



States' Biofuels Statutes

STATE OF NEW YORK

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

§ 289-c. Refunds

1. The tax imposed by this article though payable by the distributor, shall be borne by the purchaser and when paid by the distributor shall be deemed to have been so paid for the account of the purchaser. No person shall sell, advertise, or offer for sale motor fuel, separate from the tax herein imposed; and the price paid by the purchaser for motor fuel on which the tax has been paid, if such price be not less than the amount of the tax thereon, shall be presumed for the purposes of this section to have included the tax.

1-a. (a) Any person selling motor fuel to an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter or a hospital included in the organizations described in paragraph four of such subdivision for its own use or consumption or selling kero-jet fuel to an airline for use in its airplanes may exclude the amount of the tax or taxes imposed by this article from the selling price thereof.

(b)(i) Any person registered as a distributor of motor fuel selling aviation gasoline to a fixed base operator registered under this article as a "retail seller of aviation gasoline" may exclude the amount of the tax or taxes imposed by this article from the selling price thereof where such aviation gasoline is delivered to the fixed base operator's premises and placed in a storage facility used exclusively for the purpose of fueling airplanes. The commissioner may register as a "retail seller of aviation gasoline" a fixed base operator who makes no sales of aviation gasoline other than retail sales not in bulk delivered directly into the fuel tank of an airplane and who makes no sales of motor fuel other than the foregoing described retail sales of aviation gasoline delivered directly into the fuel tank of airplanes (provided, in no event, shall kero-jet fuel be construed to constitute motor fuel). Such registration shall apply only to the wholesale purchase of only aviation gasoline by such "retail seller of aviation gasoline" and the retail sale by such person of aviation gasoline not in bulk for delivery directly into the fuel tank of an airplane for use in the operation thereof. In no event shall the registration as a "retail seller of aviation gasoline" be deemed to be an authorization to import, or cause to be imported, motor fuel including aviation gasoline, into this state. All the provisions of section two hundred eighty-three-a (except subdivision one) of this article shall be applicable to the registration of "retail sellers of aviation gasoline" with the

same force and effect as if the language of such section had been incorporated in full herein and had expressly referred to the registration of “retail sellers of aviation gasoline”, with such modification as may be necessary in order to adapt the language so as to apply to the registration of applicants for and persons registered as “retail sellers of aviation gasoline”. Provided, however, that if the commissioner is satisfied that certain requirements of such foregoing provisions with respect to registration are not necessary in order to protect tax revenues, the commissioner may waive, limit or modify such requirements with respect to the registration of “retail sellers of aviation gasoline”. The department, where applicable, shall coordinate the registration process with respect to a fixed base operator applying for registration as a “retail seller of aviation gasoline” and as a distributor of kero-jet fuel only with the purpose of eliminating any duplicative information or procedures required of the applicant. Every person registered as a “retail seller of aviation gasoline” shall keep complete and accurate records of purchases and sales of aviation gasoline (including individual invoices identifying each purchase or sale of aviation gasoline) to and from such “retail seller of aviation gasoline”. The commissioner shall, if it is determined to be appropriate, establish a requirement that a certificate be given by a “retail seller of aviation gasoline” prior to the sale of aviation gasoline pursuant to this paragraph.

(ii) Any person registered as a distributor of motor fuel and also registered as a “retail seller of aviation gasoline” may exclude the amount of the tax or taxes imposed by this article from the selling price thereof on such retail sale of aviation gasoline.

(c)(i) Any person making a sale of motor fuel under the circumstances described in paragraph (a), or subparagraph (i) of paragraph (b) of this subdivision or making a sale of Diesel motor fuel under the circumstances described in subdivision four of section two hundred eighty-two-a of this article whereby the tax or taxes imposed by this article have not been passed through to the purchaser, shall be allowed a refund or credit of the tax or taxes imposed by this article in the amount of such tax or taxes paid by such person on such motor fuel or Diesel motor fuel being sold or included in the price paid by such person for such fuel. Claims for refunds or credits shall be presented, and refunds or credits shall be made, only as authorized by the commissioner under such rules and regulations as he may prescribe.

(ii) Any airline registered as a distributor of motor fuel who imports aviation gasoline into this state for use in its airplanes and a distributor described in subparagraph (ii) of paragraph (b) of this subdivision shall be allowed a refund or credit of the tax or taxes imposed by this article in the amount of such tax or taxes paid by such person on such aviation gasoline so imported and used exclusively in the operation of its airplanes. The refund or credit shall accrue at the time the aviation gasoline is delivered and stored as prescribed in subparagraph (i) of paragraph (b) of this subdivision. Claims for refunds or credits shall be presented and refunds or credits shall be made only as authorized by the commissioner, including documentary proof required to substantiate refund claims.

