

STATE OF NEW YORK

3461

2023-2024 Regular Sessions

IN ASSEMBLY

February 3, 2023

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 48 to read

2 as follows:

3 § 48. 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
8 have the same meaning
9 as section two hundred eighty-two of this chapter.
10 (3) "Filling station" shall have the same
11 meaning as section two
12 hundred eighty-two of this chapter.
13 (4) "Retail sale" and "sold at retail" shall
14 mean any sale of motor
15 fuel or diesel motor fuel at a filling station to a
16 person for use in a
17 motor vehicle.
18 (5) "Retail seller" shall mean any person
19 who sells motor fuel or
20 diesel motor fuel at retail.
21 (6) "Sale" shall have the same meaning as section
22 two hundred eighty-
23 two of this chapter.
24 (b) Exemption from taxation. Notwithstanding
any other provision of
law, rule or regulation to the contrary, the taxes
imposed on retail
sales of motor fuel and diesel motor fuel made
during the applicable
period shall be exempt from the taxes imposed by
articles twelve-A,
thirteen-A, and twenty-eight of this chapter. If
the retail seller is
located within a municipality that has elected to
eliminate the tax
imposed pursuant to article twenty-nine of
this chapter, such taxes

EXPLANATION--Matter in italics (underscored) is
new; matter in brackets
[-] is old law to be omitted.

LBD07313-01-3

A. 3461

2

1 shall not be imposed on the retail sale of motor
2 fuel or diesel motor
3 fuel during the applicable period.
4 (c) Price reduction. During the applicable
5 period, each retail seller

4 shall reduce the price per gallon of motor fuel and
5 diesel motor fuel
6 offered for sale by the amount of the taxes
7 that the retail seller
8 prepaid on the gallon of motor fuel and diesel
9 motor fuel and the amount
10 of tax in excess of the prepaid amount that would
11 have been collected
12 from the consumer if the sale of the motor fuel or
13 diesel motor fuel had
14 not been exempt from tax pursuant to subdivision
15 (b) of this section.
16 (d) Advertising. Notwithstanding any other
17 provision of law to the
18 contrary, a retail seller may advertise that the
19 motor fuel and/or
20 diesel motor fuel is being or will be sold without
21 the state taxes. Such
22 advertisement may commence no earlier than three
23 days before the appli-
24 cable period and must end by the end of the
25 applicable period.
26 (e) Refunds and credits. (1) Notwithstanding any
27 other provision of
28 law to the contrary, the retail seller shall be
29 entitled to receive a
30 credit against the taxes due pursuant to article
31 twenty-eight of this
32 chapter for the amount of tax that the retail
33 seller prepaid pursuant to
34 articles twelve-A, thirteen-A, twenty-eight and,
35 if applicable, twenty-
36 nine of this chapter. If the retail seller is
37 located within a munici-
38 pality that has elected to eliminate the tax
39 imposed pursuant to article
40 twenty-nine of this chapter, the retail seller
41 shall be entitled to
42 claim a credit against the taxes due pursuant to
43 article twenty-eight of
44 this chapter for such prepaid taxes. The amount of
45 credit shall equal
46 the amount of tax that was prepaid pursuant to
47 articles twelve-A, thir-

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

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

46 8. By March thirty-first, two thousand twenty-
47 four, the comptroller
48 shall transfer from the general fund to the mass
49 transportation operat-
50 ing assistance fund an amount no greater than the
51 amount that would have

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

A. 3461

3

1 § 3. Subdivision 3 of section 89-b of the state
2 finance law is amended
3 by adding a new paragraph (g) to read as follows:
4 (g) Within forty-five days after an applicable
5 period as defined by
6 subdivision (a) of section forty-eight of the tax
7 law, the comptroller,
8 in consultation with the director of the division
9 of the budget, shall
10 transfer from the general fund to the special
11 obligation reserve and
12 payment account an amount equal to the amount that
13 would have otherwise
14 been deposited in the special obligation reserve
15 and payment account
16 pursuant to this section if the exemption defined
17 in subdivision (b) of
18 section forty-eight of the tax law had not been
19 authorized.

20 § 4. Section 89-c of the state finance law is
21 amended by adding a new
22 subdivision 4 to read as follows:
23 4. Within forty-five days after an applicable
24 period as defined by
25 subdivision (a) of section forty-eight of the tax
26 law, the comptroller,

15 in consultation with the director of the division
16 of the budget, shall
17 transfer from the general fund to the dedicated
18 mass transportation
19 trust fund an amount equal to the amount that
20 would have otherwise been
21 deposited in the dedicated mass transportation
22 trust fund pursuant to
23 this section if the exemption defined in
24 subdivision (b) of section
25 forty-eight of the tax law had not been authorized.

26 § 5. Section 392-i of the general business law,
27 as amended by section
28 5 of part M-1 of chapter 109 of the laws of 2006,
29 is amended to read as

30 follows:

31 § 392-i. Prices reduced to reflect change in
32 sales tax computation.

33 Every person engaged in the retail sale of
34 motor fuel and/or diesel

35 motor fuel or a distributor of such fuels, as
36 defined in article

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

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

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

prepaid by the retail seller allowable pursuant to
section forty-eight

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

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

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

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

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

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

the tax law.

38 § 6. Paragraph 1 of subdivision (n) of section
1817 of the tax law, as
39 amended by section 30 of subpart I of part V-1 of
chapter 57 of the laws
40 of 2009, is amended to read as follows:
41 (1) Every person engaged in the retail sale
of motor fuel and/or
42 diesel motor fuel or a distributor of such fuels,
as defined in article
43 twelve-A of this chapter, shall comply with the
provisions of section
44 three hundred ninety-two-i of the general business
law by reducing the
45 prices charged for motor fuel and diesel motor
fuel in an amount equal
46 to any reduction in taxes prepaid by the
distributor, credit for the
47 amount of taxes prepaid by the retail seller
allowable pursuant to
48 section forty-eight of the tax law, exemption from
taxation pursuant to
49 section forty-eight of the tax law to the extent
that the tax that would
50 have been otherwise due exceeds the amount of tax
prepaid, or imposed on
51 retail customers resulting from computing sales
and compensating use
52 taxes at a cents per gallon rate pursuant to the
provisions of paragraph
53 two of subdivision (e) and subdivision (m) of
section one thousand one
54 hundred eleven of this chapter.
55 § 7. Notwithstanding any law to the contrary, a
municipality may make
56 the election to eliminate all taxes on motor fuel
and diesel motor fuel

A. 3461

4

1 pursuant to sections eleven hundred seven and
eleven hundred eight of
2 the tax law or article twenty-nine of the tax law
beginning fourteen
3 days after the effective date of this section and
ending one year after

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

5 municipality mails, by certified or registered
mail, a certified copy of

6 such local law, ordinance or resolution to the
commissioner of taxation

7 and finance at his or her office in Albany no
later than the Wednesday

8 immediately preceding the applicable period as
defined by paragraph one

9 of subdivision (a) of section forty-eight of the
tax law.

10 § 8. The commissioner of taxation and finance
shall (a) on an emergen-

11 cy basis, promulgate and/or amend any rules and
regulations necessary to

12 provide for the tax free sales of motor fuel and
diesel motor fuel and

13 refunds of prepaid tax to retail sellers; and

14 (b) immediately make provisions for retail
sellers to apply for credit

15 for the taxes prepaid pursuant to articles
twelve-A, thirteen-A,

16 twenty-eight, and, if applicable, twenty-nine of
the tax law.

17 § 9. This act shall take effect immediately.