



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

February 13, 2023

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

Re: Extension of a cents per gallon rate of sales and compensating use taxes on motor fuel for June 1, 2023 through December 31, 2023 with a \$2.00 per gallon limit

Dear Honorable Members:

Please find enclosed for your approval a Resolution authorizing the County of Erie to extend a cents-per-gallon method of sales and compensating use taxes on a temporary basis. This action will ensure Erie County residents continue to pay no sales tax on a gallon of gasoline or diesel fuel above \$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.

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,

Mark C. Poloncarz
Erie County Executive

MCP/mc
Enclosure

cc: Kevin Hardwick, PhD., Erie County Comptroller
Jeremy Toth, 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: Extension of a cents per gallon rate of sales and compensating use taxes on motor fuel for June 1, 2023 through December 31, 2023 with a \$2.00 per gallon limit
Date: February 13, 2023

SUMMARY

In order to continue providing relief to Erie County residents who are facing a significant increase in fuel costs, Erie County will extend its temporary limit taxation on gasoline and diesel fuel.

FISCAL IMPLICATIONS

Based on current fuel prices, Erie County will lose approximately \$0.06 per gallon in sales tax revenue. Total revenue losses for the year will be highly variable based on fluctuations in fuel prices over the course of 2023. If fuel prices maintain their current levels throughout the rest of year, projected losses would be approximately \$8,000,000 for the 2023 fiscal year.

REASONS FOR RECOMMENDATION

Although fuel prices have come down from their height in 2022, Erie County would like to extend its sales tax rate per gallon limit on motor fuel which includes both standard gasoline and diesel at \$2.00 per gallon, with the remaining price of a gallon of fuel being exempted from Erie County taxes.

BACKGROUND INFORMATION

The 2022-23 State budget gave 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, 2023, 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, 2023.

CONSEQUENCE OF NEGATIVE ACTION

Erie County would 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.

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, 2023 and ending December 31, 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, 2023.

; 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, 2023, 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 County Executive's Office, the Comptroller's Office and the Division of Budget and Management.