

S04925 Text:

STATE OF NEW YORK

4925

2023-2024 Regular Sessions

IN SENATE

February 17, 2023

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue

AN ACT to amend the tax law, the state finance law, and the general business law, in relation to enacting the "gas tax holiday act of 2023"

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

1 Section 1. Short title. This act shall be known and may be cited as

2 the "gas tax holiday act of 2023".

3 § 2. The tax law is amended by adding a new section 48 to read as follows:

4 § 48. Fuel tax holiday. (a) Definitions. For purposes of this section:

6 (1) "Applicable period" shall mean from the
first of the month next
7 succeeding the effective date of this section
until December thirty-
8 first, two thousand twenty-three.
9 (2) "Diesel motor fuel" and "motor fuel" shall
have the same meaning
10 as section two hundred eighty-two of this chapter.
11 (3) "Filling station" shall have the same
meaning as section two
12 hundred eighty-two of this chapter.
13 (4) "Fuel gas" shall have the same meaning as in
section 1-103 of the
14 energy law.
15 (5) "Retail sale" and "sold at retail" shall
mean: (i) any sale of
16 fuel gas; or (ii) any sale of motor fuel or diesel
motor fuel at a fill-
17 ing station to a person for use in a motor vehicle.
18 (6) "Retail seller" shall mean any person who
sells motor fuel or
19 diesel motor fuel at retail.
20 (7) "Sale" shall have the same meaning as
section two hundred eighty-
21 two of this chapter.
22 (8) "Utility" shall mean a municipality,
telephone corporation, utili-
23 ty corporation, steam corporation, waterworks
corporation, an elec-
24 tric corporation, a gas corporation, and a
combination gas and electric

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

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1 corporation as such terms are defined in
section two of the public
2 service law, and any other community water system
as defined in 10 NYCRR
3 § 5-1.1.

4 (9) "Utility corporation" shall have the same
meaning as subdivision
5 twenty-four of section two of the public service
law.

6 (b) Exemption from taxation. Notwithstanding any
other provision of
7 law, rule or regulation to the contrary, the
taxes imposed on retail
8 sales of fuel gas, motor fuel and diesel motor
fuel made during the
9 applicable period shall be exempt from the
taxes imposed by articles
10 twelve-A, thirteen-A, and twenty-eight of this
chapter. If the retail
11 seller is located within a municipality that has
elected to eliminate
12 the tax imposed pursuant to article twenty-nine of
this chapter, such
13 taxes shall not be imposed on the retail sale of
motor fuel or diesel
14 motor fuel during the applicable period.

15 (c) Price reduction. (1) During the applicable
period, each retail
16 seller shall reduce the price per gallon of motor
fuel and diesel motor
17 fuel offered for sale by the amount of the taxes
that the retail seller
18 prepaid on the gallon of motor fuel and diesel
motor fuel and the amount
19 of tax in excess of the prepaid amount that
would have been collected
20 from the consumer if the sale of the motor fuel or
diesel motor fuel had
21 not been exempt from tax pursuant to subdivision
(b) of this section.

22 (2) During the applicable period, each
utility corporation shall
23 reduce the rate of fuel gas related utility
rates per kilowatt hour
24 (kwh) offered by the amount of the taxes that
the utility corpo-
25 ration prepaid on the fuel gas and the amount of
tax in excess of the

26 prepaid amount that would have been collected
27 from the consumer if
28 the fuel gas rates had not been exempt from tax
29 pursuant to subdivision
30 (b) of this section.
31 (d) Advertising. (1) Notwithstanding any other
32 provision of law to the
33 contrary, a retail seller may advertise that the
34 motor fuel and/or
35 diesel motor fuel is being or will be sold without
36 the state taxes. Such
37 advertisement may commence no earlier than three
38 days before the appli-
39 cable period and shall end by the end of the
40 applicable period.
41 (2) Notwithstanding any other provision of law
42 to the contrary, a
43 utility corporation may advertise that fuel gas
44 utility rates are being
45 or will be calculated without the imposition of
46 state sales taxes. Such
47 advertisement may commence no earlier than three
48 days before the appli-
49 cable period and shall end by the end of the
50 applicable period.
51 (e) Refunds and credits. (1) Notwithstanding any
52 other provision of
53 law to the contrary, the retail seller shall be
54 entitled to receive a
55 credit against the taxes due pursuant to article
56 twenty-eight of this
57 chapter for the amount of tax that the retail
58 seller prepaid pursuant to
59 articles twelve-A, thirteen-A, twenty-eight and,
60 if applicable, twenty-
61 nine of this chapter. If the retail seller is
62 located within a munici-
63 pality that has elected to eliminate the tax
64 imposed pursuant to article
65 twenty-nine of this chapter, the retail seller
66 shall be entitled to
67 claim a credit against the taxes due pursuant to
68 article twenty-eight of

