

STATE OF NEW YORK

3853

2023-2024 Regular Sessions

IN ASSEMBLY

February 8, 2023

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

AN ACT to amend the tax law, in relation to exempting fuel used in vessels used directly and predominantly in a business providing sport fishing opportunities for hire to the general public from the tax on petroleum businesses and from sales and compensating use taxes

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

1 Section 1. Section 300 of the tax law is amended by adding a new
2 subdivision (j-1) to read as follows:

3 (j-1) "commercial sport fishing vessel" means a vessel owned by a
4 person, who has been issued and holds a marine and coastal district
5 party and charter boat license pursuant to section 13-0336 of the envi-
6 ronmental conservation law.

7 § 2. Paragraph 2 of subdivision (b) of section 301-a of the tax law,
8 as added by section 154 of part A of chapter 389 of the laws of 1997, is
9 amended to read as follows:

10 (2) Motor fuel brought into this state in the fuel tank connecting
11 with the engine of a vessel propelled by the use of such motor fuel
12 shall be deemed to constitute a taxable use of motor fuel for the
13 purposes of this subdivision to the extent that the fuel is consumed in
14 the operation of the vessel in this state. Provided, however, that this
15 paragraph shall not apply to (i) a recreational motor boat or (ii)
16 subsequent to August thirty-first, nineteen hundred ninety-four, a
17 commercial fishing vessel (as defined in subdivision (j) of section
18 three hundred of this article) if the motor fuel imported and consumed
19 in this state is used to operate such vessel while it is engaged in the
20 harvesting of fish for sale or (iii) a commercial sport fishing vessel,
21 if such vessel provides its owner with at least fifty percent of his or
22 her total annual income. Provided, further, that tax liability for
23 gallonage that a vessel consumes shall be the tax liability with respect

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

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1 to the positive difference between the gallonage consumed in this state
2 during the reporting period and the gallonage purchased in this state
3 (upon which the tax imposed by this section has been paid) during such
4 period. A credit or refund shall be available for any excess of tax
5 liability for gallonage purchased in this state during the period over
6 tax liability on gallonage so consumed in this state during such period,
7 which excess shall be presumed to have been used outside this state.

8 § 3. Subparagraph (B) of paragraph 1 of subdivision (c) of section
9 301-a of the tax law, as amended by section 19 of part K of chapter 61
10 of the laws of 2011, is amended to read as follows:

11 (B) Highway diesel motor fuel brought into this state in the fuel tank
12 connecting with the engine of a vessel propelled by the use of such
13 diesel motor fuel shall be deemed to constitute a taxable use of diesel
14 motor fuel for the purpose of this paragraph to the extent of the fuel
15 that is consumed in the operation of the vessel in this state. Provided,
16 however, this paragraph shall not apply to (i) a recreational motor boat
17 or (ii) a commercial fishing vessel (as defined in subdivision (j) of
18 section three hundred of this article) if the highway diesel motor fuel
19 imported into and consumed in this state is used to operate such commer-
20 cial fishing vessel while it is engaged in the harvesting of fish for
21 sale or (iii) a commercial sport fishing vessel, if such vessel provides
22 its owner with at least fifty percent of his or her total annual income.

23 Provided, further, that tax liability for gallonage that a vessel
24 consumes in this state shall be the tax liability with respect to the
25 positive difference between the gallonage consumed in this state during
26 the reporting period and the gallonage purchased in this state (upon
27 which the tax imposed by this section has been paid) during such period.
28 A credit or refund shall be available for any excess of tax liability
29 for gallonage purchased in this state during the period over tax liabil-
30 ity on gallonage so consumed in this state during such period, which
31 excess shall be presumed to have been used outside this state.

32 § 4. The opening paragraph of section 301-c of the tax law, as amended
33 by section 2 of part T of chapter 59 of the laws of 2022, is amended to
34 read as follows:

35 A subsequent purchaser shall be eligible for reimbursement of tax with
36 respect to the following gallonage, subsequently sold by such purchaser
37 in accordance with subdivision (a), (b), (e), (h), (j), (k), (n) or (o)
38 of this section or used by such purchaser in accordance with subdivision
39 (c), (d), (f), (g), (g-1), (i), (l), (m) or (q) of this section, which
40 gallonage has been included in the measure of the tax imposed by this
41 article on a petroleum business:

42 § 5. The opening paragraph of section 301-c of the tax law, as amended
43 by section 3 of part T of chapter 59 of the laws of 2022, is amended to
44 read as follows:

45 A subsequent purchaser shall be eligible for reimbursement of tax with
46 respect to the following gallonage, subsequently sold by such purchaser
47 in accordance with subdivision (a), (b), (e), (h), (j) or (k) of this
48 section or used by such purchaser in accordance with subdivision (c),
49 (d), (f), (g), (g-1), (i), (l), (m) or (q) of this section, which gallo-
50 nage has been included in the measure of the tax imposed by this article
51 on a petroleum business:

52 § 6. Section 301-c of the tax law is amended by adding a new subdivi-
53 sion (g-1) to read as follows:

