



States' Biofuels Statutes

STATE OF NEW YORK

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

§ 301-c. Reimbursement

[Opening par. eff. until Sept. 1, 2016, pursuant to L.2006, c. 109, pt. W-1, § 19. See, also, opening par. below.] A subsequent purchaser shall be eligible for reimbursement of tax with respect to the following gallonage, subsequently sold by such purchaser in accordance with subdivision (a), (b), (e), (h), (j), (k), (n) or (o) of this section or used by such purchaser in accordance with subdivision (c), (d), (f), (g), (i), (l) or (m) of this section, which gallonage has been included in the measure of the tax imposed by this article on a petroleum business:

[Opening par. eff. Sept. 1, 2016. See, also, opening par. above.] A subsequent purchaser shall be eligible for reimbursement of tax with respect to the following gallonage, subsequently sold by such purchaser in accordance with subdivision (a), (b), (e), (h), (j) or (k) of this section or used by such purchaser in accordance with subdivision (c), (d), (f), (g), (i), (l) or (m) of this section, which gallonage has been included in the measure of the tax imposed by this article on a petroleum business:

(a) Non-highway Diesel motor fuel used for heating purposes. (1) Total residential heating reimbursement. Non-highway Diesel motor fuel purchased in this state and sold by such purchaser to a consumer for use exclusively for residential heating purposes but only where (i) 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 non-highway Diesel motor fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such non-highway Diesel motor fuel, (ii) the tax imposed pursuant to this article has been paid with respect to such non-highway diesel motor fuel and the entire amount of such tax has been absorbed by such purchaser, and (iii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that the commissioner is authorized, in the event that the commissioner determines that it would not threaten the integrity of the administration and enforcement of the tax imposed by this article, to provide a reimbursement with respect to a retail sale to a consumer for residential heating purposes of less than ten gallons of non-highway diesel motor fuel provided such fuel is not dispensed into the tank of a motor vehicle.

(2) Partial non-residential heating reimbursement. (A) Non-highway Diesel motor fuel purchased in this state and sold by such purchaser to a consumer for use exclusively for heating, other than for residential heating purposes, but only where (i) 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 non-highway Diesel motor fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such non-highway Diesel motor fuel, (ii) the tax imposed pursuant to this article has been paid with respect to such non-highway diesel motor fuel and the entire amount of such tax has been absorbed by such purchaser, and (iii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article.

(B) Calculation of partial reimbursement. Notwithstanding any other provision of this article, the amount of the reimbursement under this paragraph shall be determined by multiplying the quantity of non-highway diesel motor fuel eligible for the reimbursement 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 non-highway diesel motor fuel rate, as the case may be.

(b) Sales to New York state and the federal government. Motor fuel and diesel motor fuel purchased in this state and sold by such purchaser in this state to an organization described in paragraph one or two of subdivision (a) of section eleven hundred sixteen of this chapter where (i) such motor fuel or diesel motor fuel is for such organization's own use or consumption, (ii) the tax imposed pursuant to this article has been paid with respect to such motor fuel or diesel motor fuel and the entire amount of such tax has been absorbed by such purchaser and, (iii) such purchaser possesses documentary proof satisfactory to the commissioner of taxation and finance evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that the commissioner of taxation and finance shall require such documentary proof to qualify for any reimbursement of tax provided by this section as the commissioner deems appropriate, including the expansion of any certification required pursuant to section two hundred eighty-five-a or two hundred eighty-five-b of this chapter to cover the taxes imposed pursuant to this article.

(c) Motor fuel and diesel motor fuel used by certain omnibus carriers. Motor fuel and diesel motor fuel purchased in this state by an omnibus carrier and consumed by such omnibus carrier in the operation of an omnibus (i) in local transit service in this state, as described under paragraph (d) of subdivision three of section two hundred eighty-nine-c of this chapter, pursuant to a certificate of public 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, or (ii) in the transportation of school children in the state under a contract made pursuant to the provisions of the education law. Provided, however, the reimbursement under this subdivision is available only where the tax imposed pursuant to this article has been paid with respect to such motor fuel or diesel motor fuel and the entire amount of such tax has been absorbed by such omnibus carrier, where such omnibus carrier possesses documentary proof satisfactory to the commissioner of taxation and finance evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article, and where, in the case of the reimbursement under clause (i) of this subdivision, such motor fuel or diesel motor fuel is included in the gallonage upon which reimbursement is calculated under paragraph (d) of subdivision

three of section two hundred eighty-nine-c of this chapter and, in the case of the reimbursement under clause (ii) of this subdivision, such motor fuel or diesel motor fuel is included in the gallonage upon which reimbursement is calculated under paragraph (b) of such subdivision three of section two hundred eighty-nine-c.

