

# STATE OF NEW YORK

4154

2023-2024 Regular Sessions

## IN ASSEMBLY

February 10, 2023

Introduced by M. of A. KELLES, GONZALEZ-ROJAS, MITAYNES, SIMON, WILLIAMS, L. ROSENTHAL, MAMDANI -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to tax on sales of motor fuel and petroleum products; to repeal paragraph 3 of subdivision (f) and paragraph 4 of subdivision (g) of section 301-a of the tax law, relating to manufacturing gallonage for purposes of the imposition of certain taxes; to repeal subdivisions (i), (j), and (l) of section 301-c of the tax law relating to reimbursement; to repeal section 301-d of the tax law relating to a utility credit or reimbursement; to repeal subdivision (f) of section 301-e of the tax law relating to an aviation fuel business which services four or more cities; to repeal subparagraph (xi) of paragraph 3 of subdivision (c) of section 1105 of the tax law relating to services rendered with respect to certain property; to repeal paragraph 9 of subdivision (a) of section 1115 of the tax law relating to fuel sold to an airline for use in its airplanes; and to amend the tax law, in relation to making conforming technical changes

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

1 Section 1. Subdivision (m) of section 301-a of the tax law, as added  
2 by section 20 of part K of chapter 61 of the laws of 2011, is amended to  
3 read as follows:  
4 (m) Special rate adjustment for certain vessels. Notwithstanding any  
5 provision of this section to the contrary, the use of non-highway diesel  
6 motor fuel in the engine of a vessel to propel such vessel shall be  
7 subject to tax at the motor fuel and highway diesel motor fuel rate  
8 provided for in this section, and shall be subject to the provisions of  
9 section three hundred one-j of this article, including the adjustment  
10 set forth in paragraph [~~four~~ **three**] of subdivision (a) of such section  
11 three hundred one-j. A credit or refund shall be available to the extent

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

LBD07826-01-3

1 tax paid on gallonage used to propel any such vessel exceeds the amount  
2 of tax due based on the tax rate set forth herein. Provided, however,  
3 that the commissioner shall require such documentary proof to qualify  
4 for any credit or reimbursement provided hereunder as the commissioner  
5 deems appropriate.

6 § 2. Paragraph 3 of subdivision (f) and paragraph 4 of subdivision (g)  
7 of section 301-a of the tax law are REPEALED.

8 § 3. Subdivisions (a) and (d) of section 301-b of the tax law, subdivi-  
9 sion (a) as added by chapter 190 of the laws of 1990, paragraph 5 of  
10 subdivision (a) as amended by section 3 of part E of chapter 59 of the  
11 laws of 2012, paragraphs 6, 7 and 8 of subdivision (a) as added by  
12 section 4 of part W-1 of chapter 109 of the laws of 2006, and subdivi-  
13 sion (d) as amended by section 21 of part K of chapter 61 of the laws of  
14 2011, are amended to read as follows:

15 (a) Products. (1) [~~Kerosene sold or used by a petroleum business which~~  
16 ~~is registered under article twelve A of this chapter as a distributor of~~  
17 ~~diesel motor fuel so long as (i) such product has not been blended or~~  
18 ~~mixed with any other product constituting diesel motor fuel or motor~~  
19 ~~fuel or a residual petroleum product and (ii) such product is not used~~  
20 ~~by the petroleum business as fuel to operate a motor vehicle or sold by~~  
21 ~~such petroleum business to a consumer for use as fuel to operate a motor~~  
22 ~~vehicle.~~

23 (2) ~~Kero jet fuel (i) sold by a petroleum business which is registered~~  
24 ~~under article twelve A of this chapter as a distributor of diesel motor~~  
25 ~~fuel to a consumer for use exclusively as jet aircraft fuel or to a~~  
26 ~~petroleum business registered under such article twelve A as a "distrib-~~  
27 ~~utor of kero jet fuel only" where such fixed base operator is engaged~~  
28 ~~solely in making or offering to make retail sales not in bulk of kero-~~  
29 ~~jet fuel directly into the fuel tank of an airplane for the purpose of~~  
30 ~~operating such airplane, (ii) used by a petroleum business, registered~~  
31 ~~under article twelve A of this chapter as a distributor of diesel motor~~  
32 ~~fuel, exclusively as jet aircraft fuel, or (iii) sold at retail not in~~  
33 ~~bulk by a petroleum business registered under article twelve A of this~~  
34 ~~chapter as a "distributor of kero-jet fuel only" where such fuel is~~  
35 ~~delivered directly into the fuel tank of a jet airplane for use in the~~  
36 ~~operation of such airplane.~~

