STATE OF NEW YORK

9491

IN SENATE

June 29, 2022

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the tax law and the state finance law, in relation to enacting the "New York Oil Windfall Profits Tax Act of 2023"

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

Section 1. This act may be cited as the "New York Oil Windfall Profits Tax Act of 2023".

§ 2. The tax law is amended by adding a new section 301-n to read as follows:

§ 301-n. Windfall profits tax. (a) Imposition of tax. Notwithstanding any other provision of law, rule or regulation to the contrary, in addition to any other tax imposed under this article, in each calendar quarter there is hereby imposed on any covered taxpayer an excise tax at the rate determined under subdivision (b) of this section on:

(1) Each barrel of taxable crude oil extracted by the taxpayer within the state and removed from the property of such taxpayer during the calendar quarter, and

(2) Each barrel of taxable crude oil entered into the state during the calendar quarter by the taxpayer for consumption, use or warehousing.

(b) Rate of tax. The rate of tax imposed by this section on any barrel of taxable crude oil for any calendar quarter is the product of:

(1) Fifty percent, and

(2) The excess, if any, of:

(A) the average price of a barrel of Brent crude oil over the covered calendar quarter, over

(B) the average price of a barrel of Brent crude oil over the period beginning on January first, two thousand fifteen, and ending on December thirty-first, two thousand nineteen.

(c) Withholding and deposit of tax. The commissioner shall provide such rules as are necessary for the withholding and deposit of the tax imposed under this section on any taxable crude oil.

(d) Records and information. Each taxpayer liable for tax under this section shall keep such records, make such returns, and furnish such

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

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information to the commissioner and to such other persons having an interest in the taxable crude oil with respect to such oil as the commissioner may by regulations prescribe.

(e) Return of windfall profit tax. The commissioner shall provide for the filing and the time of such filing of the return of the tax imposed under this section.

(f) Regulations. The commissioner shall prescribe such rules and regulations as may be necessary or appropriate to carry out the purposes of this section.

(g) Inflation adjustment. (1) In general. In the case of a calendar quarter in any taxable year beginning after two thousand twenty-two, the amount determined under subdivision (b) of this section shall be increased by an amount equal to: (i) such dollar amount, multiplied by (ii) the cost-of-living adjustment determined under subsection (f) of section one of the internal revenue code for the calendar year in which the taxable year begins, determined by substituting two thousand twenty-one for "2016" in section 1 (f)(3)(A)(ii) of the internal revenue code.

(2) Rounding. If any dollar amount after being increased under paragraph one of this subdivision, is not a multiple of fifty cents, such dollar amount shall be rounded to the next lowest multiple of one cent.

(h) Fractional part of barrel. In the case of a fraction of a barrel, the tax imposed by this section shall be the same fraction of the amount of such tax imposed on the whole barrel.

(i) Definitions and special rules. As used in this section, the following terms shall have the following meanings:

(1) "Applicable period" shall mean from the first of the month next succeeding the effective date of this section until December thirty-first, two thousand twenty-three.

(2) "Covered taxpayer" shall mean:

(A) Any taxpayer if, with respect to any calendar quarter:

(i) the average daily number of barrels of taxable crude oil extracted and imported by such taxpayer for calendar year two thousand nineteen exceeded three hundred thousand barrels, or

(ii) the average daily number of barrels of taxable crude oil extracted and imported by the taxpayer for the calendar quarter exceeds three hundred thousand barrels; and

(B) Every petroleum business subject to the tax imposed pursuant to section three hundred one-a of this article for the privilege of engaging in business, doing business, employing capital, owning or leasing property, or maintaining an office in this state.

(3) "Taxable crude oil" shall include crude oil and crude oil condensates.

(4) "Barrel" shall mean forty-two United States gallons.

(5) "Sale" shall have the same meaning as such term is defined in section two hundred eighty-two of this chapter.

(j) Rebates and credits. (1) Income tax credit. In the case of an eligible individual, there shall be allowed an income tax credit for each taxable year beginning after the date of the enactment of this section, an amount equal to the sum of the gasoline price rebate amount for calendar quarters beginning in such taxable year.

