

# STATE OF NEW YORK

7953

## IN SENATE

January 4, 2024

Introduced by Sen. PARKER -- 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 and the state finance law, in relation to enacting the "New York Oil Windfall Profits Tax Act"

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

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

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

5 § 301-n. Windfall profits tax. (a) Imposition of tax. Notwithstanding  
6 any other provision of law, rule or regulation to the contrary, in addi-  
7 tion to any other tax imposed under this article, in each calendar quar-  
8 ter there is hereby imposed on any covered taxpayer an excise tax at the  
9 rate determined under subdivision (b) of this section on:

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

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

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

17 (1) Fifty percent, and

18 (2) The excess, if any, of:

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

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

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

27 (d) Records and information. Each taxpayer liable for tax under this  
28 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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1 information to the commissioner and to such other persons having an  
2 interest in the taxable crude oil with respect to such oil as the  
3 commissioner may by regulations prescribe.

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

7 (f) Regulations. The commissioner shall prescribe such rules and regu-  
8 lations as may be necessary or appropriate to carry out the purposes of  
9 this section.

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

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

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

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

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

30 (2) "Covered taxpayer" shall mean:

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

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

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

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

42 (3) "Taxable crude oil" shall include crude oil and crude oil conden-  
43 sates.

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

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

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

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

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

5 (3) Identification requirements. Notwithstanding any contrary  
6 provision of this subdivision, the rebate amount authorized hereunder  
7 shall be treated as being zero unless the taxpayer includes such taxpay-  
8 er's full valid identification number on the return filed for the taxa-  
9 ble year.

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

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

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

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

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

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

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

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

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

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

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

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

1 this chapter for such applicable taxable year in an amount equal to the  
2 advance refund amount for such rebate taxable year.

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

9 (3) Timing and manner of payments. The commissioner shall, subject to  
10 the provisions of this section, refund or credit any overpayment attrib-  
11 utable to this section and determined with respect to any calendar quar-  
12 ter not later than ninety days after the end of such calendar quarter.  
13 No refund or credit shall be made or allowed under this subdivision with  
14 respect to any applicable taxable year after the last day of the rebate  
15 taxable year.

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

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

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

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

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

39 a. the date which is ninety days after the date specified in section  
40 6072 (a) of the internal revenue code with respect to returns for the  
41 taxable year following the applicable taxable year, or

42 b. September first of the calendar year following the applicable tax-  
43 able year as defined in subdivision (n) of this section.

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

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

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

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

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

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

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

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

23 (r) Local option. Notwithstanding any contrary provision of law, a  
24 municipality may make the election to impose an excise tax on any  
25 covered taxpayer, for the applicable period, at the rate as determined  
26 under subdivision (b) of this section by local law, ordinance or resol-  
27 ution, if such municipality mails, by certified or registered mail, a  
28 certified copy of such local law, ordinance or resolution to the commis-  
29 sioner at his or her office in Albany no later than the Wednesday imme-  
30 diately preceding the first day of the applicable period.

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

33 § 99-rr. Protect New Yorkers from gas price surges fund. 1. There is  
34 hereby established in the joint custody of the commissioner of taxation  
35 and finance and the comptroller, a special fund to be known as the  
36 "protect New Yorkers from gas price surges fund".

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

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

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

7 § 4. This act shall take effect immediately and shall apply to calen-  
8 dar quarters commencing on and after such date.