

2411

2009-2010 Regular Sessions

I N A S S E M B L Y

January 15, 2009

Introduced by M. of A. HEVESI -- read once and referred to the Committee
on Ways and Means

AN ACT to amend the tax law, in relation to providing a sales and
compensating use tax exemption on non-commercial Energy Star appli-
ances

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

1 Section 1. Subdivision (b) of section 1101 of the tax law is amended
2 by adding a new paragraph 33 to read as follows:
3 (33) NEW ENERGY STAR APPLIANCE. A RESIDENTIAL REFRIGERATOR, COMBINA-
4 TION RESIDENTIAL REFRIGERATOR/FREEZER, RESIDENTIAL FREEZER, RESIDENTIAL
5 CLOTHES WASHER, RESIDENTIAL COMPACT FLUORESCENT LIGHT BULBS, RESIDENTIAL
6 BATTERY CHARGER, NON-COMMERCIAL WATER COOLER, NON-COMMERCIAL CEILING FAN
7 WITH OR WITHOUT A LIGHT, NON-COMMERCIAL CEILING FAN LIGHT KIT, NON-COM-
8 Mercial DISHWASHER, ROOM OR CENTRAL AIR CONDITIONER, NON-COMMERCIAL
9 FURNACE, NON-COMMERCIAL BOILER AND NON-COMMERCIAL HOT WATER HEATER,
10 NON-COMMERCIAL DEHUMIDIFIER, NON-COMMERCIAL PROGRAMMABLE THERMOSTAT AND
11 NON-COMMERCIAL ROOM AIR CLEANER WHICH IS SOLD FOR THE FIRST TIME AT
12 RETAIL, PROVIDED SUCH APPLIANCE QUALIFIES FOR, AND IS LABELED WITH, AN
13 ENERGY STAR LABEL BY THE MANUFACTURER, PURSUANT TO AN AGREEMENT AMONG
14 THE MANUFACTURER, THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND
15 THE UNITED STATES DEPARTMENT OF ENERGY.
16 S 2. Subdivision (a) of section 1115 of the tax law is amended by
17 adding a new paragraph 44 to read as follows:
18 (44) DURING THE LAST SATURDAY AND SUNDAY OF JUNE, NEW ENERGY STAR
19 APPLIANCES THAT COST LESS THAN TWO THOUSAND FIVE HUNDRED DOLLARS,
20 PROVIDED, HOWEVER THAT IF SUCH APPLIANCES COST THE INDIVIDUAL MORE THAN
21 TWO THOUSAND FIVE HUNDRED DOLLARS, THE FIRST TWO THOUSAND FIVE HUNDRED
22 DOLLARS SHALL BE EXEMPT FROM SALES AND USES TAXES.

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

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1 S 3. Clause 9 of subdivision (b) of section 1107 of the tax law, as
2 amended by section 78 of part A of chapter 56 of the laws of 1998, is
3 amended to read as follows:

4 (9) Except as otherwise provided by law, the [exemption] EXEMPTIONS
5 provided for in paragraph thirty of subdivision (a) of section eleven
6 hundred fifteen relating to clothing and footwear AND PARAGRAPH
7 FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED HUNDRED FIFTEEN
8 RELATING TO NEW ENERGY STAR APPLIANCES shall not apply.

9 S 4. Subdivision (f) of section 1109 of the tax law, as added by
10 section 118-a of part A of chapter 389 of the laws of 1997, is amended
11 to read as follows:

12 (f) The [exemption] EXEMPTIONS contained in [paragraph] PARAGRAPHS
13 thirty AND FORTY-FOUR of subdivision (a) of section eleven hundred
14 fifteen of this article shall not apply.

