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

3419

2009-2010 Regular Sessions

I N S E N A T E

March 18, 2009

Introduced by Sen. YOUNG -- 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 eliminating state sales and compensating use taxes on motor fuels and diesel motor fuels and authorizing localities to eliminate such taxes at the local level

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

Section 1. Subdivision (a) of section 1115 of the tax law is amended by adding a new paragraph 44 to read as follows:

(44) MOTOR FUEL AND DIESEL MOTOR FUEL.

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 IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN RELATING TO MOTOR FUEL AND DIESEL MOTOR FUEL SHALL BE APPLICABLE PURSUANT TO A LOCAL LAW, ORDINANCE OR RESOLUTION ADOPTED BY A CITY SUBJECT TO THE PROVISIONS OF THIS SECTION. SUCH CITY IS EMPOWERED TO ADOPT OR REPEAL SUCH A LOCAL LAW, ORDINANCE OR RESOLUTION. SUCH ADOPTION OR REPEAL SHALL ALSO BE DEEMED TO AMEND ANY LOCAL LAW, ORDINANCE OR RESOLUTION ENACTED BY SUCH A CITY IMPOSING TAXES PURSUANT TO THE AUTHORITY OF SUBDIVISION (A) OF SECTION TWELVE HUNDRED TEN OF THIS CHAPTER.

S 3. Subparagraph (i) of paragraph 1 of subdivision (a) of section 1210 of the tax law, as amended by section 4 of part SS-1 of chapter 57 of the laws of 2008, 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

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

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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. 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) of section eleven hundred nineteen of this chapter. 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), the clothing and footwear exemption provided for in paragraph thirty of subdivision (a) and the qualified empire zone enterprise exemptions provided for in subdivision (z) 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 or such qualified empire zone enterprise exemptions; provided that if such a city having a population of one million or more in which the taxes imposed by section eleven hundred seven of this chapter are in effect enacts the resolution described in subdivision (k) of this section or repeals such resolution or enacts the resolution described in subdivision (l) of this section or repeals such resolution or enacts the resolution described in subdivision (n) of this section or repeals such resolution, such resolution or repeal shall also be deemed to amend any local law, ordinance or resolution enacted by such a city imposing such taxes pursuant to the authority of this subdivision, whether or not such taxes are suspended at the time such city enacts its resolution pursuant to subdivision (k), (l) or (n) of this section or at the time of any such repeal; provided, further, that any such local law, ordinance or resolution and section eleven hundred seven of this chapter, as deemed to be amended in the event a city of one million or more enacts a resolution pursuant to the authority of subdivision (k), (l) or (n) of this section, shall be further amended, as provided in section twelve hundred eighteen of this subpart, so that the residential solar energy systems equipment exemption or the clothing and footwear exemption or the qualified empire zone enterprise exemptions in any such local law, ordinance or resolution or in such section eleven hundred seven are the same, as the case may be, as the residential solar energy systems equipment exemption provided for in subdivision (ee), the clothing and footwear exemption in paragraph thirty of subdivision (a) or the qualified empire zone enterprise exemptions in subdivision (z) of section eleven hundred fifteen of this chapter. ANY LOCAL LAW, ORDINANCE OR RESOLUTION ENACTED BY ANY CITY, COUNTY OR SCHOOL DISTRICT, IMPOSING THE TAXES AUTHORIZED BY THIS SUBDIVISION, SHALL OMIT THE MOTOR FUEL AND DIESEL MOTOR FUEL EXEMPTION PROVIDED FOR IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER, UNLESS SUCH CITY, COUNTY OR SCHOOL DISTRICT ELECTS OTHERWISE; PROVIDED THAT IF SUCH A CITY HAVING A POPULATION OF ONE MILLION OR MORE ENACTS THE RESOLUTION DESCRIBED IN SUBDIVISION (P) OF THIS SECTION OR REPEALS SUCH RESOLUTION, SUCH RESOLUTION OR REPEAL SHALL ALSO BE DEEMED TO AMEND ANY LOCAL LAW, ORDINANCE OR RESOLUTION ENACTED BY SUCH A CITY IMPOSING SUCH TAXES PURSUANT TO THE AUTHORITY OF THIS SUBDIVISION, WHETHER OR NOT SUCH TAXES ARE SUSPENDED AT THE TIME SUCH CITY ENACTS ITS RESOLUTION PURSUANT TO SUBDIVISION (P) OF THIS SECTION OR AT THE TIME OF ANY SUCH REPEAL; PROVIDED, FURTHER, THAT ANY SUCH LOCAL LAW, ORDINANCE OR RESOLUTION AND SECTION ELEVEN HUNDRED SEVEN OF THIS CHAPTER, AS DEEMED TO BE AMENDED IN THE EVENT A CITY OF ONE MILLION OR MORE ENACTS A RESOLUTION PURSUANT TO THE AUTHORITY OF SUBDIVISION (P) OF THIS SECTION, SHALL BE FURTHER AMENDED, AS PROVIDED IN SECTION TWELVE HUNDRED EIGHTEEN OF THIS SUBPART, SO THAT THE MOTOR FUEL AND DIESEL MOTOR FUEL EXEMPTION IN ANY SUCH LOCAL LAW, ORDINANCE OR RESOLUTION OR IN SUCH SECTION ELEVEN HUNDRED SEVEN OF THIS CHAPTER IS THE SAME AS THE MOTOR FUEL AND DIESEL MOTOR FUEL EXEMPTION IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER.