(d) Motor fuel and diesel motor fuel used by certain nonpublic school operators. Motor fuel and diesel motor fuel purchased in this state by a nonpublic school operator, as defined in subdivision eleven of section two hundred eighty-two of this chapter, and consumed by such nonpublic school operator exclusively in educational related activities. Provided, however, the reimbursement under this subdivision is available only where the tax imposed pursuant to this article has been paid with respect to such motor fuel or diesel motor fuel and the entire amount of such tax has been absorbed by such nonpublic school operator, where such nonpublic school operator possesses documentary proof satisfactory to the commissioner of taxation and finance evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article, and where such motor fuel or diesel motor fuel is included in the gallonage upon which the reimbursement is calculated under paragraph (e) of subdivision three of section two hundred eighty-nine-c of this chapter.

(e) Non-highway Diesel motor fuel and residual petroleum product used for farm production. Non-highway Diesel motor fuel or residual petroleum product purchased in this state and sold by such purchaser to a consumer for use or consumption directly and exclusively in the production for sale of tangible personal property by farming, but only if all of 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). This reimbursement may be claimed only where (i) the tax imposed pursuant to this article has been paid with respect to such non-highway diesel motor fuel or residual petroleum product and the entire amount of such tax has been absorbed by such purchaser, and (ii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that the commissioner shall require such documentary proof to qualify for any reimbursement of tax provided by this section as the commissioner deems appropriate.

(f) Motor fuel used for farm production. No more than one thousand five hundred gallons of motor fuel purchased in this state in a thirty-day period or a greater amount which has been given prior clearance by the commissioner, by a consumer for use or consumption directly and exclusively in the production for sale of tangible personal property by farming, but only if all of such fuel 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). This reimbursement to such purchaser who used such motor fuel in the manner specified in this subdivision may be claimed only where, (i) the tax imposed pursuant to this article has been paid with respect to such motor fuel and the entire amount of such tax has been absorbed by such purchaser, and (ii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that the commissioner shall require such documentary proof to qualify for any reimbursement of tax provided by this subdivision as the commissioner deems appropriate. The commissioner is hereby empowered to make such provisions as deemed necessary to define the procedures for granting prior clearance for purchases of more than one thousand five hundred gallons in a thirty-day period.

(g) Diesel motor fuel and motor fuel used in the operation of commercial fishing vessels. Diesel motor fuel or motor fuel purchased in this state by a commercial fisherman at retail wherein (1) such diesel motor fuel or such motor fuel is delivered by a pump equipped with a hose directly into the fuel tank of a commercial fishing vessel to be used as fuel in the operation of such vessel for the purpose of engaging in the commercial harvesting of fish for sale; and (2) such vessel is operated by a commercial fisherman; but only where (i) the tax imposed pursuant to this article has been paid with respect to such diesel motor fuel or such motor fuel and the entire amount of such tax has been absorbed by such purchaser and, (ii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that the commissioner shall require such documentary proof to qualify for any reimbursement of tax provided by this section as the commissioner deems appropriate.

(h) A subsequent purchaser which is registered as a distributor of diesel motor fuel shall be eligible for reimbursement of the tax imposed by section three hundred one-a of this article with respect to gallonage of residual petroleum product and non-highway diesel motor fuel subsequently sold by such purchaser to an organization which has qualified under paragraph four or five of subdivision (a) of section eleven hundred sixteen of this chapter for the exclusive use and consumption by such organization. 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. This reimbursement may be claimed only where (i) the tax imposed pursuant to this article has been paid with respect to such non-highway diesel motor fuel or residual petroleum product and the entire amount of such tax has been absorbed by such purchaser, and (ii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, further, that the commissioner shall require such other documentary proof to qualify for any reimbursement of tax provided by this section as the commissioner deems appropriate.

(i) Reimbursement for commercial gallonage. (1) A reimbursement shall be allowed to a consumer with respect to gallonage of non-highway diesel motor fuel or residual petroleum product (i) which was purchased by such consumer and where the supplemental tax imposed by section three hundred one-j of this article with respect to such gallonage was paid by a petroleum business and passed through to such consumer, (ii) such consumer absorbed the entirety of such tax in the purchase price of such gallonage, and (iii) such gallonage was used and consumed by such consumer exclusively as “commercial gallonage”. Provided, however, that the commissioner shall require such documentary proof to qualify for any reimbursement of tax provided by this subdivision as the commissioner deems appropriate, including a certification by the consumer that the product was used and consumed exclusively as “commercial gallonage” by such consumer.

(2) Calculation. The amount of the reimbursement shall be determined by multiplying the quantity of “commercial gallonage” eligible for reimbursement times the then current rate of the supplemental tax imposed by section three hundred one-j of this article with respect to non-highway diesel motor fuel or residual petroleum product, as the case may be. Any reimbursement of tax may be applied for not more often than monthly.

