



States' Biofuels Statutes

STATE OF NEW YORK

This project was undertaken in partnership with the USDA Office of the Chief Economist, The Office of Energy Policy and New Uses. For information on the full project, visit [States' Biofuels Statutory Citations](#).

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

§ 282-a. Imposition of excise tax on Diesel motor fuel

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

2. No person shall sell or use Diesel motor fuel within this state (other than a retail sale not in bulk or self-use of Diesel motor fuel which has been the subject of a retail sale), import or cause the importation of Diesel motor fuel into the state or produce, refine, manufacture or compound Diesel motor fuel within the state unless such person shall be registered by the department as a distributor of Diesel motor fuel. Provided, the commissioner shall not register as a distributor of Diesel motor fuel any person who is engaged solely in one or both of the following: (i) any person who makes or offers to make a retail sale not in bulk of such fuel or (ii) any person who purchases Diesel motor fuel in bulk in this state for the sole purpose of self-use. The commissioner may, however, register as a distributor of kero-jet fuel only a

fixed base operator who makes no sales of kero-jet fuel other than retail sales not in bulk delivered directly into the fuel tank of an airplane for use in the operation of such airplane and who makes no other sales of diesel motor fuel. Such registration shall apply only to the wholesale purchase of kero-jet fuel and the retail sale of such fuel not in bulk for delivery directly into the fuel tank of an airplane for use in the operation thereof. Provided, further, that if the commissioner is satisfied that full registration is not necessary in order to protect tax revenues, the commissioner may limit or modify the requirement of registration as a distributor with respect to any person otherwise required to register solely because such person engages in the sale of non-highway Diesel motor fuel where such person makes sales of non-highway Diesel motor fuel to the consumer solely for the purposes described in subparagraph (i) of paragraph (b) of subdivision three of this section, provided that if the commissioner so limits or modifies such registration requirement with respect to such person, then such registration shall apply only to the importation, sale and distribution of such non-highway Diesel motor fuel. The commissioner may also waive any other requirement imposed by this article on such a distributor. All the provisions of section two hundred eighty-three of this article shall apply to applicants for registration and registrants with respect to Diesel motor fuel, and, in addition, distributors with respect to Diesel motor fuel shall be subject to all other provisions of this article relating to distributors of motor fuel, including but not limited to, the keeping of records, the fixing, determination and payment of tax and filing of returns. Provided, further, the commissioner may limit or modify the requirement of registration as a distributor with respect to any person who produces for self use “unqualified biodiesel.”

3. (a) The tax imposed by this section shall not apply to the sale of untaxed Diesel motor fuel to or the use of such fuel by an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter where such Diesel motor fuel is used by such organization for its own use or consumption.

(b) The tax on the incidence of sale or use imposed by subdivision one of this section shall not apply to: (i) the sale or use of non-highway Diesel motor fuel, but only if all of such fuel is consumed other than on the public highways of this state (except for the use of the public highway by farmers to reach adjacent farmlands); provided, however, this exemption shall in no event apply to a sale of non-highway Diesel motor fuel 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 (except for delivery at a farm site which qualifies for the exemption under subdivision (g) of section three hundred one-b of this chapter); or (ii) a sale to the consumer consisting of not more than twenty gallons of water-white kerosene to be used and consumed exclusively for heating purposes; or (iii) 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 (iv) a sale of kero-jet fuel to an airline for use in its airplanes or a use of kero-jet fuel by an airline in its airplanes; or (v) a sale of kero-jet fuel by a registered distributor of Diesel motor fuel to a fixed base operator registered under this article as a distributor of kero-jet fuel only where such fixed base operator is engaged solely in making or offering to make retail sales not in bulk of kero-jet fuel directly into the fuel tank of an airplane for the purpose of operating such airplane; or (vi) a retail sale not in bulk of kero-jet fuel by a fixed base operator registered under this article as a distributor of kero-jet fuel only where such fuel is delivered directly into the fuel tank of an airplane for use in the operation of such airplane; or (vii) the sale of previously untaxed qualified biodiesel to a person registered under this article 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 (viii) the sale of previously untaxed highway Diesel motor fuel by a person registered under this article as a distributor of Diesel motor fuel to a person registered under this article 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 article, 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.

(c) Nothing in this article shall exempt non-highway diesel motor fuel from the imposition of the tax under this section, if such non-highway diesel motor fuel is intended for use on the waterways of the state including any other waterways bordering on the state, for operating pleasure or recreational motor boats thereon.

4. The tax imposed by this section on Diesel motor fuel shall be passed through by the seller and included as part of the selling price to each purchaser of such fuel. Provided, however, the amount of the tax imposed by this section may be excluded from the selling price of Diesel motor fuel where (i) a sale of Diesel motor fuel is made to an organization described in paragraph (a) of subdivision three of this section solely for the purpose stated therein; (ii) a sale of non-highway Diesel motor fuel is made to a consumer but only if such non-highway Diesel motor fuel is not delivered to a filling station, nor delivered into a storage tank which is equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle; or (iii) 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 (iv) a sale of kero-jet fuel is made to an airline for use in its airplanes.

5. All the provisions of this article relating to the administration and collection of the taxes on motor fuel, except section two hundred eighty-three-a of this article, shall be applicable to the tax imposed by this section with such limitation as specifically provided for in this article with respect to Diesel motor fuel and with such modification as may be necessary to adapt the language of such provisions to the tax imposed by this section. With respect to the bond or other security required by subdivision three of section two hundred eighty-three of this article, the commissioner, in determining the amount of bond or other security required for the purpose of securing tax payments, shall take into account the volume of non-highway Diesel motor fuel and other Diesel motor fuel sold for exempt purposes by a distributor of Diesel motor fuel during prior periods as a factor reducing potential tax liability along with any other relevant factors in determining the amount of security required. With respect to the bond required to be filed prior to registration as a Diesel motor fuel distributor, no bond shall be required of an applicant upon a finding of the applicant's fiscal responsibility, as reflected by such factors as net worth, current assets and liabilities, and tax reporting and payment history, and the department shall not provide for a minimum bond of every applicant.

Credits: (Added L.1988, c. 261, § 70. Amended L.1989, c. 245, §§ 7, 8; L.1995, c. 2, § 75; L.2006, c. 302, § 2, eff. Dec. 1, 2006; L.2011, c. 61, pt. K, § 5, eff. Sept. 1, 2011; L.2012, c. 59, pt. E, § 2, eff. June 1, 2012; L.2013, c. 59, pt. W, §§ 2 to 4, eff. Aug. 1, 2013.)