

2009-2010 Regular Sessions

I N S E N A T E

January 9, 2009

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to taxpayer relief on cell phone taxes

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

1 Section 1. Section 1109 of the tax law is amended by adding a new  
2 subdivision (i) to read as follows:

3 (I) THE EXEMPTION CONTAINED IN SUBDIVISION (CC) OF SECTION ELEVEN  
4 HUNDRED FIFTEEN OF THIS ARTICLE SHALL NOT APPLY.

5 S 2. Subdivision (cc) of section 1115 of the tax law, as added by  
6 section 11 of part S of chapter 85 of the laws of 2002, is amended to  
7 read as follows:

8 (cc) Notwithstanding any other provision of law to the contrary,  
9 receipts from the sale of mobile telecommunications service [by a home  
10 service provider] shall be exempt from the taxes imposed by subparagraph  
11 (B) of paragraph one and paragraph two of subdivision (b) of section  
12 eleven hundred five of this article [if the mobile telecommunications  
13 customer's place of primary use is within a taxing jurisdiction outside  
14 this state].

15 S 3. Subparagraph (i) of paragraph 1 of subdivision (a) of section  
16 1210 of the tax law, as amended by section 4 of part SS-1 of chapter 57  
17 of the laws of 2008, is amended to read as follows:

18 (i) Either, all of the taxes described in article twenty-eight of this  
19 chapter, at the same uniform rate, as to which taxes all provisions of  
20 the local laws, ordinances or resolutions imposing such taxes shall be  
21 identical, except as to rate and except as otherwise provided, with the  
22 corresponding provisions in such article twenty-eight, including the  
23 definition and exemption provisions of such article, so far as the  
24 provisions of such article twenty-eight can be made applicable to the

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

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

1 ment exemption provided for in subdivision (ee), the clothing and foot-  
2 wear exemption in paragraph thirty of subdivision (a), THE MOBILE TELE-  
3 COMMUNICATIONS SERVICE EXEMPTION PROVIDED FOR IN SUBDIVISION (CC), or  
4 the qualified empire zone enterprise exemptions in subdivision (z) of  
5 section eleven hundred fifteen of this chapter.

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

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

10 (1) ANY CITY, COUNTY OR SCHOOL DISTRICT, ACTING THROUGH ITS GOVERNING  
11 BODY, IS HEREBY AUTHORIZED AND EMPOWERED TO ELECT TO PROVIDE THE SAME  
12 EXEMPTIONS FROM SUCH TAXES AS THE MOBILE TELECOMMUNICATIONS SERVICE  
13 EXEMPTION FROM STATE SALES AND COMPENSATING USE TAXES DESCRIBED IN  
14 SUBDIVISION (CC) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER BY  
15 ENACTING A RESOLUTION IN THE FORM SET FORTH IN PARAGRAPH TWO OF THIS  
16 SUBDIVISION; ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE WHERE-  
17 UPON, UPON COMPLIANCE WITH THE PROVISIONS OF SUBDIVISIONS (D) AND (E) OF  
18 THIS 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, MOBILE TELECOMMUNICATIONS  
27 SERVICE EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES PURSUANT TO  
28 SUBDIVISION (CC) OF SECTION 1115 OF THE TAX LAW SHALL ALSO BE EXEMPT  
29 FROM SALES AND COMPENSATING USE TAXES IMPOSED IN THIS JURISDICTION.

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

35 S 5. This act shall take effect immediately; provided, however, that  
36 sections one and two of this act shall take effect March 1, 2010.