(j) Reimbursement for manufacturing gallonage. A subsequent purchaser shall be eligible for reimbursement of any taxes imposed under this article with respect to gallonage of residual petroleum product and non-highway diesel motor fuel subsequently sold by such purchaser to a consumer as “manufacturing gallonage.” This reimbursement may be claimed only where (1) any tax imposed pursuant to this article has been paid with respect to such gallonage and the entire amount of such tax has been absorbed by such purchaser, and (2) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of such tax. Provided, however, that the commissioner shall require such documentary proof to qualify for any reimbursement of tax provided by this subdivision as the commissioner deems appropriate including a certificate by the consumer that such product is to be used and consumed exclusively as “manufacturing gallonage”.

(k) Reimbursement for railroad gallonage. (1) A subsequent purchaser, which is registered as a distributor of diesel motor fuel, shall be eligible for a reimbursement in accordance with this subdivision with respect to non-highway diesel motor fuel subsequently sold by such purchaser to a consumer as “railroad diesel”.

(2) The amount of the reimbursement with respect to such product shall be equal to the difference between (i) the tax actually paid under this article by a petroleum business with respect to such product and subsequently passed through to and absorbed by such purchaser, and (ii) the tax under this article that would have been paid with respect to such product had an importing distributor sold such product directly to a purchaser as “railroad diesel”. Provided that the commissioner shall require such documentary proof as the commissioner deems necessary to substantiate a reimbursement claim under this subdivision. Any reimbursement of tax may be applied for not more often than monthly.

(l) Reimbursement for mining and extraction. A purchaser shall be eligible for reimbursement of the tax imposed by section three hundred one-a of this article with respect to gallonage of residual petroleum product and non-highway diesel motor fuel, purchased for use and consumption directly and exclusively in the production of tangible personal property for sale by mining or extracting, but only if all of such fuel or product is delivered at the mining or extracting site and is consumed other than on the public highways of this state; provided, however, this reimbursement shall in no event apply to a sale of non-highway diesel motor fuel which involves a delivery at a filling station. This reimbursement may be claimed only where (i) the tax imposed pursuant to this article has been paid with respect to such non-highway diesel motor fuel or residual petroleum product and the entire amount of such tax has been absorbed by such purchaser, and (ii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that the commissioner shall require such documentary proof to qualify for any reimbursement of tax provided by this section as the commissioner deems appropriate.

(m) Reimbursement 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. This reimbursement may be claimed only where (1) any tax imposed pursuant to this article has been paid with respect to such gallonage and the entire amount of such tax has been absorbed by such purchaser, and (2) such ferry possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of such tax.

Provided, that the commissioner shall require such documentary proof to qualify for any reimbursement provided hereunder as the commissioner deems appropriate.

(n) [Deemed repealed Sept. 1, 2016, pursuant to L.2006, c. 109, pt. W-1, § 19.] Reimbursement for E85. E85 purchased in this state and sold by such purchaser in this state where (1) such 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, (2) the tax imposed pursuant to this article has been paid with respect to such E85 and the entire amount of such tax has been absorbed by such purchaser, and (3) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, that the commissioner shall require such documentary proof to qualify for any reimbursement provided hereunder as the commissioner deems appropriate.

(o) [Deemed repealed Sept. 1, 2016, pursuant to L.2006, c. 109, pt. W-1, § 19.] (1) Partial reimbursement for B20. B20 purchased in this state and sold by such purchaser in this state where (i) the tax imposed pursuant to this article has been paid with respect to such B20 and the entire amount of such tax has been absorbed by such purchaser, and (ii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, that the commissioner shall require such documentary proof to qualify for any reimbursement provided hereunder as the commissioner deems appropriate.

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

(p) Reimbursement for motor fuel and diesel motor fuel used by a voluntary ambulance service, as defined in section three thousand one of the public health law, a fire company or a 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 monies, where any such entity is the purchaser, user or consumer of motor fuel or diesel motor fuel in a vehicle owned and operated by such entity and used exclusively for such entity's purposes. A purchaser shall be eligible for reimbursement of the tax imposed pursuant to this article if (1) any tax imposed pursuant to this article has been paid with respect to such gallonage and the entire amount of such tax has been absorbed by such purchaser, and (2) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by such purchaser of the entire amount of such tax. Provided, that the commissioner shall require such documentary proof to qualify for any reimbursement provided hereunder as the commissioner deems appropriate.

Credits: (Added L.1990, c. 190, § 216. Amended L.1991, c. 330, § 3; L.1994, c. 170, §§ 319, 327; L.1995, c. 2, §§ 79, 80; L.1996, c. 309, § 185; L.1999, c. 407, pt. H, §§ 3 to 5, eff. April 1, 2001; L.2000, c. 63, pt. X, § 2, eff. April 1, 2001; L.2000, c. 468, §§ 3 to 5, eff. Dec. 1, 2000; L.2006, c. 109, pt. W-1, §§ 5, 6, eff. Sept. 1, 2006; L.2006, c. 302, § 10, eff. Dec. 1, 2006; L.2011, c. 61, pt. K, § 23, eff. Sept. 1, 2011; L.2013, c. 59, pt. L, § 1, eff. June 1, 2013.)