

1161

2009-2010 Regular Sessions

I N S E N A T E

January 26, 2009

Introduced by Sen. MARCELLINO -- 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 energy-star appliances from state sales and compensating use taxes and granting municipalities the option to provide such exemption; and providing for the repeal of such provisions upon expiration thereof

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

1 Section 1. Subdivision (a) of section 1115 of the tax law is amended
2 by adding a new paragraph 44 to read as follows:
3 (44) RETAIL SALES OF THE FOLLOWING PRODUCTS, PROVIDED THAT THE PRODUCT
4 QUALIFIES AS AN ENERGY-STAR PRODUCT PURSUANT TO THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ENERGY-STAR PROGRAM, SHALL BE EXEMPT FROM
5 THE SALES TAX PROVISIONS OF SECTION ELEVEN HUNDRED FIVE OF THIS ARTICLE:
6 CLOTHES WASHER, DISHWASHER, REFRIGERATOR, ROOM AIR CONDITIONER, CEILING
7 FAN, DEHUMIDIFIER, FREEZER, PROGRAMMABLE THERMOSTAT, AND VENTILATING
8 FAN. THE EXEMPTION PROVIDED FOR IN THIS SUBDIVISION SHALL NOT APPLY TO
9 THE RENTAL, LEASING, REPAIR OR SERVICING OF SUCH ENERGY-STAR PRODUCTS.
10 S 2. Subparagraph (i) of paragraph 1 of subdivision (a) of section
11 1210 of the tax law, as amended by section 4 of part SS-1 of chapter 57
12 of the laws of 2008, is amended to read as follows:
13 (i) Either, all of the taxes described in article twenty-eight of this
14 chapter, at the same uniform rate, as to which taxes all provisions of
15 the local laws, ordinances or resolutions imposing such taxes shall be
16 identical, except as to rate and except as otherwise provided, with the
17 corresponding provisions in such article twenty-eight, including the
18 definition and exemption provisions of such article, so far as the
19 provisions of such article twenty-eight can be made applicable to the
20 taxes imposed by such city or county and with such limitations and
21 special provisions as are set forth in this article. The taxes author-
22

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

LBD06865-01-9

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

1 [or], the qualified empire zone enterprise exemptions in subdivision (z)
2 OR THE ENERGY-STAR PRODUCT EXEMPTION PROVIDED FOR IN PARAGRAPH
3 FORTY-FOUR OF SUBDIVISION (A) of section eleven hundred fifteen of this
4 chapter.

5 S 3. 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 HAVING A POPULATION OF ONE MILLION OR MORE IN WHICH THE
10 TAXES IMPOSED BY SECTION ELEVEN HUNDRED SEVEN OF THIS CHAPTER ARE IN
11 EFFECT, ACTING THROUGH ITS LOCAL LEGISLATIVE BODY, IS HEREBY AUTHORIZED
12 AND EMPOWERED TO ELECT TO PROVIDE THE SAME EXEMPTIONS FROM SUCH TAXES AS
13 THE ENERGY-STAR PRODUCT EXEMPTION FROM STATE SALES AND COMPENSATING USE
14 TAXES DESCRIBED IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION
15 ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER BY ENACTING A RESOLUTION IN THE
16 FORM SET FORTH IN PARAGRAPH TWO OF THIS SUBDIVISION; WHEREUPON, UPON
17 COMPLIANCE WITH THE PROVISIONS OF SUBDIVISIONS (D) AND (E) OF THIS
18 SECTION, SUCH ENACTMENT OF SUCH RESOLUTION SHALL BE DEEMED TO BE AN
19 AMENDMENT TO SUCH SECTION ELEVEN HUNDRED SEVEN AND SUCH SECTION ELEVEN
20 HUNDRED SEVEN SHALL BE DEEMED TO INCORPORATE SUCH EXEMPTIONS AS IF THEY
21 HAD BEEN DULY ENACTED BY THE STATE LEGISLATURE AND APPROVED BY THE
22 GOVERNOR.

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

25 SECTION ONE. RECEIPTS FROM SALES OF AND CONSIDERATION GIVEN OR
26 CONTRACTED TO BE GIVEN FOR, OR FOR THE USE OF, PROPERTY AND SERVICES
27 EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES PURSUANT TO PARAGRAPH
28 FORTY-FOUR OF SUBDIVISION (A) OF SECTION 1115 OF THE TAX LAW SHALL ALSO
29 BE EXEMPT FROM SALES AND COMPENSATING USE TAXES IMPOSED IN THIS JURIS-
30 DICTION.

31 SECTION TWO. THIS RESOLUTION SHALL TAKE EFFECT SEPTEMBER 1, (INSERT
32 THE YEAR, BUT NOT EARLIER THAN THE YEAR 2010) AND SHALL APPLY TO SALES
33 MADE, SERVICES RENDERED AND USES OCCURRING ON AND AFTER THAT DATE IN
34 ACCORDANCE WITH THE APPLICABLE TRANSITIONAL PROVISIONS IN SECTIONS 1106,
35 1216 AND 1217 OF THE NEW YORK TAX LAW.

36 S 4. This act shall take effect April 1, 2010 and shall be deemed
37 repealed April 1, 2015.