

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

3419--A

2009-2010 Regular Sessions

I N S E N A T E

March 18, 2009

Introduced by Sens. YOUNG, RANZENHOFER -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- recommitted to the Committee on Energy and Telecommunications in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 OF THIS ARTICLE RELATING TO MOTOR FUEL AND DIESEL MOTOR FUEL
9 SHALL BE APPLICABLE PURSUANT TO A LOCAL LAW, ORDINANCE OR RESOLUTION
10 ADOPTED BY A CITY SUBJECT TO THE PROVISIONS OF THIS SECTION. SUCH CITY
11 IS EMPOWERED TO ADOPT OR REPEAL SUCH A LOCAL LAW, ORDINANCE OR RESOL-
12 UTION. SUCH ADOPTION OR REPEAL SHALL ALSO BE DEEMED TO AMEND ANY LOCAL
13 LAW, ORDINANCE OR RESOLUTION ENACTED BY SUCH A CITY IMPOSING TAXES
14 PURSUANT TO THE AUTHORITY OF SUBDIVISION (A) OF SECTION TWELVE HUNDRED
15 TEN OF THIS CHAPTER.
16 S 3. Subparagraph (i) of paragraph 1 of subdivision (a) of section
17 1210 of the tax law, as amended by section 34 of part S-1 of chapter 57
18 of the laws of 2009, is amended to read as follows:
19 (i) Either, all of the taxes described in article twenty-eight of this
20 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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1 the local laws, ordinances or resolutions imposing such taxes shall be
2 identical, except as to rate and except as otherwise provided, with the
3 corresponding provisions in such article twenty-eight, including the
4 definition and exemption provisions of such article, so far as the
5 provisions of such article twenty-eight can be made applicable to the
6 taxes imposed by such city or county and with such limitations and
7 special provisions as are set forth in this article. The taxes author-
8 ized under this subdivision may not be imposed by a city or county
9 unless the local law, ordinance or resolution imposes such taxes so as
10 to include all portions and all types of receipts, charges or rents,
11 subject to state tax under sections eleven hundred five and eleven
12 hundred ten of this chapter, except as otherwise provided. (i) Any local
13 law, ordinance or resolution enacted by any city of less than one
14 million or by any county or school district, imposing the taxes author-
15 ized by this subdivision, shall, notwithstanding any provision of law to
16 the contrary, exclude from the operation of such local taxes all sales
17 of tangible personal property for use or consumption directly and
18 predominantly in the production of tangible personal property, gas,
19 electricity, refrigeration or steam, for sale, by manufacturing, proc-
20 essing, generating, assembly, refining, mining or extracting; and all
21 sales of tangible personal property for use or consumption predominantly
22 either in the production of tangible personal property, for sale, by
23 farming or in a commercial horse boarding operation, or in both; and,
24 unless such city, county or school district elects otherwise, shall omit
25 the provision for credit or refund contained in clause six of subdivi-
26 sion (a) or subdivision (d) of section eleven hundred nineteen of this
27 chapter. (ii) Any local law, ordinance or resolution enacted by any
28 city, county or school district, imposing the taxes authorized by this
29 subdivision, shall omit the residential solar energy systems equipment
30 exemption provided for in subdivision (ee) and the clothing and footwear
31 exemption provided for in paragraph thirty of subdivision (a) of section
32 eleven hundred fifteen of this chapter, unless such city, county or
33 school district elects otherwise as to either such residential solar
34 energy systems equipment exemption or such clothing and footwear
35 exemption. ANY LOCAL LAW, ORDINANCE OR RESOLUTION ENACTED BY ANY CITY,
36 COUNTY OR SCHOOL DISTRICT, IMPOSING THE TAXES AUTHORIZED BY THIS SUBDI-
37 VISION, SHALL OMIT THE MOTOR FUEL AND DIESEL MOTOR FUEL EXEMPTION
38 PROVIDED FOR IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEV-
39 EN HUNDRED FIFTEEN OF THIS CHAPTER, UNLESS SUCH CITY, COUNTY OR SCHOOL
40 DISTRICT ELECTS OTHERWISE; PROVIDED THAT IF SUCH A CITY HAVING A POPU-
41 LATION OF ONE MILLION OR MORE ENACTS THE RESOLUTION DESCRIBED IN SUBDI-
42 VISION (P) OF THIS SECTION OR REPEALS SUCH RESOLUTION, SUCH RESOLUTION
43 OR REPEAL SHALL ALSO BE DEEMED TO AMEND ANY LOCAL LAW, ORDINANCE OR
44 RESOLUTION ENACTED BY SUCH A CITY IMPOSING SUCH TAXES PURSUANT TO THE
45 AUTHORITY OF THIS SUBDIVISION, WHETHER OR NOT SUCH TAXES ARE SUSPENDED
46 AT THE TIME SUCH CITY ENACTS ITS RESOLUTION PURSUANT TO SUBDIVISION (P)
47 OF THIS SECTION OR AT THE TIME OF ANY SUCH REPEAL; PROVIDED, FURTHER,
48 THAT ANY SUCH LOCAL LAW, ORDINANCE OR RESOLUTION AND SECTION ELEVEN
49 HUNDRED SEVEN OF THIS CHAPTER, AS DEEMED TO BE AMENDED IN THE EVENT A
50 CITY OF ONE MILLION OR MORE ENACTS A RESOLUTION PURSUANT TO THE AUTHORI-
51 TY OF SUBDIVISION (P) OF THIS SECTION, SHALL BE FURTHER AMENDED, AS
52 PROVIDED IN SECTION TWELVE HUNDRED EIGHTEEN OF THIS SUBPART, SO THAT THE
53 MOTOR FUEL AND DIESEL MOTOR FUEL EXEMPTION IN ANY SUCH LOCAL LAW, ORDI-
54 NANCE OR RESOLUTION OR IN SUCH SECTION ELEVEN HUNDRED SEVEN OF THIS
55 CHAPTER IS THE SAME AS THE MOTOR FUEL AND DIESEL MOTOR FUEL EXEMPTION IN

