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

7994

2009-2010 Regular Sessions

I N A S S E M B L Y

May 1, 2009

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

AN ACT to amend the tax law, in relation to the exemption from sales and compensating use tax for certain fuel sources used to produce electricity

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

Section 1. Subdivision (e) of section 1102 of the tax law is relettered subdivision (f) and a new subdivision (e) is added to read as follows:

(E) "COMBINED CYCLE ELECTRIC GENERATING FACILITY" SHALL MEAN A NON-UTILITY, MERCHANT ELECTRIC GENERATING FACILITY UTILIZING NATURAL GAS, ULTRA LOW SULFUR DIESEL FUEL AND STEAM IN THE PRODUCTION OF ELECTRICITY AND WHICH, ON THE EFFECTIVE DATE OF THIS SUBDIVISION IS:

(I) LOCATED WITHIN A CITY WITH A POPULATION OF ONE MILLION OR MORE;

(II) OPERATING UNDER A CERTIFICATE GRANTED BY THE PUBLIC SERVICE DEPARTMENT PURSUANT TO THE AUTHORITY OF ARTICLE TEN OF THE PUBLIC SERVICE LAW AS FORMERLY IN EFFECT ON THE DATE SUCH CERTIFICATE WAS GRANTED;

(III) IS CURRENTLY CAPABLE OF PRODUCING AT LEAST FIVE HUNDRED MEGAWATTS OF ELECTRICITY; AND

(IV) HAS, ON OR AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION: (1) COMMITTED TO CONSTRUCT A SECOND PHASE FOR THE PRODUCTION OF ELECTRICITY BY MEANS OF A NATURAL GAS FIRED, COMBINED CYCLE FIVE HUNDRED MEGAWATT ELECTRIC GENERATING UNIT, SUPPLEMENTAL TO THE ABOVE MENTIONED EXISTING FIVE HUNDRED MEGAWATT UNIT AND ON THE SAME SITE, AS A "MERCHANT" FACILITY WITHOUT A POWER PURCHASE AGREEMENT IN ORDER TO COMMENCE CONSTRUCTION, AND (2) HAS ISSUED TO ITS CONSTRUCTION CONTRACTOR A "FULL NOTICE TO PROCEED" WITH CONSTRUCTION OF SAID SECOND PHASE ON OR BEFORE JUNE THIRTIETH, TWO THOUSAND ELEVEN.

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

LBD11489-01-9

S 2. Clause 1 of subdivision (b) of section 1107 of the tax law, as amended by chapter 472 of the laws of 2000, is amended to read as follows:

(1) The exemptions provided for in subdivision (c) of section eleven hundred fifteen shall not apply to fuel, gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature for use or consumption directly and exclusively in the production of gas, electricity, refrigeration or steam, EXCEPT THAT THE EXEMPTIONS PROVIDED FOR IN SUCH SUBDIVISION (C) SHALL APPLY TO NATURAL GAS, ULTRA LOW SULFUR DIESEL FUEL AND STEAM USED OR CONSUMED DIRECTLY AND EXCLUSIVELY IN THE PRODUCTION OF ELECTRICITY IN A COMBINED CYCLE ELECTRIC GENERATING FACILITY.

