STATE OF NEW YORK

8728--A

IN SENATE

April 5, 2022

Introduced by Sens. TEDISCO, JORDAN, BORRELLO, MARTUCCI, WEIK -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to establishing limitations on excise and sales taxes and petroleum business 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.

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

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Provided, further, no Diesel motor fuel shall be included in the measure of the tax unless it shall have previously come to rest within the meaning of federal decisional law interpreting the United States constitution. All tax for the period for which a return is required to be filed shall be due on the date limited for the filing of the return for such period, regardless of whether a return is filed as required by this article or whether the return which is filed correctly shows the amount of tax due.

1-a. 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 one-quarter of a percentage point (.0025) 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 one-quarter of a percentage point (.0025) 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.

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

§ 282-b. Additional Diesel motor fuel tax. **1.** In addition to the tax imposed by section two hundred eighty-two-a of this [~~chapter~~] **article**, a like tax shall be imposed at the rate of three cents per gallon upon sale or use within the state of Diesel motor fuel or upon the delivery of Diesel motor fuel to a filling station or into the fuel tank of a motor vehicle for use in the operation thereof. Except as otherwise provided in this section, all of the provisions of this article shall apply with respect to the additional tax imposed by this section to the same extent as if it were imposed by said section two hundred eighty-two-a. Beginning on April first, nineteen hundred ninety-one, four and one-sixth 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, four and one-sixth 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-two, an additional eight and one-third 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-two, an additional eight and one-third 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, two thousand one, seventy-five per centum 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. 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 two-tenths of a percentage point (.002) 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 two-tenths of a percentage point (.002) 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.

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

§ 282-c. Supplemental Diesel motor fuel tax. **1.** In addition to the taxes imposed by sections two hundred eighty-two-a and two hundred eighty-two-b of this [~~chapter~~] **article**, a like tax shall be imposed at the rate of one cent per gallon upon the sale or use within the state of Diesel motor fuel or upon the delivery of Diesel motor fuel to a filling station or into the fuel tank of a motor vehicle for use in the operation thereof. Except for paragraph (b) of subdivision three of section two hundred eighty-nine-c **of this article**, all the provisions of this article shall apply with respect to the supplemental tax imposed by this section to the same extent as if it were imposed by said section two hundred eighty-two-a. On and after the first day of October, nineteen hundred seventy-two, twenty-five per centum of the monies 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 established pursuant to the provisions of **former** section eighty-nine of the state finance law. Beginning on April first, nineteen hundred eighty-three, twenty-five per centum of the monies 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 established pursuant to the provisions of **former** section eighty-nine-a of the state finance law. Beginning on 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 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, 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 hundred sixteen of this chapter or a hospital included in the organizations described in paragraph four of such subdivision for its own use or consumption and except kero-jet fuel when imported or manufactured by an airline for use in its airplanes. Provided, further, no motor fuel shall be included in the measure of the tax unless it shall have previously come to rest within the meaning of federal decisional law interpreting the United States constitution. All tax for the period for which a return is required to be filed shall be due on the date limited for the filing of the return for such period, regardless of whether a return is filed by such distributor as required by this article or whether the return which is filed correctly shows the amount of tax due.

3. 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 one-quarter of a percentage point (.0025) 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 one-quarter of a percentage point (.0025) 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.

§ 5. Section 284-a of the tax law, as amended by section 3 of part EE of chapter 63 of the laws of 2000, is amended to read as follows:

§ 284-a. Additional motor fuel tax. **1.** In addition to the tax imposed by section two hundred eighty-four of this [~~**chapter**~~] **article**, a like tax shall be imposed at the rate of three cents per gallon upon motor fuel imported, manufactured or sold within this state by a distributor. Except as otherwise provided in this section, all the provisions of this article except subdivision two of section two hundred eighty-nine-e of this article shall apply with respect to the additional tax imposed by this section to the same extent as if it were imposed by said section two hundred eighty-four. Beginning on April first, nineteen hundred ninety-one, four and one-sixth 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, four and one-sixth 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-two, an additional eight and one-third 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-two, an additional eight and one-third 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, two thousand, seventy-five per centum 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. 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 two-tenths of a percentage point (.002) 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 two-tenths of a percentage point (.002) 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.

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

§ 284-c. Supplemental motor fuel tax. **1.** In addition to the taxes imposed by sections two hundred eighty-four and two hundred eighty-four-a of this [~~**chapter**~~] **article**, a like tax shall be imposed at the rate of one cent per gallon upon motor fuel imported, manufactured or sold within this state by a distributor. Except for paragraph (b) of subdivision three of section two hundred eighty-nine-c **of this article**, all the provisions of this article shall apply with respect to the supplemental tax imposed by this section to the same extent as if it were imposed by said section two hundred eighty-four. On and after the first day of October, nineteen hundred seventy-two, twenty-five per centum of the monies 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 established pursuant to the provisions of **former** section eighty-nine of the state finance law. Beginning on April first, nineteen hundred eighty-three, twenty-five per centum of the monies 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 established pursuant to the provisions of **former** section eighty-nine-a of the state finance law. Beginning on April first, nineteen hundred ninety, an additional twelve and one-half per centum of the monies 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, 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 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, 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.

§ 7. Subdivision (b) of section 1105 of the tax law is amended by adding a new paragraph 5 to read as follows:

(5) Notwithstanding the provisions of of this subdivision, 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 one-quarter of a percentage point (.0025) 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 one-quarter of a percentage point (.0025) 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.

§ 8. Section 301-a of the tax law is amended by adding a new subdivision (n) to read as follows:

(n) Notwithstanding the provisions of this subdivision, the full amount of tax imposed by this section shall only apply when the average price of motor fuel in the state is two dollars and twenty-five cents or less. If the average price of motor fuel exceeds two dollars and twenty-five cents, the amount of tax imposed by this section shall be reduced by one-quarter of a percentage point (.0025) 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 one-quarter of a percentage point (.0025) 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 article shall apply.

§ 9. Section 1201 of the tax law is amended by adding a new subdivision (n) to read as follows:

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

§ 10. Section 1202 of the tax law is amended by adding a new subdivision (h) to read as follows:

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

§ 11. The tax law is amended by adding a section 45 to read as follows:

§ 45. Every person engaged in the retail sale of motor fuel or diesel motor fuel or a distributor of such fuels, shall comply with the provisions of sections two hundred eighty-two-a, two hundred eighty-two-b, two hundred eighty-two-c, two hundred eighty-four, two hundred eighty-four-a, two hundred eighty-four-c, eleven hundred five, twelve hundred one, twelve hundred two, and three hundred one-a of this chapter by reducing the prices charged for motor fuel and Diesel motor fuel in an amount equal to any reduction in taxes prepaid by the distributor or imposed on retail customers resulting from the suspension of taxes on motor fuel and Diesel motor fuel under those sections.

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