

2194--A

2013-2014 Regular Sessions

I N   S E N A T E

January 14, 2013

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Introduced by Sens. YOUNG, MAZIARZ, RANZENHOFER -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- recommitted to the Committee on Energy and Telecommunications in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to eliminating state sales and compensating use taxes on motor fuels and diesel motor fuels and authorizing localities to eliminate such taxes at the local level

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Subdivision (a) of section 1115 of the tax law is amended  
2     by adding a new paragraph 44 to read as follows:  
3     (44) MOTOR FUEL AND DIESEL MOTOR FUEL.  
4     S 2. Subdivision (b) of section 1107 of the tax law is amended by  
5     adding a new clause 12 to read as follows:  
6     (12) EXCEPT AS OTHERWISE PROVIDED BY LAW, THE EXEMPTION PROVIDED IN  
7     PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED  
8     FIFTEEN OF THIS ARTICLE RELATING TO MOTOR FUEL AND DIESEL MOTOR FUEL  
9     SHALL BE APPLICABLE PURSUANT TO A LOCAL LAW, ORDINANCE OR RESOLUTION  
10    ADOPTED BY A CITY SUBJECT TO THE PROVISIONS OF THIS SECTION. SUCH CITY  
11    IS EMPOWERED TO ADOPT OR REPEAL SUCH A LOCAL LAW, ORDINANCE OR RESOL-  
12    UTION. SUCH ADOPTION OR REPEAL SHALL ALSO BE DEEMED TO AMEND ANY LOCAL  
13    LAW, ORDINANCE OR RESOLUTION ENACTED BY SUCH A CITY IMPOSING TAXES  
14    PURSUANT TO THE AUTHORITY OF SUBDIVISION (A) OF SECTION TWELVE HUNDRED  
15    TEN OF THIS CHAPTER.  
16    S 3. Paragraph 1 of subdivision (a) of section 1210 of the tax law, as  
17    amended by chapter 13 of the laws of 2013, is amended to read as  
18    follows:  
19    (1) Either, all of the taxes described in article twenty-eight of this  
20    chapter, at the same uniform rate, as to which taxes all provisions of