(2) Rebate amount. For the purposes of this subdivision, "gasoline price rebate amount" means, with respect to any taxpayer for any calendar quarter beginning in a taxable year, an amount determined by the commissioner not later than thirty days after the end of such calendar quarter taking into account the number of eligible individuals and the

amount of revenue in the "protect New Yorkers from gas price surges fund" established pursuant to section ninety-nine-pp of the state finance law and resulting from the tax imposed by this section for the preceding calendar quarter.

(3) Identification requirements. Notwithstanding any contrary provision of this subdivision, the rebate amount authorized hereunder shall be treated as being zero unless the taxpayer includes such taxpayer's full valid identification number on the return filed for the taxable year.

(4) Filing. Solely for purposes of this subdivision, a return of tax shall not be treated as filed until such return has been processed by the internal revenue service.

(5) Special rule for joint returns. In the case of an eligible individual filing a joint return, the gasoline price rebate amount shall be one hundred fifty percent of the amount determined under paragraph two of this subdivision with respect to other taxpayers.

(6) Application to certain individuals. In the case of any individual who, at the time of any determination made pursuant to paragraph three of this subdivision, has not filed a tax return for the applicable taxable year or for the year following the applicable taxable year the commissioner shall determine the rebate amount on the basis of information available to the commissioner, and shall, on the basis of such information, determine the advance refund amount with respect to such individual without regard to paragraph two of subdivision (b) of this section, unless the commissioner has reason to know that such amount would otherwise be reduced by reason of such subdivision.

(7) Limitation based on adjusted gross income. The amount of the credit allowed by this subdivision shall be reduced, but not below zero, by five percent of so much of the eligible individual's adjusted gross income as exceeds:

(A) $160,000 in the case of a joint return;

(B) $115,000 in the case of a head of household; and

(C) $80,000 in any other case.

(8) Eligible individuals. (A) For the purposes of this section, the term "eligible individual" shall mean any individual state resident other than: (i) a nonresident alien individual, (ii) an individual who is a dependent of another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, and (iii) an estate or trust.

(B) The term "dependent" shall have the same as such term is defined in section one hundred fifty-two of the internal revenue code.

(k) Special rules; credit treated as refundable. The credit allowed by subdivision (m) of this section shall be treated as refundable pursuant to the applicable provisions of subpart C of part IV of subchapter A of chapter 1 of subtitle A of title twenty-six of the internal revenue code.

(l) Joint returns. Except as provided by the commissioner, in the case of a refund or credit made or allowed pursuant to subdivision (m) of this section with respect to a joint return, half of such refund or credit shall be treated as having been made or allowed to each individual filing such return.

(m) Advance refunds and credits. (1) Subject to paragraph four of this subdivision, for any rebate taxable year, each individual who was an eligible individual for the applicable taxable year shall be treated as having made a payment against the tax imposed by article twenty-two of this chapter for such applicable taxable year in an amount equal to the advance refund amount for such rebate taxable year.

(2) Advance refund amount. For purposes of paragraph one of this subdivision, the advance refund amount for any rebate taxable year is the amount that would be allowed as a credit under this section for the applicable taxable year if this section were applied to such applicable taxable year, without regard to any effective date, using the gasoline price rebate amount for the refund taxable year.

(3) Timing and manner of payments. The commissioner shall, subject to the provisions of this section, refund or credit any overpayment attributable to this section and determined with respect to any calendar quarter not later than ninety days after the end of such calendar quarter. No refund or credit shall be made or allowed under this subdivision with respect to any applicable taxable year after the last day of the rebate taxable year.

(4) Application to individuals who have filed a return of tax for the year after the applicable taxable year. (A) Returns filed at time of initial determination. If, at the time of any determination made pursuant to paragraph three of this subdivision, the individual referred to in paragraph one of this subdivision has filed a return of tax for the individual's first taxable year beginning after the applicable taxable year, the provisions of paragraph one of this subdivision shall be applied with respect to such individual by substituting "taxable year following the applicable taxable year" for "applicable taxable year".

(B) Additional payment. (i) In the case of any individual who files, before the additional payment determination date, a return of tax for such individual's first taxable year beginning after the applicable taxable year, the commissioner shall make a payment, in addition to any payment made under paragraph one of this subdivision, to such individual equal to the excess, if any, of:

a. the amount which would be determined under paragraph one of this subdivision, after the application of subparagraph (A) of this paragraph by applying paragraph one of this subdivision as of the additional payment determination date, over

b. the amount of any payment made with respect to such individual under paragraph one of this subdivision.