37 (3) ~~Aviation gasoline, meeting the specifications set forth in Ameri-~~  
38 ~~can Standard Testing Material Specification D910 or Military Specifica-~~  
39 ~~tion MIL-C-5572, which is imported or caused to be imported into this~~  
40 ~~state by a petroleum business which is registered under article twelve A~~  
41 ~~of this chapter as a distributor of motor fuel or produced, refined,~~  
42 ~~manufactured or compounded in this state by such a petroleum business.~~

43 (4) ~~Residual petroleum product sold by a petroleum business registered~~  
44 ~~under this article as a residual petroleum product business if such~~  
45 ~~product is sold by such petroleum business to a consumer for use exclu-~~  
46 ~~sively as bunker fuel for vessels or if such product is used by such~~  
47 ~~petroleum business exclusively as bunker fuel in its own vessels.~~

48 (5) ~~Liquefied petroleum gases, such as butane, ethane or propane.~~

49 (6)] E85 imported or caused to be imported into this state or  
50 produced, refined, manufactured or compounded in this state by a petro-  
51 leum business registered under article twelve-A of this chapter, as a  
52 distributor of motor fuel, and then sold by such petroleum business and  
53 delivered to a filling station and placed in a storage tank of such  
54 filling station for such E85 to be dispensed directly into a motor vehi-  
55 cle for use in the operation of such vehicle.

1     ~~(7)~~ (i) Partial B20 exemption. B20 imported or caused to be imported  
2 into this state or produced, refined, manufactured or compounded in this  
3 state by a petroleum business registered under article twelve-A of this  
4 chapter, as a distributor of diesel motor fuel, and then sold by such  
5 petroleum business.

6     (ii) Calculation of partial exemption. The amount of the partial  
7 exemption under this paragraph shall be determined by multiplying the  
8 quantity of B20 times twenty percent of the applicable taxes otherwise  
9 imposed by this article on such fuel.

10    ~~(8)~~ (2) CNG or hydrogen.

11    (d) Sales to consumers for heating purposes. ~~(1)~~ Total residential  
12 heating exemption. Non-highway diesel motor fuel sold by a petroleum  
13 business registered under article twelve-A of this chapter as a distrib-  
14 utor of diesel motor fuel or residual petroleum product sold by a petro-  
15 leum business registered under this article as a residual petroleum  
16 product business to the consumer exclusively for residential heating  
17 purposes only if such non-highway diesel motor fuel is delivered into a  
18 storage tank which is not equipped with a hose or other apparatus by  
19 which such fuel can be dispensed into the fuel tank of a motor vehicle  
20 and such storage tank is attached to the heating unit burning such fuel.

21    ~~(2) Partial non-residential heating exemption. (A) Non-highway diesel  
22 motor fuel sold by a petroleum business registered under article  
23 twelve-A of this chapter as a distributor of diesel motor fuel or resi-  
24 dual petroleum product sold by a petroleum business registered under  
25 this article as a residual petroleum product business to the consumer  
26 exclusively for heating, other than residential heating purposes only if  
27 such non-highway diesel motor fuel is delivered into a storage tank  
28 which is not equipped with a hose or other apparatus by which such fuel  
29 can be dispensed into the fuel tank of a motor vehicle and such storage  
30 tank is attached to the heating unit burning such fuel. (B) Calculation  
31 of partial exemption. The partial exemption under this paragraph shall  
32 be determined by multiplying the quantity of non-highway diesel motor  
33 fuel and residual petroleum product eligible for the exemption times the  
34 sum of the then current rate of the supplemental tax imposed by section  
35 three hundred one-j of this article and forty-six percent of the then  
36 current rate of the tax imposed by section three hundred one-a of this  
37 article, with respect to the specific non-highway diesel motor fuel or  
38 residual petroleum product rate, as the case may be.]~~

