

DRAFT LBDC

A BUDGET BILL submitted by the Governor
in accordance with Article VII of the Constitution

AN ACT to amend the tax law, in relation to allowing certain
tax-free interdistributor sales of highway diesel motor
fuel

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Subdivision 13 of section 282 of the tax law, as added by
2 chapter 276 of the laws of 1986, is amended to read as follows:

3 13. "Terminal" means a motor fuel or Diesel motor fuel storage facili-
4 ty with a storage capacity of fifty thousand gallons or more excluding
5 such facility at which motor fuel or Diesel motor fuel is stored solely
6 for its retail sale at such facility. "Terminal operator" means any
7 person who or which has the use of or control over, or the right to so
8 use or control, a terminal.

9 § 2. Subdivision 1 of section 282-a of the tax law, as amended by
10 chapter 2 of the laws of 1995, is amended to read as follows:

11 1. There is hereby levied and imposed with respect to Diesel motor
12 fuel an excise tax of four cents per gallon upon the sale or use of
13 Diesel motor fuel in this state.

14 The excise tax is imposed on the first sale or use of Diesel motor
15 fuel to occur which is not exempt from tax under this article. Provided,
16 however, if the tax has not been imposed prior thereto, it shall be
17 imposed on the removal of highway Diesel motor fuel from a terminal,
18 other than by pipeline, barge, tanker or other vessel, or the delivery
19 of Diesel motor fuel to a filling station or into the fuel tank connect-
20 ing with the engine of a motor vehicle for use in the operation thereof

1 whichever event shall be first to occur. The tax shall be computed based
2 upon the number of gallons of Diesel motor fuel sold, removed or used or
3 the number of gallons of Diesel fuel delivered into the fuel tank of a
4 motor vehicle, as the case may be. Nothing in this article shall be
5 construed to require the payment of such excise tax more than once upon
6 the same Diesel motor fuel. Nor shall the collection of such tax be made
7 applicable to the sale or use of Diesel motor fuel under circumstances
8 which preclude the collection of such tax by reason of the United States
9 constitution and of laws of the United States enacted pursuant thereto.
10 Provided, further, no Diesel motor fuel shall be included in the measure
11 of the tax unless it shall have previously come to rest within the mean-
12 ing of federal decisional law interpreting the United States constitu-
13 tion. All tax for the period for which a return is required to be filed
14 shall be due on the date limited for the filing of the return for such
15 period, regardless of whether a return is filed as required by this
16 article or whether the return which is filed correctly shows the amount
17 of tax due.

18 § 3. Paragraph (b) of subdivision 3 of section 282-a of the tax law,
19 as amended by section 2 of part E of chapter 59 of the laws of 2012, is
20 amended to read as follows:

21 (b) The tax on the incidence of sale or use imposed by subdivision one
22 of this section shall not apply to: (i) the sale or use of non-highway
23 Diesel motor fuel, but only if all of such fuel is consumed other than
24 on the public highways of this state (except for the use of the public
25 highway by farmers to reach adjacent farmlands); provided, however, this
26 exemption shall in no event apply to a sale of non-highway Diesel motor
27 fuel which involves a delivery at a filling station or into a repository
28 which is equipped with a hose or other apparatus by which such fuel can

1 be dispensed into the fuel tank of a motor vehicle (except for delivery
2 at a farm site which qualifies for the exemption under subdivision (g)
3 of section three hundred one-b of this chapter); or (ii) a sale to the
4 consumer consisting of not more than twenty gallons of water-white kero-
5 sene to be used and consumed exclusively for heating purposes; or (iii)
6 the sale to or delivery at a filling station or other retail vendor of
7 water-white kerosene provided such filling station or other retail
8 vendor only sells such water-white kerosene exclusively for heating
9 purposes in containers of no more than twenty gallons; or (iv) a sale of
10 kero-jet fuel to an airline for use in its airplanes or a use of kero-
11 jet fuel by an airline in its airplanes; or (v) a sale of kero-jet fuel
12 by a registered distributor of Diesel motor fuel to a fixed base opera-
13 tor registered under this article as a distributor of kero-jet fuel only
14 where such fixed base operator is engaged solely in making or offering
15 to make retail sales not in bulk of kero-jet fuel directly into the fuel
16 tank of an airplane for the purpose of operating such airplane; or (vi)
17 a retail sale not in bulk of kero-jet fuel by a fixed base operator
18 registered under this article as a distributor of kero-jet fuel only
19 where such fuel is delivered directly into the fuel tank of an airplane
20 for use in the operation of such airplane; or (vii) the sale of previ-
21 ously untaxed qualified biodiesel to a person registered under this
22 article as a distributor of Diesel motor fuel other than (A) a retail
23 sale to such person or (B) a sale to such person which involves a deliv-
24 ery at a filling station or into a repository which is equipped with a
25 hose or other apparatus by which such qualified biodiesel can be
26 dispensed into the fuel tank of a motor vehicle; or (viii) the sale of
27 previously untaxed highway Diesel motor fuel by a person registered
28 under this article as a distributor of Diesel motor fuel to a person