S 3. Paragraph 4 of subdivision (a) of section 1210 of the tax law, as amended by section 35 of part S-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(4) Notwithstanding any other provision of law to the contrary, any local law enacted by any city of one million or more that imposes the taxes authorized by this subdivision (i) may omit the exception provided in subparagraph (ii) of paragraph three of subdivision (c) of section eleven hundred five of this chapter for receipts from laundering, dry-cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining; (ii) may impose the tax described in paragraph six of subdivision (c) of section eleven hundred five of this chapter at a rate in addition to the rate prescribed by this section not to exceed two percent in multiples of one-half of one percent; (iii) shall provide that the tax described in paragraph six of subdivision (c) of section eleven hundred five of this chapter does not apply to facilities owned and operated by the city or an agency or instrumentality of the city or a public corporation the majority of whose members are appointed by the chief executive officer of the city or the legislative body of the city or both of them; (iv) shall not include any tax on receipts from, or the use of, the services described in paragraph seven of subdivision (c) of section eleven hundred five of this chapter; (v) shall provide that, for purposes of the tax described in subdivision (e) of section eleven hundred five of this chapter, "permanent resident" means any occupant of any room or rooms in a hotel for at least one hundred eighty consecutive days with regard to the period of such occupancy; (vi) may omit the exception provided in paragraph one of subdivision (f) of section eleven hundred five of this chapter for charges to a patron for admission to, or use of, facilities for sporting activities in which the patron is to be a participant, such as bowling alleys and swimming pools; (vii) shall not provide the clothing and footwear exemption in paragraph thirty of subdivision (a) of section eleven hundred fifteen of this chapter but must exempt clothing and footwear and any item used or consumed to make or repair exempt clothing and which becomes a physical component part of that exempt clothing; (viii) shall omit the exemption provided in paragraph forty-one of subdivision (a) of section eleven hundred fifteen of this chapter; (ix) shall omit the exemption provided in subdivision (c) of section eleven hundred fifteen of this chapter insofar as it applies to fuel, gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature for use or consumption directly and exclusively in the production of gas, electricity, refrigeration or steam, EXCEPT THAT THE EXEMPTION PROVIDED FOR IN SUCH SUBDIVISION (C) SHALL APPLY TO NATURAL GAS, ULTRA LOW SULFUR DIESEL FUEL AND STEAM USED OR CONSUMED DIRECTLY AND EXCLUSIVELY IN THE PRODUCTION OF ELECTRICITY IN A COMBINED CYCLE ELECTRIC GENERATING FACILITY; and (x)

shall omit, unless such city elects otherwise, the provision for refund or credit contained in clause six of subdivision (a) or in subdivision (d) of section eleven hundred nineteen of this chapter.

S 4. Paragraph 2 of subdivision (b) of section 1210 of the tax law, as amended by section 36 of part Y of chapter 63 of the laws of 2000, is amended to read as follows:

(2) In respect to the taxes described in such subdivisions (b), (d), (e) and (f) of section eleven hundred five of this chapter and in such clauses (E), (G) and (H) of subdivision (a) of section eleven hundred ten of this chapter and the transitional provisions in such section eleven hundred six covering those taxes, all provisions of a local law imposing any such tax, except as to rate and except as otherwise provided herein, shall be identical with the corresponding provisions in such article twenty-eight of this chapter, including the definition and exemption provisions of such article, so far as the provisions of such article twenty-eight of this chapter 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; provided, however, that any local law enacted by any city of one million or more, imposing the taxes authorized by this subdivision, shall omit the exemption provided in subdivision (c) of section eleven hundred fifteen of this chapter, EXCEPT THAT SUCH LOCAL LAW SHALL NOT OMIT THE EXEMPTION PROVIDED FOR IN SUCH SUBDIVISION (C) INSOFAR AS IT APPLIES TO NATURAL GAS, ULTRA LOW SULFUR DIESEL FUEL AND STEAM USED OR CONSUMED DIRECTLY AND EXCLUSIVELY IN THE PRODUCTION OF ELECTRICITY IN A COMBINED CYCLE ELECTRIC GENERATING FACILITY and may omit the exception provided in paragraph [(1)] ONE of subdivision (f) of section eleven hundred five of this chapter for charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant, such as bowling alleys and swimming pools. The transitional provisions contained in subdivision (d) of section eleven hundred six of this chapter shall apply in the same manner and to the same extent to a tax imposed by omitting the exception in paragraph [(1)] ONE of subdivision (f) of section eleven hundred five of this chapter, as described in the preceding sentence, except that an equivalent date shall be substituted to accord with the date when the tax so imposed becomes effective. The tax described in any one of such subdivisions (b), (d), (e) and (f) of section eleven hundred five of this chapter, including the related transitional provisions in such section eleven hundred six of this chapter, and the taxes described in clauses (E), (G) and (H) of subdivision (a) of section eleven hundred ten of this chapter where the tax described in such subdivision (b) of section eleven hundred five of this chapter is imposed, may not be imposed by a city or county unless the local law, ordinance or resolution imposes such tax so as to include all portions and all types of receipts, charges or rents, as the case may be, subject to state tax under the applicable subdivision of section eleven hundred five of this chapter and uses subject to tax under the applicable provisions of section eleven hundred ten of this chapter where the tax described in subdivision (b) of section eleven hundred five of this chapter is imposed.

S 5. This act shall take effect August 1, 2010; provided that section three of this act shall take effect on the same date and in the same manner as section 35 of part S-1 of chapter 57 of the laws of 2009, takes effect; and provided further that this act shall apply to sales made after August 1, 2010 in accordance with the applicable transitional provisions set forth in sections 1106, 1107 and 1217 of the tax law.