum product eligible for the exemption times the~~  
32 ~~sum of the then current rate of the supplemental tax imposed by section~~  
33 ~~three hundred one-j of this article and forty-six percent of the then~~  
34 ~~current rate of the tax imposed by section three hundred one-a of this~~  
35 ~~article, with respect to the specific non-highway diesel motor fuel or~~  
36 ~~residual petroleum product rate, as the case may be.]~~

37 § 4. The opening paragraph and paragraph 1 of subdivision (c) of  
38 section 301-b of the tax law, as added by chapter 190 of the laws of  
39 1990, are amended to read as follows:

40 Sales to [~~New York state and~~] the federal government. (1) Motor fuel  
41 imported or caused to be imported into this state or produced, refined,  
42 manufactured or compounded in this state by a petroleum business regis-  
43 tered under article twelve-A of this chapter, as a distributor of motor  
44 fuel, and then sold by such petroleum business to an organization  
45 described in paragraph [~~one or~~] two of subdivision (a) of section eleven  
46 hundred sixteen of this chapter where such motor fuel is used by such  
47 organization for its own use or consumption.

48 § 5. The opening paragraph and subdivisions (a) and (b) of section  
49 301-c of the tax law, the opening paragraph as amended by section 5 of  
50 part W-1 of chapter 109 of the laws of 2006, subdivision (a) as amended  
51 by section 23 of part K of chapter 61 of the laws of 2011, and subdivi-  
52 sion (b) as amended by chapter 330 of the laws of 1991, are amended to  
53 read as follows:

54 A subsequent purchaser shall be eligible for reimbursement of tax with  
55 respect to the following gallonage, subsequently sold by such purchaser  
56 in accordance with subdivision (a), (b), (e), (h), [~~(j), (k), (n) or~~

1 ~~(e)~~ (i), (k) or (l) of this section or used by such purchaser in  
2 accordance with subdivision (c), (d), (f), (g) ~~[, (i), (l)]~~ or ~~[(m)]~~ (j)  
3 of this section, which gallonage has been included in the measure of the  
4 tax imposed by this article on a petroleum business:

5 (a) ~~[Non-highway Diesel motor fuel used for heating purposes. (1)]~~  
6 Total residential heating reimbursement. Non-highway Diesel motor fuel  
7 purchased in this state and sold by such purchaser to a consumer for use  
8 exclusively for residential heating purposes but only where (i) such  
9 non-highway diesel motor fuel is delivered into a storage tank which is  
10 not equipped with a hose or other apparatus by which such non-highway  
11 Diesel motor fuel can be dispensed into the fuel tank of a motor vehicle  
12 and such storage tank is attached to the heating unit burning such non-  
13 highway Diesel motor fuel, (ii) the tax imposed pursuant to this article  
14 has been paid with respect to such non-highway diesel motor fuel and the  
15 entire amount of such tax has been absorbed by such purchaser, and (iii)  
16 such purchaser possesses documentary proof satisfactory to the commis-  
17 sioner evidencing the absorption by it of the entire amount of the tax  
18 imposed pursuant to this article. Provided, however, that the commis-  
19 sioner is authorized, in the event that the commissioner determines that  
20 it would not threaten the integrity of the administration and enforce-  
21 ment of the tax imposed by this article, to provide a reimbursement with  
22 respect to a retail sale to a consumer for residential heating purposes  
23 of less than ten gallons of non-highway diesel motor fuel provided such  
24 fuel is not dispensed into the tank of a motor vehicle.

