



States' Biofuels Statutes

STATE OF NEW YORK

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Current through the 2013 Legislative Session of the New York General Assembly.

§ 1102. Prepayment of sales tax on motor fuel and diesel motor fuel

(a)(1) [Eff. until Sept. 1, 2016, pursuant to L.2006, c. 109, pt. W-1, § 19. See, also, par. (1) below.] Every distributor of motor fuel shall pay, as a prepayment on account of the taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter, a tax on each gallon of motor fuel (i) which he imports or causes to be imported into this state for use, distribution, storage or sale in the state or produces, refines, manufactures or compounds in this state or (ii) if the tax has not been imposed prior to its sale in this state, which he sells (which acts shall in regard to motor fuel hereinafter in this article be encompassed by the phrase “imported, manufactured or sold”), except when imported, manufactured or sold under circumstances which preclude the collection of such tax by reason of the United States constitution and of the laws of the United States enacted pursuant thereto or when imported or manufactured by an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this article or a hospital included in the organizations described in paragraph four of such subdivision for its own use and consumption and except kero-jet fuel when imported by an airline for use in its airplanes, and except CNG, and except hydrogen, and except E85 when delivered to a filling station and placed in a storage tank of such filling station for such E85 to be dispensed directly into a motor vehicle for use in the operation of such vehicle.

(a)(1) [Eff. Sept. 1, 2016. See, also, par. (1) above.] Every distributor of motor fuel shall pay, as a prepayment on account of the taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter, a tax on each gallon of motor fuel (i) which he imports or causes to be imported into this state for use, distribution, storage or sale in the state or produces, refines, manufactures or compounds in this state or (ii) if the tax has not been imposed prior to its sale in this state, which he sells (which acts shall in regard to motor fuel hereinafter in this article be encompassed by the phrase “imported, manufactured or sold”), except when imported, manufactured or sold under circumstances which preclude the collection of such tax by reason of the United States constitution and of the laws of the United States enacted pursuant thereto or when imported or manufactured by an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this article or a hospital included in the organizations described in paragraph four of such subdivision for its own use and consumption and except kero-jet fuel when imported by an airline for use in its

airplanes.

(2) [Eff. until Sept. 1, 2016, pursuant to L.2006, c. 109, pt. W-1, § 19. See, also, par. (2) below.] Every distributor of diesel motor fuel shall pay, as a prepayment on account of the taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter, a tax upon the sale or use of diesel motor fuel in this state. The tax shall be computed based upon the number of gallons of diesel motor fuel sold or used. 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 retail service station. The collection of such tax shall not be made applicable to the sale or use of diesel motor fuel under circumstances which preclude the collection of such tax by reason of the United States constitution and of laws of the United States enacted pursuant thereto. The prepaid tax on diesel motor fuel shall not apply to (i) the sale of non-highway Diesel motor fuel to a person registered as a distributor of Diesel motor fuel other than a sale to such person which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle; (ii) the sale to or delivery at a filling station or other retail vendor of water-white kerosene provided such filling station or other retail vendor only sells such water-white kerosene exclusively for heating purposes in containers of no more than twenty gallons or to the sale of CNG or hydrogen; (iii) the sale of previously untaxed qualified biodiesel, as defined in subdivision twenty-three of section two hundred eighty-two of this chapter, to a person registered under article twelve-A of this chapter as a distributor of Diesel motor fuel other than (A) a retail sale to such person or (B) a sale to such person which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such qualified biodiesel can be dispensed into the fuel tank of a motor vehicle; or (iv) the sale of previously untaxed highway diesel motor fuel by a person registered under article twelve-A of this chapter as a distributor of diesel motor fuel to a person registered under such article twelve-A as a distributor of diesel motor fuel where the highway diesel motor fuel is either: (A) being delivered by pipeline, railcar, barge, tanker or other vessel to a terminal, the operator of which terminal is registered under section two hundred eighty-three-b of this chapter, or (B) within such a terminal where it has been so delivered. Provided, however, that the exemption set forth in this subparagraph shall not apply to any highway diesel motor fuel if it is removed from a terminal, other than by pipeline, barge, tanker or other vessel.

