

STATE OF NEW YORK

9503

IN ASSEMBLY

March 10, 2022

Introduced by M. of A. SANTABARBARA -- read
once and referred to the
Committee on Ways and Means

AN ACT to amend the tax law, the general business
law and the state
finance law, in relation to establishing a
temporary fuel tax holiday

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

1 Section 1. The tax law is amended by adding a new
section 47 to read
2 as follows:

3 § 47. Fuel tax holiday. (a) Definitions. For
purposes of this section,

4 (1) "Applicable period" shall mean the period
beginning fourteen days

5 after the effective date of this section and ending
one year after such

6 beginning date.

7 (2) "Diesel motor fuel" and "motor fuel" shall
have the same meaning

8 as section two hundred eighty-two of this chapter.

9 (3) "Filling station" shall have the same
10 meaning as section two
11 hundred eighty-two of this chapter.
12 (4) "Retail sale" and "sold at retail" shall
13 mean any sale of motor
14 fuel or diesel motor fuel at a filling station to a
15 person for use in a
16 motor vehicle.
17 (5) "Retail seller" shall mean any person
18 who sells motor fuel or
19 diesel motor fuel at retail.
20 (6) "Sale" shall have the same meaning as section
21 two hundred eighty-
22 two of this chapter.
23 (b) Exemption from taxation. Notwithstanding
24 any other provision of
25 law, rule or regulation to the contrary, the taxes
26 imposed on retail
27 sales of motor fuel and diesel motor fuel made
28 during the applicable
29 period shall be exempt from the taxes imposed by
30 articles twelve-A,
31 thirteen-A, and twenty-eight of this chapter. If
32 the retail seller is
33 located within a municipality that has elected to
34 eliminate the tax
35 imposed pursuant to article twenty-nine of
36 this chapter, such taxes
37 shall not be imposed on the retail sale of motor
38 fuel or diesel motor
39 fuel during the applicable period.
40 (c) Price reduction. During the applicable
41 period, each retail seller
42 shall reduce the price per gallon of motor fuel and
43 diesel motor fuel

EXPLANATION--Matter in italics (underscored) is
new; matter in brackets

[~~-~~] is old law to be omitted.

1 offered for sale by the amount of the taxes
2 that the retail seller
3 prepaid on the gallon of motor fuel and diesel
4 motor fuel and the amount
5 of tax in excess of the prepaid amount that would
6 have been collected
7 from the consumer if the sale of the motor fuel or
8 diesel motor fuel had
9 not been exempt from tax pursuant to subdivision
10 (b) of this section.

11 (d) Advertising. Notwithstanding any other
12 provision of law to the
13 contrary, a retail seller may advertise that the
14 motor fuel and/or
15 diesel motor fuel is being or will be sold without
16 the state taxes. Such
17 advertisement may commence no earlier than three
18 days before the appli-
19 cable period and must end by the end of the
20 applicable period.

21 (e) Refunds and credits. (1) Notwithstanding any
22 other provision of
23 law to the contrary, the retail seller shall be
24 entitled to receive a
25 credit against the taxes due pursuant to article
26 twenty-eight of this
27 chapter for the amount of tax that the retail
28 seller prepaid pursuant to
29 articles twelve-A, thirteen-A, twenty-eight and,
30 if applicable, twenty-
31 nine of this chapter. If the retail seller is
32 located within a munici-
33 pality that has elected to eliminate the tax
34 imposed pursuant to article
35 twenty-nine of this chapter, the retail seller
36 shall be entitled to
37 claim a credit against the taxes due pursuant to
38 article twenty-eight of
39 this chapter for such prepaid taxes. The amount of
40 credit shall equal
41 the amount of tax that was prepaid pursuant to
42 articles twelve-A, thir-
43 teen-A, twenty-eight and, if applicable, twenty-
44 nine of this chapter for

23 each gallon of motor fuel and diesel motor fuel
24 sold at retail during
25 the applicable period. Such credit shall not be
26 allowed for sales that
27 would have otherwise been exempt from tax.
28 (2) A retail seller may claim the credit
29 prescribed in paragraph one
30 of this subdivision when the retail seller files
31 its return of tax for
32 the sales of motor fuel and diesel motor fuel
33 for the period that
34 includes the applicable period. Notwithstanding
35 the foregoing, if a
36 retailer seller is required to file its return
37 more than thirty days
38 after the close of the applicable period
39 defined in paragraph one of
40 subdivision (a) of this section, such retailer
41 shall be authorized to
42 file an amendment to its most recently filed
43 return to claim such cred-
44 it. No credit may be claimed for the taxes prepaid
45 pursuant to article
46 twelve-A, thirteen-A, twenty-eight or, if
47 applicable, twenty-nine of
48 this chapter pursuant to this section if the
49 claim would have been
50 barred pursuant to the article that required
51 prepayment of such taxes.
52 No interest shall be paid on any claims for credit
53 made pursuant to this
54 section.