15 S 5. 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
25 taxes imposed by such city or county and with such limitations and
26 special provisions as are set forth in this article. The taxes author-
27 ized under this subdivision may not be imposed by a city or county
28 unless the local law, ordinance or resolution imposes such taxes so as
29 to include all portions and all types of receipts, charges or rents,
30 subject to state tax under sections eleven hundred five and eleven
31 hundred ten of this chapter, except as otherwise provided. Any local
32 law, ordinance or resolution enacted by any city of less than one
33 million or by any county or school district, imposing the taxes author-
34 ized by this subdivision, shall, notwithstanding any provision of law to
35 the contrary, exclude from the operation of such local taxes all sales
36 of tangible personal property for use or consumption directly and
37 predominantly in the production of tangible personal property, gas,
38 electricity, refrigeration or steam, for sale, by manufacturing, proc-
39 essing, generating, assembly, refining, mining or extracting; and all
40 sales of tangible personal property for use or consumption predominantly
41 either in the production of tangible personal property, for sale, by
42 farming or in a commercial horse boarding operation, or in both; and,
43 unless such city, county or school district elects otherwise, shall omit
44 the provision for credit or refund contained in clause six of subdivi-
45 sion (a) of section eleven hundred nineteen of this chapter. Any local
46 law, ordinance or resolution enacted by any city, county or school
47 district, imposing the taxes authorized by this subdivision, shall omit
48 the residential solar energy systems equipment exemption provided for in
49 subdivision (ee), the clothing and footwear exemption provided for in
50 paragraph thirty of subdivision (a) [and], the qualified empire zone
51 enterprise exemptions provided for in subdivision (z) AND THE NEW ENERGY
52 STAR APPLIANCES EXEMPTION PROVIDED FOR IN PARAGRAPH FORTY-FOUR OF SUBDI-
53 VISION (A) of section eleven hundred fifteen of this chapter, unless
54 such city, county or school district elects otherwise as to either such
55 residential solar energy systems equipment exemption or such clothing
56 and footwear exemption or such qualified empire zone enterprise

1 exemptions OR SUCH NEW ENERGY STAR APPLIANCES EXEMPTION; provided that
2 if such a city having a population of one million or more in which the
3 taxes imposed by section eleven hundred seven of this chapter are in
4 effect enacts the resolution described in subdivision (k) of this
5 section or repeals such resolution or enacts the resolution described in
6 subdivision (l) of this section or repeals such resolution or enacts the
7 resolution described in subdivision (n) OR (P) of this section or
8 repeals such resolution, such resolution or repeal shall also be deemed
9 to amend any local law, ordinance or resolution enacted by such a city
10 imposing such taxes pursuant to the authority of this subdivision,
11 whether or not such taxes are suspended at the time such city enacts its
12 resolution pursuant to subdivision (k), (l) [or], (n) OR (P) of this
13 section or at the time of any such repeal; provided, further, that any
14 such local law, ordinance or resolution and section eleven hundred seven
15 of this chapter, as deemed to be amended in the event a city of one
16 million or more enacts a resolution pursuant to the authority of subdivi-
17 sion (k), (l) [or], (n) OR (P) of this section, shall be further
18 amended, as provided in section twelve hundred eighteen of this subpart,
19 so that the residential solar energy systems equipment exemption or the
20 clothing and footwear exemption or the qualified empire zone enterprise
21 exemptions OR THE NEW ENERGY STAR APPLIANCES EXEMPTION in any such local
22 law, ordinance or resolution or in such section eleven hundred seven OF
23 THIS CHAPTER are the same, as the case may be, as the residential solar
24 energy systems equipment exemption provided for in subdivision (ee), the
25 clothing and footwear exemption in paragraph thirty of subdivision (a)
26 [or], the qualified empire zone enterprise exemptions in subdivision (z)
27 OR THE NEW ENERGY STAR APPLIANCES EXEMPTION PROVIDED FOR IN PARAGRAPH
28 FORTY-FOUR OF SUBDIVISION (A) of section eleven hundred fifteen of this
29 chapter.

30 S 6. Subdivision (d) of section 1210 of the tax law, as amended by
31 section 12 of part GG of chapter 63 of the laws of 2000, is amended to
32 read as follows:

33 (d) A local law, ordinance or resolution imposing any tax pursuant to
34 this section, increasing or decreasing the rate of such tax, repealing
35 or suspending such tax, exempting from such tax the energy sources and
36 services described in paragraph three of subdivision (a) or of subdivi-
37 sion (b) of this section or changing the rate of tax imposed on such
38 energy sources and services or providing for the credit or refund
39 described in clause six of subdivision (a) of section eleven hundred
40 nineteen of this chapter must go into effect only on one of the follow-
41 ing dates: March first, June first, September first or December first;
42 provided, that a local law, ordinance or resolution providing for the
43 exemption described in paragraph thirty OR FORTY-FOUR of subdivision (a)
44 or providing for the exemptions described in subdivision (z) of section
45 eleven hundred fifteen of this chapter or repealing any such exemption
46 so provided and a resolution enacted pursuant to the authority of subdivi-
47 sion (k) OR (P) of this section providing such exemption or subdivi-
48 sion (l) of this section providing such exemptions or repealing such
49 exemption or exemptions so provided must go into effect only on March
50 first. No such local law, ordinance or resolution shall be effective
51 unless a certified copy of such law, ordinance or resolution is mailed
52 by registered or certified mail to the commissioner at the commission-
53 er's office in Albany at least ninety days prior to the date it is to
54 become effective. However, the commissioner may waive and reduce such
55 ninety-day minimum notice requirement to a mailing of such certified
56 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 7. 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 NEW ENERGY STAR APPLIANCES EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES, DURING THE SAME PERIODS EACH YEAR, DESCRIBED IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER BY ENACTING A RESOLUTION EXACTLY 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, OR FOR THE USE OF, NEW ENERGY STAR APPLIANCES EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES PURSUANT TO PARAGRAPH 44 OF SUBDIVISION (A) OF SECTION 1115 OF THE NEW YORK TAX LAW SHALL ALSO BE EXEMPT FROM SALES AND COMPENSATING USE TAXES IMPOSED IN THIS JURISDICTION, DURING THE SAME PERIODS SET FORTH IN SUCH PARAGRAPH 44.

SECTION TWO. THIS RESOLUTION SHALL TAKE EFFECT MARCH 1, 2010 AND SHALL APPLY TO SALES MADE AND USES OCCURRING DURING THE APPLICABLE EXEMPTIONS PERIODS EACH YEAR, IN ACCORDANCE WITH THE APPLICABLE TRANSITIONAL PROVISIONS OF SECTIONS 1106 AND 1217 OF THE NEW YORK TAX LAW.

S 8. Notwithstanding any other provision of state or local law, ordinance or resolution to the contrary: (a) Any county or city imposing sales and compensating use taxes pursuant to the authority of subpart B of part 1 of article 29 of the tax law, acting through its local legislative body, is hereby authorized and empowered to elect to provide the exemption from such taxes for new Energy Star appliances exempt from state sales and compensating use taxes described in paragraph 44 of subdivision (a) of section 1115 of the tax law, for the periods described therein, whether such taxes are imposed by local law, ordinance or resolution, by enacting a resolution exactly in the form set forth in subdivision (c) of this section; whereupon, upon compliance with the provisions of subdivision (d) of this section, such enactment of such resolution shall be deemed to amend such local law, ordinance or resolution imposing such taxes, and such local law, ordinance or resolution shall thenceforth be deemed to incorporate such exemption for such periods.

1 (b) Any city of one million or more in which the taxes imposed by
2 section 1107 of the tax law are in effect, acting through its local
3 legislative body, is hereby authorized and empowered to elect to provide
4 the exemption from such taxes for the same new Energy Star appliances
5 exempt from state sales and compensating use taxes described in para-
6 graph 44 of subdivision (a) of section 1115 of the tax law, for the
7 periods described therein, by enacting a resolution exactly in the form
8 set forth in subdivision (c) of this section; whereupon, upon compliance
9 with the provisions of subdivision (d) of this section, such enactment
10 of such resolution shall be deemed to amend such section 1107 of the tax
11 law and such section 1107 shall thenceforth be deemed to incorporate
12 such exemption for such periods as if it had been duly enacted by the
13 state legislature and approved by the governor and such resolution shall
14 also be deemed to amend any local law, ordinance or resolution enacted
15 by such a city imposing such taxes pursuant to the authority of subdivi-
16 sion (a) of section 1210 of the tax law, whether or not such taxes are
17 suspended at the time such city enacts its resolution.

18 (c) Form of Resolution:

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

21 Section one: The (county or city) of (insert locality's name) hereby
22 elects the annual last weekend in June new Energy Star appliance
23 exemption period commencing in the fall of 2010.

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

28 (d) A resolution adopted pursuant to this section shall be effective
29 only if it is adopted exactly as set forth in subdivision (c) of this
30 section and such county or city adopts it by March 1, 2010, mails a
31 certified copy of it to the commissioner of taxation and finance by
32 certified mail by such date and otherwise complies with the requirements
33 of subdivisions (d) and (e) of section 1210 of the tax law.

34 S 9. This act shall take effect immediately and shall apply to sales
35 made and uses occurring during exemption periods on or after that date
36 in accordance with the applicable transitional provisions of sections
37 1106 and 1217 of the tax law.