

STATE OF NEW YORK

8728

IN SENATE

April 5, 2022

Introduced by Sens. TEDISCO, JORDAN -- 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 establishing limitations on excise and sales 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:

Section 1. Subdivision 1 of section 282-a of the tax law, as amended by section 2 of part W of chapter 59 of the laws of 2013, is amended and a new subdivision 1-a is added to read as follows:

1. ~~[There]~~ Subject to the provisions of subdivision one-a of this section, there is hereby levied and imposed with respect to Diesel motor fuel an excise tax of four cents per gallon upon the sale or use of Diesel motor fuel in this state.

The excise tax is imposed on the first sale or use of Diesel motor fuel to occur which is not exempt from tax under this article. Provided, however, if the tax has not been imposed prior thereto, it shall be imposed on the removal of highway Diesel motor fuel from a terminal, other than by pipeline, barge, tanker or other vessel, or the delivery of Diesel motor fuel to a filling station or into the fuel tank connecting with the engine of a motor vehicle for use in the operation thereof whichever event shall be first to occur. The tax shall be computed based upon the number of gallons of Diesel motor fuel sold, removed or used or the number of gallons of Diesel fuel delivered into the fuel tank of a motor vehicle, as the case may be. Nothing in this article shall be construed to require the payment of such excise tax more than once upon the same Diesel motor fuel. Nor shall the collection of such tax be made applicable to the sale or use of Diesel motor fuel under circumstances which preclude the collection of such tax by reason of the United States constitution and of laws of the United States enacted pursuant thereto. Provided, further, no Diesel motor fuel shall be included in the measure

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

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1 of the tax unless it shall have previously come to rest within the mean-
2 ing of federal decisional law interpreting the United States constitu-
3 tion. All tax for the period for which a return is required to be filed
4 shall be due on the date limited for the filing of the return for such
5 period, regardless of whether a return is filed as required by this
6 article or whether the return which is filed correctly shows the amount
7 of tax due.

8 1-a. The full amount of the tax imposed by this section shall apply to
9 sales of motor fuel at prices up to two dollars and twenty-five cents
10 per gallon. If the average price of motor fuel in the state exceeds two
11 dollars and twenty-five cents per gallon, the amount of tax imposed by
12 this section shall be reduced by one-quarter of a percentage point
13 (.0025) for every increment of five cents increase in the cost of motor
14 fuel per gallon. The tax imposed by this section shall be suspended
15 entirely if the average price of motor fuel in the state equals or
16 exceeds three dollars per gallon. If the average price of motor fuel in
17 the state falls below three dollars per gallon, the tax imposed by this
18 section shall be assessed in increases of one-quarter of a percentage
19 point (.0025) for every increment of five cents increase in the cost of
20 motor fuel per gallon until the average price of motor fuel in the state
21 decreases to two dollars and twenty-five cents per gallon, at which time
22 the full amount of tax imposed by this section shall apply to sales of
23 motor fuel.

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

26 § 282-b. Additional Diesel motor fuel tax. 1. In addition to the tax
27 imposed by section two hundred eighty-two-a of this [~~chapter~~] article, a
28 like tax shall be imposed at the rate of three cents per gallon upon
29 sale or use within the state of Diesel motor fuel or upon the delivery
30 of Diesel motor fuel to a filling station or into the fuel tank of a
31 motor vehicle for use in the operation thereof. Except as otherwise
32 provided in this section, all of the provisions of this article shall
33 apply with respect to the additional tax imposed by this section to the
34 same extent as if it were imposed by said section two hundred eighty-
35 two-a. Beginning on April first, nineteen hundred ninety-one, four and
36 one-sixth per centum of the moneys received by the department pursuant
37 to the provisions of this section shall be deposited to the credit of
38 the emergency highway reconditioning and preservation fund reserve
39 account established pursuant to the provisions of paragraph (b) of
40 subdivision two of former section eighty-nine of the state finance law.
41 Beginning on April first, nineteen hundred ninety-one, four and one-
42 sixth per centum of the moneys received by the department pursuant to
43 the provisions of this section shall be deposited to the credit of the
44 emergency highway construction and reconstruction fund reserve account
45 established pursuant to the provisions of paragraph (b) of subdivision
46 two of former section eighty-nine-a of the state finance law. Beginning
47 on April first, nineteen hundred ninety-two, an additional eight and
48 one-third per centum of the moneys received by the department pursuant
49 to the provisions of this section shall be deposited to the credit of
50 the emergency highway reconditioning and preservation fund reserve
51 account established pursuant to the provisions of paragraph (b) of
52 subdivision two of former section eighty-nine of the state finance law.
53 Beginning on April first, nineteen hundred ninety-two, an additional
54 eight and one-third per centum of the moneys received by the department
55 pursuant to the provisions of this section shall be deposited to the
56 credit of the emergency highway construction and reconstruction fund

