

3759

2009-2010 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. SCHIMMINGER, LUPARDO, STIRPE, FIELDS, GABRYSZAK, GUNTHER, HOYT, ROBINSON, SCHROEDER -- Multi-Sponsored by -- M. of A. BOYLAND, DelMONTE, HOOPER, V. LOPEZ, McENENY, PEOPLES, PHEFFER, REILLY, J. RIVERA, TOWNS, WEISENBERG -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to suspending the state sales and compensating use tax on certain disaster clean-up items during a state of emergency and authorizing localities to waive such tax during the same period

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 (gg) to read as follows:  
3 (GG) THE GOVERNOR MAY TEMPORARILY SUSPEND SALES AND COMPENSATING USE  
4 TAXES ASSOCIATED WITH SERVICES OTHERWISE TAXABLE UNDER SUBDIVISION (C)  
5 OF SECTION ELEVEN HUNDRED FIVE OR UNDER SECTION ELEVEN HUNDRED TEN OF  
6 THIS ARTICLE RENDERED IN CLEAN-UP AND REPAIR OF REAL PROPERTY, PROPERTY  
7 OR LAND, AS SUCH TERMS ARE DEFINED IN THE REAL PROPERTY TAX LAW, WHEN  
8 SUCH SERVICES ARE PROVIDED BY A CONTRACTOR, SUBCONTRACTOR, REPAIRPERSON  
9 OR OWNER OF SUCH REAL PROPERTY, PROPERTY OR LAND LOCATED IN AN AFFECTED  
10 COUNTY DURING THE PERIOD OF TIME DECLARED BY THE GOVERNOR AS A STATE  
11 DISASTER EMERGENCY, AS DEFINED BY SECTION TWENTY OF THE EXECUTIVE LAW,  
12 AND UP TO SIXTY DAYS THEREAFTER.  
13 S 2. Subparagraph (i) of paragraph 1 of subdivision (a) of section  
14 1210 of the tax law, as amended by section 4 of part SS-1 of chapter 57  
15 of the laws of 2008, is amended to read as follows:  
16 (i) Either, all of the taxes described in article twenty-eight of this  
17 chapter, at the same uniform rate, as to which taxes all provisions of  
18 the local laws, ordinances or resolutions imposing such taxes shall be  
19 identical, except as to rate and except as otherwise provided, with the  
20 corresponding provisions in such article twenty-eight, including the

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

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

1 section eleven hundred seven are the same, as the case may be, as the  
2 residential solar energy systems equipment exemption provided for in  
3 subdivision (ee), the clothing and footwear exemption in paragraph thir-  
4 ty of subdivision (a) or the qualified empire zone enterprise exemptions  
5 in subdivision (z) OR THE STATE OF EMERGENCY CLEAN-UP ACTIVITIES  
6 EXEMPTION PROVIDED FOR IN SUBDIVISION (GG) of section eleven hundred  
7 fifteen of this chapter.

8 S 3. Subdivision (d) of section 1210 of the tax law, as amended by  
9 section 12 of part GG of chapter 63 of the laws of 2000, is amended to  
10 read as follows:

11 (d) A local law, ordinance or resolution imposing any tax pursuant to  
12 this section, increasing or decreasing the rate of such tax, repealing  
13 or suspending such tax, exempting from such tax the energy sources and  
14 services described in paragraph three of subdivision (a) or of subdivi-  
15 sion (b) of this section or changing the rate of tax imposed on such  
16 energy sources and services or providing for the credit or refund  
17 described in clause six of subdivision (a) of section eleven hundred  
18 nineteen of this chapter must go into effect only on one of the follow-  
19 ing dates: March first, June first, September first or December first;  
20 provided, that a local law, ordinance or resolution providing for the  
21 exemption described in paragraph thirty of subdivision (a) or providing  
22 for the exemptions described in subdivision (z) OR (GG) of section elev-  
23 en hundred fifteen of this chapter or repealing any such exemption so  
24 provided and a resolution enacted pursuant to the authority of subdivi-  
25 sion (k) OR (P) of this section providing such exemption or subdivision  
26 (l) of this section providing such exemptions or repealing such  
27 exemption or exemptions so provided must go into effect only on March  
28 first. No such local law, ordinance or resolution shall be effective  
29 unless a certified copy of such law, ordinance or resolution is mailed  
30 by registered or certified mail to the commissioner at the commission-  
31 er's office in Albany at least ninety days prior to the date it is to  
32 become effective. However, the commissioner may waive and reduce such  
33 ninety-day minimum notice requirement to a mailing of such certified  
34 copy by registered or certified mail within a period of not less than  
35 thirty days prior to such effective date if the commissioner deems such  
36 action to be consistent with the commissioner's duties under section  
37 twelve hundred fifty of this article and the commissioner acts by resol-  
38 ution. Where the restriction provided for in section twelve hundred  
39 twenty-three of this article as to the effective date of a tax and the  
40 notice requirement provided for therein are applicable and have not been  
41 waived, the restriction and notice requirement in section twelve hundred  
42 twenty-three of this article shall also apply.