54 (g-1) Diesel motor fuel and motor fuel used in the operation of
55 commercial sport fishing vessels. Diesel motor fuel or motor fuel
56 purchased in this state by the operator of a commercial sport fishing

1 vessel at retail wherein such diesel motor fuel or such motor fuel is
2 delivered by a pump equipped with a hose directly into the fuel tank of
3 a commercial sport fishing vessel to be used as fuel in the operation of
4 such vessel for the purpose of providing sport fishing opportunities for
5 hire to the general public; but only where (1) the tax imposed pursuant
6 to this article has been paid with respect to such diesel motor fuel or
7 such motor fuel and the entire amount of such tax has been absorbed by
8 such purchaser, (2) such purchaser possesses documentary proof satisfac-
9 tory to the commissioner evidencing the absorption by it of the entire
10 amount of the tax imposed pursuant to this article, and (3) the vessel
11 provides its owner with at least fifty percent of his or her total annu-
12 al income. Provided, however, that the commissioner shall require such
13 documentary proof to qualify for any reimbursement of tax provided by
14 this section as the commissioner deems appropriate.

15 § 7. Subdivision (a) of section 1115 of the tax law is amended by
16 adding a new paragraph 24-a to read as follows:

17 (24-a) Fuel used in vessels used directly and predominantly in a busi-
18 ness providing sport fishing opportunities for hire to the general
19 public; provided that such vessel provides its owner with at least fifty
20 percent of his or her total annual income.

21 § 8. Subparagraph (i) of paragraph 1 of subdivision (a) of section
22 1210 of the tax law, as amended by section 5 of part J of chapter 59 of
23 the laws of 2021, is amended to read as follows:

24 (i) Any local law, ordinance or resolution enacted by any city of less
25 than one million or by any county or school district, imposing the taxes
26 authorized by this subdivision, shall, notwithstanding any provision of
27 law to the contrary, exclude from the operation of such local taxes all
28 sales of tangible personal property for use or consumption directly and
29 predominantly in the production of tangible personal property, gas,
30 electricity, refrigeration or steam, for sale, by manufacturing, proc-
31 essing, generating, assembly, refining, mining or extracting; and all
32 sales of tangible personal property for use or consumption predominantly
33 either in the production of tangible personal property, for sale, by
34 farming or in a commercial horse boarding operation, or in both; and all
35 sales of fuel sold for use in commercial aircraft and general aviation
36 aircraft; and the fuel used in commercial sport fishing vessels
37 exemption provided for in paragraph twenty-four-a of subdivision (a) of
38 section eleven hundred fifteen of this chapter; and, unless such city,
39 county or school district elects otherwise, shall omit the provision for
40 credit or refund contained in clause six of subdivision (a) or subdivi-
41 sion (d) of section eleven hundred nineteen of this chapter.

42 § 9. Section 1210 of the tax law is amended by adding a new subdivi-
43 sion (n) to read as follows:

44 (n) Notwithstanding any other provision of state or local law, ordi-
45 nance or resolution to the contrary:

46 (1) Any city having a population of one million or more in which the
47 taxes imposed by section eleven hundred seven of this chapter are in
48 effect, acting through its local legislative body, is hereby authorized
49 and empowered to elect to provide the same exemptions from such taxes as
50 the fuel used in commercial sport fishing vessels exemption from state
51 sales and compensating use taxes described in paragraph twenty-four-a of
52 subdivision (a) of section eleven hundred fifteen of this chapter by
53 enacting a resolution in the form set forth in paragraph two of this
54 subdivision; whereupon, upon compliance with the provisions of subdivi-
55 sions (d) and (e) of this section, such enactment of such resolution
56 shall be deemed to be an amendment to such section eleven hundred seven

1 and such section eleven hundred seven shall be deemed to incorporate
2 such exemptions as if they had been duly enacted by the state legisla-
3 ture and approved by the governor.

4 (2) Form of Resolution: Be it enacted by the (insert proper title of
5 local legislative body) as follows:

6 Section one. Receipts from sales of and consideration given or
7 contracted to be given for, or for the use of, property and services
8 exempt from state sales and compensating use taxes pursuant to paragraph
9 twenty-four-a of subdivision (a) of section 1115 of the tax law shall
10 also be exempt from sales and compensating use taxes imposed in this
11 jurisdiction.

12 Section two. This resolution shall take effect June 1, (insert the
13 year, but not earlier than the year 2023) and shall apply to sales made,
14 services rendered and uses occurring on and after that date in accord-
15 ance with the applicable transitional provisions in sections 1106, 1216
16 and 1217 of the New York tax law.

17 § 10. This act shall take effect on the ninetieth day after it shall
18 have become a law; provided, that the amendments to the opening para-
19 graph of section 301-c of the tax law, made by section four of this act
20 shall not affect the repeal of such paragraph pursuant to section 19 of
21 part W-1 of chapter 109 of the laws of 2006, as amended, and shall be
22 deemed repealed therewith, when upon such date the provisions of section
23 five of this act shall take effect.