(d) [Deemed repealed Sept. 1, 2016, pursuant to L.2006, c. 109, pt. W-1, § 19.] (i) Any person may exclude the amount of the tax or taxes imposed by this article on E85 from the selling price thereof where E85 is 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. Any person making a sale of E85 under the circumstances described herein, whereby the tax or taxes otherwise imposed by this article have not been passed through to the purchaser, shall be allowed a refund or credit of the taxes imposed by this article in the amount of such tax or taxes paid by such person on such E85 being sold or included in the price paid by such person for such fuel. Claims for refunds or credits shall

be presented, and refunds or credits shall be made, only as authorized by the commissioner under such rules and regulations as the commissioner may prescribe.

(ii) Any person may exclude twenty percent of the amount of the tax or taxes imposed by this article from the selling price with respect to any sale of B20. Any person making a sale of B20 upon which such person does not pass on more than eighty percent of the taxes otherwise imposed by this article, where such person has purchased such B20 with the entire amount of the taxes imposed by this article included in such person's purchase price, shall be entitled to a refund or credit equal to the amount of the tax or taxes paid under this article on such B20 in excess of eighty percent of the tax or taxes imposed by this article on diesel motor fuel. Claims for refunds or credits shall be presented, and refunds or credits shall be made, only as authorized by the commissioner under such rules and regulations as the commissioner may prescribe.

(iii) Any person may exclude the amount of the tax or taxes imposed by this article on CNG or hydrogen from the selling price thereof. Any person making a sale of CNG or hydrogen, whereby the tax or taxes otherwise imposed by this article have not been passed through to the purchaser, shall be allowed a refund or credit of any taxes imposed by this article in the amount of such tax or taxes paid by such person on such CNG or hydrogen being sold or included in the price paid by such person for such CNG or hydrogen. Claims for refunds or credits shall be presented, and refunds or credits shall be made, only as authorized by the commissioner under such rules and regulations as the commissioner may prescribe.

2. However, the intention of this article is to place the ultimate burden resulting from such tax, so far as possible, on persons who use the public highways of the state for operating motor vehicles thereon, or who use the waterways of the state including any other waterways bordering on the state for operating pleasure or recreational motor boats thereon, and the following refunds are provided to that end, subject to the provisions of subdivision five of this section.

3. (a) Except as otherwise provided in paragraph (b) of this section, any person who shall buy any motor fuel or diesel motor fuel, on which the tax imposed by this article shall have been paid, and shall consume the same in any manner except in the operation of a motor vehicle upon or over the public highways of this state, or in the operation of a pleasure or recreational motor boat upon or over the waterways of the state including waterways bordering on the state, shall be reimbursed the amount of such tax in the manner and subject to the conditions herein provided except that there shall be no reimbursement of tax paid on motor fuel or diesel motor fuel taken out of this state in a fuel tank connected with the engine of a motor vehicle and consumed outside of this state.

(b) Any omnibus carrier which shall buy any motor fuel on which the aggregate tax imposed by section two hundred eighty-four and section two hundred eighty-four-a of this chapter, or any diesel motor fuel on which the aggregate tax imposed by section two hundred eighty-two-a and section two hundred eighty-two-b of this chapter, shall have been paid, shall be reimbursed, in the case of such motor fuel, the amount paid pursuant to such sections two hundred eighty-four and two hundred eighty-four-a in excess of four cents per gallon, and in the case of diesel motor fuel, the amount paid pursuant to such sections two hundred eighty-two-a and two hundred eighty-two-b in excess of six cents per gallon, provided such motor fuel or diesel motor fuel has been consumed by such carrier in the operation of an omnibus in this state. Any taxicab licensee, as defined by subdivision ten of section two hundred eighty-two of this chapter, who or which shall buy any motor fuel on which the aggregate tax imposed by

section two hundred eighty-four and section two hundred eighty-four-a of this chapter or any diesel motor fuel on which the aggregate tax imposed by section two hundred eighty-two-a and section two hundred eighty-two-b of this chapter, shall have been paid, shall be reimbursed, in the case of such motor fuel, the amount paid pursuant to such sections two hundred eighty-four and two hundred eighty-four-a in excess of four cents per gallon, and in the case of diesel motor fuel, the amount paid pursuant to such sections two hundred eighty-two-a and two hundred eighty-two-b in excess of six cents per gallon, provided such motor fuel or diesel fuel has been consumed by such licensee in the operation of a taxicab in this state.