39    § 4. The subdivision heading and paragraph 1 of subdivision (c) of  
40 section 301-b of the tax law, as added by chapter 190 of the laws of  
41 1990, are amended to read as follows:

42    Sales to ~~[New York state and]~~ the federal government. (1) Motor fuel  
43 imported or caused to be imported into this state or produced, refined,  
44 manufactured or compounded in this state by a petroleum business regis-  
45 tered under article twelve-A of this chapter, as a distributor of motor  
46 fuel, and then sold by such petroleum business to an organization  
47 described in paragraph ~~[one or]~~ two of subdivision (a) of section eleven  
48 hundred sixteen of this chapter where such motor fuel is used by such  
49 organization for its own use or consumption.

50    § 5. The opening paragraph and subdivisions (a) and (b) of section  
51 301-c of the tax law, the opening paragraph as amended by section 2 of  
52 part T of chapter 59 of the laws of 2022, subdivision (a) as amended by  
53 section 23 of part K of chapter 61 of the laws of 2011, and subdivision  
54 (b) as amended by chapter 330 of the laws of 1991, are amended to read  
55 as follows:

1 A subsequent purchaser shall be eligible for reimbursement of tax with  
2 respect to the following gallonage, subsequently sold by such purchaser  
3 in accordance with subdivision (a), (b), (e), (h), [~~(j), (k), (n) or~~  
4 ~~(o)~~ (i), (k) or (l) of this section or used by such purchaser in  
5 accordance with subdivision (c), (d), (f), (g), [~~(i), (l), (m)~~] (j) or  
6 (q) of this section, which gallonage has been included in the measure of  
7 the tax imposed by this article on a petroleum business:

8 (a) [~~Non-highway Diesel motor fuel used for heating purposes. (1)~~]  
9 Total residential heating reimbursement. Non-highway Diesel motor fuel  
10 purchased in this state and sold by such purchaser to a consumer for use  
11 exclusively for residential heating purposes but only where (i) such  
12 non-highway diesel motor fuel is delivered into a storage tank which is  
13 not equipped with a hose or other apparatus by which such non-highway  
14 Diesel motor fuel can be dispensed into the fuel tank of a motor vehicle  
15 and such storage tank is attached to the heating unit burning such non-  
16 highway Diesel motor fuel, (ii) the tax imposed pursuant to this article  
17 has been paid with respect to such non-highway diesel motor fuel and the  
18 entire amount of such tax has been absorbed by such purchaser, and (iii)  
19 such purchaser possesses documentary proof satisfactory to the commis-  
20 sioner evidencing the absorption by it of the entire amount of the tax  
21 imposed pursuant to this article. Provided, however, that the commis-  
22 sioner is authorized, in the event that the commissioner determines that  
23 it would not threaten the integrity of the administration and enforce-  
24 ment of the tax imposed by this article, to provide a reimbursement with  
25 respect to a retail sale to a consumer for residential heating purposes  
26 of less than ten gallons of non-highway diesel motor fuel provided such  
27 fuel is not dispensed into the tank of a motor vehicle.

28 [~~(2) Partial non-residential heating reimbursement. (A) Non-highway~~  
29 ~~Diesel motor fuel purchased in this state and sold by such purchaser to~~  
30 ~~a consumer for use exclusively for heating, other than for residential~~  
31 ~~heating purposes, but only where (i) such non-highway diesel motor fuel~~  
32 ~~is delivered into a storage tank which is not equipped with a hose or~~  
33 ~~other apparatus by which such non-highway Diesel motor fuel can be~~  
34 ~~dispensed into the fuel tank of a motor vehicle and such storage tank is~~  
35 ~~attached to the heating unit burning such non-highway Diesel motor fuel,~~  
36 ~~(ii) the tax imposed pursuant to this article has been paid with respect~~  
37 ~~to such non-highway diesel motor fuel and the entire amount of such tax~~  
38 ~~has been absorbed by such purchaser, and (iii) such purchaser possesses~~  
39 ~~documentary proof satisfactory to the commissioner evidencing the~~  
40 ~~absorption by it of the entire amount of the tax imposed pursuant to~~  
41 ~~this article.~~