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

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

47 (1) ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE IN WHICH THE  
48 TAXES IMPOSED BY SECTION ELEVEN HUNDRED SEVEN OF THIS CHAPTER ARE IN  
49 EFFECT, ACTING THROUGH ITS LOCAL LEGISLATIVE BODY, IS HEREBY AUTHORIZED  
50 AND EMPOWERED TO ELECT TO PROVIDE THE EXEMPTION FROM SUCH TAXES FOR THE  
51 SAME STATE OF EMERGENCY CLEAN-UP ACTIVITIES EXEMPT FROM STATE SALES AND  
52 COMPENSATING USE TAXES, DURING THE SAME PERIODS EACH YEAR, DESCRIBED IN  
53 SUBDIVISION (GG) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER BY  
54 ENACTING A RESOLUTION EXACTLY IN THE FORM SET FORTH IN PARAGRAPH TWO OF  
55 THIS SUBDIVISION; WHEREUPON, UPON COMPLIANCE WITH THE PROVISIONS OF  
56 SUBDIVISIONS (D) AND (E) OF THIS SECTION, SUCH ENACTMENT OF SUCH RESOL-

1 UTION SHALL BE DEEMED TO BE AN AMENDMENT TO SUCH SECTION ELEVEN HUNDRED  
2 SEVEN AND SUCH SECTION ELEVEN HUNDRED SEVEN SHALL BE DEEMED TO INCORPO-  
3 RATE SUCH EXEMPTION AS IF IT HAD BEEN DULY ENACTED BY THE STATE LEGISLA-  
4 TURE AND APPROVED BY THE 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, OR FOR THE USE OF, STATE OF EMERGENCY  
9 CLEAN-UP ACTIVITIES EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES  
10 PURSUANT TO SUBDIVISION (GG) OF SECTION 1115 OF THE NEW YORK TAX LAW  
11 SHALL ALSO BE EXEMPT FROM SALES AND COMPENSATING USE TAXES IMPOSED IN  
12 THIS JURISDICTION, DURING THE SAME PERIODS SET FORTH IN SUCH SUBDIVI-  
13 SION.

14 SECTION TWO. THIS RESOLUTION SHALL TAKE EFFECT MARCH 1, (INSERT THE  
15 YEAR, BUT NOT EARLIER THAN THE YEAR 2009) AND SHALL APPLY TO SALES MADE  
16 AND USES OCCURRING DURING THE APPLICABLE EXEMPTION PERIODS EACH YEAR, IN  
17 ACCORDANCE WITH THE APPLICABLE TRANSITIONAL PROVISIONS OF SECTIONS 1106  
18 AND 1217 OF THE NEW YORK TAX LAW.

19 S 5. Notwithstanding any other provision of state or local law, ordi-  
20 nance or resolution to the contrary: (a) Any county or city imposing  
21 sales and compensating use taxes pursuant to the authority of subpart B  
22 of part I of article 29 of the tax law, acting through its local legis-  
23 lative body, is hereby authorized and empowered to elect to provide the  
24 exemption from such taxes for new state of emergency clean-up activities  
25 exempt from state sales and compensating use taxes described in subdivi-  
26 sion (gg) of section 1115 of the tax law, for the periods described  
27 therein, whether such taxes are imposed by local law, ordinance or  
28 resolution, by enacting a resolution exactly in the form set forth in  
29 subdivision (c) of this section, such enactment of such resolution shall  
30 be deemed to amend such local law, ordinance or resolution imposing such  
31 taxes, and such local law, ordinance or resolution shall thenceforth be  
32 deemed to incorporate such exemptions.

33 (b) Any city of one million or more in which the taxes imposed by  
34 section 1107 of the tax law are in effect, acting through its local  
35 legislative body, is hereby authorized and empowered to elect to provide  
36 the exemption from such taxes for the same state of emergency clean-up  
37 activities exempt from state sales and compensating use taxes described  
38 in subdivision (gg) of section 1115 of the tax law, for the periods  
39 described therein, by enacting a resolution exactly in the form set  
40 forth in subdivision (c) of this section, such enactment of such resol-  
41 ution shall be deemed to amend such section 1107 of the tax law and such  
42 section 1107 shall thenceforth be deemed to incorporate such exemption  
43 for such periods as if it had been duly enacted by the state legislature  
44 and approved by the governor and such resolution shall also be deemed to  
45 amend any local law, ordinance or resolution enacted by such a city  
46 imposing such taxes pursuant to the authority of subdivision (a) of  
47 section 1210 of the tax law, whether or not such taxes are suspended at  
48 the time such city enacts its resolution.

49 (c) Form of Resolution:

50 Be it enacted by the (insert proper title of local legislative body)  
51 as follows:

52 Section one: The (county or city) of (locality's name) hereby elects  
53 the state of emergency clean-up activities exemption periods commencing  
54 (commencement period).

55 Section two: This resolution shall take effect immediately and shall  
56 apply to sales made and uses occurring during the applicable periods

1 each year, in accordance with applicable transitional provisions of the  
2 New York Tax Law.

3 (d) A resolution adopted pursuant to this section shall be effective  
4 only if it is adopted exactly as set forth in subdivision (c) of this  
5 section and such county or city adopts it by November 15, 2009, mails a  
6 certified copy of it to the commissioner of taxation and finance by  
7 certified mail by such date and otherwise complies with the requirements  
8 of subdivisions (d) and (e) of section 1210 of the tax law.

9 S 6. This act shall take effect immediately and shall apply to sales  
10 made and uses occurring during exemption periods on or after such date  
11 in accordance with the applicable transitional provisions of sections  
12 1106 and 1217 of the tax law.