

2431

2009-2010 Regular Sessions

I N A S S E M B L Y

January 15, 2009

Introduced by M. of A. TOBACCO -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to taxpayer relief on cell phone taxes

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

1 Section 1. Section 1109 of the tax law is amended by adding a new
2 subdivision (i) to read as follows:

3 (I) THE EXEMPTION CONTAINED IN SUBDIVISION (CC) OF SECTION ELEVEN
4 HUNDRED FIFTEEN OF THIS ARTICLE SHALL NOT APPLY.

5 S 2. Subdivision (cc) of section 1115 of the tax law, as added by
6 section 11 of part S of chapter 85 of the laws of 2002, is amended to
7 read as follows:

8 (cc) Notwithstanding any other provision of law to the contrary,
9 receipts from the sale of mobile telecommunications service [by a home
10 service provider] shall be exempt from the taxes imposed by subparagraph
11 (B) of paragraph one and paragraph two of subdivision (b) of section
12 eleven hundred five of this article [if the mobile telecommunications
13 customer's place of primary use is within a taxing jurisdiction outside
14 this state].

15 S 3. Subparagraph (i) of paragraph 1 of subdivision (a) of section
16 1210 of the tax law, as amended by section 4 of part SS-1 of chapter 57
17 of the laws of 2008, is amended to read as follows:

18 (i) Either, all of the taxes described in article twenty-eight of this
19 chapter, at the same uniform rate, as to which taxes all provisions of
20 the local laws, ordinances or resolutions imposing such taxes shall be
21 identical, except as to rate and except as otherwise provided, with the
22 corresponding provisions in such article twenty-eight, including the
23 definition and exemption provisions of such article, so far as the
24 provisions of such article twenty-eight can be made applicable to the
25 taxes imposed by such city or county and with such limitations and

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

LBD04030-01-9

1 special provisions as are set forth in this article. The taxes author-
2 ized under this subdivision may not be imposed by a city or county
3 unless the local law, ordinance or resolution imposes such taxes so as
4 to include all portions and all types of receipts, charges or rents,
5 subject to state tax under sections eleven hundred five and eleven
6 hundred ten of this chapter, except as otherwise provided. Any local
7 law, ordinance or resolution enacted by any city of less than one
8 million or by any county or school district, imposing the taxes author-
9 ized by this subdivision, shall, notwithstanding any provision of law to
10 the contrary, exclude from the operation of such local taxes all sales
11 of tangible personal property for use or consumption directly and
12 predominantly in the production of tangible personal property, gas,
13 electricity, refrigeration or steam, for sale, by manufacturing, proc-
14 essing, generating, assembly, refining, mining or extracting; and all
15 sales of tangible personal property for use or consumption predominantly
16 either in the production of tangible personal property, for sale, by
17 farming or in a commercial horse boarding operation, or in both; and,
18 unless such city, county or school district elects otherwise, shall omit
19 the provision for credit or refund contained in clause six of subdivi-
20 sion (a) of section eleven hundred nineteen of this chapter. Any local
21 law, ordinance or resolution enacted by any city, county or school
22 district, imposing the taxes authorized by this subdivision, shall omit
23 the residential solar energy systems equipment exemption provided for in
24 subdivision (ee), the clothing and footwear exemption provided for in
25 paragraph thirty of subdivision (a), THE MOBILE TELECOMMUNICATIONS
26 SERVICE EXEMPTION PROVIDED FOR IN SUBDIVISION (CC), and the qualified
27 empire zone enterprise exemptions provided for in subdivision (z) of
28 section eleven hundred fifteen of this chapter, unless such city, county
29 or school district elects otherwise as to either such residential solar
30 energy systems equipment exemption or such clothing and footwear
31 exemption OR SUCH TELECOMMUNICATIONS SERVICE EXEMPTION, or such quali-
32 fied empire zone enterprise exemptions; provided that if such a city
33 having a population of one million or more in which the taxes imposed by
34 section eleven hundred seven of this chapter are in effect enacts the
35 resolution described in subdivision (k) of this section or repeals such
36 resolution or enacts the resolution described in subdivision (l) of this
37 section or repeals such resolution or enacts the resolution described in
38 subdivision (n) of this section or repeals such resolution OR ENACTS THE
39 RESOLUTION DESCRIBED IN SUBDIVISION (P) OF THIS SECTION OR REPEALS SUCH
40 RESOLUTION, such resolution or repeal shall also be deemed to amend any
41 local law, ordinance or resolution enacted by such a city imposing such
42 taxes pursuant to the authority of this subdivision, whether or not such
43 taxes are suspended at the time such city enacts its resolution pursuant
44 to subdivision (k), (l) [or], (n) OR (P) of this section or at the time
45 of any such repeal; provided, further, that any such local law, ordi-
46 nance or resolution and section eleven hundred seven of this chapter, as
47 deemed to be amended in the event a city of one million or more enacts a
48 resolution pursuant to the authority of subdivision (k), (l) [or], (n)
49 OR (P) of this section, shall be further amended, as provided in section
50 twelve hundred eighteen of this subpart, so that the residential solar
51 energy systems equipment exemption or the clothing and footwear
52 exemption OR THE MOBILE TELECOMMUNICATIONS SERVICE EXEMPTION or the
53 qualified empire zone enterprise exemptions in any such local law, ordi-
54 nance or resolution or in such section eleven hundred seven are the
55 same, as the case may be, as the residential solar energy systems equip-
56 ment exemption provided for in subdivision (ee), the clothing and foot-

