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

2431

2009-2010 Regular Sessions

I N A S S E M B L Y

January 15, 2009

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

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:

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

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

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

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

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 provisions of such article twenty-eight can be made applicable to the taxes imposed by such city or county and with such limitations and

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

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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), THE MOBILE TELECOMMUNICATIONS SERVICE EXEMPTION PROVIDED FOR IN SUBDIVISION (CC), 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 TELECOMMUNICATIONS SERVICE 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 OR 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 (k), (l) [or], (n) OR (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 (k), (l) [or], (n) OR (P) 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 MOBILE TELECOMMUNICATIONS SERVICE 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 foot-

wear exemption in paragraph thirty of subdivision (a), THE MOBILE TELECOMMUNICATIONS SERVICE EXEMPTION PROVIDED FOR IN SUBDIVISION (CC), or the qualified empire zone enterprise exemptions in subdivision (z) of section eleven hundred fifteen of this chapter.

S 4. 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, COUNTY OR SCHOOL DISTRICT, ACTING THROUGH ITS GOVERNING BODY, IS HEREBY AUTHORIZED AND EMPOWERED TO ELECT TO PROVIDE THE SAME EXEMPTIONS FROM SUCH TAXES AS THE MOBILE TELECOMMUNICATIONS SERVICE EXEMPTION FROM STATE SALES AND COMPENSATING USE TAXES DESCRIBED IN SUBDIVISION (CC) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER BY ENACTING A RESOLUTION IN THE FORM SET FORTH IN PARAGRAPH TWO OF THIS SUBDIVISION; ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE 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 EXEMPTIONS AS IF THEY 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, MOBILE TELECOMMUNICATIONS SERVICE EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES PURSUANT TO SUBDIVISION (CC) OF SECTION 1115 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 MARCH 1, (INSERT THE YEAR, BUT NOT EARLIER THAN THE YEAR 2010) AND SHALL APPLY TO SALES MADE, SERVICES RENDERED AND USES OCCURRING ON AND AFTER THAT DATE IN ACCORDANCE WITH THE APPLICABLE TRANSITIONAL PROVISIONS IN SECTIONS 1106, 1216 AND 1217 OF THE NEW YORK TAX LAW.

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