(c) All claims for reimbursement shall be in such form and contain such information as the commissioner shall prescribe and shall be filed within three years from (i) the date of the purchase, in the case of the purchaser; or (ii) the date of the sale, in the case of the seller, of the motor fuel so subject to reimbursement. Every such claim shall include a certificate by or on behalf of the party presenting the same to the effect that it is just, true and correct, that no part thereof has been paid, except as stated therein, and that the balance therein stated is actually due and owing. The claimant shall satisfy the department that the claimant has borne the tax and that the motor fuel has been consumed by the claimant in a manner other than the operation of a motor vehicle upon or over the public highways of this state, the operation of a pleasure or recreational motorboat upon or over the waterways of the state including waterways bordering on the state or, in the case of an omnibus carrier, taxicab licensee, nonpublic school operator or volunteer ambulance service, that the claimant has borne the tax and that the amount claimed is the amount of such tax reimbursable under paragraph (b), (d), (e) or (f) of this subdivision. The department may require such further information or proof as it shall deem necessary for the administration of such claim. Claims for reimbursement approved by the department shall be paid from revenues collected under this article and deposited to the credit of the comptroller as hereinafter provided; but no such claims shall be paid unless the department is satisfied that the amount of the tax for which the reimbursement is claimed has actually been collected by the state. The amount of any erroneous or excessive payment to a claimant for reimbursement may be determined by the department and may be recovered from such claimant in the same manner as a tax imposed by this article, provided, however, that any such determination shall be made within three years after the date of such erroneous or excessive payment.

d) Any omnibus carrier which shall buy motor fuel on which the aggregate tax imposed by section two hundred eighty-four, section two hundred eighty-four-a and section two hundred eighty-four-c of this chapter or any diesel motor fuel on which the aggregate tax imposed by section two hundred eighty-two-a, section two hundred eighty-two-b and section two hundred eighty-two-c of this chapter shall have been paid, shall be reimbursed the amount paid provided such motor fuel or diesel motor fuel has been consumed by such carrier in the operation of an omnibus in local transit service in this state pursuant to a certificate of convenience and necessity issued by the commissioner of transportation of this state or by the interstate commerce commission of the United States or pursuant to a contract, franchise or consent between such carrier and a city having a population of more than one million inhabitants, or any agency of such city.

(e) Any nonpublic school operator which shall buy motor fuel on which the aggregate tax imposed by section two hundred eighty-four, section two hundred eighty-four-a and section two hundred eighty-four-c of this chapter or any diesel motor fuel on which the aggregate tax imposed by section two hundred eighty-two-a, section two hundred eighty-two-b and section two hundred eighty-two-c of this

chapter shall have been paid, shall be reimbursed the amount paid provided such motor fuel or diesel motor fuel has been consumed by such nonpublic school operator exclusively in educational related activities.

(f) Any voluntary ambulance service, as defined in section thirty hundred one of the public health law, which shall buy motor fuel on which the tax or taxes imposed by this article shall have been paid shall be reimbursed the amount of such tax in the manner and subject to the conditions herein set forth, provided such motor fuel has been consumed by such volunteer ambulance service vehicle in the course of operating within the state.

(g) An organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter or a hospital included in the organizations described in paragraph four of such subdivision, or a fire company or fire department, as defined in section three of the volunteer firefighters' benefit law, or a volunteer rescue squad supported in whole or in part by tax money where any such entity is the purchaser, user or consumer of motor fuel or diesel motor fuel in a vehicle owned and operated by it and used exclusively for its purposes, or an airline where it has purchased kero-jet fuel for use in its airplanes shall be reimbursed the amount of the taxes on motor fuel and diesel motor fuel imposed by or pursuant to the authority of this article included in the price paid for such motor fuel or diesel motor fuel.

(h) Notwithstanding any provision of the law to the contrary, tax paid pursuant to this article in respect to motor fuel or diesel motor fuel purchased by a government entity and paid for by such government entity with a credit card shall be reimbursed or credited to the issuer of the credit card used for such purchase or the fuel distributor designated in accordance with and subject to the provisions of sections eleven hundred thirty-eight, eleven hundred thirty-nine, eleven hundred forty-two, and eleven hundred forty-five of this chapter concerning such credit card issuers, fuel distributors and government entities. Such provisions shall apply with respect to the administration of and procedure with respect to the taxes imposed under this article in the same manner and with the same force and effect as if the language of such provisions had been incorporated in full into this article and had expressly referred to the tax under this article, with such modifications as may be necessary in order to adapt the language of such provisions to the taxes imposed by this article, except to the extent that any such provision is not relevant to this article.

4. Repealed by L.2011, c. 61, pt. K, § 14, eff. Sept. 1, 2011.

5. If the provisions of this section providing for reimbursement of the amount of the tax paid be held unconstitutional by a court of competent jurisdiction, the other constitutional provisions of this article nevertheless shall stand, it being the express intention of the legislature that even though such provision for reimbursement be held unconstitutional the tax provided for by this article shall be imposed, collected and distributed as provided in this article, regardless in that event of the manner in which the motor fuel is consumed.

