

STATE OF NEW YORK

2174

2023-2024 Regular Sessions

IN SENATE

January 19, 2023

Introduced by Sens. TEDISCO, BORRELLO, GALLIVAN, PALUMBO, WEIK -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue

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

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

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1 which preclude the collection of such tax by reason of the United States
2 constitution and of laws of the United States enacted pursuant thereto.
3 Provided, further, no Diesel motor fuel shall be included in the measure
4 of the tax unless it shall have previously come to rest within the mean-
5 ing of federal decisional law interpreting the United States constitu-
6 tion. All tax for the period for which a return is required to be filed
7 shall be due on the date limited for the filing of the return for such
8 period, regardless of whether a return is filed as required by this
9 article or whether the return which is filed correctly shows the amount
10 of tax due.

11 1-a. The full amount of the tax imposed by this section shall apply to
12 sales of motor fuel at prices up to two dollars and twenty-five cents
13 per gallon. If the average price of motor fuel in the state exceeds two
14 dollars and twenty-five cents per gallon, the amount of tax imposed by
15 this section shall be reduced by one-quarter of a percentage point
16 (.0025) for every increment of five cents increase in the cost of motor
17 fuel per gallon. The tax imposed by this section shall be suspended
18 entirely if the average price of motor fuel in the state equals or
19 exceeds three dollars per gallon. If the average price of motor fuel in
20 the state falls below three dollars per gallon, the tax imposed by this
21 section shall be assessed in increases of one-quarter of a percentage
22 point (.0025) for every increment of five cents increase in the cost of
23 motor fuel per gallon until the average price of motor fuel in the state
24 decreases to two dollars and twenty-five cents per gallon, at which time
25 the full amount of tax imposed by this section shall apply to sales of
26 motor fuel.

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

29 § 282-b. Additional Diesel motor fuel tax. 1. In addition to the tax
30 imposed by section two hundred eighty-two-a of this ~~chapter~~ article, a
31 like tax shall be imposed at the rate of three cents per gallon upon
32 sale or use within the state of Diesel motor fuel or upon the delivery
33 of Diesel motor fuel to a filling station or into the fuel tank of a
34 motor vehicle for use in the operation thereof. Except as otherwise
35 provided in this section, all of the provisions of this article shall
36 apply with respect to the additional tax imposed by this section to the
37 same extent as if it were imposed by said section two hundred eighty-
38 two-a. Beginning on April first, nineteen hundred ninety-one, four and
39 one-sixth per centum of the moneys received by the department pursuant
40 to the provisions of this section shall be deposited to the credit of
41 the emergency highway reconditioning and preservation fund reserve
42 account established pursuant to the provisions of paragraph (b) of
43 subdivision two of former section eighty-nine of the state finance law.
44 Beginning on April first, nineteen hundred ninety-one, four and one-
45 sixth per centum of the moneys received by the department pursuant to
46 the provisions of this section shall be deposited to the credit of the
47 emergency highway construction and reconstruction fund reserve account
48 established pursuant to the provisions of paragraph (b) of subdivision
49 two of former section eighty-nine-a of the state finance law. Beginning
50 on April first, nineteen hundred ninety-two, an additional eight and
51 one-third per centum of the moneys received by the department pursuant
52 to the provisions of this section shall be deposited to the credit of
53 the emergency highway reconditioning and preservation fund reserve
54 account established pursuant to the provisions of paragraph (b) of
55 subdivision two of former section eighty-nine of the state finance law.
56 Beginning on April first, nineteen hundred ninety-two, an additional

1 eight and one-third per centum of the moneys received by the department
2 pursuant to the provisions of this section shall be deposited to the
3 credit of the emergency highway construction and reconstruction fund
4 reserve account established pursuant to the provisions of paragraph (b)
5 of subdivision two of former section eighty-nine-a of the state finance
6 law. Beginning on April first, two thousand one, seventy-five per centum
7 of the moneys received by the department pursuant to the provisions of
8 this section shall be deposited in the dedicated fund accounts pursuant
9 to subdivision (d) of section three hundred one-j of this chapter.
10 Beginning on April first, two thousand three, all of the moneys received
11 by the department pursuant to the provisions of this section shall be
12 deposited in the dedicated fund accounts pursuant to subdivision (d) of
13 section three hundred one-j of this chapter.