(2) [Eff. Sept. 1, 2016, pursuant to L.2006, c. 109, pt. W-1, § 19. See, also, par. (2) above.] Every distributor of diesel motor fuel shall pay, as a prepayment on account of the taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter, a tax upon the sale or use of diesel motor fuel in this state. The tax shall be computed based upon the number of gallons of diesel motor fuel sold or used. 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 retail service station. The collection of such tax shall not be made applicable to the sale or use of diesel motor fuel under circumstances which preclude the collection of such tax by reason of the United States constitution and of laws of the United States enacted pursuant thereto. The prepaid tax on diesel motor fuel shall not apply to (i) the sale of non-highway Diesel motor fuel to a person registered as a distributor of Diesel motor fuel other than a sale to such person which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle; (ii) the sale to or delivery at a filling station or other retail vendor of water-white kerosene provided such filling station or other retail vendor only sells such water-white kerosene exclusively for heating purposes in

containers of no more than twenty gallons; (iii) the sale of previously untaxed qualified biodiesel, as defined in subdivision twenty-three of section two hundred eighty-two of this chapter to a person registered under article twelve-A of this chapter as a distributor of Diesel motor fuel other than (A) a retail sale to such person or (B) a sale to such person which involves a delivery at a filling station or into a repository which is equipped with a hose or other apparatus by which such qualified biodiesel can be dispensed into the fuel tank of a motor vehicle; or (iv) the sale of previously untaxed highway diesel motor fuel by a person registered under article twelve-A of this chapter as a distributor of diesel motor fuel to a person registered under such article twelve-A as a distributor of diesel motor fuel where the highway diesel motor fuel is either: (A) being delivered by pipeline, railcar, barge, tanker or other vessel to a terminal, the operator of which terminal is registered under section two hundred eighty-three-b of this chapter, or (B) within such a terminal where it has been so delivered. Provided, however, that the exemption set forth in this subparagraph shall not apply to any highway diesel motor fuel once it is removed from a terminal, other than by pipeline, barge, tanker or other vessel.

(3) The amount of such prepayment per gallon shall be computed pursuant to the provisions of subdivision (e) of section eleven hundred eleven of this article. Provided, further, no motor fuel or diesel motor fuel shall be included in the measure of the tax under clause (i) of paragraph one and paragraph two of this subdivision unless it shall have previously come to rest within the meaning of federal decisional law interpreting the United States constitution.

(b) The taxes required to be prepaid pursuant to this section shall be administered and collected in a like manner as the taxes imposed by sections eleven hundred five and eleven hundred ten of this article. All the provisions of this article relating to or applicable to the administration, collection and disposition of the taxes imposed by such sections shall apply to the tax required to be prepaid under this section so far as such provisions can be made applicable to such prepayments of tax with such limitations as set forth in this article and such modifications as may be necessary in order to adapt such language to the tax so imposed, provided, however, that the provisions of paragraph one of subdivision (c) of section eleven hundred thirty-seven of this article and the reference in section eleven hundred thirty-seven-A of this article to such paragraph one of subdivision (c) of section eleven hundred thirty-seven shall not be applicable to such tax required to be prepaid under this section. Such provisions shall apply with the same force and effect as if the language of those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or is not relevant to the tax required to be prepaid by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to the tax required to be prepaid pursuant to this section unless a different meaning is clearly required. Provided, further, that, except as otherwise provided in subdivision (j) of section eleven hundred fifteen of this article and except as otherwise provided in paragraph five of subdivision (b) of section eleven hundred sixteen of this article, the exemptions provided in such sections (other than that provided in paragraph nine of subdivision (a) of such section eleven hundred fifteen with respect to purchases of kero-jet fuel) shall not apply to the tax required to be prepaid under this section.

