

2448

2013-2014 Regular Sessions

I N S E N A T E

January 17, 2013

Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the tax law, in relation to exempting the sale and installation of commercial fuel cell electric generating equipment from state sales and compensating use tax and granting municipalities the option to grant such exemption

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

1 Section 1. Section 1115 of the tax law is amended by adding a new
2 subdivision (ii) to read as follows:
3 (II) RECEIPTS FROM THE RETAIL SALE OF COMMERCIAL FUEL CELL ELECTRIC
4 GENERATING SYSTEMS EQUIPMENT AND OF THE SERVICE OF INSTALLING SUCH
5 SYSTEMS SHALL BE EXEMPT FROM TAXES IMPOSED BY SECTION ELEVEN HUNDRED
6 FIVE AND ELEVEN HUNDRED ELEVEN OF THIS ARTICLE. FOR THE PURPOSES OF THIS
7 SUBDIVISION, "FUEL CELL ELECTRICITY GENERATING SYSTEMS EQUIPMENT" SHALL
8 MEAN AN ARRANGEMENT OR COMBINATION OF COMPONENTS INSTALLED UPON NON-RE-
9 SIDENTIAL PREMISES THAT UTILIZE A SOLID OXIDE, MOLTEN CARBONATE, PROTON
10 EXCHANGE MEMBRANE OR PHOSPHORIC ACID FUEL CELL THAT IS MANUFACTURED,
11 INSTALLED AND OPERATED IN ACCORDANCE WITH APPLICABLE GOVERNMENT AND
12 INDUSTRY STANDARDS. SUCH ARRANGEMENT OR COMPONENTS SHALL NOT INCLUDE
13 EQUIPMENT THAT IS PART OF A NON-FUEL CELL ENERGY SYSTEM.
14 S 2. Paragraph 1 of subdivision (a) of section 1210 of the tax law, as
15 amended by chapter 406 of the laws of 2012, is amended to read as
16 follows:
17 (1) Either, all of the taxes described in article twenty-eight of this
18 chapter, at the same uniform rate, as to which taxes all provisions of
19 the local laws, ordinances or resolutions imposing such taxes shall be
20 identical, except as to rate and except as otherwise provided, with the
21 corresponding provisions in such article twenty-eight, including the
22 definition and exemption provisions of such article, so far as the

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

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1 provisions of such article twenty-eight can be made applicable to the
2 taxes imposed by such city or county and with such limitations and
3 special provisions as are set forth in this article. The taxes author-
4 ized under this subdivision may not be imposed by a city or county
5 unless the local law, ordinance or resolution imposes such taxes so as
6 to include all portions and all types of receipts, charges or rents,
7 subject to state tax under sections eleven hundred five and eleven
8 hundred ten of this chapter, except as otherwise provided. (i) Any local
9 law, ordinance or resolution enacted by any city of less than one
10 million or by any county or school district, imposing the taxes author-
11 ized by this subdivision, shall, notwithstanding any provision of law to
12 the contrary, exclude from the operation of such local taxes all sales
13 of tangible personal property for use or consumption directly and
14 predominantly in the production of tangible personal property, gas,
15 electricity, refrigeration or steam, for sale, by manufacturing, proc-
16 essing, generating, assembly, refining, mining or extracting; and all
17 sales of tangible personal property for use or consumption predominantly
18 either in the production of tangible personal property, for sale, by
19 farming or in a commercial horse boarding operation, or in both; and,
20 unless such city, county or school district elects otherwise, shall omit
21 the provision for credit or refund contained in clause six of subdivi-
22 sion (a) or subdivision (d) of section eleven hundred nineteen of this
23 chapter. (ii) Any local law, ordinance or resolution enacted by any
24 city, county or school district, imposing the taxes authorized by this
25 subdivision, shall omit the residential solar energy systems equipment
26 exemption provided for in subdivision (ee), the commercial solar energy
27 systems equipment exemption provided for in subdivision (hh), THE
28 COMMERCIAL FUEL CELL ELECTRIC GENERATING EQUIPMENT EXEMPTION PROVIDED IN
29 SUBDIVISION (II), and the clothing and footwear exemption provided for
30 in paragraph thirty of subdivision (a) of section eleven hundred fifteen
31 of this chapter, unless such city, county or school district elects
32 otherwise as to either such residential solar energy systems equipment
33 exemption, such commercial solar energy systems equipment exemption,
34 SUCH COMMERCIAL FUEL CELL ELECTRIC GENERATING EXEMPTION, or such cloth-
35 ing and footwear exemption.

36 S 3. Section 1210 of the tax law is amended by adding a new subdivi-
37 sion (q) to read as follows:

38 (Q) NOTWITHSTANDING ANY OTHER PROVISION OF STATE OR LOCAL LAW, ORDI-
39 NANCE OR RESOLUTION TO THE CONTRARY:

40 (1) ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE IN WHICH THE
41 TAXES IMPOSED BY SECTION ELEVEN HUNDRED SEVEN OF THIS CHAPTER ARE IN
42 EFFECT, ACTING THROUGH ITS LOCAL LEGISLATIVE BODY, IS HEREBY AUTHORIZED
43 AND EMPOWERED TO ELECT TO PROVIDE THE SAME EXEMPTIONS FROM SUCH TAXES AS
44 THE COMMERCIAL FUEL CELL ELECTRIC GENERATING EQUIPMENT EXEMPTION FROM
45 STATE SALES AND COMPENSATING USE TAXES DESCRIBED IN SUBDIVISION (II) OF
46 SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER BY ENACTING A RESOLUTION
47 IN THE FORM SET FORTH IN PARAGRAPH TWO OF THIS SUBDIVISION; WHEREUPON,
48 UPON COMPLIANCE WITH THE PROVISIONS OF SUBDIVISIONS (D) AND (E) OF THIS
49 SECTION, SUCH ENACTMENT OF SUCH RESOLUTION SHALL BE DEEMED TO BE AN
50 AMENDMENT TO SUCH SECTION ELEVEN HUNDRED SEVEN AND SUCH SECTION ELEVEN
51 HUNDRED SEVEN SHALL BE DEEMED TO INCORPORATE SUCH EXEMPTIONS AS IF THEY
52 HAD BEEN DULY ENACTED BY THE STATE LEGISLATURE AND APPROVED BY THE
53 GOVERNOR.

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

1 SECTION ONE. RECEIPTS FROM SALES OF AND CONSIDERATION GIVEN OR
2 CONTRACTED TO BE GIVEN FOR, OR FOR THE USE OF, PROPERTY AND SERVICES
3 EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES PURSUANT TO SUBDIVI-
4 SION (II) OF SECTION 1115 OF THE TAX LAW SHALL ALSO BE EXEMPT FROM SALES
5 AND COMPENSATING USE TAXES IMPOSED IN THIS JURISDICTION.
6 SECTION TWO. THIS RESOLUTION SHALL TAKE EFFECT JANUARY 1, (INSERT THE
7 YEAR, BUT NOT EARLIER THAN THE YEAR 2013) AND SHALL APPLY TO SALES MADE,
8 SERVICES RENDERED AND USES OCCURRING ON OR AFTER THAT DATE IN ACCORDANCE
9 WITH THE APPLICABLE TRANSITIONAL PROVISIONS IN SECTIONS 1106, 1216 AND
10 1217 OF THE NEW YORK TAX LAW.
11 S 4. This act shall take effect immediately, provided that section one
12 of this act shall take effect on the first of January next succeeding
13 the date on which this act shall have become a law.