42 [~~(B) Calculation of partial reimbursement. Notwithstanding any other~~  
43 ~~provision of this article, the amount of the reimbursement under this~~  
44 ~~paragraph shall be determined by multiplying the quantity of non-highway~~  
45 ~~diesel motor fuel eligible for the reimbursement times the sum of the~~  
46 ~~then current rate of the supplemental tax imposed by section three~~  
47 ~~hundred one-j of this article and forty six percent of the then current~~  
48 ~~rate of the tax imposed by section three hundred one-a of this article,~~  
49 ~~with respect to the non-highway diesel motor fuel rate, as the case may~~  
50 ~~be.]~~

51 (b) Sales to [~~New York state and~~] the federal government. Motor fuel  
52 and diesel motor fuel purchased in this state and sold by such purchaser  
53 in this state to an organization described in paragraph [~~one or~~] two of  
54 subdivision (a) of section eleven hundred sixteen of this chapter where  
55 (i) such motor fuel or diesel motor fuel is for such organization's own  
56 use or consumption, (ii) the tax imposed pursuant to this article has

1 been paid with respect to such motor fuel or diesel motor fuel and the  
2 entire amount of such tax has been absorbed by such purchaser and, (iii)  
3 such purchaser possesses documentary proof satisfactory to the commis-  
4 sioner of taxation and finance evidencing the absorption by it of the  
5 entire amount of the tax imposed pursuant to this article. Provided,  
6 however, that the commissioner [~~of taxation and finance~~] shall require  
7 such documentary proof to qualify for any reimbursement of tax provided  
8 by this section as the commissioner deems appropriate, including the  
9 expansion of any certification required pursuant to section two hundred  
10 eighty-five-a or two hundred eighty-five-b of this chapter to cover the  
11 taxes imposed pursuant to this article.

12 § 5-a. The opening paragraph of section 301-c of the tax law, as  
13 amended by section 3 of part T of chapter 59 of the laws of 2022, is  
14 amended to read as follows:

15 A subsequent purchaser shall be eligible for reimbursement of tax with  
16 respect to the following gallonage, subsequently sold by such purchaser  
17 in accordance with subdivision (a), (b), (e), (h)[~~, (j)~~] or [~~(k)~~] (i) of  
18 this section or used by such purchaser in accordance with subdivision  
19 (c), (d), (f), (g), [~~(i), (l), (m)~~] (j) or (q) of this section, which  
20 gallonage has been included in the measure of the tax imposed by this  
21 article on a petroleum business:

22 § 6. Subdivisions (i), (j) and (l) of section 301-c of the tax law are  
23 REPEALED.

24 § 7. Subdivisions (k), (m), (n), (o), (p) and (q) of section 301-c of  
25 the tax law are redesignated subdivisions (i), (j), (k), (l), (m) and  
26 (n).

27 § 8. Section 301-d of the tax law is REPEALED.

28 § 9. Paragraph 4 of subdivision (e) of section 301-e of the tax law,  
29 as added by chapter 190 of the laws of 1990, is amended to read as  
30 follows:

31 (4) "aviation fuel" means kero-jet fuel and aviation gasoline [~~as~~  
32 ~~described in paragraph three of subdivision (a) of section three hundred~~  
33 ~~one-b of this article~~] meeting the specifications set forth in American  
34 Standard Testing Material Specification D910 or Military Specification  
35 MIL-G-5572. Provided, further the term kero-jet shall not include naph-  
36 tha based aviation fuel refined and used solely for propelling military  
37 jet airplanes of the United States Armed Forces.

38 § 10. Subdivision (f) of section 301-e of the tax law is REPEALED.