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

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1 the local laws, ordinances or resolutions imposing such taxes shall be  
2 identical, except as to rate and except as otherwise provided, with the  
3 corresponding provisions in such article twenty-eight, including the  
4 definition and exemption provisions of such article, so far as the  
5 provisions of such article twenty-eight can be made applicable to the  
6 taxes imposed by such city or county and with such limitations and  
7 special provisions as are set forth in this article. The taxes author-  
8 ized under this subdivision may not be imposed by a city or county  
9 unless the local law, ordinance or resolution imposes such taxes so as  
10 to include all portions and all types of receipts, charges or rents,  
11 subject to state tax under sections eleven hundred five and eleven  
12 hundred ten of this chapter, except as otherwise provided. (i) Any local  
13 law, ordinance or resolution enacted by any city of less than one  
14 million or by any county or school district, imposing the taxes author-  
15 ized by this subdivision, shall, notwithstanding any provision of law to  
16 the contrary, exclude from the operation of such local taxes all sales  
17 of tangible personal property for use or consumption directly and  
18 predominantly in the production of tangible personal property, gas,  
19 electricity, refrigeration or steam, for sale, by manufacturing, proc-  
20 essing, generating, assembly, refining, mining or extracting; and all  
21 sales of tangible personal property for use or consumption predominantly  
22 either in the production of tangible personal property, for sale, by  
23 farming or in a commercial horse boarding operation, or in both; and,  
24 unless such city, county or school district elects otherwise, shall omit  
25 the provision for credit or refund contained in clause six of subdivi-  
26 sion (a) or subdivision (d) of section eleven hundred nineteen of this  
27 chapter. (ii) Any local law, ordinance or resolution enacted by any  
28 city, county or school district, imposing the taxes authorized by this  
29 subdivision, shall omit the residential solar energy systems equipment  
30 exemption provided for in subdivision (ee), the commercial solar energy  
31 systems equipment exemption provided for in subdivision (ii) and the  
32 clothing and footwear exemption provided for in paragraph thirty of  
33 subdivision (a) of section eleven hundred fifteen of this chapter,  
34 unless such city, county or school district elects otherwise as to  
35 either such residential solar energy systems equipment exemption, such  
36 commercial solar energy systems equipment exemption or such clothing and  
37 footwear exemption. ANY LOCAL LAW, ORDINANCE OR RESOLUTION ENACTED BY  
38 ANY CITY, COUNTY OR SCHOOL DISTRICT, IMPOSING THE TAXES AUTHORIZED BY  
39 THIS SUBDIVISION, SHALL OMIT THE MOTOR FUEL AND DIESEL MOTOR FUEL  
40 EXEMPTION PROVIDED FOR IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF  
41 SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER, UNLESS SUCH CITY, COUNTY  
42 OR SCHOOL DISTRICT ELECTS OTHERWISE; PROVIDED THAT IF SUCH A CITY HAVING  
43 A POPULATION OF ONE MILLION OR MORE ENACTS THE RESOLUTION DESCRIBED IN  
44 SUBDIVISION (Q) OF THIS SECTION OR REPEALS SUCH RESOLUTION, SUCH RESOL-  
45 UTION OR REPEAL SHALL ALSO BE DEEMED TO AMEND ANY LOCAL LAW, ORDINANCE  
46 OR RESOLUTION ENACTED BY SUCH A CITY IMPOSING SUCH TAXES PURSUANT TO THE  
47 AUTHORITY OF THIS SUBDIVISION, WHETHER OR NOT SUCH TAXES ARE SUSPENDED  
48 AT THE TIME SUCH CITY ENACTS ITS RESOLUTION PURSUANT TO SUBDIVISION (Q)  
49 OF THIS SECTION OR AT THE TIME OF ANY SUCH REPEAL; PROVIDED, FURTHER,  
50 THAT ANY SUCH LOCAL LAW, ORDINANCE OR RESOLUTION AND SECTION ELEVEN  
51 HUNDRED SEVEN OF THIS CHAPTER, AS DEEMED TO BE AMENDED IN THE EVENT A  
52 CITY OF ONE MILLION OR MORE ENACTS A RESOLUTION PURSUANT TO THE AUTHORI-  
53 TY OF SUBDIVISION (Q) OF THIS SECTION, SHALL BE FURTHER AMENDED, AS  
54 PROVIDED IN SECTION TWELVE HUNDRED EIGHTEEN OF THIS SUBPART, SO THAT THE  
55 MOTOR FUEL AND DIESEL MOTOR FUEL EXEMPTION IN ANY SUCH LOCAL LAW, ORDI-  
56 NANCE OR RESOLUTION OR IN SUCH SECTION ELEVEN HUNDRED SEVEN OF THIS

CHAPTER IS THE SAME AS THE MOTOR FUEL AND DIESEL MOTOR FUEL EXEMPTION IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER.

S 4. Subdivision (d) of section 1210 of the tax law, as amended by section 37 of part S-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(d) A local law, ordinance or resolution imposing any tax pursuant to this section, increasing or decreasing the rate of such tax, repealing or suspending such tax, exempting from such tax the energy sources and services described in paragraph three of subdivision (a) or of subdivision (b) of this section or changing the rate of tax imposed on such energy sources and services or providing for the credit or refund described in clause six of subdivision (a) of section eleven hundred nineteen of this chapter must go into effect only on one of the following dates: March first, June first, September first or December first; provided, that a local law, ordinance or resolution providing for the exemption described in paragraph thirty of subdivision (a) of section eleven hundred fifteen of this chapter or repealing any such exemption or a local law, ordinance or resolution providing for a refund or credit described in subdivision (d) of section eleven hundred nineteen of this chapter or repealing such provision so provided must go into effect only on March first; PROVIDED, FURTHER, THAT A LOCAL LAW, ORDINANCE OR RESOLUTION PROVIDING FOR THE EXEMPTION DESCRIBED IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER OR REPEALING ANY SUCH EXEMPTION SO PROVIDED AND A RESOLUTION ENACTED PURSUANT TO THE AUTHORITY OF SUBDIVISION (Q) OF THIS SECTION PROVIDING SUCH EXEMPTION OR REPEALING SUCH EXEMPTION SO PROVIDED MAY GO INTO EFFECT IMMEDIATELY. No such local law, ordinance or resolution shall be effective unless a certified copy of such law, ordinance or resolution is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least ninety days prior to the date it is to become effective. However, the commissioner may waive and reduce such ninety-day minimum notice requirement to a mailing of such certified copy by registered or certified mail within a period of not less than thirty days prior to such effective date if the commissioner deems such action to be consistent with the commissioner's duties under section twelve hundred fifty of this article and the commissioner acts by resolution. Where the restriction provided for in section twelve hundred twenty-three of this article as to the effective date of a tax and the notice requirement provided for therein are applicable and have not been waived, the restriction and notice requirement in section twelve hundred twenty-three of this article shall also apply.