25 ~~[(2) Partial non-residential heating reimbursement. (A) Non-highway~~  
26 ~~Diesel motor fuel purchased in this state and sold by such purchaser to~~  
27 ~~a consumer for use exclusively for heating, other than for residential~~  
28 ~~heating purposes, but only where (i) such non-highway diesel motor fuel~~  
29 ~~is delivered into a storage tank which is not equipped with a hose or~~  
30 ~~other apparatus by which such non-highway Diesel motor fuel can be~~  
31 ~~dispensed into the fuel tank of a motor vehicle and such storage tank is~~  
32 ~~attached to the heating unit burning such non-highway Diesel motor fuel,~~  
33 ~~(ii) the tax imposed pursuant to this article has been paid with respect~~  
34 ~~to such non-highway diesel motor fuel and the entire amount of such tax~~  
35 ~~has been absorbed by such purchaser, and (iii) such purchaser possesses~~  
36 ~~documentary proof satisfactory to the commissioner evidencing the~~  
37 ~~absorption by it of the entire amount of the tax imposed pursuant to~~  
38 ~~this article.~~

39 ~~(B) Calculation of partial reimbursement. Notwithstanding any other~~  
40 ~~provision of this article, the amount of the reimbursement under this~~  
41 ~~paragraph shall be determined by multiplying the quantity of non-highway~~  
42 ~~diesel motor fuel eligible for the reimbursement times the sum of the~~  
43 ~~then current rate of the supplemental tax imposed by section three~~  
44 ~~hundred one-j of this article and forty-six percent of the then current~~  
45 ~~rate of the tax imposed by section three hundred one-a of this article,~~  
46 ~~with respect to the non-highway diesel motor fuel rate, as the case may~~  
47 ~~be.]~~

48 (b) Sales to ~~[New York state and]~~ the federal government. Motor fuel  
49 and diesel motor fuel purchased in this state and sold by such purchaser  
50 in this state to an organization described in paragraph ~~[one or]~~ two of  
51 subdivision (a) of section eleven hundred sixteen of this chapter where  
52 (i) such motor fuel or diesel motor fuel is for such organization's own  
53 use or consumption, (ii) the tax imposed pursuant to this article has  
54 been paid with respect to such motor fuel or diesel motor fuel and the  
55 entire amount of such tax has been absorbed by such purchaser and, (iii)  
56 such purchaser possesses documentary proof satisfactory to the commis-

1 sioner of taxation and finance evidencing the absorption by it of the  
2 entire amount of the tax imposed pursuant to this article. Provided,  
3 however, that the commissioner ~~[of taxation and finance]~~ shall require  
4 such documentary proof to qualify for any reimbursement of tax provided  
5 by this section as the commissioner deems appropriate, including the  
6 expansion of any certification required pursuant to section two hundred  
7 eighty-five-a or two hundred eighty-five-b of this chapter to cover the  
8 taxes imposed pursuant to this article.

9 § 5-a. The opening paragraph of section 301-c of the tax law, as  
10 amended by chapter 468 of the laws of 2000, is amended to read as  
11 follows:

12 A subsequent purchaser shall be eligible for reimbursement of tax with  
13 respect to the following gallonage, subsequently sold by such purchaser  
14 in accordance with subdivision (a), (b), (e), (h) ~~[, (j)]~~ or ~~[(k)]~~ (i) of  
15 this section or used by such purchaser in accordance with subdivision  
16 (c), (d), (f), (g) ~~[, (i), (l)]~~ or ~~[(m)]~~ (j) of this section, which  
17 gallonage has been included in the measure of the tax imposed by this  
18 article on a petroleum business:

19 § 6. Subdivisions (i), (j) and (l) of section 301-c of the tax law are  
20 REPEALED.

21 § 7. Subdivisions (k), (m), (n), (o) and (p) of section 301-c of the  
22 tax law are redesignated subdivisions (i), (j), (k), (l) and (m).

23 § 8. Section 301-d of the tax law is REPEALED.