1 registered under this article as a distributor of Diesel motor fuel
2 where the highway Diesel motor fuel is either: (A) being delivered by
3 pipeline, railcar, barge, tanker or other vessel to a terminal, the
4 operator of which terminal is registered under section two hundred
5 eighty-three-b of this article, or (B) within such a terminal where it
6 has been so delivered. Provided, however, that the exemption set forth
7 in this subparagraph shall not apply to any highway Diesel motor fuel if
8 it is removed from a terminal, other than by pipeline, barge, tanker or
9 other vessel.

10 § 4. Subdivision 5 of section 282-a of the tax law, as amended by
11 section 5 of part K of chapter 61 of the laws of 2011, is amended to
12 read as follows:

13 5. All the provisions of this article relating to the administration
14 and collection of the taxes on motor fuel, except [sections] section two
15 hundred eighty-three-a [and two hundred eighty-three-b] of this article,
16 shall be applicable to the tax imposed by this section with such limita-
17 tion as specifically provided for in this article with respect to Diesel
18 motor fuel and with such modification as may be necessary to adapt the
19 language of such provisions to the tax imposed by this section. With
20 respect to the bond or other security required by subdivision three of
21 section two hundred eighty-three of this article, the commissioner, in
22 determining the amount of bond or other security required for the
23 purpose of securing tax payments, shall take into account the volume of
24 non-highway Diesel motor fuel and other Diesel motor fuel sold for
25 exempt purposes by a distributor of Diesel motor fuel during prior peri-
26 ods as a factor reducing potential tax liability along with any other
27 relevant factors in determining the amount of security required. With
28 respect to the bond required to be filed prior to registration as a

1 Diesel motor fuel distributor, no bond shall be required of an applicant
2 upon a finding of the applicant's fiscal responsibility, as reflected by
3 such factors as net worth, current assets and liabilities, and tax
4 reporting and payment history, and the department shall not provide for
5 a minimum bond of every applicant.

6 § 5. Section 300 of the tax law is amended by adding a new subdivision
7 (s) to read as follows:

8 (s) The term "terminal" shall have the same meaning as in subdivision
9 thirteen of section two hundred eighty-two of this chapter.

10 § 6. Subparagraph (A) of paragraph 1 of subdivision (c) of section
11 301-a of the tax law, as amended by section 19 of part K of chapter 61
12 of the laws of 2011, is amended to read as follows:

13 (A) The highway diesel motor fuel component shall be determined by
14 multiplying the motor fuel and highway diesel motor fuel rate times (1)
15 the number of gallons of highway diesel motor fuel sold or used by a
16 petroleum business in this state during the month covered by the return
17 under this article and (2) with respect to any gallonage which prior
18 thereto has not been included in the measure of the tax imposed by this
19 article, times the number of gallons of highway diesel motor fuel
20 [delivered] (i) removed from a terminal, other than by pipeline, barge,
21 tanker or other vessel, (ii) delivered to a filling station or [(ii)],
22 (iii) delivered into the fuel tank connecting with the engine of a motor
23 vehicle for use in the operation thereof, whichever of the latter [two]
24 three events shall be the first to occur. Provided, however, that no
25 highway diesel motor fuel shall be included in the measure of the tax
26 unless it shall have previously come to rest within the meaning of
27 federal decisional law interpreting the United States constitution, nor

1 decisional law, nor shall any highway diesel motor fuel be included in
2 the measure of the tax imposed by this article more than once.

3 § 7. Subdivision (e) of section 301-b of the tax law, as amended by
4 section 4 of part E of chapter 59 of the laws of 2012, is amended to
5 read as follows:

6 (e) Sales of highway diesel motor fuel, qualified biodiesel, non-high-
7 way diesel motor fuel and residual petroleum product to registered
8 distributors of diesel motor fuel and registered residual petroleum
9 product businesses.

