

3419

2009-2010 Regular Sessions

I N S E N A T E

March 18, 2009

Introduced by Sen. YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the tax law, in relation to eliminating state sales and compensating use taxes on motor fuels and diesel motor fuels and authorizing localities to eliminate such taxes at the local level

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

1 Section 1. Subdivision (a) of section 1115 of the tax law is amended
2 by adding a new paragraph 44 to read as follows:
3 (44) MOTOR FUEL AND DIESEL MOTOR FUEL.
4 S 2. Subdivision (b) of section 1107 of the tax law is amended by
5 adding a new clause 12 to read as follows:
6 (12) EXCEPT AS OTHERWISE PROVIDED BY LAW, THE EXEMPTION PROVIDED IN
7 PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED
8 FIFTEEN RELATING TO MOTOR FUEL AND DIESEL MOTOR FUEL SHALL BE APPLICABLE
9 PURSUANT TO A LOCAL LAW, ORDINANCE OR RESOLUTION ADOPTED BY A CITY
10 SUBJECT TO THE PROVISIONS OF THIS SECTION. SUCH CITY IS EMPOWERED TO
11 ADOPT OR REPEAL SUCH A LOCAL LAW, ORDINANCE OR RESOLUTION. SUCH ADOPTION
12 OR REPEAL SHALL ALSO BE DEEMED TO AMEND ANY LOCAL LAW, ORDINANCE OR
13 RESOLUTION ENACTED BY SUCH A CITY IMPOSING TAXES PURSUANT TO THE AUTHOR-
14 ITY OF SUBDIVISION (A) OF SECTION TWELVE HUNDRED TEN OF THIS CHAPTER.
15 S 3. 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

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

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1 provisions of such article twenty-eight can be made applicable to the
2 taxes imposed by such city or county and with such limitations and
3 special provisions as are set forth in this article. The taxes author-
4 ized under this subdivision may not be imposed by a city or county
5 unless the local law, ordinance or resolution imposes such taxes so as
6 to include all portions and all types of receipts, charges or rents,
7 subject to state tax under sections eleven hundred five and eleven
8 hundred ten of this chapter, except as otherwise provided. Any local
9 law, ordinance or resolution enacted by any city of less than one
10 million or by any county or school district, imposing the taxes author-
11 ized by this subdivision, shall, notwithstanding any provision of law to
12 the contrary, exclude from the operation of such local taxes all sales
13 of tangible personal property for use or consumption directly and
14 predominantly in the production of tangible personal property, gas,
15 electricity, refrigeration or steam, for sale, by manufacturing, proc-
16 essing, generating, assembly, refining, mining or extracting; and all
17 sales of tangible personal property for use or consumption predominantly
18 either in the production of tangible personal property, for sale, by
19 farming or in a commercial horse boarding operation, or in both; and,
20 unless such city, county or school district elects otherwise, shall omit
21 the provision for credit or refund contained in clause six of subdivi-
22 sion (a) of section eleven hundred nineteen of this chapter. Any local
23 law, ordinance or resolution enacted by any city, county or school
24 district, imposing the taxes authorized by this subdivision, shall omit
25 the residential solar energy systems equipment exemption provided for in
26 subdivision (ee), the clothing and footwear exemption provided for in
27 paragraph thirty of subdivision (a) and the qualified empire zone enter-
28 prise exemptions provided for in subdivision (z) of section eleven
29 hundred fifteen of this chapter, unless such city, county or school
30 district elects otherwise as to either such residential solar energy
31 systems equipment exemption or such clothing and footwear exemption or
32 such qualified empire zone enterprise exemptions; provided that if such
33 a city having a population of one million or more in which the taxes
34 imposed by section eleven hundred seven of this chapter are in effect
35 enacts the resolution described in subdivision (k) of this section or
36 repeals such resolution or enacts the resolution described in subdivi-
37 sion (l) of this section or repeals such resolution or enacts the resol-
38 ution described in subdivision (n) of this section or repeals such
39 resolution, such resolution or repeal shall also be deemed to amend any
40 local law, ordinance or resolution enacted by such a city imposing such
41 taxes pursuant to the authority of this subdivision, whether or not such
42 taxes are suspended at the time such city enacts its resolution pursuant
43 to subdivision (k), (l) or (n) of this section or at the time of any
44 such repeal; provided, further, that any such local law, ordinance or
45 resolution and section eleven hundred seven of this chapter, as deemed
46 to be amended in the event a city of one million or more enacts a resol-
47 ution pursuant to the authority of subdivision (k), (l) or (n) of this
48 section, shall be further amended, as provided in section twelve hundred
49 eighteen of this subpart, so that the residential solar energy systems
50 equipment exemption or the clothing and footwear exemption or the quali-
51 fied empire zone enterprise exemptions in any such local law, ordinance
52 or resolution or in such section eleven hundred seven are the same, as
53 the case may be, as the residential solar energy systems equipment
54 exemption provided for in subdivision (ee), the clothing and footwear
55 exemption in paragraph thirty of subdivision (a) or the qualified empire
56 zone enterprise exemptions in subdivision (z) of section eleven hundred

