

# STATE OF NEW YORK

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3869

2023-2024 Regular Sessions

## IN ASSEMBLY

February 8, 2023

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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 providing an exemption from the payment of the motor fuels tax and the sales tax on motor fuels used in the operation of commercial fishing vessels

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

1 Section 1. Paragraph (b) of subdivision 3 of section 282-a of the tax  
2 law, as amended by section 3 of part W of chapter 59 of the laws of  
3 2013, is amended to read as follows:

4 (b) The tax on the incidence of sale or use imposed by subdivision one  
5 of this section shall not apply to: (i) the sale or use of non-highway  
6 Diesel motor fuel, but only if all of such fuel is consumed other than  
7 on the public highways of this state (except for the use of the public  
8 highway by farmers to reach adjacent farmlands); provided, however, this  
9 exemption shall in no event apply to a sale of non-highway Diesel motor  
10 fuel which involves a delivery at a filling station or into a repository  
11 which is equipped with a hose or other apparatus by which such fuel can  
12 be dispensed into the fuel tank of a motor vehicle (except for delivery  
13 at a farm site which qualifies for the exemption under subdivision (g)  
14 of section three hundred one-b of this chapter); or (ii) a sale to the  
15 consumer consisting of not more than twenty gallons of water-white kero-  
16 sene to be used and consumed exclusively for heating purposes; or (iii)  
17 the sale to or delivery at a filling station or other retail vendor of  
18 water-white kerosene provided such filling station or other retail  
19 vendor only sells such water-white kerosene exclusively for heating  
20 purposes in containers of no more than twenty gallons; or (iv) a sale of  
21 kero-jet fuel to an airline for use in its airplanes or a use of kero-  
22 jet fuel by an airline in its airplanes; or (v) a sale of kero-jet fuel  
23 by a registered distributor of Diesel motor fuel to a fixed base opera-  
24 tor registered under this article as a distributor of kero-jet fuel only

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

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1 where such fixed base operator is engaged solely in making or offering  
2 to make retail sales not in bulk of kero-jet fuel directly into the fuel  
3 tank of an airplane for the purpose of operating such airplane; or (vi)  
4 a retail sale not in bulk of kero-jet fuel by a fixed base operator  
5 registered under this article as a distributor of kero-jet fuel only  
6 where such fuel is delivered directly into the fuel tank of an airplane  
7 for use in the operation of such airplane; or (vii) the sale of previ-  
8 ously untaxed qualified biodiesel to a person registered under this  
9 article as a distributor of Diesel motor fuel other than (A) a retail  
10 sale to such person or (B) a sale to such person which involves a deliv-  
11 ery at a filling station or into a repository which is equipped with a  
12 hose or other apparatus by which such qualified biodiesel can be  
13 dispensed into the fuel tank of a motor vehicle; or (viii) the sale of  
14 previously untaxed highway Diesel motor fuel by a person registered  
15 under this article as a distributor of Diesel motor fuel to a person  
16 registered under this article as a distributor of Diesel motor fuel  
17 where the highway Diesel motor fuel is either: (A) being delivered by  
18 pipeline, railcar, barge, tanker or other vessel to a terminal, the  
19 operator of which terminal is registered under section two hundred  
20 eighty-three-b of this article, or (B) within such a terminal where it  
21 has been so delivered. Provided, however, that the exemption set forth  
22 in this subparagraph shall not apply to any highway Diesel motor fuel if  
23 it is removed from a terminal, other than by pipeline, barge, tanker or  
24 other vessel; or (ix) a sale of Diesel motor fuel to a "commercial fish-  
25 erman", as such term is defined in subdivision (i) of section three  
26 hundred of this chapter, at retail under the circumstances set forth in  
27 paragraph one of subdivision (g) of section three hundred one-c of this  
28 chapter, and where such commercial fishing vessel is operated by a  
29 commercial fisherman.

