

7066

I N S E N A T E

March 10, 2010

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 ASSEMBLY, 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.