S T A T E O F N E W Y O R K

4769--A

2009-2010 Regular Sessions

I N A S S E M B L Y

February 6, 2009

Introduced by M. of A. ALESSI -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to exempting the sales of wine and wine products produced in the state from sales and compensating use taxes during the first week in March

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

Section 1. Subdivision (b) of section 1101 of the tax law is amended by adding a new paragraph 37 to read as follows:

(37) WINE AND WINE PRODUCTS. (I) "WINE" MEANS THE PRODUCT OF THE NORMAL ALCOHOLIC FERMENTATION OF THE JUICE OF FRESH, SOUND, RIPE GRAPES, WITH THE USUAL CELLAR TREATMENT AND NECESSARY ADDITIONS TO CORRECT DEFECTS DUE TO CLIMATIC, SACCHARINE AND SEASONAL CONDITIONS, INCLUDING CHAMPAGNE, SPARKLING AND FORTIFIED WINE OF AN ALCOHOLIC CONTENT NOT TO EXCEED TWENTY-FOUR PER CENTUM BY VOLUME. NO OTHER PRODUCT SHALL BE CALLED "WINE" UNLESS DESIGNATED BY APPROPRIATE PREFIXES DESCRIPTIVE OF THE FRUIT OR OTHER PRODUCT FROM WHICH THE SAME WAS PREDOMINANTLY PRODUCED, OR AS ARTIFICIAL OR IMITATION WINE.

(II) "WINE PRODUCT" MEANS A BEVERAGE CONTAINING WINE TO WHICH IS ADDED CONCENTRATED OR UNCONCENTRATED JUICE, FLAVORING MATERIAL, WATER, CITRIC ACID, SUGAR AND CARBON DIOXIDE AND CONTAINING NOT MORE THAN SIX PER CENTUM ALCOHOL BY VOLUME, TO WHICH NOTHING OTHER THAN WINE HAS BEEN ADDED TO INCREASE THE ALCOHOLIC CONTENT OF SUCH BEVERAGE.

S 2. Subdivision (b) of section 1107 of the tax law is amended by adding a new clause 12 to read as follows:

(12) EXCEPT AS OTHERWISE PROVIDED BY LAW, THE EXEMPTION PROVIDED FOR IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED

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

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FIFTEEN OF THIS ARTICLE RELATING TO WINE AND WINE PRODUCTS SHALL NOT APPLY.

S 3. Subdivision (a) of section 1115 of the tax law is amended by adding a new paragraph 44 to read as follows:

(44) FOR THE FIRST WEEK IN MARCH, THE RETAIL SALE OF WINE AND WINE PRODUCTS PRODUCED IN THE STATE.

S 4. Subparagraph (i) of paragraph 1 of subdivision (a) of section 1210 of the tax law, as amended by section 34 of part S-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(i) Either, all of the taxes described in article twenty-eight of this chapter, at the same uniform rate, as to which taxes all provisions of the local laws, ordinances or resolutions imposing such taxes shall be identical, except as to rate and except as otherwise provided, with the corresponding provisions in such article twenty-eight, including the definition and exemption provisions of such article, so far as the provisions of such article twenty-eight can be made applicable to the taxes imposed by such city or county and with such limitations and special provisions as are set forth in this article. The taxes authorized under this subdivision may not be imposed by a city or county unless the local law, ordinance or resolution imposes such taxes so as to include all portions and all types of receipts, charges or rents, subject to state tax under sections eleven hundred five and eleven hundred ten of this chapter, except as otherwise provided. (i) Any local law, ordinance or resolution enacted by any city of less than one million or by any county or school district, imposing the taxes authorized by this subdivision, shall, notwithstanding any provision of law to the contrary, exclude from the operation of such local taxes all sales of tangible personal property for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam, for sale, by manufacturing, processing, generating, assembly, refining, mining or extracting; and all sales of tangible personal property for use or consumption predominantly either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both; and, unless such city, county or school district elects otherwise, shall omit the provision for credit or refund contained in clause six of subdivision (a) or subdivision (d) of section eleven hundred nineteen of this chapter. (ii) Any local law, ordinance or resolution enacted by any city, county or school district, imposing the taxes authorized by this subdivision, shall omit the residential solar energy systems equipment exemption provided for in subdivision (ee) and the clothing and footwear exemption provided for in paragraph thirty of subdivision (a) of section eleven hundred fifteen of this chapter, unless such city, county or school district elects otherwise as to either such residential solar energy systems equipment exemption or such clothing and footwear exemption. EXCEPT AS OTHERWISE PROVIDED BY LAW, ANY LOCAL LAW, ORDINANCE OR RESOLUTION ENACTED BY ANY CITY OF LESS THAN ONE MILLION OR BY ANY COUNTY OR SCHOOL DISTRICT, IMPOSING THE TAXES AUTHORIZED BY THIS SUBDIVISION, SHALL OMIT THE WINE AND WINE PRODUCT EXEMPTION PROVIDED FOR IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER.