14 2. The full amount of the tax imposed by this section shall apply to
15 sales of motor fuel at prices up to two dollars and twenty-five cents
16 per gallon. If the average price of motor fuel in the state exceeds two
17 dollars and twenty-five cents per gallon, the amount of tax imposed by
18 this section shall be reduced by two-tenths of a percentage point (.002)
19 for every increment of five cents increase in the cost of motor fuel per
20 gallon. The tax imposed by this section shall be suspended entirely if
21 the average price of motor fuel in the state equals or exceeds three
22 dollars per gallon. If the average price of motor fuel in the state
23 falls below three dollars per gallon, the tax imposed by this section
24 shall be assessed in increases of two-tenths of a percentage point
25 (.002) for every increment of five cents increase in the cost of motor
26 fuel per gallon until the average price of motor fuel in the state
27 decreases to two dollars and twenty-five cents per gallon, at which time
28 the full amount of tax imposed by this section shall apply to sales of
29 motor fuel.

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

32 § 282-c. Supplemental Diesel motor fuel tax. 1. In addition to the
33 taxes imposed by sections two hundred eighty-two-a and two hundred
34 eighty-two-b of this [~~chapter~~] article, a like tax shall be imposed at
35 the rate of one cent per gallon upon the sale or use within the state of
36 Diesel motor fuel or upon the delivery of Diesel motor fuel to a filling
37 station or into the fuel tank of a motor vehicle for use in the opera-
38 tion thereof. Except for paragraph (b) of subdivision three of section
39 two hundred eighty-nine-c of this article, all the provisions of this
40 article shall apply with respect to the supplemental tax imposed by this
41 section to the same extent as if it were imposed by said section two
42 hundred eighty-two-a. On and after the first day of October, nineteen
43 hundred seventy-two, twenty-five per centum of the monies received by
44 the department pursuant to the provisions of this section shall be
45 deposited to the credit of the emergency highway reconditioning and
46 preservation fund established pursuant to the provisions of former
47 section eighty-nine of the state finance law. Beginning on April first,
48 nineteen hundred eighty-three, twenty-five per centum of the monies
49 received by the department pursuant to the provisions of this section
50 shall be deposited to the credit of the emergency highway construction
51 and reconstruction fund established pursuant to the provisions of former
52 section eighty-nine-a of the state finance law. Beginning on April
53 first, nineteen hundred ninety, an additional twelve and one-half per
54 centum of the moneys received by the department pursuant to the
55 provisions of this section shall be deposited to the credit of the emer-
56 gency highway reconditioning and preservation fund reserve account

1 established pursuant to the provisions of paragraph (b) of subdivision
2 two of former section eighty-nine of the state finance law. Beginning on
3 April first, nineteen hundred ninety, an additional twelve and one-half
4 per centum of the moneys received by the department pursuant to the
5 provisions of this section shall be deposited to the credit of the emer-
6 gency highway construction and reconstruction fund reserve account
7 established pursuant to the provisions of paragraph (b) of subdivision
8 two of former section eighty-nine-a of the state finance law. Beginning
9 on April first, nineteen hundred ninety-one, an additional twelve and
10 one-half per centum of the moneys received by the department pursuant to
11 the provisions of this section shall be deposited to the credit of the
12 emergency highway reconditioning and preservation fund reserve account
13 established pursuant to the provisions of paragraph (b) of subdivision
14 two of former section eighty-nine of the state finance law. Beginning on
15 April first, nineteen hundred ninety-one, an additional twelve and one-
16 half per centum of the moneys received by the department pursuant to the
17 provisions of this section shall be deposited to the credit of the emer-
18 gency construction and reconstruction fund reserve account established
19 pursuant to the provisions of paragraph (b) of subdivision two of former
20 section eighty-nine-a of the state finance law. Beginning on April
21 first, two thousand three, all of the moneys received by the department
22 pursuant to the provisions of this section shall be deposited in the
23 dedicated fund accounts pursuant to subdivision (d) of section three
24 hundred one-j of this chapter.

25 2. The full amount of the tax imposed by this section shall apply to
26 sales of motor fuel at prices up to two dollars and twenty-five cents
27 per gallon. If the average price of motor fuel in the state exceeds two
28 dollars and twenty-five cents per gallon, the amount of tax imposed by
29 this section shall be reduced by sixty-six hundredths of a percentage
30 point (.0066) for every increment of five cents increase in the cost of
31 motor fuel per gallon. The tax imposed by this section shall be
32 suspended entirely if the average price of motor fuel in the state
33 equals or exceeds three dollars per gallon. If the average price of
34 motor fuel in the state falls below three dollars per gallon, the tax
35 imposed by this section shall be assessed in increases of sixty-six
36 hundredths of a percentage point (.0066) for every increment of five
37 cents increase in the cost of motor fuel per gallon until the average
38 price of motor fuel in the state decreases to two dollars and twenty-
39 five cents per gallon, at which time the full amount of tax imposed by
40 this section shall apply to sales of motor fuel.