39 § 11. Subdivision (a) of section 301-j of the tax law, as amended by  
40 chapter 309 of the laws of 1996, paragraphs 1, 2, 3 and 4 as amended by  
41 section 29 of part K of chapter 61 of the laws of 2011, is amended to  
42 read as follows:

43 (a) Imposition of tax. (1) In addition to the taxes imposed by  
44 sections three hundred one-a and three hundred one-e of this article,  
45 there is hereby imposed upon every petroleum business subject to tax  
46 imposed under section three hundred one-a of this article and every  
47 aviation fuel business subject to the aviation gasoline component of the  
48 tax imposed under section three hundred one-e of this article, a supple-  
49 mental monthly tax for each or any part of a taxable month at a rate of  
50 six and eight-tenths cents per gallon with respect to the products  
51 included in each component of the taxes imposed by such section three  
52 hundred one-a and the aviation gasoline component of the tax imposed by  
53 such section three hundred one-e of this article.

54 (2) [~~Provided, however, "commercial gallonage," as such term is~~  
55 ~~defined in subdivision (k) of section three hundred of this article,~~  
56 ~~shall be exempt from the measure of the tax imposed under this section.~~

1 ~~(3)~~] Provided, further, "railroad diesel," as such term is defined in  
2 subdivision (1) of section three hundred of this article, shall be  
3 exempt from the measure of the tax imposed under this section.

4 [~~(4)~~] (3) Provided, further, a separate per gallon rate shall apply  
5 with respect to highway diesel motor fuel. Such rate shall be determined  
6 by taking the adjusted rate per gallon of tax imposed under paragraph  
7 one of this subdivision as adjusted in accordance with paragraph [~~five~~]  
8 four of this subdivision and subtracting therefrom one and three-quar-  
9 ters cents. Commencing January first, two thousand twelve, and each  
10 January thereafter, the per gallon rate applicable to highway diesel  
11 motor fuel shall be the adjusted rate under paragraph one of this subdivi-  
12 sion as adjusted in accordance with paragraph [~~five~~] four of this  
13 subdivision which commences on such date minus one and three-quarters  
14 cents. The resulting rate under this paragraph shall be expressed in  
15 hundredths of a cent.

16 [~~(5)~~] (4) Except as herein provided, the tax imposed under this  
17 section shall be calculated in the same respective manner as the taxes  
18 imposed by section three hundred one-a and section three hundred one-e  
19 of this article. Except [~~for section three hundred one-d and except~~] as  
20 otherwise provided in this section, all the provisions of this article  
21 applicable to the taxes imposed by sections three hundred one-a and  
22 three hundred one-e of this article, shall apply with respect to the  
23 supplemental tax imposed by this section to the same extent as if it  
24 were respectively imposed by such sections.

25 § 12. Subparagraphs (ix) and (x) of paragraph 3 and paragraph 5 of  
26 subdivision (c) of section 1105 of the tax law, subparagraph (ix) of  
27 paragraph 3 as added by chapter 395 of the laws of 1998, subparagraph  
28 (x) of paragraph 3 as added by section 1 of part FF of chapter 407 of  
29 the laws of 1999, and paragraph 5 as amended by chapter 321 of the laws  
30 of 2005, are amended to read as follows:

31 (ix) [~~such services rendered with respect to tangible property used or~~  
32 ~~consumed directly and predominantly in the production for sale of gas or~~  
33 ~~oil by manufacturing, processing, generating, assembling, refining,~~  
34 ~~mining, or extracting.~~

35 ~~(x)~~] such services rendered with respect to property described in  
36 paragraph twelve-a of subdivision (a) of section eleven hundred fifteen  
37 of this article.

38 (5) Maintaining, servicing or repairing real property, property or  
39 land, as such terms are defined in the real property tax law, whether  
40 the services are performed in or outside of a building, as distinguished  
41 from adding to or improving such real property, property or land, by a  
42 capital improvement as such term capital improvement is defined in para-  
43 graph nine of subdivision (b) of section eleven hundred one of this  
44 article, but excluding (i) services rendered by an individual who is not  
45 in a regular trade or business offering his services to the public, (ii)  
46 [~~services rendered directly with respect to real property, property or~~  
47 ~~land used or consumed directly and predominantly in the production for~~  
48 ~~sale of gas or oil by manufacturing, processing, generating, assembling,~~  
49 ~~refining, mining, or extracting, (iii)] services rendered with respect  
50 to real property, property or land used or consumed predominantly either  
51 in the production of tangible personal property, for sale, by farming or  
52 in a commercial horse boarding operation, or in both and [~~(iv)~~] (iii)  
53 services of removal of waste material from a facility regulated as a  
54 transfer station or construction and demolition debris processing facil-  
55 ity by the department of environmental conservation, provided that the  
56 waste material to be removed was not generated by the facility.~~



1 § 13. Subparagraph (xi) of paragraph 3 of subdivision (c) of section  
2 1105 of the tax law is REPEALED.