48 this chapter for such prepaid taxes. The amount of
49 credit shall equal
50 the amount of tax that was prepaid pursuant to
51 articles twelve-A, thir-
52 teen-A, twenty-eight and, if applicable, twenty-
53 nine of this chapter for
54 each gallon of motor fuel and diesel motor fuel
55 sold at retail during
56 the applicable period. Such credit shall not be
57 allowed for sales that
58 would have otherwise been exempt from tax.
59 (2) A retail seller may claim the credit
60 prescribed in paragraph one
61 of this subdivision when the retail seller files
62 its return of tax for
63 the sales of motor fuel and diesel motor fuel
64 for the period that

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65 includes the applicable period. Notwithstanding
66 the foregoing, if a
67 retail seller is required to file its return more
68 than thirty days after
69 the close of the applicable period defined in
70 paragraph one of subdivi-
71 sion (a) of this section, such retailer shall be
72 authorized to file an
73 amendment to its most recently filed return to
74 claim such credit. No
75 credit may be claimed for the taxes prepaid
76 pursuant to article
77 twelve-A, thirteen-A, twenty-eight or, if
78 applicable, twenty-nine of
79 this chapter pursuant to this section if the
80 claim would have been
81 barred pursuant to the article that required
82 prepayment of such taxes.
83 No interest shall be paid on any claims for credit
84 made pursuant to this
85 section.

86 § 3. Subdivision 3 of section 89-b of the state
87 finance law is amended

88 by adding a new paragraph (g) to read as follows:

14 (g) Within forty-five days after the applicable
15 period as defined by
16 subdivision (a) of section forty-eight of the tax
17 law, the comptroller,
18 in consultation with the director of the division
19 of the budget, shall
20 transfer from the general fund to the special
21 obligation reserve and
22 payment account an amount equal to the amount that
23 would have otherwise
24 been deposited in the special obligation reserve
25 and payment account
26 pursuant to this section if the exemption defined
27 in subdivision (b) of
28 section forty-eight of the tax law had not been
29 authorized.

30 § 4. Section 392-i of the general business law,
as amended by section
31 5 of part M-1 of chapter 109 of the laws of 2006,
is amended to read as

32 follows:

33 § 392-i. Prices reduced to reflect change in
sales tax computation.

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

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

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

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

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

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

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

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

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

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

36 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.

39 § 5. Paragraph 1 of subdivision (n) of section 1817 of the tax law, as amended by section 30 of subpart I of part V-1 of chapter 57 of the laws of 2009, is amended to read as follows:

42 (1) Every person engaged in the retail sale of motor fuel and/or diesel motor fuel or a distributor of such fuels, as defined in article twelve-A of this chapter, shall comply with the provisions of section three hundred ninety-two-i of the general business law by reducing the prices charged for motor fuel and 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 this chapter, exemption from section forty-eight of this chapter to the extent that the tax that would have been otherwise due exceeds the amount of tax prepaid, or

52 imposed on retail customers resulting from computing sales and compen- sating 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 one thousand one hundred eleven of this chapter.

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1 § 6. Notwithstanding any law to the contrary, a municipality may make
2 the election to eliminate all taxes on fuel gas, motor fuel and diesel

3 motor fuel pursuant to sections eleven hundred
seven and eleven hundred
4 eight of the tax law or article twenty-nine of
the tax law for the
5 applicable period, as defined by subdivision (a)
of section forty-eight
6 of the tax law, as added by section two of this
act, by local law, ordi-
7 nance or resolution, if such municipality mails, by
certified or regis-
8 tered mail, a certified copy of such local law,
ordinance or resolution
9 to the commissioner of taxation and finance at his
or her office in
10 Albany no later than the Wednesday immediately
preceding the first day
11 of the applicable period.
12 § 7. The commissioner of taxation and finance
shall, on an emergency
13 basis, promulgate and/or amend any rules and
regulations necessary to
14 provide for the tax free sales of fuel gas, motor
fuel and diesel motor
15 fuel and refunds of prepaid tax to retail sellers.
16 § 8. This act shall take effect immediately.