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I N   S E N A T E

March 10, 2010

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Introduced by Sen. RANZENHOFER -- 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 suspending the state sales  
and compensating use tax on certain disaster clean-up items during a  
state of emergency and authorizing localities to waive such tax during  
the same period

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

1     Section 1. Section 1115 of the tax law is amended by adding a new  
2     subdivision (gg) to read as follows:  
3     (GG) THE GOVERNOR MAY TEMPORARILY SUSPEND SALES AND COMPENSATING USE  
4     TAXES ASSOCIATED WITH SERVICES OTHERWISE TAXABLE UNDER SUBDIVISION (C)  
5     OF SECTION ELEVEN HUNDRED FIVE OR UNDER SECTION ELEVEN HUNDRED TEN OF  
6     THIS ARTICLE RENDERED IN CLEAN-UP AND REPAIR OF REAL PROPERTY, PROPERTY  
7     OR LAND, AS SUCH TERMS ARE DEFINED IN THE REAL PROPERTY TAX LAW, WHEN  
8     SUCH SERVICES ARE PROVIDED BY A CONTRACTOR, SUBCONTRACTOR, REPAIRPERSON  
9     OR OWNER OF SUCH REAL PROPERTY, PROPERTY OR LAND LOCATED IN AN AFFECTED  
10    COUNTY DURING THE PERIOD OF TIME DECLARED BY THE GOVERNOR AS A STATE  
11    DISASTER EMERGENCY, AS DEFINED BY SECTION TWENTY OF THE EXECUTIVE LAW,  
12    AND UP TO SIXTY DAYS THEREAFTER.  
13    S 2. Subparagraph (i) of paragraph 1 of subdivision (a) of section  
14    1210 of the tax law, as amended by section 34 of part S-1 of chapter 57  
15    of the laws of 2009, is amended to read as follows:  
16    (i) Either, all of the taxes described in article twenty-eight of this  
17    chapter, at the same uniform rate, as to which taxes all provisions of  
18    the local laws, ordinances or resolutions imposing such taxes shall be  
19    identical, except as to rate and except as otherwise provided, with the  
20    corresponding provisions in such article twenty-eight, including the  
21    definition and exemption provisions of such article, so far as the  
22    provisions of such article twenty-eight can be made applicable to the  
23    taxes imposed by such city or county and with such limitations and  
24    special provisions as are set forth in this article. The taxes author-  
25    ized under this subdivision may not be imposed by a city or county

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

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1 unless the local law, ordinance or resolution imposes such taxes so as  
2 to include all portions and all types of receipts, charges or rents,  
3 subject to state tax under sections eleven hundred five and eleven  
4 hundred ten of this chapter, except as otherwise provided. [(i)] (A)  
5 Any local law, ordinance or resolution enacted by any city of less than  
6 one million or by any county or school district, imposing the taxes  
7 authorized by this subdivision, shall, notwithstanding any provision of  
8 law to the contrary, exclude from the operation of such local taxes all  
9 sales of tangible personal property for use or consumption directly and  
10 predominantly in the production of tangible personal property, gas,  
11 electricity, refrigeration or steam, for sale, by manufacturing, proc-  
12 essing, generating, assembly, refining, mining or extracting; and all  
13 sales of tangible personal property for use or consumption predominantly  
14 either in the production of tangible personal property, for sale, by  
15 farming or in a commercial horse boarding operation, or in both; and,  
16 unless such city, county or school district elects otherwise, shall omit  
17 the provision for credit or refund contained in clause six of subdivi-  
18 sion (a) or subdivision (d) of section eleven hundred nineteen of this  
19 chapter. [(ii)] (B) Any local law, ordinance or resolution enacted by  
20 any city, county or school district, imposing the taxes authorized by  
21 this subdivision, shall omit the residential solar energy systems equip-  
22 ment exemption provided for in subdivision (ee) and the clothing and  
23 footwear exemption provided for in paragraph thirty of subdivision (a)  
24 AND THE STATE OF EMERGENCY CLEAN-UP ACTIVITIES PROVIDED FOR IN SUBDIVI-  
25 SION (GG) of section eleven hundred fifteen of this chapter, unless such  
26 city, county or school district elects otherwise as to either such resi-  
27 dential solar energy systems equipment exemption or such clothing and  
28 footwear exemption.

