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# COUNTY OF ERIE

**MARK C. POLONCARZ**

COUNTY EXECUTIVE

April 25, 2022

Erie County Legislature  
92 Franklin Street – Fourth Floor  
Buffalo, New York 14202

**Re: Adopting a cents per gallon rate of sales and compensating use taxes on motor fuel for June 1<sup>st</sup> 2022 through February 28<sup>th</sup> 2023 with a \$2.00 per gallon limit**  
**IMMEDIATE CONSIDERATION REQUESTED**

Dear Honorable Members:

Please find enclosed for your approval a Resolution authorizing the County of Erie to adopt a cents-per-gallon method of sales and compensating use taxes on a temporary basis in alignment with action taken by the State of New York in the adopted 2022-2023 state budget. This action will ensure Erie County residents pay no sales tax on a gallon of gasoline or diesel fuel above \$2.00. For example, a gallon of fuel priced at \$4.35 would be taxed as if it was only \$2.00.

In addition, per this cover letter, the County of Erie formally requests that the Commissioner of Taxation and Finance reduce the 90-day notice requirement period for this resolution to 30 days. It must be noted, to see the reduction in per gallon at the gas pump, retailers must reduce the price of gas to customers. If they do not, the retailers will see a windfall of profits, the county will have lost significant revenue, and consumers will have seen no change.

Should your Honorable Body require further information, I encourage you to contact the Division of Budget and Management or the County Attorney's Office. Thank you for your consideration on this matter.

Sincerely yours,

Mark C. Poloncarz  
Erie County Executive

MCP/bqs  
Enclosure

cc: Erie County Comptroller Kevin Hardwick, PhD.  
Michael Siragusa, Erie County Attorney  
Robert W. Keating, Director of Budget and Management

## **MEMORANDUM**

**To:** Honorable Members of the Erie County Legislature  
**From:** Office of the County Executive  
**Re:** Adopting a cents per gallon rate of sales and compensating use taxes on motor fuel for June 1<sup>st</sup> 2022 through February 28<sup>th</sup> 2023 with a \$2.00 per gallon limit  
**Date:** April 25, 2022

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### **SUMMARY**

In order to provide some relief to Erie County residents who are facing a significant increase in fuel costs, Erie County will temporarily limit taxation on gasoline and diesel fuel.

### **FISCAL IMPLICATIONS**

Based on current fuel prices, Erie County will lose approximately \$0.11 per gallon in sales tax revenue, of which 56% would have gone to Erie County. Total sales-tax losses for the year will be highly variable based on fluctuations in fuel prices and consumption over the course of 2022. It must be noted, to see the reduction in per gallon at the gas pump, retailers must reduce the price of gas to customers. If they do not, the retailers will see a windfall of profits, the county will have lost significant revenue, and consumers will have seen no change.

### **REASONS FOR RECOMMENDATION**

Motorists are confronting the highest fuel costs since 2012 due to a number of factors including the recent invasion of Ukraine by the Russian Federation, a major oil producer. In order to provide some degree of relief, counties and cities in New York State are able to adopt a rate per gallon instead of a percentage sales and compensating use tax on motor fuel which includes both standard gasoline and diesel. This rate per gallon may be capped at a certain level, so that very expensive gas is only taxed at a lower amount. This resolution would set a limit at \$2.00 per gallon, with the remaining price of a gallon of fuel being exempted from Erie County taxes.

### **BACKGROUND INFORMATION**

The recently-enacted State budget gives localities an additional option for electing a cents-per-gallon sales tax rate on motor fuel and Diesel motor fuel allowing localities to elect a cents-per-gallon rate, calculated by multiplying their percentage sales tax rate by \$2.00 or \$3.00, or \$4.00 rounded to the nearest cent.

A locality can opt to have the rate take effect at the beginning of any sales tax quarter (March 1, June 1, September 1 or December 1). However, if a locality is interested in adopting a cents-per-gallon rate to take effect on June 1, 2022, several steps must be taken promptly. These include enacting a local law, ordinance or resolution in the form provided by the Commissioner (used in here), requesting a waiver of the 90-day notice period required by the Tax Law to no less than 30 days, and mailing that enactment by certified or registered mail no later than May 2, 2022.

### **CONSEQUENCE OF NEGATIVE ACTION**

Erie County would continue to tax the full price of each gallon of fuel irrespective of any future increases in fuel prices.

### **STEPS FOLLOWING APPROVAL**

The Clerk of the Legislature will seal and certify five copies of the resolution and provide the certified resolutions to the Department of Law for filing with the Secretary of State, the State Comptroller, and the Erie County Clerk, within five days of enactment, pursuant to section 1210(e) of the Tax Law. No later than May 2nd, the Department of Law will send a certified copy of this resolution via certified mail to the Commissioner of Taxation and Finance.

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RESOLUTION

of the

Legislature of the County of Erie, electing a cents per gallon rate of sales and compensating use taxes on motor fuel and diesel motor fuel, in lieu of the percentage rate of such taxes, pursuant to the authority of Article 29 of the Tax Law of the State of New York.

NOW, THEREFORE BE IT

RESOLVED, that be it enacted by the Legislature of the County of Erie, as follows:

SECTION 1. The Erie County Sales and Use Tax Resolution, being a resolution adopted by the Board of Supervisors of the County of Erie as Item 8 of Meeting Number 31, held July 27, 1965, Supervisors Proceedings, page 666, as amended, is hereby further amended by adding a new section 4-B to read as follows:

Section 4-B. Cents per gallon rate of sales and compensating use taxes on motor fuel and diesel motor fuel.

Notwithstanding any provision of this enactment to the contrary, for the period commencing June 1, 2022 and ending February 28<sup>th</sup> 2023, in lieu of the percentage rate of sales and compensating use taxes imposed on receipts from the retail sale of and consideration given or contracted to be given for, or for the use of, motor fuel and diesel motor fuel, such taxes shall be imposed at a rate of cents per gallon of such motor fuel or diesel motor fuel, in the manner prescribed by subdivision (m) of section 1111 of the New York Tax Law, provided that, for purposes of calculating the cents per gallon rate of tax, such receipts or consideration shall be limited to two dollars per gallon of either such fuel. Provided that, if the average price of such fuels changes as described in such subdivision (m) of section 1111 of the Tax Law, the Commissioner of Taxation and Finance shall adjust the cents per gallon tax rate on such fuels in the manner prescribed in such subdivision (m) of section 1111 of the Tax Law.

SECTION 2. This resolution shall take effect June 1, 2022.

and be it further

RESOLVED, that the Clerk of the Legislature is hereby directed to seal and certify five copies of the resolution and provide the certified resolutions to the Department of Law for filing with the Secretary of State, the State Comptroller, and the Erie County Clerk, within five days of enactment, pursuant to section 1210(e) of the Tax Law; and be it further

RESOLVED, that no later than May 2, 2022, the Department of Law shall send a certified copy of this resolution via certified mail to the Commissioner of Taxation and Finance.; and be it further

RESOLVED, that certified copies of this resolution be forwarded to the Office of the County Executive, the Office of the Comptroller and the Division of Budget and Management