24 § 9. Paragraph 4 of subdivision (e) of section 301-e of the tax law,  
25 as added by chapter 190 of the laws of 1990, is amended to read as  
26 follows:

27 (4) "aviation fuel" means kero-jet fuel and aviation gasoline ~~[(as~~  
28 ~~described in paragraph three of subdivision (a) of section three hundred~~  
29 ~~one-b of this article)]~~ meeting the specifications set forth in American  
30 Standard Testing Material Specification D910 or Military Specification  
31 MIL-G-5572. Provided, further the term kero-jet shall not include naph-  
32 tha based aviation fuel refined and used solely for propelling military  
33 jet airplanes of the United States Armed Forces.

34 § 10. Subdivision (f) of section 301-e is REPEALED.

35 § 11. Subdivision (a) of section 301-j of the tax law, as amended by  
36 chapter 309 of the laws of 1996, paragraphs 1, 2, 3 and 4 as amended by  
37 section 29 of part K of chapter 61 of the laws of 2011, is amended to  
38 read as follows:

39 (a) Imposition of tax. (1) In addition to the taxes imposed by  
40 sections three hundred one-a and three hundred one-e of this article,  
41 there is hereby imposed upon every petroleum business subject to tax  
42 imposed under section three hundred one-a of this article and every  
43 aviation fuel business subject to the aviation gasoline component of the  
44 tax imposed under section three hundred one-e of this article, a supple-  
45 mental monthly tax for each or any part of a taxable month at a rate of  
46 six and eight-tenths cents per gallon with respect to the products  
47 included in each component of the taxes imposed by such section three  
48 hundred one-a and the aviation gasoline component of the tax imposed by  
49 such section three hundred one-e of this article.

50 (2) ~~[(Provided, however, "commercial gallonage," as such term is~~  
51 ~~defined in subdivision (k) of section three hundred of this article,~~  
52 ~~shall be exempt from the measure of the tax imposed under this section.~~

53 ~~(3)]~~ Provided, further, "railroad diesel," as such term is defined in  
54 subdivision (l) of section three hundred of this article, shall be  
55 exempt from the measure of the tax imposed under this section.

1    ~~[(4)]~~ (3) Provided, further, a separate per gallon rate shall apply  
2 with respect to highway diesel motor fuel. Such rate shall be determined  
3 by taking the adjusted rate per gallon of tax imposed under paragraph  
4 one of this subdivision as adjusted in accordance with paragraph ~~[five]~~  
5 four of this subdivision and subtracting therefrom one and three-quar-  
6 ters cents. Commencing January first, two thousand twelve, and each  
7 January thereafter, the per gallon rate applicable to highway diesel  
8 motor fuel shall be the adjusted rate under paragraph one of this subdivi-  
9 sion as adjusted in accordance with paragraph ~~[five]~~ four of this  
10 subdivision which commences on such date minus one and three-quarters  
11 cents. The resulting rate under this paragraph shall be expressed in  
12 hundredths of a cent.

13    ~~[(5)]~~ (4) Except as herein provided, the tax imposed under this  
14 section shall be calculated in the same respective manner as the taxes  
15 imposed by section three hundred one-a and section three hundred one-e  
16 of this article. Except ~~[for section three hundred one-d and except]~~ as  
17 otherwise provided in this section, all the provisions of this article  
18 applicable to the taxes imposed by sections three hundred one-a and  
19 three hundred one-e of this article, shall apply with respect to the  
20 supplemental tax imposed by this section to the same extent as if it  
21 were respectively imposed by such sections.

22    § 12. Subparagraphs (ix) and (x) of paragraph 3 and paragraph 5 of  
23 subdivision (c) of section 1105 of the tax law, subparagraph (ix) of  
24 paragraph 3 as added by chapter 395 of the laws of 1998, subparagraph  
25 (x) of paragraph 3 as added by section 1 of part FF of chapter 407 of  
26 the laws of 1999, and paragraph 5 as amended by chapter 321 of the laws  
27 of 2005, are amended to read as follows:

28    (ix) ~~[such services rendered with respect to tangible property used or~~  
29 ~~consumed directly and predominantly in the production for sale of gas or~~  
30 ~~oil by manufacturing, processing, generating, assembling, refining,~~  
31 ~~mining, or extracting.~~

32    ~~(\*)~~ such services rendered with respect to property described in  
33 paragraph twelve-a of subdivision (a) of section eleven hundred fifteen  
34 of this article.