(c) Nothing in this article shall be construed to require the payment of the tax required to be prepaid pursuant to this section more than once upon motor fuel or diesel motor fuel sold within the state. When the foregoing prepaid tax imposed pursuant to this section is paid it shall have been so paid on account of the taxes imposed by this article or pursuant to the authority of article twenty-nine of this chapter with respect to the retail sale or use of motor fuel or diesel motor fuel. Nothing in this section shall modify or

affect the taxes imposed by sections eleven hundred five and eleven hundred ten of this article as applied to receipts from the sale or use of such fuel.

(d) Deposit and disposition of revenue. (1) Consistent with sections eleven hundred forty-eight and twelve hundred sixty-one of this chapter, the taxes imposed pursuant to this section and interest and penalties thereon received by the commissioner, after deducting the amount which the commissioner of taxation and finance or his delegate shall determine to be necessary for reasonable costs of the commissioner in administering, collecting and distributing such taxes, shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the comptroller, to the credit of the comptroller. Of the total revenue collected or received under this section, the comptroller shall retain in his hands such amount as the commissioner of taxation and finance may determine to be necessary for refunds under this article and pursuant to the authority of article twenty-nine of this chapter.

(2) On or before the twelfth day of each month, after reserving such amount for such refunds and such costs, the commissioner or the commissioner's delegate shall certify to the comptroller the amount of all revenues so received during the prior month as a result of the taxes, interest and penalties so imposed and, in addition, on or before the last day of June and December the commissioner or delegate shall certify the amount of such moneys received during and including the first twenty-five days of said months. At the time the commissioner prepares such certification, the commissioner or the commissioner's delegate shall determine the receipts attributable to the amount, and number of gallons, of motor fuel and diesel motor fuel sold at retail in each county and city and in the metropolitan commuter transportation district subject to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article and the like taxes imposed pursuant to the authority of article twenty-nine of this chapter and the commissioner or delegate shall certify the portion of such receipts and gallons from the total payments that represents the prepaid tax on account of the taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter (determined without regard to the taxes imposed by this section and any like taxes imposed pursuant to the authority of article twenty-nine of this chapter) based upon the retail sales or uses of such fuel in such jurisdiction or district. The amount of revenues so certified shall be deposited and distributed by the comptroller in accordance therewith. Where the amount so certified in any distribution is more or less than the amount due, the amount of the overpayment or underpayment shall be determined as soon after the discovery of the overpayment or underpayment as is reasonably possible and subsequent certifications to the comptroller shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments as the comptroller and the commissioner shall consider reasonable in view of the amount of the overpayment or underpayment and all other pertinent facts and circumstances.

(e) For the purposes of this section and article twelve-A of this chapter the term "use" shall mean, in addition to the meaning set forth in paragraph seven of subdivision (b) of section eleven hundred one of this article, the exercise of any right or power over motor fuel or diesel motor fuel by any person, whether or not a purchaser, including, but not limited to, the receiving, the withdrawal from storage or any consumption of such fuel.

Credits: (Added L.1985, c. 44, § 20. Amended L.1986, c. 276, § 15; L.1988, c. 261, § 84; L.2006, c. 109, pt. M-1, § 2-a, eff. June 1, 2006; L.2006, c. 109, pt. W-1, §§ 8, 9, eff. Sept. 1, 2006; L.2006, c. 302,

§ 11, eff. Dec. 1, 2006; L.2011, c. 61, pt. K, § 39, eff. Sept. 1, 2011; L.2011, c. 61, pt. K, § 39-a; L.2012, c. 59, pt. E, § 5, eff. June 1, 2012; L.2012, c. 59, pt. E, § 6; L.2013, c. 59, pt. W, § 9, eff. Aug. 1, 2013; L.2013, c. 59, pt. W, § 10.)