S 4. Subdivision (d) of section 1210 of the tax law, as amended by section 12 of part GG of chapter 63 of the laws of 2000, is amended to read as follows:

(d) A local law, ordinance or resolution imposing any tax pursuant to this section, increasing or decreasing the rate of such tax, repealing or suspending such tax, exempting from such tax the energy sources and services described in paragraph three of subdivision (a) or of subdivision (b) of this section or changing the rate of tax imposed on such energy sources and services or providing for the credit or refund described in clause six of subdivision (a) of section eleven hundred nineteen of this chapter must go into effect only on one of the following dates: March first, June first, September first or December first; provided, that a local law, ordinance or resolution providing for the exemption described in paragraph thirty of subdivision (a) or providing for the exemptions described in subdivision (z) of section eleven hundred fifteen of this chapter or repealing any such exemption so provided and a resolution enacted pursuant to the authority of subdivision (k) of this section providing such exemption or subdivision (l) of this section providing such exemptions or repealing such exemption or exemptions so provided must go into effect only on March first; PROVIDED, FURTHER, THAT A LOCAL LAW, ORDINANCE OR RESOLUTION PROVIDING FOR THE EXEMPTION DESCRIBED IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER OR REPEALING ANY SUCH EXEMPTION SO PROVIDED AND A RESOLUTION ENACTED PURSUANT TO THE AUTHORITY OF SUBDIVISION (P) OF THIS SECTION PROVIDING SUCH EXEMPTION OR REPEALING SUCH EXEMPTION SO PROVIDED MAY GO INTO EFFECT IMMEDIATELY. No such local law, ordinance or resolution shall be effective unless a certified copy of such law, ordinance or resolution is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least ninety days prior to the date it is to become effective. However, the commissioner may waive and reduce such ninety-day minimum notice requirement to a mailing of such certified copy by registered or certified mail within a period of not less than thirty days prior to such effective date if the commissioner deems such action to be consistent with the commissioner's duties under section twelve hundred fifty of this article and the commissioner acts by resolution. Where the restriction provided for in section twelve hundred twenty-three of this article as to the effective date of a tax and the notice requirement provided for therein are applicable and have not been waived, the restriction and notice requirement in section twelve hundred twenty-three of this article shall also apply.

S 5. Section 1210 of the tax law is amended by adding a new subdivision (p) to read as follows:

(P) NOTWITHSTANDING ANY OTHER PROVISION OF STATE OR LOCAL LAW, ORDINANCE OR RESOLUTION TO THE CONTRARY:

(1) ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE IN WHICH THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED SEVEN OF THIS CHAPTER 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 MOTOR FUEL AND DIESEL MOTOR FUEL EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES DESCRIBED IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER BY ENACTING A RESOLUTION IN THE FORM SET FORTH IN PARAGRAPH TWO OF THIS SUBDIVISION; WHEREUPON, UPON COMPLIANCE WITH THE PROVISIONS OF SUBDIVISIONS (D) AND (E) OF THIS SECTION, SUCH ENACTMENT OF SUCH RESOLUTION SHALL BE DEEMED TO BE AN AMENDMENT TO SUCH SECTION ELEVEN HUNDRED SEVEN AND SUCH SECTION ELEVEN HUNDRED SEVEN SHALL BE DEEMED TO INCORPORATE SUCH EXEMPTION AS IF IT HAD BEEN DULY ENACTED BY THE STATE LEGISLATURE AND APPROVED BY THE GOVERNOR.

(2) 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 MOTOR FUEL AND DIESEL MOTOR FUEL EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES PURSUANT TO PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN 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, (INSERT THE DATE) AND SHALL APPLY TO SALES MADE AND USES OCCURRING ON AND AFTER THAT DATE ALTHOUGH MADE OR OCCURRING UNDER A PRIOR CONTRACT.

S 6. The commissioner of taxation and finance is hereby authorized to implement the provisions of this act with respect to the elimination of the imposition of sales tax, additional taxes, and supplemental taxes on diesel motor fuel and motor fuel and all other taxes so addressed by this act.

S 7. This act shall take effect April 1, 2009.