40 § 2. Section 88-a of the state finance law is
amended by adding a new
subdivision 8 to read as follows:

42 8. By March thirty-first, two thousand twenty-
43 three, the comptroller
44 shall transfer from the general fund to the mass
45 transportation operat-
46 ing assistance fund an amount no greater than the
47 amount that would have
48 otherwise been deposited in the mass transportation
49 operating assistance

46 fund pursuant to this section if the exemption
47 defined in subdivision
48 (b) of section forty-seven of the tax law had
49 not been authorized;
50 provided however that the comptroller shall
51 make such transfer only
52 after the director of the budget has determined in
53 his or her discretion
54 that the transfer is necessary to ensure a positive
55 fund balance of the
56 mass transportation operating assistance fund
57 at the end of the two
58 thousand eleven-two thousand twelve state fiscal
59 year.

60 § 3. Subdivision 3 of section 89-b of the state
61 finance law is amended
62 by adding a new paragraph (g) to read as follows:

63 (g) Within forty-five days after an applicable
64 period as defined by
65 subdivision (a) of section forty-seven of the tax
66 law, the comptroller,

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68 3

69 in consultation with the director of the division
70 of the budget, shall
71 transfer from the general fund to the special
72 obligation reserve and
73 payment account an amount equal to the amount that
74 would have otherwise
75 been deposited in the special obligation
76 reserve and payment account
77 pursuant to this section if the exemption defined
78 in subdivision (b) of
79 section forty-seven of the tax law had not been
80 authorized.

81 § 4. Section 89-c of the state finance law is
82 amended by adding a new
83 subdivision 4 to read as follows:

84 4. Within forty-five days after an applicable
85 period as defined by
86 subdivision (a) of section forty-seven of the tax
87 law, the comptroller,
88 in consultation with the director of the division
89 of the budget, shall

12 transfer from the general fund to the
13 dedicated mass transportation
14 trust fund an amount equal to the amount that would
15 have otherwise been
16 deposited in the dedicated mass transportation
17 trust fund pursuant to
18 this section if the exemption defined in
19 subdivision (b) of section
20 forty-seven of the tax law had not been authorized.

21 § 5. Section 392-i of the general business law,
22 as amended by section

23 5 of part M-1 of chapter 109 of the laws of 2006,
24 is amended to read as

25 follows:

26 § 392-i. Prices reduced to reflect change in
27 sales tax computation.

28 Every person engaged in the retail sale of motor
29 fuel and/or diesel

30 motor fuel or a distributor of such fuels,
31 as defined in article

32 twelve-A of the tax law, shall reduce the price
33 such person charges for

34 motor fuel and/or diesel motor fuel in an amount
35 equal to any reduction

36 in taxes prepaid by the distributor, credit for
37 the amount of taxes

38 prepaid by the retail seller allowable pursuant
39 to section forty-seven

40 of the tax law, exemption from taxation pursuant to
41 section forty-seven

42 of the tax law to the extent that the tax that
43 would have been otherwise

44 due exceeds the amount of tax prepaid, or
45 paid by retail customers

46 resulting from computing sales and compensating use
47 and other taxes at a

48 cents per gallon rate pursuant to the provisions
49 of paragraph two of

50 subdivision (e) and subdivision (m) of section
51 eleven hundred eleven of

52 the tax law.

53 § 6. Paragraph 1 of subdivision (n) of section
54 1817 of the tax law, as

35 amended by section 30 of subpart I of part V-1 of
chapter 57 of the laws

36 of 2009, is amended to read as follows:

37 (1) Every person engaged in the retail sale of
motor fuel and/or

38 diesel motor fuel or a distributor of such fuels,
as defined in article

39 twelve-A of this chapter, shall comply with the
provisions of section

40 three hundred ninety-two-i of the general
business law by reducing the

41 prices charged for motor fuel and diesel motor fuel
in an amount equal

42 to any reduction in taxes prepaid by the
distributor, credit for the

43 amount of taxes prepaid by the retail seller
allowable pursuant to

44 section forty-seven of the tax law, exemption from
taxation pursuant to

45 section forty-seven of the tax law to the extent
that the tax that would

46 have been otherwise due exceeds the amount of tax
prepaid, or imposed on

47 retail customers resulting from computing sales
and compensating use

48 taxes at a cents per gallon rate pursuant to the
provisions of paragraph

49 two of subdivision (e) and subdivision (m) of
section one thousand one

50 hundred eleven of this chapter.

51 § 7. Notwithstanding any law to the contrary, a
municipality may make

52 the election to eliminate all taxes on motor fuel
and diesel motor fuel

53 pursuant to sections eleven hundred seven and
eleven hundred eight of

54 the tax law or article twenty-nine of the tax
law beginning fourteen

55 days after the effective date of this section and
ending one year after

56 such beginning date, by local law, ordinance
or resolution, if such

1 municipality mails, by certified or registered
mail, a certified copy of
2 such local law, ordinance or resolution to the
commissioner of taxation
3 and finance at his or her office in Albany no
later than the Wednesday
4 immediately preceding the applicable period as
defined by paragraph one
5 of subdivision (a) of section forty-seven of the
tax law.

6 § 8. The commissioner of taxation and finance
shall (a) on an emergen-
7 cy basis, promulgate and/or amend any rules and
regulations necessary to
8 provide for the tax free sales of motor fuel and
diesel motor fuel and
9 refunds of prepaid tax to retail sellers; and
10 (b) immediately make provisions for retail
sellers to apply for credit
11 for the taxes prepaid pursuant to articles
twelve-A, thirteen-A,
12 twenty-eight, and, if applicable, twenty-nine of
the tax law.
13 § 9. This act shall take effect immediately.