

5772

2011-2012 Regular Sessions

I N A S S E M B L Y

February 28, 2011

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:

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

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

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1 special provisions as are set forth in this article. The taxes author-  
2 ized under this subdivision may not be imposed by a city or county  
3 unless the local law, ordinance or resolution imposes such taxes so as  
4 to include all portions and all types of receipts, charges or rents,  
5 subject to state tax under sections eleven hundred five and eleven  
6 hundred ten of this chapter, except as otherwise provided. (i) Any local  
7 law, ordinance or resolution enacted by any city of less than one  
8 million or by any county or school district, imposing the taxes author-  
9 ized by this subdivision, shall, notwithstanding any provision of law to  
10 the contrary, exclude from the operation of such local taxes all sales  
11 of tangible personal property for use or consumption directly and  
12 predominantly in the production of tangible personal property, gas,  
13 electricity, refrigeration or steam, for sale, by manufacturing, proc-  
14 essing, generating, assembly, refining, mining or extracting; and all  
15 sales of tangible personal property for use or consumption predominantly  
16 either in the production of tangible personal property, for sale, by  
17 farming or in a commercial horse boarding operation, or in both; and,  
18 unless such city, county or school district elects otherwise, shall omit  
19 the provision for credit or refund contained in clause six of subdivi-  
20 sion (a) or subdivision (d) of section eleven hundred nineteen of this  
21 chapter. (ii) Any local law, ordinance or resolution enacted by any  
22 city, county or school district, imposing the taxes authorized by this  
23 subdivision, shall omit the residential solar energy systems equipment  
24 exemption provided for in subdivision (ee) and, the clothing and foot-  
25 wear exemption provided for in paragraph thirty of subdivision (a), THE  
26 MOBILE TELECOMMUNICATIONS SERVICE EXEMPTION PROVIDED FOR IN SUBDIVISION  
27 (CC) of section eleven hundred fifteen of this chapter, unless such  
28 city, county or school district elects otherwise as to either such resi-  
29 dential solar energy systems equipment exemption or such clothing and  
30 footwear exemption OR SUCH TELECOMMUNICATIONS SERVICE EXEMPTION.

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

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

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

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

50 SECTION ONE. RECEIPTS FROM SALES OF AND CONSIDERATION GIVEN OR  
51 CONTRACTED TO BE GIVEN FOR, OR FOR THE USE OF, MOBILE TELECOMMUNICATIONS  
52 SERVICE EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES PURSUANT TO  
53 SUBDIVISION (CC) OF SECTION 1115 OF THE TAX LAW SHALL ALSO BE EXEMPT  
54 FROM SALES AND COMPENSATING USE TAXES IMPOSED IN THIS JURISDICTION.

55 SECTION TWO. THIS RESOLUTION SHALL TAKE EFFECT MARCH 1, (INSERT THE  
56 YEAR, BUT NOT EARLIER THAN THE YEAR 2012) AND SHALL APPLY TO SALES MADE,

1 SERVICES RENDERED AND USES OCCURRING ON AND AFTER THAT DATE IN ACCORD-  
2 ANCE WITH THE APPLICABLE TRANSITIONAL PROVISIONS IN SECTIONS 1106, 1216  
3 AND 1217 OF THE NEW YORK TAX LAW.  
4 S 5. This act shall take effect immediately; provided, however, that  
5 sections one and two of this act shall take effect March 1, 2012.