10 (1) The sale of previously untaxed highway diesel motor fuel by a
11 person registered under article twelve-A of this chapter as a distribu-
12 tor of diesel motor fuel to a person registered under such article
13 twelve-A as a distributor of diesel motor fuel where the highway diesel
14 motor fuel is either: (A) being delivered by pipeline, railcar, barge,
15 tanker or other vessel to a terminal, the operator of which terminal is
16 registered under section two hundred eighty-three-b of this chapter, or
17 (B) within such a terminal where it has been so delivered. Provided,
18 however, that the exemption set forth in this paragraph shall not apply
19 to any highway diesel motor fuel if it is removed from a terminal, other
20 than by pipeline, barge, tanker or other vessel.

21 (2) Qualified biodiesel and non-highway [Diesel] diesel motor fuel
22 sold by a person registered under article twelve-A of this chapter as a
23 distributor of diesel motor fuel to a person registered under such arti-
24 cle twelve-A as a distributor of diesel motor fuel where such sale is
25 not a retail sale or a sale that involves a delivery at a filling
26 station or into a repository equipped with a hose or other apparatus by
27 which such qualified biodiesel or non-highway [Diesel] diesel motor fuel
28 can be dispensed into the fuel tank of a motor vehicle.

1 ~~[(2)]~~ (3) Residual petroleum product sold by a person registered under
2 this article as a residual petroleum product business to a person regis-
3 tered under this article as a residual petroleum product business where
4 such sale is not a retail sale. Provided, however, that the commissioner
5 may require such documentary proof to qualify for any exemption provided
6 in this section as the commissioner deems appropriate, including the
7 expansion of any certifications required pursuant to section two hundred
8 eighty-five-a or two hundred eighty-five-b of this chapter to cover the
9 taxes imposed by this article.

10 ~~[(3)]~~ (4) "Qualified biodiesel" means such term as defined in subdivi-
11 sion twenty-three of section two hundred eighty-two of this chapter.

12 § 8. Clause (D) of subparagraph (ii) of paragraph 4 of subdivision (b)
13 of section 1101 of the tax law, as added by chapter 261 of the laws of
14 1988, is amended to read as follows:

15 (D) The terms "filling station", "terminal" and "owner" shall have the
16 same meaning as they have for the purposes of article twelve-A of this
17 chapter.

18 § 9. Paragraph 2 of subdivision (a) of section 1102 of the tax law, as
19 amended by section 5 of part E of chapter 59 of the laws of 2012, is
20 amended to read as follows:

21 (2) Every distributor of diesel motor fuel shall pay, as a prepayment
22 on account of the taxes imposed by this article and pursuant to the
23 authority of article twenty-nine of this chapter, a tax upon the sale or
24 use of diesel motor fuel in this state. The tax shall be computed based
25 upon the number of gallons of diesel motor fuel sold or used. Provided,
26 however, if the tax has not been imposed prior thereto, it shall be
27 imposed on the removal of highway diesel motor fuel from a terminal,
28 other than by pipeline, barge, tanker or other vessel, or the delivery

1 of diesel motor fuel to a retail service station. The collection of such
2 tax shall not be made applicable to the sale or use of diesel motor fuel
3 under circumstances which preclude the collection of such tax by reason
4 of the United States constitution and of laws of the United States
5 enacted pursuant thereto. The prepaid tax on diesel motor fuel shall not
6 apply to (i) the sale of [previously untaxed] non-highway Diesel motor
7 fuel to a person registered as a distributor of Diesel motor fuel other
8 than a sale to such person which involves a delivery at a filling
9 station or into a repository which is equipped with a hose or other
10 apparatus by which such fuel can be dispensed into the fuel tank of a
11 motor vehicle, (ii) the sale to or delivery at a filling station or
12 other retail vendor of water-white kerosene provided such filling
13 station or other retail vendor only sells such water-white kerosene
14 exclusively for heating purposes in containers of no more than twenty
15 gallons or to the sale of CNG or hydrogen; [or] (iii) the sale of previ-
16 ously untaxed qualified biodiesel to a person registered under article
17 twelve-A of this chapter as a distributor of Diesel motor fuel other
18 than (A) a retail sale to such person or (B) a sale to such person which
19 involves a delivery at a filling station or into a repository which is
20 equipped with a hose or other apparatus by which such qualified biodies-
21 el can be dispensed into the fuel tank of a motor vehicle. "Qualified
22 biodiesel" means such term as defined in subdivision twenty-three of
23 section two hundred eighty-two of this chapter, or (iv) the sale of
24 previously untaxed highway diesel motor fuel by a person registered
25 under article twelve-A of this chapter as a distributor of diesel motor
26 fuel to a person registered under such article twelve-A as a distributor
27 of diesel motor fuel where the highway diesel motor fuel is either: (A)
28 being delivered by pipeline, railcar, barge, tanker or other vessel to a

