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

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2009-2010 Regular Sessions

I N A S S E M B L Y

January 28, 2009

Introduced by M. of A. SCHIMMINGER, LUPARDO, STIRPE, FIELDS, GABRYSZAK, GUNTHER, HOYT, ROBINSON, SCHROEDER -- Multi-Sponsored by -- M. of A. BOYLAND, DelMONTE, HOOPER, V. LOPEZ, McENENY, PEOPLES-STOKES, PHEFFER, REILLY, J. RIVERA, TOWNS, WEISENBERG -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. Section 1115 of the tax law is amended by adding a new subdivision (gg) to read as follows:

(GG) THE GOVERNOR MAY TEMPORARILY SUSPEND SALES AND COMPENSATING USE TAXES ASSOCIATED WITH SERVICES OTHERWISE TAXABLE UNDER SUBDIVISION (C) OF SECTION ELEVEN HUNDRED FIVE OR UNDER SECTION ELEVEN HUNDRED TEN OF THIS ARTICLE RENDERED IN CLEAN-UP AND REPAIR OF REAL PROPERTY, PROPERTY OR LAND, AS SUCH TERMS ARE DEFINED IN THE REAL PROPERTY TAX LAW, WHEN SUCH SERVICES ARE PROVIDED BY A CONTRACTOR, SUBCONTRACTOR, REPAIRPERSON OR OWNER OF SUCH REAL PROPERTY, PROPERTY OR LAND LOCATED IN AN AFFECTED COUNTY DURING THE PERIOD OF TIME DECLARED BY THE GOVERNOR AS A STATE DISASTER EMERGENCY, AS DEFINED BY SECTION TWENTY OF THE EXECUTIVE LAW, AND UP TO SIXTY DAYS THEREAFTER.

S 2. Subparagraph (i) of paragraph 1 of subdivision (a) of section 1210 of the tax law, as amended by section 34 of part S-1 of chapter 57 of the laws of 2009, 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

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

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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 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. [(i)] (A) 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) or subdivision (d) of section eleven hundred nineteen of this chapter. [(ii)] (B) 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) and the clothing and footwear exemption provided for in paragraph thirty of subdivision (a) AND THE STATE OF EMERGENCY CLEAN-UP ACTIVITIES PROVIDED FOR IN SUBDIVISION (GG) 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.

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

(d) A local law, ordinance or resolution imposing any tax pursuant to this section, increasing or decreasing the rate of such tax, repealing or suspending such tax, exempting from such tax the energy sources and services described in paragraph three of subdivision (a) or of subdivision (b) of this section or changing the rate of tax imposed on such energy sources and services or providing for the credit or refund described in clause six of subdivision (a) of section eleven hundred nineteen of this chapter must go into effect only on one of the following dates: March first, June first, September first or December first; provided, that a local law, ordinance or resolution providing for the exemption described in paragraph thirty of subdivision (a) OR (GG) of section eleven hundred fifteen of this chapter or repealing any such exemption or a local law, ordinance or resolution providing for a refund or credit described in subdivision (d) of section eleven hundred nineteen of this chapter or repealing such provision so provided must go into effect only on March first. No such local law, ordinance or resolution shall be effective unless a certified copy of such law, ordinance or resolution is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least ninety days prior to the date it is to become effective. However, the commissioner may waive and reduce such ninety-day minimum notice requirement to a mailing of such certified 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 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 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 STATE OF EMERGENCY CLEAN-UP ACTIVITIES EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES, DURING THE SAME PERIODS EACH YEAR, DESCRIBED IN SUBDIVISION (GG) 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, STATE OF EMERGENCY CLEAN-UP ACTIVITIES EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES PURSUANT TO SUBDIVISION (GG) 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 SUBDIVISION.

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 AND USES OCCURRING DURING THE APPLICABLE EXEMPTION PERIODS EACH YEAR, IN ACCORDANCE WITH THE APPLICABLE TRANSITIONAL PROVISIONS OF SECTIONS 1106 AND 1217 OF THE NEW YORK TAX LAW.

S 5. 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 I 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 state of emergency clean-up activities exempt from state sales and compensating use taxes described in subdivision (gg) 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, 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 exemptions.

(b) Any city of one million or more in which the taxes imposed by section 1107 of the tax law 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 state of emergency clean-up activities exempt from state sales and compensating use taxes described in subdivision (gg) of section 1115 of the tax law, for the periods described therein, by enacting a resolution exactly in the form set forth in subdivision (c) of this section, such enactment of such resolution shall be deemed to amend such section 1107 of the tax law and such section 1107 shall thenceforth be deemed to incorporate such exemption for such periods as if it had been duly enacted by the state legislature and approved by the governor and such resolution 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 subdivision (a) of section 1210 of the tax law, whether or not such taxes are suspended at the time such city enacts its resolution.

(c) Form of Resolution:

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

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

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

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

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