

STATE OF NEW YORK

S. 3202

A. 5986

2007-2008 Regular Sessions

SENATE - ASSEMBLY

February 27, 2007

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

IN ASSEMBLY -- Introduced by M. of A. ALESSI -- 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. Legislative findings and declarations. The legislature
2 hereby finds that commercial fishermen are exempt from the motor fuels
3 tax and the sales tax on diesel motor fuels when such fuels are to be
4 used in commercial fishing vessels. The legislature further finds that
5 the tax law requires commercial fishermen to pay said taxes at the time
6 of purchase of the diesel motor fuel and apply for a subsequent refund
7 of the taxes. The legislature further finds that such commercial fisher-
8 men endure an administrative and financial burden as a result of such
9 law.

10 The legislature, therefore, declares that it is in the interest of the
11 commercial fishing industry of the state of New York to extend the
12 exemption from the taxes to the exemption of the payment of the taxes,
13 and consequently remove the burden placed upon this industry.

14 § 2. Paragraph (b) of subdivision 3 of section 282-a of the tax law,
15 as amended by chapter 245 of the laws of 1989, is amended to read as
16 follows:

17 (b) The tax on the incident of sale or use imposed by subdivision one
18 of this section shall not apply to: (i) the sale to or use by the
19 consumer of previously untaxed Diesel motor fuel which is not enhanced
20 Diesel motor fuel and which is used exclusively for heating purposes or

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

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1 for the purpose of use or consumption directly and exclusively in the
2 production of tangible personal property, gas, electricity, refriger-
3 ation or steam, for sale, but only if all of such fuel is consumed other

4 than on the highways of this state; provided, however, this exemption
5 shall in no event apply to a sale of Diesel motor fuel which involves a
6 delivery at a filling station or into a repository which is equipped
7 with a hose or other apparatus by which such fuel can be dispensed into
8 the fuel tank of a motor vehicle; or (ii) the sale of previously untaxed
9 Diesel motor fuel which is not enhanced Diesel motor fuel to a person
10 registered under this article as a distributor of Diesel motor fuel
11 other than (A) a retail sale to such person or (B) a sale to such person
12 which involves a delivery at a filling station or into a repository
13 which is equipped with a hose or other apparatus by which such fuel can
14 be dispensed into the fuel tank of a motor vehicle; or (iii) a sale or
15 use of enhanced Diesel motor fuel to or by a consumer exclusively for
16 the purposes of heating specified in subparagraph (i) of this paragraph
17 but only if such enhanced Diesel motor fuel is delivered into a storage
18 tank which is not equipped with a hose or other apparatus by which such
19 fuel can be dispensed into the fuel tank of a motor vehicle and such
20 storage tank is attached to the heating unit burning such fuel, provided
21 that each delivery of such fuel of over four thousand five hundred
22 gallons shall be evidenced by a certificate signed by the purchaser
23 stating that the product will be used exclusively for heating purposes;
24 or (iv) a sale or use consisting of no more than four thousand five
25 hundred gallons of Diesel motor fuel in a thirty-day period to or by a
26 consumer who purchases or uses such fuel for use or consumption directly
27 and exclusively in the production for sale of tangible personal property
28 by farming but only if all of such fuel is delivered on the farm site
29 and is consumed other than on the highways of this state (except for the
30 use of the highway to reach adjacent farmlands) provided, however, a
31 farmer may purchase more than four thousand five hundred gallons of
32 Diesel motor fuel in a thirty-day period for such use or consumption
33 exempt from the tax in accordance with prior clearance given by the
34 commissioner [~~of taxation and finance~~]; or (v) a sale to the consumer
35 consisting of not more than twenty gallons of water-white kerosene to be
36 used and consumed exclusively for heating purposes; or (vi) the sale to
37 or delivery at a filling station or other retail vendor of water-white
38 kerosene provided such filling station or other retail vendor only sells
39 such water-white kerosene exclusively for heating purposes in containers
40 of no more than twenty gallons; or (vii) a sale of kero-jet fuel to an
41 airline for use in its airplanes or a use of kero-jet fuel by an airline
42 in its airplanes; or (viii) a sale of kero-jet fuel by a registered
43 distributor of Diesel motor fuel to a fixed base operator registered
44 under this article as a distributor of kero-jet fuel only where such
45 fixed base operator is engaged solely in making or offering to make
46 retail sales not in bulk of kero-jet fuel directly into the fuel tank of
47 an airplane for the purpose of operating such airplane; or (ix) a retail
48 sale not in bulk of kero-jet fuel by a fixed base operator registered
49 under this article as a distributor of kero-jet fuel only where such
50 fuel is delivered directly into the fuel tank of an airplane for use in
51 the operation of such airplane; or (x) a sale of Diesel motor fuel to a
52 "commercial fisherman", as such term is defined in subdivision (i) of
53 section three hundred of this chapter, at retail under the circumstances
54 set forth in paragraph one of subdivision (g) of section three hundred
55 one-c of this chapter, and where such commercial fishing vessel is oper-
56 ated by a commercial fisherman.