1 terminal, the operator of which terminal is registered under section two
2 hundred eighty-three-b of this chapter, or (B) within such a terminal
3 where it has been so delivered. Provided, however, that the exemption
4 set forth in this subparagraph shall not apply to any highway diesel
5 motor fuel if it is removed from a terminal, other than by pipeline,
6 barge, tanker or other vessel.

7 § 10. Paragraph 2 of subdivision (a) of section 1102 of the tax law,
8 as amended by section 6 of part E of chapter 59 of the laws of 2012, is
9 amended to read as follows:

10 (2) Every distributor of diesel motor fuel shall pay, as a prepayment
11 on account of the taxes imposed by this article and pursuant to the
12 authority of article twenty-nine of this chapter, a tax upon the sale or
13 use of diesel motor fuel in this state. The tax shall be computed based
14 upon the number of gallons of diesel motor fuel sold or used. Provided,
15 however, if the tax has not been imposed prior thereto, it shall be
16 imposed on the removal of highway diesel motor fuel from a terminal,
17 other than by pipeline, barge, tanker or other vessel, or the delivery
18 of diesel motor fuel to a retail service station. The collection of such
19 tax shall not be made applicable to the sale or use of diesel motor fuel
20 under circumstances which preclude the collection of such tax by reason
21 of the United States constitution and of laws of the United States
22 enacted pursuant thereto. The prepaid tax on diesel motor fuel shall not
23 apply to (i) the sale of non-highway Diesel motor fuel to a person
24 registered as a distributor of Diesel motor fuel other than a sale to
25 such person which involves a delivery at a filling station or into a
26 repository which is equipped with a hose or other apparatus by which
27 such fuel can be dispensed into the fuel tank of a motor vehicle, (ii)
28 the sale to or delivery at a filling station or other retail vendor of

1 water-white kerosene provided such filling station or other retail
2 vendor only sells such water-white kerosene exclusively for heating
3 purposes in containers of no more than twenty gallons; or (iii) the sale
4 of previously untaxed qualified biodiesel to a person registered under
5 article twelve-A of this chapter as a distributor of Diesel motor fuel
6 other than (A) a retail sale to such person or (B) a sale to such person
7 which involves a delivery at a filling station or into a repository
8 which is equipped with a hose or other apparatus by which such qualified
9 biodiesel can be dispensed into the fuel tank of a motor vehicle. "Qual-
10 ified biodiesel" means such term as defined in subdivision twenty-three
11 of section two hundred eighty-two of this chapter, or (iv) the sale of
12 previously untaxed highway diesel motor fuel by a person registered
13 under article twelve-A of this chapter as a distributor of diesel motor
14 fuel to a person registered under such article twelve-A as a distributor
15 of diesel motor fuel where the highway diesel motor fuel is either: (A)
16 being delivered by pipeline, railcar, barge, tanker or other vessel to a
17 terminal, the operator of which terminal is registered under section two
18 hundred eighty-three-b of this chapter, or (B) within such a terminal
19 where it has been so delivered. Provided, however, that the exemption
20 set forth in this subparagraph shall not apply to any highway diesel
21 motor fuel once it is removed from a terminal, other than by pipeline,
22 barge, tanker or other vessel.

23 § 11. Section 1812-c of the tax law, as added by chapter 276 of the
24 laws of 1986, is amended to read as follows:

25 § 1812-c. Person not licensed as terminal operator. Any person who,
26 while not licensed as such pursuant to the provisions of article
27 twelve-A of this chapter, operates as a terminal operator as defined in
28 subdivision thirteen of section two hundred eighty-two of this chapter,

1 except where all of the motor fuel or diesel motor fuel stored in the
2 storage facility is solely for such person's own use and consumption,
3 shall be guilty of a class E felony.

4 § 12. This act shall take effect August 1, 2013; provided, however,
5 that the amendments made to paragraph 2 of subdivision (a) of section
6 1102 of the tax law made by section nine of this act shall be subject to
7 the expiration and reversion of such paragraph pursuant to section 19 of
8 part W-1 of chapter 109 of the laws of 2006, as amended, when upon such
9 date the provisions of section ten of this act shall take effect.