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 Assembly, do enact as follows:

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

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

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

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.

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

(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.

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

5. All the provisions of this article relating to the administration
and collection of the taxes on motor fuel, except [sections] section two
hundred eighty-three-a [and two hundred eighty-three-b] of this article,
shall be applicable to the tax imposed by this section with such limita-
tion 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 peri-
ods 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.

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

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

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

(A) The highway diesel motor fuel component shall be determined by multiplying the motor fuel and highway diesel motor fuel rate times (1) the number of gallons of highway diesel motor fuel sold or used by a petroleum business in this state during the month covered by the return under this article and (2) with respect to any gallonage which prior thereto has not been included in the measure of the tax imposed by this article, times the number of gallons of highway diesel motor fuel [delivered] (i) removed from a terminal, other than by pipeline, barge, tanker or other vessel, (ii) delivered to a filling station or [(ii)], (iii) delivered into the fuel tank connecting with the engine of a motor vehicle for use in the operation thereof, whichever of the latter [two] three events shall be the first to occur. Provided, however, that no highway 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, nor
decisional law, nor shall any highway diesel motor fuel be included in
the measure of the tax imposed by this article more than once.
§ 7. Subdivision (e) of section 301-b of the tax law, as amended by
section 4 of part E of chapter 59 of the laws of 2012, is amended to
read as follows:
(e) Sales of highway diesel motor fuel, qualified biodiesel, non-high-
way 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 distribu-
tor 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] 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 arti-
cle 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] diesel motor fuel
can be dispensed into the fuel tank of a motor vehicle.
[(2)] (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.

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

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

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

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

(2) Every distributor of diesel motor fuel shall pay, as a prepayment on account of the taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter, a tax upon the sale or use of diesel motor fuel in this state. The tax shall be computed based upon the number of gallons of diesel motor fuel sold or used. 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 retail service station. The collection of such
tax shall not 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. The prepaid tax on diesel motor fuel shall not
apply to (i) the sale of [previously untaxed] non-highway Diesel motor
fuel to a person registered as a distributor of Diesel motor fuel other
than 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 fuel can be dispensed into the fuel tank of a
motor vehicle, (ii) 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 to the sale of CNG or hydrogen; [or] (iii) the sale of previ-
cously untaxed qualified biodiesel to a person registered under article
twelve-A of this chapter 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 biode-
el can be dispensed into the fuel tank of a motor vehicle. "Qualified
biodiesel" means such term as defined in subdivision twenty-three of
section two hundred eighty-two of this chapter, or (iv) 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 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.

§ 10. Paragraph 2 of subdivision (a) of section 1102 of the tax law,
as amended by section 6 of part E of chapter 59 of the laws of 2012, is
amended to read as follows:
(2) Every distributor of diesel motor fuel shall pay, as a prepayment
on account of the taxes imposed by this article and pursuant to the
authority of article twenty-nine of this chapter, a tax upon the sale or
use of diesel motor fuel in this state. The tax shall be computed based
upon the number of gallons of diesel motor fuel sold or used. 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 retail service station. The collection of such
tax shall not 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. The prepaid tax on diesel motor fuel shall not
apply to (i) the sale of non-highway Diesel motor fuel to a person
registered as a distributor of Diesel motor fuel other than 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 fuel can be dispensed into the fuel tank of a motor vehicle, (ii)
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 (iii) the sale of previously untaxed qualified biodiesel to a person registered under article twelve-A of this chapter 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. "Qualified biodiesel" means such term as defined in subdivision twenty-three of section two hundred eighty-two of this chapter, or (iv) 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 subparagraph shall not apply to any highway diesel motor fuel once it is removed from a terminal, other than by pipeline, barge, tanker or other vessel.

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

§ 1812-c. Person not licensed as terminal operator. Any person who, while not licensed as such pursuant to the provisions of article twelve-A of this chapter, operates as a terminal operator as defined in subdivision thirteen of section two hundred eighty-two of this chapter,
except where all of the motor fuel or diesel motor fuel stored in the storage facility is solely for such person's own use and consumption, shall be guilty of a class E felony.

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