30 § 2. Subdivision 4 of section 282-a of the tax law, as amended by  
31 section 5 of part K of chapter 61 of the laws of 2011, is amended to  
32 read as follows:

33 4. The tax imposed by this section on Diesel motor fuel shall be  
34 passed through by the seller and included as part of the selling price  
35 to each purchaser of such fuel. Provided, however, the amount of the tax  
36 imposed by this section may be excluded from the selling price of Diesel  
37 motor fuel where (i) a sale of Diesel motor fuel is made to an organiza-  
38 tion described in paragraph (a) of subdivision three of this section  
39 solely for the purpose stated therein; (ii) a sale of non-highway Diesel  
40 motor fuel is made to a consumer but only if such non-highway Diesel  
41 motor fuel is not delivered to a filling station, nor delivered into a  
42 storage tank which is equipped with a hose or other apparatus by which  
43 such fuel can be dispensed into the fuel tank of a motor vehicle; or  
44 (iii) the sale to or delivery at a filling station or other retail  
45 vendor of water-white kerosene provided such filling station or other  
46 retail vendor only sells such water-white kerosene exclusively for heat-  
47 ing purposes in containers of no more than twenty gallons; or (iv) a  
48 sale of kero-jet fuel is made to an airline for use in its airplanes; or  
49 (v) a sale of Diesel motor fuel is made to a "commercial fisherman", as  
50 such term is defined in subdivision (i) of section three hundred of this  
51 chapter, at retail under the circumstances set forth in paragraph one of  
52 subdivision (g) of section three hundred one-c of this chapter, and  
53 where such commercial fishing vessel is operated by a commercial fish-  
54 man.

55 § 3. Section 301-b of the tax law is amended by adding a new subdivi-  
56 sion (k) to read as follows:

(k) Sales or uses of diesel motor fuel and residual petroleum product for commercial fishing. Diesel motor fuel or residual petroleum product sold to or used by a "commercial fisherman", as such term is defined in subdivision (i) of section three hundred of this article, at retail under the circumstances set forth in paragraph one of subdivision (g) of section three hundred one-c of this article, and where such commercial fishing vessel is operated by a commercial fisherman.

§ 4. Subdivision (j) of section 1115 of the tax law, as amended by section 41 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 exemptions provided in paragraphs nine and forty-two 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, CNG, hydrogen and E85, provided, however, the exemption allowed for E85 shall be subject to the additional requirements provided in section eleven hundred two of this article with respect to E85 and except that the exemption provided in paragraph twenty-four of subdivision (a) of this section shall apply to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to sales and uses of diesel motor fuel used in the operation of a fishing vessel as described in paragraph twenty-four of subdivision (a) of this section. 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).

§ 5. 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 and except that the exemption provided in paragraph twenty-four of subdivision (a) of this section shall apply to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to sales and uses of diesel motor fuel used in the operation of a fishing

1 vessel as described in paragraph twenty-four of subdivision (a) of this  
2 section. The exemption provided in subdivision (c) of this section  
3 shall apply to sales and uses of non-highway diesel motor fuel but only  
4 if all of such fuel is consumed other than on the public highways of  
5 this state. The exemption provided in subdivision (c) of this section  
6 shall apply to sales and uses of non-highway diesel motor fuel for use  
7 or consumption either in the production for sale of tangible personal  
8 property by farming or in a commercial horse boarding operation, or in  
9 both but only if all of such fuel is consumed other than on the public  
10 highways of this state (except for the use of the public highways to  
11 reach adjacent farmlands or adjacent lands used in a commercial horse  
12 boarding operation, or both).  
13 § 6. This act shall take effect on the first day of a sales tax quar-  
14 terly period, as described in subdivision (b) of section 1136 of the tax  
15 law, next commencing at least ninety days after this act shall have  
16 become a law; sections four and five of this act shall apply to sales  
17 made under and uses occurring on or after the dates such sections four  
18 and five shall have taken effect, respectively, although made or occur-  
19 ring under a prior contract; and provided further that such amendments  
20 made by section four of this act shall be subject to the expiration and  
21 reversion of such subdivision pursuant to section 19 of part W-1 of  
22 chapter 109 of the laws of 2006, as amended, when upon such date the  
23 provisions of section five of this act shall take effect.