15 fifteen of this chapter. ANY LOCAL LAW, ORDINANCE OR RESOLUTION ENACTED
16 BY ANY CITY, COUNTY OR SCHOOL DISTRICT, IMPOSING THE TAXES AUTHORIZED BY
17 THIS SUBDIVISION, SHALL OMIT THE MOTOR FUEL AND DIESEL MOTOR FUEL
18 EXEMPTION PROVIDED FOR IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF
19 SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER, UNLESS SUCH CITY, COUNTY
20 OR SCHOOL DISTRICT ELECTS OTHERWISE; PROVIDED THAT IF SUCH A CITY HAVING
21 A POPULATION OF ONE MILLION OR MORE ENACTS THE RESOLUTION DESCRIBED IN
22 SUBDIVISION (P) OF THIS SECTION OR REPEALS SUCH RESOLUTION, SUCH RESOL-
23 UTION OR REPEAL SHALL ALSO BE DEEMED TO AMEND ANY LOCAL LAW, ORDINANCE
24 OR RESOLUTION ENACTED BY SUCH A CITY IMPOSING SUCH TAXES PURSUANT TO THE
25 AUTHORITY OF THIS SUBDIVISION, WHETHER OR NOT SUCH TAXES ARE SUSPENDED
26 AT THE TIME SUCH CITY ENACTS ITS RESOLUTION PURSUANT TO SUBDIVISION (P)
27 OF THIS SECTION OR AT THE TIME OF ANY SUCH REPEAL; PROVIDED, FURTHER,
28 THAT ANY SUCH LOCAL LAW, ORDINANCE OR RESOLUTION AND SECTION ELEVEN
29 HUNDRED SEVEN OF THIS CHAPTER, AS DEEMED TO BE AMENDED IN THE EVENT A
30 CITY OF ONE MILLION OR MORE ENACTS A RESOLUTION PURSUANT TO THE AUTHORI-
31 TY OF SUBDIVISION (P) OF THIS SECTION, SHALL BE FURTHER AMENDED, AS
32 PROVIDED IN SECTION TWELVE HUNDRED EIGHTEEN OF THIS SUBPART, SO THAT THE
33 MOTOR FUEL AND DIESEL MOTOR FUEL EXEMPTION IN ANY SUCH LOCAL LAW, ORDI-
34 NANCE OR RESOLUTION OR IN SUCH SECTION ELEVEN HUNDRED SEVEN OF THIS
35 CHAPTER IS THE SAME AS THE MOTOR FUEL AND DIESEL MOTOR FUEL EXEMPTION IN
36 PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED
37 FIFTEEN OF THIS CHAPTER.

38 S 4. Subdivision (d) of section 1210 of the tax law, as amended by
39 section 12 of part GG of chapter 63 of the laws of 2000, is amended to
40 read as follows:

41 (d) A local law, ordinance or resolution imposing any tax pursuant to
42 this section, increasing or decreasing the rate of such tax, repealing
43 or suspending such tax, exempting from such tax the energy sources and
44 services described in paragraph three of subdivision (a) or of subdivi-
45 sion (b) of this section or changing the rate of tax imposed on such
46 energy sources and services or providing for the credit or refund
47 described in clause six of subdivision (a) of section eleven hundred
48 nineteen of this chapter must go into effect only on one of the follow-
49 ing dates: March first, June first, September first or December first;
50 provided, that a local law, ordinance or resolution providing for the
51 exemption described in paragraph thirty of subdivision (a) or providing
52 for the exemptions described in subdivision (z) of section eleven
53 hundred fifteen of this chapter or repealing any such exemption so
54 provided and a resolution enacted pursuant to the authority of subdivi-
55 sion (k) of this section providing such exemption or subdivision (l) of
56 this section providing such exemptions or repealing such exemption or
57 exemptions so provided must go into effect only on March first;
58 PROVIDED, FURTHER, THAT A LOCAL LAW, ORDINANCE OR RESOLUTION PROVIDING
59 FOR THE EXEMPTION DESCRIBED IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A)
60 OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER OR REPEALING ANY SUCH
61 EXEMPTION SO PROVIDED AND A RESOLUTION ENACTED PURSUANT TO THE AUTHORITY
62 OF SUBDIVISION (P) OF THIS SECTION PROVIDING SUCH EXEMPTION OR REPEALING
63 SUCH EXEMPTION SO PROVIDED MAY GO INTO EFFECT IMMEDIATELY. No such local
64 law, ordinance or resolution shall be effective unless a certified copy
65 of such law, ordinance or resolution is mailed by registered or certi-
66 fied mail to the commissioner at the commissioner's office in Albany at
67 least ninety days prior to the date it is to become effective. However,
68 the commissioner may waive and reduce such ninety-day minimum notice
69 requirement to a mailing of such certified copy by registered or certi-
70 fied mail within a period of not less than thirty days prior to such

1 effective date if the commissioner deems such action to be consistent
2 with the commissioner's duties under section twelve hundred fifty of
3 this article and the commissioner acts by resolution. Where the
4 restriction provided for in section twelve hundred twenty-three of this
5 article as to the effective date of a tax and the notice requirement
6 provided for therein are applicable and have not been waived, the
7 restriction and notice requirement in section twelve hundred twenty-
8 three of this article shall also apply.

9 S 5. Section 1210 of the tax law is amended by adding a new subdivi-
10 sion (p) to read as follows:

11 (P) NOTWITHSTANDING ANY OTHER PROVISION OF STATE OR LOCAL LAW, ORDI-
12 NANCE OR RESOLUTION TO THE CONTRARY:

13 (1) ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE IN WHICH THE
14 TAXES IMPOSED BY SECTION ELEVEN HUNDRED SEVEN OF THIS CHAPTER ARE IN
15 EFFECT, ACTING THROUGH ITS LOCAL LEGISLATIVE BODY, IS HEREBY AUTHORIZED
16 AND EMPOWERED TO ELECT TO PROVIDE THE EXEMPTION FROM SUCH TAXES FOR THE
17 SAME MOTOR FUEL AND DIESEL MOTOR FUEL EXEMPT FROM STATE SALES AND
18 COMPENSATING USE TAXES DESCRIBED IN PARAGRAPH FORTY-FOUR OF SUBDIVISION
19 (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER BY ENACTING A
20 RESOLUTION IN THE FORM SET FORTH IN PARAGRAPH TWO OF THIS SUBDIVISION;
21 WHEREUPON, UPON COMPLIANCE WITH THE PROVISIONS OF SUBDIVISIONS (D) AND
22 (E) OF THIS SECTION, SUCH ENACTMENT OF SUCH RESOLUTION SHALL BE DEEMED
23 TO BE AN AMENDMENT TO SUCH SECTION ELEVEN HUNDRED SEVEN AND SUCH SECTION
24 ELEVEN HUNDRED SEVEN SHALL BE DEEMED TO INCORPORATE SUCH EXEMPTION AS IF
25 IT HAD BEEN DULY ENACTED BY THE STATE LEGISLATURE AND APPROVED BY THE
26 GOVERNOR.

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

29 SECTION ONE. RECEIPTS FROM SALES OF AND CONSIDERATION GIVEN OR
30 CONTRACTED TO BE GIVEN FOR PURCHASES OF MOTOR FUEL AND DIESEL MOTOR FUEL
31 EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES PURSUANT TO PARAGRAPH
32 FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THE
33 TAX LAW SHALL ALSO BE EXEMPT FROM SALES AND COMPENSATING USE TAXES
34 IMPOSED IN THIS JURISDICTION.

35 SECTION TWO. THIS RESOLUTION SHALL TAKE EFFECT, (INSERT THE DATE) AND
36 SHALL APPLY TO SALES MADE AND USES OCCURRING ON AND AFTER THAT DATE
37 ALTHOUGH MADE OR OCCURRING UNDER A PRIOR CONTRACT.

38 S 6. The commissioner of taxation and finance is hereby authorized to
39 implement the provisions of this act with respect to the elimination of
40 the imposition of sales tax, additional taxes, and supplemental taxes on
41 diesel motor fuel and motor fuel and all other taxes so addressed by
42 this act.

43 S 7. This act shall take effect April 1, 2009.