1 PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED
2 FIFTEEN OF THIS CHAPTER.

3 S 4. Subdivision (d) of section 1210 of the tax law, as amended by
4 section 37 of part S-1 of chapter 57 of the laws of 2009, is amended to
5 read as follows:

6 (d) A local law, ordinance or resolution imposing any tax pursuant to
7 this section, increasing or decreasing the rate of such tax, repealing
8 or suspending such tax, exempting from such tax the energy sources and
9 services described in paragraph three of subdivision (a) or of subdivi-
10 sion (b) of this section or changing the rate of tax imposed on such
11 energy sources and services or providing for the credit or refund
12 described in clause six of subdivision (a) of section eleven hundred
13 nineteen of this chapter must go into effect only on one of the follow-
14 ing dates: March first, June first, September first or December first;
15 provided, that a local law, ordinance or resolution providing for the
16 exemption described in paragraph thirty of subdivision (a) of section
17 eleven hundred fifteen of this chapter or repealing any such exemption
18 or a local law, ordinance or resolution providing for a refund or credit
19 described in subdivision (d) of section eleven hundred nineteen of this
20 chapter or repealing such provision so provided must go into effect only
21 on March first; PROVIDED, FURTHER, THAT A LOCAL LAW, ORDINANCE OR RESOL-
22 UTION PROVIDING FOR THE EXEMPTION DESCRIBED IN PARAGRAPH FORTY-FOUR OF
23 SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER OR
24 REPEALING ANY SUCH EXEMPTION SO PROVIDED AND A RESOLUTION ENACTED PURSU-
25 ANT TO THE AUTHORITY OF SUBDIVISION (P) OF THIS SECTION PROVIDING SUCH
26 EXEMPTION OR REPEALING SUCH EXEMPTION SO PROVIDED MAY GO INTO EFFECT
27 IMMEDIATELY. No such local law, ordinance or resolution shall be effec-
28 tive unless a certified copy of such law, ordinance or resolution is
29 mailed by registered or certified mail to the commissioner at the
30 commissioner's office in Albany at least ninety days prior to the date
31 it is to become effective. However, the commissioner may waive and
32 reduce such ninety-day minimum notice requirement to a mailing of such
33 certified copy by registered or certified mail within a period of not
34 less than thirty days prior to such effective date if the commissioner
35 deems such action to be consistent with the commissioner's duties under
36 section twelve hundred fifty of this article and the commissioner acts
37 by resolution. Where the restriction provided for in section twelve
38 hundred twenty-three of this article as to the effective date of a tax
39 and the notice requirement provided for therein are applicable and have
40 not been waived, the restriction and notice requirement in section
41 twelve hundred twenty-three of this article shall also apply.

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

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

46 (1) ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE IN WHICH THE
47 TAXES IMPOSED BY SECTION ELEVEN HUNDRED SEVEN OF THIS CHAPTER ARE IN
48 EFFECT, ACTING THROUGH ITS LOCAL LEGISLATIVE BODY, IS HEREBY AUTHORIZED
49 AND EMPOWERED TO ELECT TO PROVIDE THE EXEMPTION FROM SUCH TAXES FOR THE
50 SAME MOTOR FUEL AND DIESEL MOTOR FUEL EXEMPT FROM STATE SALES AND
51 COMPENSATING USE TAXES DESCRIBED IN PARAGRAPH FORTY-FOUR OF SUBDIVISION
52 (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER BY ENACTING A
53 RESOLUTION IN THE FORM SET FORTH IN PARAGRAPH TWO OF THIS SUBDIVISION;
54 WHEREUPON, UPON COMPLIANCE WITH THE PROVISIONS OF SUBDIVISIONS (D) AND
55 (E) OF THIS SECTION, SUCH ENACTMENT OF SUCH RESOLUTION SHALL BE DEEMED
56 TO BE AN AMENDMENT TO SUCH SECTION ELEVEN HUNDRED SEVEN AND SUCH SECTION

1 ELEVEN HUNDRED SEVEN SHALL BE DEEMED TO INCORPORATE SUCH EXEMPTION AS IF
2 IT HAD BEEN DULY ENACTED BY THE STATE LEGISLATURE AND APPROVED BY THE
3 GOVERNOR.

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

6 SECTION ONE. RECEIPTS FROM SALES OF AND CONSIDERATION GIVEN OR
7 CONTRACTED TO BE GIVEN FOR PURCHASES OF MOTOR FUEL AND DIESEL MOTOR FUEL
8 EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES PURSUANT TO PARAGRAPH
9 FORTY-FOUR OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THE
10 TAX LAW SHALL ALSO BE EXEMPT FROM SALES AND COMPENSATING USE TAXES
11 IMPOSED IN THIS JURISDICTION.

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

15 S 6. The commissioner of taxation and finance is hereby authorized to
16 implement the provisions of this act with respect to the elimination of
17 the imposition of sales tax, additional taxes, and supplemental taxes on
18 diesel motor fuel and motor fuel and all other taxes so addressed by
19 this act.

20 S 7. This act shall take effect April 1, 2010.