S 5. Section 1210 of the tax law is amended by adding a new subdivision (q) to read as follows:

(Q) NOTWITHSTANDING ANY OTHER PROVISION OF STATE OR LOCAL LAW, ORDINANCE OR RESOLUTION TO THE CONTRARY:

(1) ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE IN WHICH THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED SEVEN OF THIS CHAPTER ARE IN EFFECT, ACTING THROUGH ITS LOCAL LEGISLATIVE BODY, IS HEREBY AUTHORIZED AND EMPOWERED TO ELECT TO PROVIDE THE EXEMPTION FROM SUCH TAXES FOR THE SAME MOTOR FUEL AND DIESEL MOTOR FUEL EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES DESCRIBED IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER BY ENACTING A RESOLUTION IN THE FORM SET FORTH IN PARAGRAPH TWO OF THIS SUBDIVISION; WHEREUPON, UPON COMPLIANCE WITH THE PROVISIONS OF SUBDIVISIONS (D) AND (E) OF THIS SECTION, SUCH ENACTMENT OF SUCH RESOLUTION SHALL BE DEEMED

1 TO BE AN AMENDMENT TO SUCH SECTION ELEVEN HUNDRED SEVEN AND SUCH SECTION  
2 ELEVEN HUNDRED SEVEN SHALL BE DEEMED TO INCORPORATE SUCH EXEMPTION AS IF  
3 IT HAD BEEN DULY ENACTED BY THE STATE LEGISLATURE AND APPROVED BY THE  
4 GOVERNOR.

5 (2) FORM OF RESOLUTION: BE IT ENACTED BY THE (INSERT PROPER TITLE OF  
6 LOCAL LEGISLATIVE BODY) AS FOLLOWS:

7 SECTION ONE. RECEIPTS FROM SALES OF AND CONSIDERATION GIVEN OR  
8 CONTRACTED TO BE GIVEN FOR PURCHASES OF MOTOR FUEL AND DIESEL MOTOR FUEL  
9 EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES PURSUANT TO PARAGRAPH  
10 FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THE  
11 TAX LAW SHALL ALSO BE EXEMPT FROM SALES AND COMPENSATING USE TAXES  
12 IMPOSED IN THIS JURISDICTION.

13 SECTION TWO. THIS RESOLUTION SHALL TAKE EFFECT, (INSERT THE DATE) AND  
14 SHALL APPLY TO SALES MADE AND USES OCCURRING ON AND AFTER THAT DATE  
15 ALTHOUGH MADE OR OCCURRING UNDER A PRIOR CONTRACT.

16 S 6. The commissioner of taxation and finance is hereby authorized to  
17 implement the provisions of this act with respect to the elimination of  
18 the imposition of sales tax, additional taxes, and supplemental taxes on  
19 diesel motor fuel and motor fuel and all other taxes so addressed by  
20 this act.

21 S 7. This act shall take effect on the first day of the sales tax  
22 quarterly period, as described in subdivision (b) of section 1136 of the  
23 tax law, next commencing at least 90 days after this act shall have  
24 become a law and shall apply in accordance with the applicable transi-  
25 tional provisions of sections 1106 and 1217 of the tax law.