6. Moneys paid in error under this article may be refunded. Where motor fuel, upon which the tax imposed by this article has been paid, is sold, under such circumstances that, if the tax had not been paid, the sale would not have been taxable under this article, the tax may be refunded. Refunds shall be made only as authorized by the commissioner under such rules and regulations as the commissioner may

prescribe provided an application therefor is filed with the commissioner within three years from the time the erroneous payment was made, or tax paid motor fuel was so sold. Refunds authorized by the commissioner shall be paid from revenues collected under this article and deposited to the credit of the comptroller as hereinafter provided.

7. If an agreement under the provisions of section two hundred eighty-eight (extending the period for determination of tax imposed by this article) is made within the three-year period for the filing of an application for refund under subdivision six of this section or, in the case of a claim for reimbursement under subdivision three of this section, if such agreement is made within three years from the date of purchase or sale (as the case may be) of the motor fuel, the period for filing an application for refund or a claim for reimbursement shall not expire prior to six months after the expiration of the period within which determination may be made pursuant to the agreement or any extension thereof.

8. With respect to motor fuel imported, manufactured or sold or purchased in this state, and with respect to the sale or use of Diesel motor fuel, a refund or credit shall be allowed a distributor or a purchaser of the tax required to be paid pursuant to this article upon such motor fuel or Diesel motor fuel in the amount of such tax paid by or included in the price paid by a distributor or such purchaser to the seller thereof if such fuel was exported from this state for sale or use outside this state, such distributor or such purchaser, as the case may be, exporting such fuel is duly registered with or licensed by the taxing authorities of the state to which such fuel is exported as a distributor or a dealer in the fuel being so exported, and in connection with such exportation such fuel was immediately shipped to an identified facility in the state to which such fuel is exported, and the applicant complies with all requirements and rules and regulations of the commissioner, including evidentiary requirements, relating thereto; and provided further that upon receipt of a claim for refund in processible form, interest shall be allowed and paid at the overpayment rate set by the commissioner pursuant to subdivision twenty-sixth of section one hundred seventy-one of this chapter from the due date of the return to the date immediately preceding the date of the refund check except no such interest shall be allowed or paid if the refund check is mailed within thirty days of such receipt and except no interest shall be allowed or paid if the amount thereof would be less than one dollar. For the purpose of this article, "export" from this state shall in no event be construed to include motor fuel or diesel motor fuel taken out of this state in the fuel tank connected with the engine of a motor vehicle or any conveyance and consumed in the operation thereof outside of this state.

9. With respect to any organization described in paragraph four of subdivision (a) of section eleven hundred sixteen of this chapter which is eligible pursuant to this section for reimbursement of the tax required to be paid pursuant to this article, upon receipt of a claim for reimbursement in processible form, interest shall be allowed and paid at the overpayment rate set by the commissioner of taxation and finance pursuant to subdivision twenty-sixth of section one hundred seventy-one of this chapter from the date of the application for reimbursement to the date immediately preceding the date of the reimbursement check except no such interest shall be allowed or paid if the reimbursement check is mailed within forty-five days of such receipt and except no interest shall be allowed or paid if the amount thereof would be less than one dollar. Provided, however, the department shall process applications for reimbursement as expeditiously as possible.

Credits: (Added L.1929, c. 364, § 1; L.1934, c. 411, § 1; L.1936, c. 381, § 1; L.1938, c. 159, § 1; L.1944, c. 90, § 1; L.1951, c. 271, § 1; L.1959, c. 641, § 2; L.1959, c. 711, § 2; L.1960, c. 358, §§ 1 to 3;

L.1961, c. 169, § 2; L.1963, c. 679, § 1; L.1965, c. 558, §§ 13 to 15; L.1967, c. 817; L.1968, c. 542; L.1971, c. 411, §§ 2, 4; L.1974, c. 756, §§ 2, 3; L.1974, c. 836, §§ 6, 7; L.1975, c. 455, § 4; L.1978, c. 737, §§ 2, 3; L.1985, c. 44, §§ 14, 14-a. Amended L.1986, c. 276, §§ 11 to 13; L.1988, c. 261, §§ 81, 82; L.1989, c. 61, §§ 107, 108; L.1995, c. 2, §§ 22, 77; L.1997, c. 389, pt. A, § 152, eff. Aug. 7, 1997, deemed eff. Sept. 1, 1990; L.2006, c. 109, pt. W-1, § 2, eff. Sept. 1, 2006; L.2006, c. 302, §§ 5 to 7, eff. July 26, 2006; L.2008, c. 102, § 1, eff. Sept. 1, 2008; L.2011, c. 61, pt. K, §§ 13, 14, eff. Sept. 1, 2011.)