3 § 14. Paragraph 9 of subdivision (a) of section 1115 of the tax law is  
4 REPEALED.

5 § 15. Paragraph (ii) of subdivision (b) of section 1115 of the tax  
6 law, as amended by section 30 of part Y of chapter 63 of the laws of  
7 2000, is amended to read as follows:

8 (ii) [~~Gas, electricity~~] **Electricity**, refrigeration and steam, and  
9 [~~gas,~~] electric, refrigeration and steam service of whatever nature for  
10 use or consumption directly and exclusively in research and development  
11 in the experimental or laboratory sense shall be exempt from the tax  
12 imposed under subdivision (b) of section eleven hundred five and the  
13 compensating use tax imposed under section eleven hundred ten of this  
14 article. Such research and development shall not be deemed to include  
15 the ordinary testing or inspection of materials or products for quality  
16 control, efficiency surveys, management studies, consumer surveys,  
17 advertising, promotions or research in connection with literary, histor-  
18 ical or similar projects.

19 § 16. Paragraph 1 of subdivision (c) of section 1115 of the tax law,  
20 as amended by section 7 of part B of chapter 63 of the laws of 2000, is  
21 amended to read as follows:

22 (1) [~~Fuel, gas, electricity~~] **Electricity**, refrigeration and steam, and  
23 [~~gas,~~] electric, refrigeration and steam service of whatever nature for  
24 use or consumption directly and exclusively in the production of tangi-  
25 ble personal property, [~~gas,~~] electricity, refrigeration or steam, for  
26 sale, by manufacturing, processing, assembling, generating, refining,  
27 mining or extracting shall be exempt from the taxes imposed under subdivi-  
28 sions (a) and (b) of section eleven hundred five and the compensating  
29 use tax imposed under section eleven hundred ten of this article.

30 § 17. Subdivision (j) of section 1115 of the tax law, as amended by  
31 section 41 of part K of chapter 61 of the laws of 2011, is amended to  
32 read as follows:

33 (j) The exemptions provided in this section shall not apply to the tax  
34 required to be prepaid pursuant to the provisions of section eleven  
35 hundred two of this article nor to the taxes imposed by sections eleven  
36 hundred five and eleven hundred ten of this article with respect to  
37 receipts from sales and uses of motor fuel or diesel motor fuel, [~~except~~  
38 ~~that the exemptions provided in paragraphs nine and forty two of subdivi-~~  
39 ~~vision (a) of this section shall apply to the tax required to be prepaid~~  
40 ~~pursuant to the provisions of section eleven hundred two of this article~~  
41 ~~and to the taxes imposed by sections eleven hundred five and eleven~~  
42 ~~hundred ten of this article with respect to sales and uses of kero-jet~~  
43 ~~fuel,~~] CNG, hydrogen and E85, provided, however, the exemption allowed  
44 for E85 shall be subject to the additional requirements provided in  
45 section eleven hundred two of this article with respect to E85. The  
46 exemption provided in subdivision (c) of this section shall apply to  
47 sales and uses of non-highway diesel motor fuel but only if all of such  
48 fuel is consumed other than on the public highways of this state. The  
49 exemption provided in subdivision (c) of this section shall apply to  
50 sales and uses of non-highway diesel motor fuel for use or consumption  
51 either in the production for sale of tangible personal property by farm-  
52 ing or in a commercial horse boarding operation, or in both but only if  
53 all of such fuel is consumed other than on the public highways of this  
54 state (except for the use of the public highways to reach adjacent farm-  
55 lands or adjacent lands used in a commercial horse boarding operation,  
56 or both).