(ii) Determination date. The term additional payment determination date means the earlier of:

a. the date which is ninety days after the date specified in section 6072 (a) of the internal revenue code with respect to returns for the taxable year following the applicable taxable year, or

b. September first of the calendar year following the applicable taxable year as defined in subdivision (n) of this section.

(n) Applicable taxable year. For the purposes of this section:

(1) The term "rebate taxable year" means the taxable year for which a credit is allowed under this section.

(2) The term "applicable taxable year" means the second taxable year preceding the rebate taxable year.

(o) Regulations. The commissioner shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section, including, but not limited to:

(1) regulations or other guidance providing taxpayers the opportunity to provide the commissioner information sufficient to allow the commissioner to make payments to such taxpayers under subdivision (m) of this section, including the determination of the amount of such payment, if such information is not otherwise available to the commissioner; and

(2) regulations or other guidance to ensure to the maximum extent administratively practicable that, in determining the amount of any credit under subdivision (j) of this section and any credit or refund under subdivision (m) of this section, an individual is not taken into account more than once, including by different taxpayers and including by reason of a change in joint return status or dependent status between the taxable year for which an advance refund amount is determined and the taxable year for which a credit under this section is determined.

(p) Outreach. The commissioner shall carry out a robust and comprehensive outreach program to ensure that all covered taxpayers, as defined in subdivision (i) of this section learn of their eligibility for the advance refunds and credits under subdivision (m) of this section, are advised of the opportunity to receive such advance refunds and credits as provided under subdivision (o) of this section, and are provided assistance in applying for such advance refunds and credits.

(q) Protect New Yorkers from gas price surges fund. All taxes, and any interest and penalties relating thereto, collected or received with respect to the oil windfall profits tax imposed by this section shall be deposited into the "protect New Yorkers from gas price surges fund" established pursuant to section ninety-nine-pp of the state finance law and shall be administered in accordance with the applicable provisions thereof.

(r) Local option. Notwithstanding any contrary provision of law, a municipality may make the election to impose an excise tax on any covered taxpayer, for the applicable period, at the rate as determined under subdivision (b) of this section by local law, ordinance or resolution, if such municipality mails, by certified or registered mail, a certified copy of such local law, ordinance or resolution to the commissioner at his or her office in Albany no later than the Wednesday immediately preceding the first day of the applicable period.

§ 3. The state finance law is amended by adding a new section 99-pp to read as follows:

§ 99-pp. Protect New Yorkers from gas price surges fund. 1. There is hereby established in the joint custody of the commissioner of taxation and finance and the comptroller, a special fund to be known as the "protect New Yorkers from gas price surges fund".

2. Such fund shall consist of all revenues received by the department of taxation and finance, pursuant to the provisions of section three hundred one-n of the tax law, and all other moneys appropriated, credited, or transferred thereto from any other fund or source pursuant to law. For each state fiscal year, there shall be appropriated to the fund by the state, in addition to all other moneys required to be deposited into such fund, an amount equal to the amounts of moneys collected and deposited into the fund pursuant to section three hundred one-n of the tax law, and the amounts of moneys received and deposited into the fund from grants, gifts and bequests during the preceding calendar year, as certified by the comptroller. Nothing in this section shall prevent the state from soliciting and receiving grants, gifts or bequests for the purposes of the fund as defined in this section and depositing them into the fund according to law.

3. Moneys shall be paid out of the fund on the audit and warrant of the comptroller on vouchers approved and certified by the commissioner of taxation and finance. Any interest received by the comptroller on moneys on deposit in the "protect New Yorkers from gas price surges fund" shall be retained in and become part of such fund.

4. Notwithstanding any contrary provision of this section, the commissioner of taxation and finance shall pay from time to time moneys of the fund to the dedicated highway and bridge trust fund established pursuant to section eighty-nine-b of this article in an amount equal to the amount of refunds provided under section three hundred one-n of the tax law.

§ 4. This act shall take effect immediately and shall apply to calendar quarters commencing on and after such date.