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

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

27 § 3. Section 282-c of the tax law, as amended by section 2 of part EE
28 of chapter 63 of the laws of 2000, is amended to read as follows:

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

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-one, an additional twelve and one-half 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, an additional twelve and one-half 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 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, two thousand three, all of the moneys received by the department pursuant to the provisions of this section shall be deposited in the dedicated fund accounts pursuant to subdivision (d) of section three hundred one-j of this chapter.

2. 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 sixty-six hundredths of a percentage point (.0066) 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 sixty-six hundredths of a percentage point (.0066) 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.

§ 4. Subdivision 1 of section 284 of the tax law, as amended by chapter 276 of the laws of 1986, is amended and a new subdivision 3 is added to read as follows:

1. [There] Subject to the provisions of subdivision three of this section, there is hereby levied and imposed an excise tax of four cents per gallon upon motor fuel (a) imported into or caused to be imported into the state by a distributor for use, distribution, storage or sale in the state or upon motor fuel which is produced, refined, manufactured or compounded by a distributor in the state (which acts shall hereinafter in this subdivision be encompassed by the phrase "imported or manufactured") or (b) if the tax has not been imposed prior to its sale in this state, which is sold by a distributor (which act, in conjunction with the acts described in paragraph (a) of this subdivision, shall hereinafter in this article be encompassed by the phrase "imported, manufactured or sold"), except when imported, manufactured or sold under circumstances which preclude the collection of such tax by reason of the United States constitution and of laws of the United States enacted pursuant thereto or when imported or manufactured by an organization described in paragraph one or two of subdivision (a) of section eleven

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

12 3. 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 one-quarter of a percentage point
17 (.0025) for every increment of five cents increase in the cost of motor
18 fuel per gallon. The tax imposed by this section shall be suspended
19 entirely if the average price of motor fuel in the state equals or
20 exceeds three dollars per gallon. If the average price of motor fuel in
21 the state falls below three dollars per gallon, the tax imposed by this
22 section shall be assessed in increases of one-quarter of a percentage
23 point (.0025) for every increment of five cents increase in the cost of
24 motor 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 § 5. Section 284-a of the tax law, as amended by section 3 of part EE
29 of chapter 63 of the laws of 2000, is amended to read as follows:

30 § 284-a. Additional motor fuel tax. 1. In addition to the tax imposed
31 by section two hundred eighty-four of this [~~chapter~~ article], a like tax
32 shall be imposed at the rate of three cents per gallon upon motor fuel
33 imported, manufactured or sold within this state by a distributor.
34 Except as otherwise provided in this section, all the provisions of this
35 article except subdivision two of section two hundred eighty-nine-e of
36 this article shall apply with respect to the additional tax imposed by
37 this section to the same extent as if it were imposed by said section
38 two hundred eighty-four. Beginning on April first, nineteen hundred
39 ninety-one, four and one-sixth per centum of the moneys received by the
40 department pursuant to the provisions of this section shall be deposited
41 to the credit of the emergency highway reconditioning and preservation
42 fund reserve account established pursuant to the provisions of paragraph
43 (b) of subdivision two of former section eighty-nine of the state
44 finance law. Beginning on April first, nineteen hundred ninety-one,
45 four and one-sixth per centum of the moneys received by the department
46 pursuant to the provisions of this section shall be deposited to the
47 credit of the emergency highway construction and reconstruction fund
48 reserve account established pursuant to the provisions of paragraph (b)
49 of subdivision two of former section eighty-nine-a of the state finance
50 law. Beginning on April first, nineteen hundred ninety-two, an addi-
51 tional eight and one-third per centum of the moneys received by the
52 department pursuant to the provisions of this section shall be deposited
53 to the credit of the emergency highway reconditioning and preservation
54 fund reserve account established pursuant to the provisions of paragraph
55 (b) of subdivision two of former section eighty-nine of the state
56 finance law. Beginning on April first, nineteen hundred ninety-two, an