35    (5) Maintaining, servicing or repairing real property, property or  
36 land, as such terms are defined in the real property tax law, whether  
37 the services are performed in or outside of a building, as distinguished  
38 from adding to or improving such real property, property or land, by a  
39 capital improvement as such term capital improvement is defined in para-  
40 graph nine of subdivision (b) of section eleven hundred one of this  
41 article, but excluding (i) services rendered by an individual who is not  
42 in a regular trade or business offering his services to the public, (ii)  
43 ~~[services rendered directly with respect to real property, property or~~  
44 ~~land used or consumed directly and predominantly in the production for~~  
45 ~~sale of gas or oil by manufacturing, processing, generating, assembling,~~  
46 ~~refining, mining, or extracting, (iii)]~~ services rendered with respect  
47 to real property, property or land used or consumed predominantly either  
48 in the production of tangible personal property, for sale, by farming or  
49 in a commercial horse boarding operation, or in both and ~~[(iv)]~~ (iii)  
50 services of removal of waste material from a facility regulated as a  
51 transfer station or construction and demolition debris processing facil-  
52 ity by the department of environmental conservation, provided that the  
53 waste material to be removed was not generated by the facility.

54    § 13. Subparagraph (xi) of paragraph 3 of subdivision (c) of section  
55 1105 of the tax law is REPEALED.



1 § 14. Paragraph 9 of subdivision (a) of section 1115 of the tax law is  
2 REPEALED.

3 § 15. Paragraph (ii) of subdivision (b) of section 1115 of the tax  
4 law, as amended by section 30 of part Y of chapter 63 of the laws of  
5 2000, is amended to read as follows:

6 (ii) ~~[Gas, electricity]~~ **Electricity**, refrigeration and steam, and  
7 ~~[gas,]~~ electric, refrigeration and steam service of whatever nature for  
8 use or consumption directly and exclusively in research and development  
9 in the experimental or laboratory sense shall be exempt from the tax  
10 imposed under subdivision (b) of section eleven hundred five and the  
11 compensating use tax imposed under section eleven hundred ten of this  
12 article. Such research and development shall not be deemed to include  
13 the ordinary testing or inspection of materials or products for quality  
14 control, efficiency surveys, management studies, consumer surveys,  
15 advertising, promotions or research in connection with literary, histor-  
16 ical or similar projects.

17 § 16. Paragraph 1 of subdivision (c) of section 1115 of the tax law,  
18 as amended by section 7 of part B of chapter 63 of the laws of 2000, is  
19 amended to read as follows:

20 (1) ~~[Fuel, gas, electricity]~~ **Electricity**, refrigeration and steam, and  
21 ~~[gas,]~~ electric, refrigeration and steam service of whatever nature for  
22 use or consumption directly and exclusively in the production of tangi-  
23 ble personal property, ~~[gas,]~~ electricity, refrigeration or steam, for  
24 sale, by manufacturing, processing, assembling, generating, refining,  
25 mining or extracting shall be exempt from the taxes imposed under subdi-  
26 visions (a) and (b) of section eleven hundred five and the compensating  
27 use tax imposed under section eleven hundred ten of this article.