S 5. Notwithstanding any other provision of state or local law, ordinance or resolution to the contrary: (a) any city, county or school district imposing sales and compensating use taxes pursuant to the authority of subpart B of part 1 of article 29 of the tax law, acting through its local legislative body, is hereby authorized and empowered

to elect to provide the exemption from such taxes for the same wine and wine products exempt from state sales and compensating use taxes described in paragraph 44 of subdivision (a) of section 1115 of the tax law, for the first week in March, whether such taxes are imposed by local law, ordinance or resolution, by enacting a resolution in the form set forth in subdivision (c) of this section; whereupon, upon compliance with the provisions of subdivision (d) of this section, such enactment of such resolution shall be deemed to amend such local law, ordinance or resolution imposing such taxes, and such local law, ordinance or resolution shall be deemed to incorporate such exemption for such period.

(b) Any city having a population of one million or more in which the taxes imposed by section 1107 of the tax law 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 wine and wine products exempt from state sales and compensating use taxes described in paragraph 44 of subdivision (a) of section 1115 of the tax law, for the first week in March, by enacting a resolution in the form set forth in subdivision (c) of this section; whereupon, upon compliance with the provisions of subdivision (d) of this section, such enactment of such resolution shall be deemed to be an amendment to such section 1107 of the tax law and such section 1107 shall be deemed to incorporate such exemption as if it had been duly enacted by the state legislature and approved by the governor.

(c) Form of Resolution: Be it enacted by the {insert proper title of local legislative body} as follows:

Section one. Receipts from sales of and consideration given or contracted to be given for purchases of wine and wine products produced in the state exempt from state sales and compensating use taxes pursuant to paragraph 44 of subdivision (a) of section 1115 of the tax law shall also be exempt from sales and compensating use taxes imposed in this jurisdiction.

Section two. This resolution shall take effect immediately and shall apply to sales made and uses occurring during the first week in March, although made or occurring under a prior contract.

(d) A resolution enacted pursuant to this section shall not be effective unless (1) it is enacted by February 1, 2011, (2) a certified copy of such resolution is received no later than February 15, 2011, by the commissioner of taxation and finance, attention: secretary to the commissioner of taxation and finance, room 200, building nine, state office campus, Albany, New York 12227, and (3) certified copies of such resolutions shall also be filed with the city or county clerk, the secretary of state and the state comptroller within five business days after the date it is enacted. The commissioner of taxation and finance shall accept and give effect to a resolution enacted pursuant to the authority of this section which is in substantial compliance with the provisions of this section so as to give notice to the commissioner of taxation and finance of the intent of a county, city or school district to provide the exemption authorized by this section.

S 6. The provisions of this act and of any resolution enacted pursuant thereto, taken separately or together, shall not be construed by any person or any court or other entity as either (i) a failure or refusal to continue to impose the taxes imposed by section 1107 of the tax law, as such taxes may from time to time be amended, or (ii) as a reduction in the rate at which such taxes are imposed. After the effective date of this act, the taxes imposed by such section 1107 of the tax law on receipts from retail sales of and consideration given or contracted to

be given for purchases of such wine and wine products produced in the state shall, except as provided in section five of this act for the first week in March, continue to apply, persons liable for such taxes on purchases of such wine and wine products produced in the state shall continue to be liable for such taxes, persons required to collect such taxes on such wine and wine products produced within the state shall continue to be required to collect and pay over such taxes to the commissioner of taxation and finance, such commissioner shall continue to be required to certify such taxes on such wine and wine products produced in the state as provided by article 28 of the tax law and section 92-d of the state finance law and the state comptroller shall continue to be required to deposit, appropriate and pay over such taxes as required by such section 92-d of the state finance law, in the manner and to the extent as if this act had not become a law.

S 7. This act shall take effect immediately, and the sales and compensating use tax exemptions provided pursuant to this act shall apply to sales made and uses occurring the first week in March, although made or occurring under a prior contract.