

10430

I N A S S E M B L Y

May 29, 2012

Introduced by M. of A. CUSICK -- 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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

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

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

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

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

15 S 3. Paragraph 1 of subdivision (a) of section 1210 of the tax law, as
16 amended by section 3 of part GG of chapter 57 of the laws of 2010, is
17 amended to read as follows:

18 (1) 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. (i) Any local

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

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1 law, ordinance or resolution enacted by any city of less than one
2 million or by any county or school district, imposing the taxes author-
3 ized by this subdivision, shall, notwithstanding any provision of law to
4 the contrary, exclude from the operation of such local taxes all sales
5 of tangible personal property for use or consumption directly and
6 predominantly in the production of tangible personal property, gas,
7 electricity, refrigeration or steam, for sale, by manufacturing, proc-
8 essing, generating, assembly, refining, mining or extracting; and all
9 sales of tangible personal property for use or consumption predominantly
10 either in the production of tangible personal property, for sale, by
11 farming or in a commercial horse boarding operation, or in both; and,
12 unless such city, county or school district elects otherwise, shall omit
13 the provision for credit or refund contained in clause six of subdivi-
14 sion (a) or subdivision (d) of section eleven hundred nineteen of this
15 chapter. (ii) Any local law, ordinance or resolution enacted by any
16 city, county or school district, imposing the taxes authorized by this
17 subdivision, shall omit the residential solar energy systems equipment
18 exemption provided for in subdivision (ee) and the clothing and footwear
19 exemption provided for in paragraph thirty of subdivision (a) AND THE
20 MOBILE TELECOMMUNICATIONS SERVICE EXEMPTION PROVIDED FOR IN SUBDIVISION
21 (CC), of section eleven hundred fifteen of this chapter, unless such
22 city, county or school district elects otherwise as to either such resi-
23 dential solar energy systems equipment exemption or such clothing and
24 footwear exemption OR SUCH TELECOMMUNICATIONS SERVICE EXEMPTION.

25 S 4. Section 1210 of the tax law is amended by adding a new subdivi-
26 sion (p) to read as follows:

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

29 (1) ANY CITY, COUNTY OR SCHOOL DISTRICT, ACTING THROUGH ITS GOVERNING
30 BODY, IS HEREBY AUTHORIZED AND EMPOWERED TO ELECT TO PROVIDE THE SAME
31 EXEMPTIONS FROM SUCH TAXES AS THE MOBILE TELECOMMUNICATIONS SERVICE
32 EXEMPTION FROM STATE SALES AND COMPENSATING USE TAXES DESCRIBED IN
33 SUBDIVISION (CC) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER BY
34 ENACTING A RESOLUTION IN THE FORM SET FORTH IN PARAGRAPH TWO OF THIS
35 SUBDIVISION; ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE WHERE-
36 UPON, UPON COMPLIANCE WITH THE PROVISIONS OF SUBDIVISIONS (D) AND (E) OF
37 THIS SECTION, SUCH ENACTMENT OF SUCH RESOLUTION SHALL BE DEEMED TO BE AN
38 AMENDMENT TO SUCH SECTION ELEVEN HUNDRED SEVEN AND SUCH SECTION ELEVEN
39 HUNDRED SEVEN SHALL BE DEEMED TO INCORPORATE SUCH EXEMPTIONS AS IF THEY
40 HAD BEEN DULY ENACTED BY THE STATE LEGISLATURE AND APPROVED BY THE
41 GOVERNOR.

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

44 SECTION ONE. RECEIPTS FROM SALES OF AND CONSIDERATION GIVEN OR
45 CONTRACTED TO BE GIVEN FOR, OR FOR THE USE OF, MOBILE TELECOMMUNICATIONS
46 SERVICE EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES PURSUANT TO
47 SUBDIVISION (CC) OF SECTION 1115 OF THE TAX LAW SHALL ALSO BE EXEMPT
48 FROM SALES AND COMPENSATING USE TAXES IMPOSED IN THIS JURISDICTION.

49 SECTION TWO. THIS RESOLUTION SHALL TAKE EFFECT MARCH 1, (INSERT THE
50 YEAR, BUT NOT EARLIER THAN THE YEAR 2013) AND SHALL APPLY TO SALES MADE,
51 SERVICES RENDERED AND USES OCCURRING ON AND AFTER THAT DATE IN ACCORD-
52 ANCE WITH THE APPLICABLE TRANSITIONAL PROVISIONS IN SECTIONS 1106, 1216
53 AND 1217 OF THE NEW YORK TAX LAW.

54 S 5. This act shall take effect immediately; provided, however, that
55 sections one and two of this act shall take effect March 1, 2013.