28 § 17. Subdivision (j) of section 1115 of the tax law, as amended by  
29 section 41 of part K of chapter 61 of the laws of 2011, is amended to  
30 read as follows:

31 (j) The exemptions provided in this section shall not apply to the tax  
32 required to be prepaid pursuant to the provisions of section eleven  
33 hundred two of this article nor to the taxes imposed by sections eleven  
34 hundred five and eleven hundred ten of this article with respect to  
35 receipts from sales and uses of motor fuel or diesel motor fuel, ~~[except~~  
36 ~~that the exemptions provided in paragraphs nine and forty two of subdi-~~  
37 ~~vision (a) of this section shall apply to the tax required to be prepaid~~  
38 ~~pursuant to the provisions of section eleven hundred two of this article~~  
39 ~~and to the taxes imposed by sections eleven hundred five and eleven~~  
40 ~~hundred ten of this article with respect to sales and uses of kero-jet~~  
41 ~~fuel,]~~ CNG, hydrogen and E85, provided, however, the exemption allowed  
42 for E85 shall be subject to the additional requirements provided in  
43 section eleven hundred two of this article with respect to E85. The  
44 exemption provided in subdivision (c) of this section shall apply to  
45 sales and uses of non-highway diesel motor fuel but only if all of such  
46 fuel is consumed other than on the public highways of this state. The  
47 exemption provided in subdivision (c) of this section shall apply to  
48 sales and uses of non-highway diesel motor fuel for use or consumption  
49 either in the production for sale of tangible personal property by farm-  
50 ing or in a commercial horse boarding operation, or in both but only if  
51 all of such fuel is consumed other than on the public highways of this  
52 state (except for the use of the public highways to reach adjacent farm-  
53 lands or adjacent lands used in a commercial horse boarding operation,  
54 or both).

§ 17-a. Subdivision (j) of section 1115 of the tax law, as amended by section 41-a of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(j) The exemptions provided in this section shall not apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article nor to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to receipts from sales and uses of motor fuel or diesel motor fuel~~[, except that the exemption provided in paragraph nine of subdivision (a) of this section shall apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article and to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to sales and uses of kero-jet fuel]~~. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel but only if all of such fuel is consumed other than on the public highways of this state. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel for use or consumption either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation, or in both but only if all of such fuel is consumed other than on the public highways of this state (except for the use of the public highways to reach adjacent farmlands or adjacent lands used in a commercial horse boarding operation, or both).

§ 18. Subdivision (s) of section 1115 of the tax law, as added by chapter 201 of the laws of 1995, is redesignated subdivision (p).

§ 19. Subdivision (w) of section 1115 of the tax law, as added by section 32 of part Y of chapter 63 of the laws of 2000, is amended to read as follows:

(w) Receipts from the sale of ~~[gas-or]~~ electricity or ~~[gas-or]~~ electric service of whatever nature and consideration given or contracted to be given for, or for the use of, ~~[gas-or]~~ electricity or ~~[gas-or]~~ electric service of whatever nature purchased for use or consumption directly and exclusively to provide ~~[gas-or]~~ electric service of whatever nature consisting of operating ~~[a gas pipeline or gas distribution line or]~~ an electric transmission or distribution line ~~[and ensuring the necessary working pressure in an underground gas storage facility]~~ shall be exempt from sales and compensating use taxes imposed by this article. Such exempt ~~[gas-or]~~ electricity or ~~[gas-or]~~ electric service of whatever nature shall include, but shall not be limited to, such ~~[gas-or]~~ electricity or ~~[gas-or]~~ electric service of whatever nature used or consumed directly and exclusively to (1) ~~[ensure necessary working pressure in a gas pipeline used to transport, transmit or distribute gas, (2) operate compressors used to transport, transmit or distribute gas through such a gas pipeline or distribution line or used to ensure necessary working pressure in such a storage facility, (3) operate heaters to prevent gas in such a pipeline or distribution line from freezing, (4) operate equipment which removes impurities and moisture from gas in such a pipeline or distribution line, (5)]~~ operate substations and equipment related to electric transmission and distribution lines such as transformers, capacitors, meters, switches, communication devices and heating and cooling equipment, and ~~[(6)]~~ (2) ensure the reliability of electricity or electric service transmitted or distributed through such lines, for example, by operating reserve capacity machinery and equipment.