1 wear exemption in paragraph thirty of subdivision (a), THE MOBILE TELE-
2 COMMUNICATIONS SERVICE EXEMPTION PROVIDED FOR IN SUBDIVISION (CC), or
3 the qualified empire zone enterprise exemptions in subdivision (z) of
4 section eleven hundred fifteen of this chapter.

5 S 4. Section 1210 of the tax law is amended by adding a new subdivi-
6 sion (p) to read as follows:

7 (P) NOTWITHSTANDING ANY OTHER PROVISION OF STATE OR LOCAL LAW, ORDI-
8 NANCE OR RESOLUTION TO THE CONTRARY:

9 (1) ANY CITY, COUNTY OR SCHOOL DISTRICT, ACTING THROUGH ITS GOVERNING
10 BODY, IS HEREBY AUTHORIZED AND EMPOWERED TO ELECT TO PROVIDE THE SAME
11 EXEMPTIONS FROM SUCH TAXES AS THE MOBILE TELECOMMUNICATIONS SERVICE
12 EXEMPTION FROM STATE SALES AND COMPENSATING USE TAXES DESCRIBED IN
13 SUBDIVISION (CC) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER BY
14 ENACTING A RESOLUTION IN THE FORM SET FORTH IN PARAGRAPH TWO OF THIS
15 SUBDIVISION; ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE WHERE-
16 UPON, UPON COMPLIANCE WITH THE PROVISIONS OF SUBDIVISIONS (D) AND (E) OF
17 THIS SECTION, SUCH ENACTMENT OF SUCH RESOLUTION SHALL BE DEEMED TO BE AN
18 AMENDMENT TO SUCH SECTION ELEVEN HUNDRED SEVEN AND SUCH SECTION ELEVEN
19 HUNDRED SEVEN SHALL BE DEEMED TO INCORPORATE SUCH EXEMPTIONS AS IF THEY
20 HAD BEEN DULY ENACTED BY THE STATE LEGISLATURE AND APPROVED BY THE
21 GOVERNOR.

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

24 SECTION ONE. RECEIPTS FROM SALES OF AND CONSIDERATION GIVEN OR
25 CONTRACTED TO BE GIVEN FOR, OR FOR THE USE OF, MOBILE TELECOMMUNICATIONS
26 SERVICE EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES PURSUANT TO
27 SUBDIVISION (CC) OF SECTION 1115 OF THE TAX LAW SHALL ALSO BE EXEMPT
28 FROM SALES AND COMPENSATING USE TAXES IMPOSED IN THIS JURISDICTION.

29 SECTION TWO. THIS RESOLUTION SHALL TAKE EFFECT MARCH 1, (INSERT THE
30 YEAR, BUT NOT EARLIER THAN THE YEAR 2010) AND SHALL APPLY TO SALES MADE,
31 SERVICES RENDERED AND USES OCCURRING ON AND AFTER THAT DATE IN ACCORD-
32 ANCE WITH THE APPLICABLE TRANSITIONAL PROVISIONS IN SECTIONS 1106, 1216
33 AND 1217 OF THE NEW YORK TAX LAW.

34 S 5. This act shall take effect immediately; provided, however, that
35 sections one and two of this act shall take effect March 1, 2010.