



States' Biofuels Statutes

STATE OF NEW YORK

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

§ 301-b. Exemptions

The following gallonage otherwise includable in the measure of the tax imposed by section three hundred one-a of this article on a petroleum business shall be exempt from the measure of tax on such petroleum business:

(a) Products. (1) Kerosene sold or used by a petroleum business which is registered under article twelve-A of this chapter as a distributor of diesel motor fuel so long as (i) such product has not been blended or mixed with any other product constituting diesel motor fuel or motor fuel or a residual petroleum product and (ii) such product is not used by the petroleum business as fuel to operate a motor vehicle or sold by such petroleum business to a consumer for use as fuel to operate a motor vehicle.

(2) Kero-jet fuel (i) sold by a petroleum business which is registered under article twelve-A of this chapter as a distributor of diesel motor fuel to a consumer for use exclusively as jet aircraft fuel or to a petroleum business registered under such article twelve-A 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, (ii) used by a petroleum business, registered under article twelve-A of this chapter as a distributor of diesel motor fuel, exclusively as jet aircraft fuel, or (iii) sold at retail not in bulk by a petroleum business registered under article twelve-A of this chapter as a “distributor of kero-jet fuel only” where such fuel is delivered directly into the fuel tank of a jet airplane for use in the operation of such airplane.

(3) Aviation gasoline, meeting the specifications set forth in American Standard Testing Material Specification D910 or Military Specification MIL-G-5572, which is imported or caused to be imported into this state by a petroleum business which is registered under article twelve-A of this chapter as a distributor of motor fuel or produced, refined, manufactured or compounded in this state by such a petroleum business.

(4) Residual petroleum product sold by a petroleum business registered under this article as a residual petroleum product business if such product is sold by such petroleum business to a consumer for use

exclusively as bunker fuel for vessels or if such product is used by such petroleum business exclusively as bunker fuel in its own vessels.

(5) Liquefied petroleum gases, such as butane, ethane or propane.

(6) [Deemed repealed Sept. 1, 2016, pursuant to L.2006, c. 109, pt. W-1, § 19.] E85 imported or caused to be imported into this state or produced, refined, manufactured or compounded in this state by a petroleum business registered under article twelve-A of this chapter, as a distributor of motor fuel, and then sold by such petroleum business and 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.

(7) [Deemed repealed Sept. 1, 2016, pursuant to L.2006, c. 109, pt. W-1, § 19.] (i) Partial B20 exemption. B20 imported or caused to be imported into this state or produced, refined, manufactured or compounded in this state by a petroleum business registered under article twelve-A of this chapter, as a distributor of diesel motor fuel, and then sold by such petroleum business.

(ii) Calculation of partial exemption. The amount of the partial exemption under this paragraph shall be determined by multiplying the quantity of B20 times twenty percent of the applicable taxes otherwise imposed by this article on such fuel.

(8) [Deemed repealed Sept. 1, 2016, pursuant to L.2006, c. 109, pt. W-1, § 19.] CNG or hydrogen.

(b) Export. (1) Motor fuel imported or caused to be imported into this state or produced, refined, manufactured or compounded in this state by a petroleum business registered under article twelve-A of this chapter, as a distributor of motor fuel, where

(A) such petroleum business or the immediate purchaser of such motor fuel exports such motor fuel from this state for sale or use outside the state,

(B) such petroleum business 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 product being so exported,

(C) in connection with the exportation, such fuel was immediately shipped to an identified facility in the state to which such fuel is exported, and

(D) the rules and regulations of the commissioner of taxation and finance relating to evidentiary requirements are complied with.

(2) Highway diesel motor fuel imported or caused to be imported into this state or produced, refined, manufactured or compounded in this state by a petroleum business registered under article twelve-A of this chapter, as a distributor of diesel motor fuel, which is sold by such petroleum business to a purchaser who then exports such highway diesel motor fuel from this state for sale or use outside the state where

(A) such purchaser 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 product being so exported,

(B) in connection with the exportation, such fuel was immediately shipped to an identified facility in the state to which such fuel is exported, and

(C) the rules and regulations of the commissioner relating to evidentiary requirements are complied with.

(3) 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.