1 § 3. Subdivision 4 of section 282-a of the tax law, as added by chap-
2 ter 261 of the laws of 1988, is amended to read as follows:

3 4. The tax imposed by this section on Diesel motor fuel shall be

4 passed through by the seller and included as part of the selling price
5 to each purchaser of such fuel. Provided, however, the amount of the tax
6 imposed by this section may be excluded from the selling price of Diesel
7 motor fuel where (i) a sale of Diesel motor fuel is made to an organiza-
8 tion described in paragraph (a) of subdivision three of this section
9 solely for the purpose stated therein; (ii) a sale of enhanced Diesel
10 motor fuel is made to a consumer exclusively for the purposes of heating
11 specified in subparagraph (i) of paragraph (b) of subdivision three of
12 this section but only if such enhanced Diesel motor fuel is delivered
13 into a storage tank which is not equipped with a hose or other apparatus
14 by which such fuel can be dispensed into the fuel tank of a motor vehi-
15 cle and such storage tank is attached to the heating unit burning such
16 fuel, provided that each delivery of such fuel of over four thousand
17 five hundred gallons shall be evidenced by a certificate signed by the
18 purchaser stating that the product will be used exclusively for heating
19 purposes; (iii) a sale is made consisting of no more than four thousand
20 five hundred gallons (or a greater amount which has been given prior
21 clearance by the commissioner [~~of taxation and finance~~]) of Diesel motor
22 fuel in a thirty-day period to a consumer who purchases such fuel for
23 use or consumption directly and exclusively in the production for sale
24 of tangible personal property by farming but only if all of such fuel is
25 consumed other than on the highways or waterways of this state; or (iv)
26 the sale to or delivery at a filling station or other retail vendor of
27 water-white kerosene provided such filling station or other retail
28 vendor only sells such water-white kerosene exclusively for heating
29 purposes in containers of no more than twenty gallons; or (v) a sale of
30 kero-jet fuel is made to an airline for use in its airplanes; or (vi) a
31 sale of Diesel motor fuel is made to a "commercial fisherman", as such
32 term is defined in subdivision (i) of section three hundred of this
33 chapter, at retail under the circumstances set forth in paragraph one of
34 subdivision (g) of section three hundred one-c of this chapter, and
35 where such commercial fishing vessel is operated by a commercial fisher-
36 man.

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

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

46 § 5. Subdivision (j) of section 1115 of the tax law, as amended by
47 section 12 of part W-1 of chapter 109 of the laws of 2006, is amended to
48 read as follows:

49 (j) The exemptions provided in this section shall not apply to the tax
50 required to be prepaid pursuant to the provisions of section eleven
51 hundred two of this article nor to the taxes imposed by sections eleven
52 hundred five and eleven hundred ten of this article with respect to
53 receipts from sales and uses of motor fuel or diesel motor fuel, except
54 that the exemptions provided in paragraphs nine and forty-two of subdivi-
55 sion (a) of this section shall apply to the tax required to be prepaid
56 pursuant to the provisions of section eleven hundred two of this article

1 and to the taxes imposed by sections eleven hundred five and eleven
2 hundred ten of this article with respect to sales and uses of kero-jet
3 fuel, CNG, hydrogen and E85, provided, however, the exemption allowed