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

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

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

32 § 284-c. Supplemental motor fuel tax. 1. In addition to the taxes
33 imposed by sections two hundred eighty-four and two hundred
34 eighty-four-a of this [~~chapter~~ article], a like tax shall be imposed at
35 the rate of one cent per gallon upon motor fuel imported, manufactured
36 or sold within this state by a distributor. Except for paragraph (b) of
37 subdivision three of section two hundred eighty-nine-c of this article,
38 all the provisions of this article shall apply with respect to the
39 supplemental tax imposed by this section to the same extent as if it
40 were imposed by said section two hundred eighty-four. On and after the
41 first day of October, nineteen hundred seventy-two, twenty-five per
42 centum of the monies received by the department pursuant to the
43 provisions of this section shall be deposited to the credit of the emer-
44 gency highway reconditioning and preservation fund established pursuant
45 to the provisions of former section eighty-nine of the state finance
46 law. Beginning on April first, nineteen hundred eighty-three, twenty-
47 five per centum of the monies received by the department pursuant to the
48 provisions of this section shall be deposited to the credit of the emer-
49 gency highway construction and reconstruction fund established pursuant
50 to the provisions of former section eighty-nine-a of the state finance
51 law. Beginning on April first, nineteen hundred ninety, an additional
52 twelve and one-half per centum of the monies received by the department
53 pursuant to the provisions of this section shall be deposited to the
54 credit of the emergency highway reconditioning and preservation fund
55 reserve account established pursuant to the provisions of paragraph (b)
56 of subdivision two of former section eighty-nine of the state finance

1 law. Beginning on April first, nineteen hundred ninety, an additional
2 twelve and one-half per centum of the moneys received by the department
3 pursuant to the provisions of this section shall be deposited to the
4 credit of the emergency highway construction and reconstruction fund
5 reserve account established pursuant to the provisions of paragraph (b)
6 of subdivision two of former section eighty-nine-a of the state finance
7 law. Beginning on April first, nineteen hundred ninety-one, an addi-
8 tional twelve and one-half per centum of the moneys received by the
9 department pursuant to the provisions of this section shall be deposited
10 to the credit of the emergency highway reconditioning and preservation
11 fund reserve account established pursuant to the provisions of paragraph
12 (b) of subdivision two of former section eighty-nine of the state
13 finance law. Beginning on April first, nineteen hundred ninety-one, an
14 additional twelve and one-half per centum of the moneys received by the
15 department pursuant to the provisions of this section shall be deposited
16 to the credit of the emergency highway construction and reconstruction
17 fund reserve account established pursuant to the provisions of paragraph
18 (b) of subdivision two of former section eighty-nine-a of the state
19 finance law. Beginning on April first, two thousand three, all of the
20 moneys received by the department pursuant to the provisions of this
21 section shall be deposited in the dedicated fund accounts pursuant to
22 subdivision (d) of section three 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 § 7. Subdivision (b) of section 1105 of the tax law is amended by
40 adding a new paragraph 5 to read as follows:

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

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

3 § 8. Section 1201 of the tax law is amended by adding a new subdivi-
4 sion (n) to read as follows:

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

10 § 9. Section 1202 of the tax law is amended by adding a new subdivi-
11 sion (h) to read as follows:

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

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