(c) Sales to New York state and the federal government. (1) Motor fuel imported or caused to be imported into this state or produced, refined, manufactured or compounded in this state by a petroleum business registered under article twelve-A of this chapter, as a distributor of motor fuel, and then sold by such petroleum business to an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter where such motor fuel is used by such organization for its own use or consumption.

(2) Highway diesel motor fuel imported or caused to be imported into this state or produced, refined, manufactured or compounded by a petroleum business registered under article twelve-A of this chapter, as a distributor of diesel motor fuel, and then sold by such petroleum business to an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter where such highway diesel motor fuel is used by such organization for its own use or consumption.

(3) Non-highway Diesel motor fuel sold by a petroleum business registered under article twelve-A of this chapter as a distributor of diesel motor fuel to an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter where such non-highway diesel motor fuel is used by such organization for its own use or consumption.

(4) Residual petroleum product sold by a petroleum business registered under this article as a residual petroleum product business to an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter where such product is used by such organization for its own use or consumption.

(d) Sales to consumers for heating purposes. (1) Total residential heating exemption. Non-highway diesel motor fuel sold by a petroleum business registered under article twelve-A of this chapter as a distributor of diesel motor fuel or residual petroleum product sold by a petroleum business registered under this article as a residual petroleum product business to the consumer exclusively for residential heating purposes only if such non-highway diesel motor fuel is delivered into a storage tank which is not equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such fuel.

(2) Partial non-residential heating exemption. (A) Non-highway diesel motor fuel sold by a petroleum business registered under article twelve-A of this chapter as a distributor of diesel motor fuel or residual

petroleum product sold by a petroleum business registered under this article as a residual petroleum product business to the consumer exclusively for heating, other than residential heating purposes only if such non-highway diesel motor fuel is delivered into a storage tank which is not equipped with a hose or other apparatus by which such fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such fuel.

(B) Calculation of partial exemption. The partial exemption under this paragraph shall be determined by multiplying the quantity of non-highway diesel motor fuel and residual petroleum product eligible for the exemption times the sum of the then current rate of the supplemental tax imposed by section three hundred one-j of this article and forty-six percent of the then current rate of the tax imposed by section three hundred one-a of this article, with respect to the specific non-highway diesel motor fuel or residual petroleum product rate, as the case may be.

(e) Sales of highway diesel motor fuel, qualified biodiesel, non-highway diesel motor fuel and residual petroleum product to registered distributors of diesel motor fuel and registered residual petroleum product businesses.

(1) 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 paragraph 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) Qualified biodiesel and non-highway diesel motor fuel sold 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 such sale is not a retail sale or a sale that involves a delivery at a filling station or into a repository equipped with a hose or other apparatus by which such qualified biodiesel or non-highway diesel motor fuel can be dispensed into the fuel tank of a motor vehicle.

(3) Residual petroleum product sold by a person registered under this article as a residual petroleum product business to a person registered under this article as a residual petroleum product business where such sale is not a retail sale. Provided, however, that the commissioner may require such documentary proof to qualify for any exemption provided in this section as the commissioner deems appropriate, including the expansion of any certifications required pursuant to section two hundred eighty-five-a or two hundred eighty-five-b of this chapter to cover the taxes imposed by this article.

(4) “Qualified biodiesel” means such term as defined in subdivision twenty-three of section two hundred eighty-two of this chapter.

(f) Utilities. (1) Residual petroleum product and non-highway diesel motor fuel sold to an electric corporation, as described in subdivision (a) of section three hundred one-d of this article, which is registered with the department as a petroleum business tax direct pay permittee, and used by such

electric corporation to fuel generators for the purpose of manufacturing or producing electricity where such electric corporation provides a copy of a direct pay permit authorized and issued by the commissioner, to the petroleum business making such sale. If so registered, such corporation shall be a taxpayer under this article and (i) such electric corporation shall file a return monthly and pay the applicable tax under this article, after the application of allowable credits, on all such purchases directly to the commissioner, (ii) such electric corporation shall be subject to all of the provisions of this article relating to the responsibilities and liabilities of taxpayers under this article with respect to such residual petroleum product and non-highway diesel motor fuel.