41 § 4. Subdivision 1 of section 284 of the tax law, as amended by chap-
42 ter 276 of the laws of 1986, is amended and a new subdivision 3 is added
43 to read as follows:

44 1. ~~[There]~~ Subject to the provisions of subdivision three of this
45 section, there is hereby levied and imposed an excise tax of four cents
46 per gallon upon motor fuel (a) imported into or caused to be imported
47 into the state by a distributor for use, distribution, storage or sale
48 in the state or upon motor fuel which is produced, refined, manufactured
49 or compounded by a distributor in the state (which acts shall hereinaft-
50 er in this subdivision be encompassed by the phrase "imported or manu-
51 factured") or (b) if the tax has not been imposed prior to its sale in
52 this state, which is sold by a distributor (which act, in conjunction
53 with the acts described in paragraph (a) of this subdivision, shall
54 hereinafter in this article be encompassed by the phrase "imported,
55 manufactured or sold"), except when imported, manufactured or sold under
56 circumstances which preclude the collection of such tax by reason of the

1 United States constitution and of laws of the United States enacted
2 pursuant thereto or when imported or manufactured by an organization
3 described in paragraph one or two of subdivision (a) of section eleven
4 hundred sixteen of this chapter or a hospital included in the organiza-
5 tions described in paragraph four of such subdivision for its own use or
6 consumption and except kero-jet fuel when imported or manufactured by an
7 airline for use in its airplanes. Provided, further, no motor fuel shall
8 be included in the measure of the tax unless it shall have previously
9 come to rest within the meaning of federal decisional law interpreting
10 the United States constitution. All tax for the period for which a
11 return is required to be filed shall be due on the date limited for the
12 filing of the return for such period, regardless of whether a return is
13 filed by such distributor as required by this article or whether the
14 return which is filed correctly shows the amount of tax due.

15 3. The full amount of the tax imposed by this section shall apply to
16 sales of motor fuel at prices up to two dollars and twenty-five cents
17 per gallon. If the average price of motor fuel in the state exceeds two
18 dollars and twenty-five cents per gallon, the amount of tax imposed by
19 this section shall be reduced by one-quarter of a percentage point
20 (.0025) for every increment of five cents increase in the cost of motor
21 fuel per gallon. The tax imposed by this section shall be suspended
22 entirely if the average price of motor fuel in the state equals or
23 exceeds three dollars per gallon. If the average price of motor fuel in
24 the state falls below three dollars per gallon, the tax imposed by this
25 section shall be assessed in increases of one-quarter of a percentage
26 point (.0025) for every increment of five cents increase in the cost of
27 motor fuel per gallon until the average price of motor fuel in the state
28 decreases to two dollars and twenty-five cents per gallon, at which time
29 the full amount of tax imposed by this section shall apply to sales of
30 motor fuel.

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

33 § 284-a. Additional motor fuel tax. 1. In addition to the tax imposed
34 by section two hundred eighty-four of this ~~chapter~~ article, a like tax
35 shall be imposed at the rate of three cents per gallon upon motor fuel
36 imported, manufactured or sold within this state by a distributor.
37 Except as otherwise provided in this section, all the provisions of this
38 article except subdivision two of section two hundred eighty-nine-e of
39 this article shall apply with respect to the additional tax imposed by
40 this section to the same extent as if it were imposed by said section
41 two hundred eighty-four. Beginning on April first, nineteen hundred
42 ninety-one, four and one-sixth per centum of the moneys received by the
43 department pursuant to the provisions of this section shall be deposited
44 to the credit of the emergency highway reconditioning and preservation
45 fund reserve account established pursuant to the provisions of paragraph
46 (b) of subdivision two of former section eighty-nine of the state
47 finance law. Beginning on April first, nineteen hundred ninety-one,
48 four and one-sixth per centum of the moneys received by the department
49 pursuant to the provisions of this section shall be deposited to the
50 credit of the emergency highway construction and reconstruction fund
51 reserve account established pursuant to the provisions of paragraph (b)
52 of subdivision two of former section eighty-nine-a of the state finance
53 law. Beginning on April first, nineteen hundred ninety-two, an addi-
54 tional eight and one-third per centum of the moneys received by the
55 department pursuant to the provisions of this section shall be deposited
56 to the credit of the emergency highway reconditioning and preservation