29 S 3. Subdivision (d) of section 1210 of the tax law, as amended by  
30 section 37 of part S-1 of chapter 57 of the laws of 2009, is amended to  
31 read as follows:

32 (d) A local law, ordinance or resolution imposing any tax pursuant to  
33 this section, increasing or decreasing the rate of such tax, repealing  
34 or suspending such tax, exempting from such tax the energy sources and  
35 services described in paragraph three of subdivision (a) or of subdivi-  
36 sion (b) of this section or changing the rate of tax imposed on such  
37 energy sources and services or providing for the credit or refund  
38 described in clause six of subdivision (a) of section eleven hundred  
39 nineteen of this chapter must go into effect only on one of the follow-  
40 ing dates: March first, June first, September first or December first;  
41 provided, that a local law, ordinance or resolution providing for the  
42 exemption described in paragraph thirty of subdivision (a) OR (GG) of  
43 section eleven hundred fifteen of this chapter or repealing any such  
44 exemption or a local law, ordinance or resolution providing for a refund  
45 or credit described in subdivision (d) of section eleven hundred nine-  
46 teen of this chapter or repealing such provision so provided must go  
47 into effect only on March first. No such local law, ordinance or resol-  
48 ution shall be effective unless a certified copy of such law, ordinance  
49 or resolution is mailed by registered or certified mail to the commis-  
50 sioner at the commissioner's office in Albany at least ninety days prior  
51 to the date it is to become effective. However, the commissioner may  
52 waive and reduce such ninety-day minimum notice requirement to a mailing  
53 of such certified copy by registered or certified mail within a period  
54 of not less than thirty days prior to such effective date if the commis-  
55 sioner deems such action to be consistent with the commissioner's duties  
56 under section twelve hundred fifty of this article and the commissioner

1 acts by resolution. Where the restriction provided for in section twelve  
2 hundred twenty-three of this article as to the effective date of a tax  
3 and the notice requirement provided for therein are applicable and have  
4 not been waived, the restriction and notice requirement in section  
5 twelve hundred twenty-three of this article shall also apply.

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 HAVING A POPULATION OF ONE MILLION OR MORE IN WHICH THE  
11 TAXES IMPOSED BY SECTION ELEVEN HUNDRED SEVEN OF THIS CHAPTER ARE IN  
12 EFFECT, ACTING THROUGH ITS LOCAL LEGISLATIVE BODY, IS HEREBY AUTHORIZED  
13 AND EMPOWERED TO ELECT TO PROVIDE THE EXEMPTION FROM SUCH TAXES FOR THE  
14 SAME STATE OF EMERGENCY CLEAN-UP ACTIVITIES EXEMPT FROM STATE SALES AND  
15 COMPENSATING USE TAXES, DURING THE SAME PERIODS EACH YEAR, DESCRIBED IN  
16 SUBDIVISION (GG) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER BY  
17 ENACTING A RESOLUTION EXACTLY IN THE FORM SET FORTH IN PARAGRAPH TWO OF  
18 THIS SUBDIVISION; WHEREUPON, UPON COMPLIANCE WITH THE PROVISIONS OF  
19 SUBDIVISIONS (D) AND (E) OF THIS SECTION, SUCH ENACTMENT OF SUCH RESOL-  
20 UTION SHALL BE DEEMED TO BE AN AMENDMENT TO SUCH SECTION ELEVEN HUNDRED  
21 SEVEN AND SUCH SECTION ELEVEN HUNDRED SEVEN SHALL BE DEEMED TO INCORPO-  
22 RATE SUCH EXEMPTION AS IF IT HAD BEEN DULY ENACTED BY THE STATE LEGISLA-  
23 TURE AND APPROVED BY THE GOVERNOR.