(2) If a direct payment permit is granted, its use shall be subject to conditions specified by the commissioner and the payment of tax on all product purchased pursuant to the permit shall be made directly to the commissioner by the permit holder. The commissioner may suspend or cancel a direct payment permit for any of the grounds for suspending or cancelling a registration pursuant to section three hundred two of this article and the notice and hearing provisions applicable under such section three hundred two of this article shall apply to the suspension and cancellation of direct payment permits.

(3) A sale to an electric corporation authorized to issue direct payment permits which furnishes a direct payment permit in proper form shall, with respect to the seller, not be subject to tax under this article unless such electric corporation's direct payment permit has been suspended or cancelled by the commissioner and the commissioner has provided petroleum businesses with information identifying persons whose direct payment permits have been suspended or cancelled or such seller has been provided information that the purchaser's direct payment permit has been cancelled or suspended. Where a seller accepts a direct payment permit from a person whose direct payment permit has been suspended or cancelled, and the commissioner has provided petroleum businesses with information identifying those persons whose direct payment permits have been suspended or cancelled or where the seller has been provided information that the purchaser's direct payment permit has been suspended or cancelled, such sale shall be subject to tax at the full applicable rate.

(g) Sales or uses of non-highway diesel motor fuel and residual petroleum product for farm production. Non-highway Diesel motor fuel or residual petroleum product sold to or used by a consumer who purchases or uses such non-highway Diesel motor fuel or product for use or consumption directly and exclusively in the production for sale of tangible personal property by farming, but only if all such non-highway Diesel motor fuel or product is delivered on the farm site and is consumed other than on the public highways of this state (except for the use of the public highway to reach adjacent farmlands).

(h) Exemption for certain not-for-profit organizations. There shall be exempt from the measure of the petroleum business tax imposed by section three hundred one-a of this article a sale or use of residual petroleum product, or non-highway diesel motor fuel to or by an organization which has qualified under paragraph four or five of subdivision (a) of section eleven hundred sixteen of this chapter where such non-highway diesel motor fuel or residual petroleum product is exclusively for use and consumption by such organization, but only if all of such non-highway diesel motor fuel or product is consumed other than on the public highways of this state. 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 non-highway Diesel motor fuel can be dispensed into the fuel tank of a motor vehicle and all deliveries hereunder shall be made to the premises

occupied by the qualifying organization and used by such organization in furtherance of the exempt purposes of such organization. Provided, however, that the commissioner shall require such documentary proof to qualify for any exemption provided herein as the commissioner deems appropriate. Provided, further, the distributor selling such non-highway Diesel motor fuel and product shall separately report on its return the gallonage sold during the reporting period exempt from tax under the provisions of this subdivision and provide such other information with respect to such sales as the commissioner deems appropriate to prevent evasion.

(i) Exemption for passenger commuter ferries. A use by a passenger commuter ferry of non-highway diesel motor fuel or residual petroleum product where such non-highway diesel motor fuel or residual petroleum product was used and consumed by a passenger commuter ferry exclusively in providing mass transportation service. Provided, that the commissioner shall require such documentary proof to qualify for any exemption provided hereunder as the commissioner deems appropriate.

(j) Repealed by L.2011, c. 61, pt. K, § 22, eff. Sept. 1, 2011.

Credits: (Added L.1990, c. 190, § 216. Amended L.1991, c. 166, § 12; L.1991, c. 329, § 4; L.1991, c. 330, § 2; L.1994, c. 170, § 318; L.1995, c. 2, § 78; L.1997, c. 389, pt. A, § 155, eff. Aug. 7, 1997, deemed eff. Sept. 1, 1990; L.1999, c. 407, pt. H, § 2, eff. April 1, 2001; L.2000, c. 63, pt. X, § 1, eff. April 1, 2001; L.2000, c. 468, § 2, eff. Dec. 1, 2000; L.2006, c. 109, pt. W-1, § 4, eff. Sept. 1, 2006; L.2006, c. 302, §§ 8, 9, eff. Dec. 1, 2006; L.2011, c. 61, pt. K, §§ 21, 22, eff. Sept. 1, 2011; L.2012, c. 59, pt. E, §§ 3, 4, eff. June 1, 2012; L.2013, c. 59, pt. W, § 7, eff. Aug. 1, 2013.)