1 fund reserve account established pursuant to the provisions of paragraph
2 (b) of subdivision two of former section eighty-nine of the state
3 finance law. Beginning on April first, nineteen hundred ninety-two, an
4 additional eight and one-third per centum of the moneys received by the
5 department pursuant to the provisions of this section shall be deposited
6 to the credit of the emergency highway construction and reconstruction
7 fund reserve account established pursuant to the provisions of paragraph
8 (b) of subdivision two of former section eighty-nine-a of the state
9 finance law. Beginning on April first, two thousand, seventy-five per
10 centum of the moneys received by the department pursuant to the
11 provisions of this section shall be deposited in the dedicated fund
12 accounts pursuant to subdivision (d) of section three hundred one-j of
13 this chapter. Beginning on April first, two thousand three, all of the
14 moneys received by the department pursuant to the provisions of this
15 section shall be deposited in the dedicated fund accounts pursuant to
16 subdivision (d) of section three hundred one-j of this chapter.

17 2. The full amount of the tax imposed by this section shall apply to
18 sales of motor fuel at prices up to two dollars and twenty-five cents
19 per gallon. If the average price of motor fuel in the state exceeds two
20 dollars and twenty-five cents per gallon, the amount of tax imposed by
21 this section shall be reduced by two-tenths of a percentage point (.002)
22 for every increment of five cents increase in the cost of motor fuel per
23 gallon. The tax imposed by this section shall be suspended entirely if
24 the average price of motor fuel in the state equals or exceeds three
25 dollars per gallon. If the average price of motor fuel in the state
26 falls below three dollars per gallon, the tax imposed by this section
27 shall be assessed in increases of two-tenths of a percentage point
28 (.002) for every increment of five cents increase in the cost of motor
29 fuel per gallon until the average price of motor fuel in the state
30 decreases to two dollars and twenty-five cents per gallon, at which time
31 the full amount of tax imposed by this section shall apply to sales of
32 motor fuel.

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

35 § 284-c. Supplemental motor fuel tax. 1. In addition to the taxes
36 imposed by sections two hundred eighty-four and two hundred
37 eighty-four-a of this ~~chapter~~ article, a like tax shall be imposed at
38 the rate of one cent per gallon upon motor fuel imported, manufactured
39 or sold within this state by a distributor. Except for paragraph (b) of
40 subdivision three of section two hundred eighty-nine-c of this article,
41 all the provisions of this article shall apply with respect to the
42 supplemental tax imposed by this section to the same extent as if it
43 were imposed by said section two hundred eighty-four. On and after the
44 first day of October, nineteen hundred seventy-two, twenty-five per
45 centum of the monies received by the department pursuant to the
46 provisions of this section shall be deposited to the credit of the emer-
47 gency highway reconditioning and preservation fund established pursuant
48 to the provisions of former section eighty-nine of the state finance
49 law. Beginning on April first, nineteen hundred eighty-three, twenty-
50 five per centum of the monies received by the department pursuant to the
51 provisions of this section shall be deposited to the credit of the emer-
52 gency highway construction and reconstruction fund established pursuant
53 to the provisions of former section eighty-nine-a of the state finance
54 law. Beginning on April first, nineteen hundred ninety, an additional
55 twelve and one-half per centum of the monies received by the department
56 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

1 gallon until the average price of motor fuel in the state decreases to
2 two dollars and twenty-five cents per gallon, at which time the full
3 amount of tax imposed by this section shall apply to sales of motor
4 fuel.

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

7 (n) Notwithstanding the provisions of this subdivision, the full
8 amount of tax imposed by this section shall only apply when the average
9 price of motor fuel in the state is two dollars and twenty-five cents or
10 less. If the average price of motor fuel exceeds two dollars and twen-
11 ty-five cents, the amount of tax imposed by this section shall be
12 reduced by one-quarter of a percentage point (.0025) for every increment
13 of five cents increase in the cost of motor fuel per gallon. The tax
14 imposed by this section shall be suspended entirely if the average price
15 of motor fuel in the state equals or exceeds three dollars per gallon.
16 If the average price of motor fuel in the state falls below three
17 dollars per gallon, the tax imposed by this section shall be assessed in
18 increases of one-quarter of a percentage point (.0025) for every incre-
19 ment of five cents increase in the cost of motor fuel per gallon until
20 the average price of motor fuel in the state decreases to two dollars
21 and twenty-five cents per gallon, at which time the full amount of tax
22 imposed by this article shall apply.

23 § 9. Section 1201 of the tax law is amended by adding a new subdivi-
24 sion (n) to read as follows:

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

30 § 10. Section 1202 of the tax law is amended by adding a new subdivi-
31 sion (h) to read as follows:

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

37 § 11. The tax law is amended by adding a section 48 to read as
38 follows:

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

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