§ 20. Subdivision (k) of section 300 of the tax law, as amended by section 17 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(k) "Commercial gallonage" means gallonage (1) which is non-highway diesel motor fuel or residual petroleum product, (2) ~~[which is included in the full measure of the non-highway diesel motor fuel component or the residual petroleum product component of the tax imposed under section three hundred one-a of this article, (3)]~~ which does not (and will not) qualify ~~[(A) for the utility credit or reimbursement provided for in section three hundred one-d of this article, (B)]~~ (A) as "manufacturing gallonage", as such term is defined in subdivision (m) of this section, ~~[(C)]~~ or (B) for the not-for-profit organization exemption provided for in subdivision (h) of section three hundred one-b of this article, ~~[or (D) for the heating exemption provided for in paragraph two of subdivision (d) of section three hundred one-b of this article or the heating reimbursement provided for in paragraph two of subdivision (a) of section three hundred one-c of this article,]~~ and ~~[(4)]~~ (3) which will not be used nor has been used in the fuel tank connecting with the engine of a vessel. No gallonage shall qualify as "commercial gallonage" where such gallonage is eligible for the ~~[(i) utility credit or reimbursement under such section three hundred one-d of this article, (ii) "manufacturing exemption" under paragraph three of subdivision (f) of section three hundred one-a of this article, (iii)]~~ not-for-profit organization exemption under subdivision (h) of section three hundred one-b of this article~~[, or (iv) heating exemption provided for in paragraph two of subdivision (d) of section three hundred one-b of this article or the heating reimbursement provided for in paragraph two of subdivision (a) of section three hundred one-c of this article]~~. The commissioner shall require such documentary proof to substantiate the classification of product as "commercial gallonage" as the commissioner deems appropriate.

§ 21. Paragraph 1 of subdivision (f) of section 301-b of the tax law, as amended by section 21 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(1) Residual petroleum product and non-highway diesel motor fuel sold to an electric corporation, ~~[as described in subdivision (a) of section three hundred one-d of this article,]~~ as defined in subdivision thirteen of section two of the public service law, subject to the supervision of the department of public service, which is registered with the department as a petroleum business tax direct pay permittee, and used by such electric corporation to fuel generators for the purpose of manufacturing or producing electricity where such electric corporation provides a copy of a direct pay permit authorized and issued by the commissioner, to the petroleum business making such sale. If so registered, such corporation shall be a taxpayer under this article and (i) such electric corporation shall file a return monthly and pay the applicable tax under this article, after the application of allowable credits, on all such purchases directly to the commissioner, (ii) such electric corporation shall be subject to all of the provisions of this article relating to the responsibilities and liabilities of taxpayers under this article with respect to such residual petroleum product and non-highway diesel motor fuel.

§ 22. This act shall take effect immediately and shall apply to all tax years commencing on or after the first of January next succeeding the date on which it shall have become a law; provided, however, that:

(a) the amendments to paragraphs 6, 7 and 8 of subdivision (a) of section 301-b made by section three of this act shall not affect the

1 expiration and repeal of such paragraphs and shall expire and be deemed  
2 repealed therewith;

3 (b) the amendments to the opening paragraph of section 301-c of the  
4 tax law as made by section five of this act shall be subject to the  
5 expiration and reversion of such paragraph pursuant to section 19 of  
6 part W-1 of chapter 109 of the laws of 2006, as amended, when upon such  
7 date the provisions of section five-a of this act shall take effect;

8 (c) the amendments to subdivisions (n) and (o) of section 301-c made  
9 by section seven of this act shall not affect the expiration and repeal  
10 of such subdivisions and shall expire and be deemed repealed therewith;  
11 and

12 (d) the amendments to subdivision (j) of section 1115 of the tax law  
13 made by section seventeen of this act shall be subject to the expiration  
14 and reversion of such subdivision pursuant to section 19 of part W-1 of  
15 chapter 109 of the laws of 2006, as amended, when upon such date the  
16 provisions of section seventeen-a of this act shall take effect.