4 for E85 shall be subject to the additional requirements provided in
5 section eleven hundred two of this article with respect to E85 and
6 except that the exemption provided in paragraph twenty-four of subdivi-
7 sion (a) of this section shall apply to the taxes imposed by sections
8 eleven hundred five and eleven hundred ten of this article with respect
9 to sales and uses of diesel motor fuel used in the operation of a fish-
10 ing vessel as described in paragraph twenty-four of subdivision (a) of
11 this section. The exemption provided in subdivision (c) of this section
12 shall apply to sales and uses of diesel motor fuel which is not enhanced
13 diesel motor fuel but only if all of such fuel is consumed other than on
14 the highways of this state, provided, however, this exemption shall in
15 no event apply to a sale of diesel motor fuel which involves a delivery
16 at a filling station or into a repository which is equipped with a hose
17 or other apparatus by which such fuel can be dispensed into the fuel
18 tank of a motor vehicle. The exemption provided in subdivision (c) of
19 this section shall apply to sales and uses of no more than four thousand
20 five hundred gallons of diesel motor fuel in a thirty-day period for use
21 or consumption either in the production for sale of tangible personal
22 property by farming or in a commercial horse boarding operation, or in
23 both but only if all of such fuel is consumed other than on the highways
24 of this state (except for the use of the highways to reach adjacent
25 farmlands or adjacent lands used in a commercial horse boarding opera-
26 tion, or both), provided, however, such exemption shall be applicable to
27 the sale or use of more than four thousand five hundred gallons of
28 diesel motor fuel in a thirty-day period for such use or consumption in
29 accordance with a prior clearance given by the commissioner.

30 § 6. Subdivision (j) of section 1115 of the tax law, as amended by
31 section 8 of part B of chapter 63 of the laws of 2000, 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 exemption provided in paragraph nine of subdivision (a) of this
39 section shall apply to the tax required to be prepaid pursuant to the
40 provisions of section eleven hundred two of this article and to the
41 taxes imposed by sections eleven hundred five and eleven hundred ten of
42 this article with respect to sales and uses of kero-jet fuel and except
43 that the exemption provided in paragraph twenty-four of subdivision (a)
44 of this section shall apply to the taxes imposed by sections eleven
45 hundred five and eleven hundred ten of this article with respect to
46 sales and uses of diesel motor fuel used in the operation of a fishing
47 vessel as described in paragraph twenty-four of subdivision (a) of this
48 section. The exemption provided in subdivision (c) of this section shall
49 apply to sales and uses of diesel motor fuel which is not enhanced
50 diesel motor fuel but only if all of such fuel is consumed other than on
51 the highways of this state, provided, however, this exemption shall in
52 no event apply to a sale of diesel motor fuel which involves a delivery
53 at a filling station or into a repository which is equipped with a hose
54 or other apparatus by which such fuel can be dispensed into the fuel
55 tank of a motor vehicle. The exemption provided in subdivision (c) of
56 this section shall apply to sales and uses of no more than four thousand

1 five hundred gallons of diesel motor fuel in a thirty-day period for use
2 or consumption either in the production for sale of tangible personal
3 property by farming or in a commercial horse boarding operation, or in

4 both but only if all of such fuel is consumed other than on the highways
5 of this state (except for the use of the highways to reach adjacent
6 farmlands or adjacent lands used in a commercial horse boarding opera-
7 tion, or both), provided, however, such exemption shall be applicable to
8 the sale or use of more than four thousand five hundred gallons of
9 diesel motor fuel in a thirty-day period for such use or consumption in
10 accordance with a prior clearance given by the commissioner.

11 § 7. This act shall take effect on the first day of a sales tax quar-
12 terly period, as described in subdivision (b) of section 1136 of the tax
13 law, next commencing at least 120 days after this act shall have become
14 a law, and section five of this act shall apply to sales made under and
15 uses occurring on or after the date such section five shall have taken
16 effect although made or occurring under a prior contract, provided that
17 the amendments to subdivision (j) of section 1115 of the tax law made by
18 section five of this act shall be subject to the expiration and rever-
19 sion of such subdivision pursuant to section 19 of part W-1 of chapter
20 109 of the laws of 2006, as amended, when upon such date the provisions
21 of section six of this act shall take effect.