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

26 SECTION ONE. RECEIPTS FROM SALES OF AND CONSIDERATION GIVEN OR  
27 CONTRACTED TO BE GIVEN FOR, OR FOR THE USE OF, STATE OF EMERGENCY  
28 CLEAN-UP ACTIVITIES EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES  
29 PURSUANT TO SUBDIVISION (GG) OF SECTION 1115 OF THE NEW YORK TAX LAW  
30 SHALL ALSO BE EXEMPT FROM SALES AND COMPENSATING USE TAXES IMPOSED IN  
31 THIS JURISDICTION, DURING THE SAME PERIODS SET FORTH IN SUCH SUBDIVI-  
32 SION.

33 SECTION TWO. THIS RESOLUTION SHALL TAKE EFFECT MARCH 1, (INSERT THE  
34 YEAR, BUT NOT EARLIER THAN THE YEAR 2010) AND SHALL APPLY TO SALES MADE  
35 AND USES OCCURRING DURING THE APPLICABLE EXEMPTION PERIODS EACH YEAR, IN  
36 ACCORDANCE WITH THE APPLICABLE TRANSITIONAL PROVISIONS OF SECTIONS 1106  
37 AND 1217 OF THE NEW YORK TAX LAW.

38 S 5. Notwithstanding any other provision of state or local law, ordi-  
39 nance or resolution to the contrary: (a) Any county or city imposing  
40 sales and compensating use taxes pursuant to the authority of subpart B  
41 of part I of article 29 of the tax law, acting through its local legis-  
42 lative body, is hereby authorized and empowered to elect to provide the  
43 exemption from such taxes for new state of emergency clean-up activities  
44 exempt from state sales and compensating use taxes described in subdivi-  
45 sion (gg) of section 1115 of the tax law, for the periods described  
46 therein, whether such taxes are imposed by local law, ordinance or  
47 resolution, by enacting a resolution exactly in the form set forth in  
48 subdivision (c) of this section, such enactment of such resolution shall  
49 be deemed to amend such local law, ordinance or resolution imposing such  
50 taxes, and such local law, ordinance or resolution shall thenceforth be  
51 deemed to incorporate such exemptions.

52 (b) Any city of one million or more in which the taxes imposed by  
53 section 1107 of the tax law are in effect, acting through its local  
54 legislative body, is hereby authorized and empowered to elect to provide  
55 the exemption from such taxes for the same state of emergency clean-up  
56 activities exempt from state sales and compensating use taxes described

1 in subdivision (gg) of section 1115 of the tax law, for the periods  
2 described therein, by enacting a resolution exactly in the form set  
3 forth in subdivision (c) of this section, such enactment of such resol-  
4 ution shall be deemed to amend such section 1107 of the tax law and such  
5 section 1107 shall thenceforth be deemed to incorporate such exemption  
6 for such periods as if it had been duly enacted by the state legislature  
7 and approved by the governor and such resolution shall also be deemed to  
8 amend any local law, ordinance or resolution enacted by such a city  
9 imposing such taxes pursuant to the authority of subdivision (a) of  
10 section 1210 of the tax law, whether or not such taxes are suspended at  
11 the time such city enacts its resolution.

12 (c) Form of Resolution:

13 Be it enacted by the (insert proper title of local legislative body)  
14 as follows:

15 Section one: The (county or city) of (locality's name) hereby elects  
16 the state of emergency clean-up activities exemption periods commencing  
17 (commencement period).

18 Section two: This resolution shall take effect immediately and shall  
19 apply to sales made and uses occurring during the applicable periods  
20 each year, in accordance with applicable transitional provisions of the  
21 New York Tax Law.

22 (d) A resolution adopted pursuant to this section shall be effective  
23 only if it is adopted exactly as set forth in subdivision (c) of this  
24 section and such county or city adopts it by November 15, 2009, mails a  
25 certified copy of it to the commissioner of taxation and finance by  
26 certified mail by such date and otherwise complies with the requirements  
27 of subdivisions (d) and (e) of section 1210 of the tax law.

28 S 6. This act shall take effect immediately and shall apply to sales  
29 made and uses occurring during exemption periods on or after such date  
30 in accordance with the applicable transitional provisions of sections  
31 1106 and 1217 of the tax law.