1 § 17-a. Subdivision (j) of section 1115 of the tax law, as amended by  
2 section 41-a of part K of chapter 61 of the laws of 2011, is amended to  
3 read as follows:

4 (j) The exemptions provided in this section shall not apply to the tax  
5 required to be prepaid pursuant to the provisions of section eleven  
6 hundred two of this article nor to the taxes imposed by sections eleven  
7 hundred five and eleven hundred ten of this article with respect to  
8 receipts from sales and uses of motor fuel or diesel motor fuel[~~, except  
9 that the exemption provided in paragraph nine of subdivision (a) of this  
10 section shall apply to the tax required to be prepaid pursuant to the  
11 provisions of section eleven hundred two of this article and to the  
12 taxes imposed by sections eleven hundred five and eleven hundred ten of  
13 this article with respect to sales and uses of kero jet fuel~~]. The  
14 exemption provided in subdivision (c) of this section shall apply to  
15 sales and uses of non-highway diesel motor fuel but only if all of such  
16 fuel is consumed other than on the public highways of this state. The  
17 exemption provided in subdivision (c) of this section shall apply to  
18 sales and uses of non-highway diesel motor fuel for use or consumption  
19 either in the production for sale of tangible personal property by farm-  
20 ing or in a commercial horse boarding operation, or in both but only if  
21 all of such fuel is consumed other than on the public highways of this  
22 state (except for the use of the public highways to reach adjacent farm-  
23 lands or adjacent lands used in a commercial horse boarding operation,  
24 or both).

25 § 18. Subdivision (s) of section 1115 of the tax law, as added by  
26 chapter 201 of the laws of 1995, is redesignated subdivision (p).

27 § 19. Subdivision (w) of section 1115 of the tax law, as added by  
28 section 32 of part Y of chapter 63 of the laws of 2000, is amended to  
29 read as follows:

30 (w) Receipts from the sale of [~~gas or~~] electricity or [~~gas or~~] elec-  
31 tric service of whatever nature and consideration given or contracted to  
32 be given for, or for the use of, [~~gas or~~] electricity or [~~gas or~~] elec-  
33 tric service of whatever nature purchased for use or consumption direct-  
34 ly and exclusively to provide [~~gas or~~] electric service of whatever  
35 nature consisting of operating [~~a gas pipeline or gas distribution line  
36 or~~] an electric transmission or distribution line [~~and ensuring the  
37 necessary working pressure in an underground gas storage facility~~] shall  
38 be exempt from sales and compensating use taxes imposed by this article.  
39 Such exempt [~~gas or~~] electricity or [~~gas or~~] electric service of whatev-  
40 er nature shall include, but shall not be limited to, such [~~gas or~~]  
41 electricity or [~~gas or~~] electric service of whatever nature used or  
42 consumed directly and exclusively to (1) [~~ensure necessary working pres-  
43 sure in a gas pipeline used to transport, transmit or distribute gas,  
44 (2) operate compressors used to transport, transmit or distribute gas  
45 through such a gas pipeline or distribution line or used to ensure  
46 necessary working pressure in such a storage facility, (3) operate heat-  
47 ers to prevent gas in such a pipeline or distribution line from freez-  
48 ing, (4) operate equipment which removes impurities and moisture from  
49 gas in such a pipeline or distribution line, (5)~~] operate substations  
50 and equipment related to electric transmission and distribution lines  
51 such as transformers, capacitors, meters, switches, communication  
52 devices and heating and cooling equipment, and [~~(6)~~] (2) ensure the  
53 reliability of electricity or electric service transmitted or distrib-  
54 uted through such lines, for example, by operating reserve capacity  
55 machinery and equipment.



1 § 20. Subdivision (k) of section 300 of the tax law, as amended by  
2 section 17 of part K of chapter 61 of the laws of 2011, is amended to  
3 read as follows:

4 (k) "Commercial gallonage" means gallonage (1) which is non-highway  
5 diesel motor fuel or residual petroleum product, (2) [~~which is included~~  
6 ~~in the full measure of the non-highway diesel motor fuel component or~~  
7 ~~the residual petroleum product component of the tax imposed under~~  
8 ~~section three hundred one a of this article, (3)] which does not (and  
9 will not) qualify [~~(A) for the utility credit or reimbursement provided~~  
10 ~~for in section three hundred one d of this article, (B)] (A) as "manu-  
11 facturing gallonage", as such term is defined in subdivision (m) of this  
12 section, [~~(C)] or (B) for the not-for-profit organization exemption~~  
13 provided for in subdivision (h) of section three hundred one-b of this  
14 article, [~~or (D) for the heating exemption provided for in paragraph two~~  
15 ~~of subdivision (d) of section three hundred one b of this article or the~~  
16 ~~heating reimbursement provided for in paragraph two of subdivision (a)~~  
17 ~~of section three hundred one c of this article,]~~ and [(4)] (3) which  
18 will not be used nor has been used in the fuel tank connecting with the  
19 engine of a vessel. No gallonage shall qualify as "commercial gallonage"  
20 where such gallonage is eligible for the [~~(i) utility credit or~~  
21 ~~reimbursement under such section three hundred one d of this article,~~  
22 ~~(ii) "manufacturing exemption" under paragraph three of subdivision (f)~~  
23 ~~of section three hundred one a of this article, (iii)] not-for-profit  
24 organization exemption under subdivision (h) of section three hundred  
25 one-b of this article[, ~~or (iv) heating exemption provided for in para-~~  
26 ~~graph two of subdivision (d) of section three hundred one b of this~~  
27 ~~article or the heating reimbursement provided for in paragraph two of~~  
28 ~~subdivision (a) of section three hundred one c of this article]. The  
29 commissioner shall require such documentary proof to substantiate the  
30 classification of product as "commercial gallonage" as the commissioner  
31 deems appropriate.~~~~~~~~

32 § 21. Paragraph 1 of subdivision (f) of section 301-b of the tax law,  
33 as amended by section 21 of part K of chapter 61 of the laws of 2011, is  
34 amended to read as follows:

35 (1) Residual petroleum product and non-highway diesel motor fuel sold  
36 to an electric corporation, [~~as described in subdivision (a) of section~~  
37 ~~three hundred one d of this article,]~~ as defined in subdivision thirteen  
38 of section two of the public service law, subject to the supervision of  
39 the department of public service, which is registered with the depart-  
40 ment as a petroleum business tax direct pay permittee, and used by such  
41 electric corporation to fuel generators for the purpose of manufacturing  
42 or producing electricity where such electric corporation provides a copy  
43 of a direct pay permit authorized and issued by the commissioner, to the  
44 petroleum business making such sale. If so registered, such corporation  
45 shall be a taxpayer under this article and (i) such electric corporation  
46 shall file a return monthly and pay the applicable tax under this arti-  
47 cle, after the application of allowable credits, on all such purchases  
48 directly to the commissioner, (ii) such electric corporation shall be  
49 subject to all of the provisions of this article relating to the respon-  
50 sibilities and liabilities of taxpayers under this article with respect  
51 to such residual petroleum product and non-highway diesel motor fuel.

52 § 22. This act shall take effect immediately and shall apply to all  
53 tax years commencing on or after the first of January next succeeding  
54 the date on which it shall have become a law; provided, however, that:

55 (a) the amendments to paragraphs 6, 7 and 8 of subdivision (a) of  
56 section 301-b made by section three of this act shall not affect the

1 expiration and repeal of such paragraphs and shall expire and be deemed  
2 repealed therewith;

3 (b) the amendments to the opening paragraph of section 301-c of the  
4 tax law as made by section five of this act shall be subject to the  
5 expiration and reversion of such paragraph pursuant to section 19 of  
6 part W-1 of chapter 109 of the laws of 2006, as amended, when upon such  
7 date the provisions of section five-a of this act shall take effect;

8 (c) the amendments to subdivisions (n) and (o) of section 301-c made  
9 by section seven of this act shall not affect the expiration and repeal  
10 of such subdivisions and shall expire and be deemed repealed therewith;  
11 and

12 (d) the amendments to subdivision (j) of section 1115 of the tax law  
13 made by section seventeen of this act shall be subject to the expiration  
14 and reversion of such subdivision pursuant to section 19 of part W-1 of  
15 chapter 109 of the laws of 2006, as amended, when upon such date the  
16 provisions of section seventeen-a of this act shall take effect.