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

5367

2011-2012 Regular Sessions

I N S E N A T E

May 12, 2011

Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the real property tax law and the administrative code of the city of New York, in relation to applications for tax abatements for industrial and construction work on properties in a city of one million or more persons and to tax abatements for certain energy generating facilities in such city

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

Section 1. Legislative findings. The legislature hereby finds that the New York city industrial and commercial incentive program granted, as of right, reductions in real property taxes to new industrial and commercial projects, including power plants. That program lapsed in 2008 and its successor, the industrial and commercial abatement program, enacted by chapter 119 of the laws of 2008, did not provide for tax abatements for new generating facilities in New York city. In August 2010 the board of directors of the New York city industrial development agency revised its uniform tax exemption policy to provide a discretionary tax abatement program, and other benefits, for certain electric generating facilities. However, the tax benefits of the program were not recognized by the federal energy regulatory commission in setting the installed capacity demand curves for the City of New York for 2011/2012, 2012/2013 and 2013/2014, potentially resulting in a significant increase in the level of the demand curves and corresponding capacity prices paid by customers in the city of New York. The legislature further finds that it is the best interest of customers to prevent such impacts by amending the real property tax law for the purpose of making electric generating facilities eligible for benefits, as of right, under the industrial and commercial abatement program.

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

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S 2. Subdivision 17 of section 489-aaaaaa of the real property tax law, as added by chapter 119 of the laws of 2008, is amended to read as follows:

17. "Utility property" means property and equipment as described in paragraphs (c), (d), (e), (f) and (i) of subdivision twelve of section one hundred two of this chapter that is used in the ordinary course of business by its owner or any other entity or property as described in paragraphs (a) and (b) of subdivision twelve of section one hundred two of this chapter that is owned by any entity that uses in the ordinary course of business property and equipment as described in paragraphs (c), (d), (e), (f) and (i) of subdivision twelve of section one hundred two of this chapter, without regard to the classification of such property and equipment for real property tax purposes pursuant to section eighteen hundred two of this chapter, except that any such property and equipment used solely to serve the building to which they are attached shall not be deemed utility property. NOTWITHSTANDING ANY PROVISION OF THIS TITLE TO THE CONTRARY, ELECTRIC GENERATING FACILITIES OWNED BY ENTITIES OTHER THAN UTILITIES OWNING GREATER THAN ONE HUNDRED MILES OF TRANSMISSION FACILITIES SHALL NOT BE CONSIDERED UTILITY PROPERTY. FOR PURPOSES OF THIS TITLE, "ELECTRIC GENERATING FACILITY" SHALL MEAN A GENERATING UNIT THAT IS DETERMINED BY THE NEW YORK INDEPENDENT SYSTEM OPERATOR TO SATISFY THE DEFINITION OF A GENERATOR SET FORTH IN SECTION 2.7 OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR'S MARKET ADMINISTRATION AND CONTROL AREA SERVICES TARIFF, AS SUCH DEFINITION EXISTED AS OF APRIL FIRST, TWO THOUSAND ELEVEN. AN "ELECTRIC GENERATING FACILITY" UNDER THIS TITLE INCLUDES ALL REAL PROPERTY USED IN CONNECTION WITH THE GENERATION OF ELECTRICITY, AND ANY FACILITIES USED TO INTERCONNECT THE ELECTRIC GENERATING FACILITY WITH THE ELECTRIC TRANSMISSION OR DISTRIBUTION SYSTEM, BUT SHALL NOT INCLUDE ANY FACILITIES WHICH ARE PART OF THE ELECTRIC TRANSMISSION OR DISTRIBUTION SYSTEM; IT MAY BE COMPRISED OF A SINGLE TURBINE AND GENERATOR OR MULTIPLE TURBINES AND GENERATORS LOCATED AT THE SAME SITE. NOTWITHSTANDING ANY PROVISION OF THIS TITLE TO THE CONTRARY, AN ELECTRIC GENERATING FACILITY SHALL BE CONSIDERED INDUSTRIAL PROPERTY, PROVIDED HOWEVER THAT THE BENEFIT PERIOD FOR AN ELECTRIC GENERATING FACILITY SHALL NOT EXCEED FIFTEEN YEARS.

S 3. Paragraph (a) of subdivision 1 of section 489-dddddd of the real property tax law, as amended by chapter 138 of the laws of 2008, is amended to read as follows:

(a) Application for benefits pursuant to this title may be made immediately following the effective date of a local law enacted pursuant to this title and, EXCEPT FOR APPLICATIONS FOR BENEFITS PURSUANT TO THIS TITLE BY ELECTRIC GENERATING FACILITIES, continuing until March first, two thousand [eleven] FIFTEEN.

S 4. Section 489-dddddd of the real property tax law is amended by adding a new subdivision 3 to read as follows:

3. (A) EXCEPT FOR BENEFITS GRANTED PURSUANT TO THIS TITLE TO ELECTRIC GENERATING FACILITIES, NO BENEFITS PURSUANT TO THIS TITLE SHALL BE GRANTED FOR CONSTRUCTION WORK PERFORMED PURSUANT TO A BUILDING PERMIT ISSUED AFTER APRIL FIRST, TWO THOUSAND FIFTEEN.

(B) IF NO BUILDING PERMIT WAS REQUIRED, THEN, EXCEPT FOR ELECTRIC GENERATING FACILITIES, NO BENEFITS PURSUANT TO THIS TITLE SHALL BE GRANTED FOR CONSTRUCTION WORK THAT IS NOT COMMENCED ON OR BEFORE APRIL FIRST, TWO THOUSAND FIFTEEN.

S 5. Subdivision 1 of section 489-eeeeee of the real property tax law, as added by chapter 119 of the laws of 2008, is amended to read as follows:

1. Continuing use. For the duration of the benefit period, the recipient of benefits shall file biennially with the department, on or before the appropriate taxable status date, a statement of the continuing use of such property and any changes in use that have occurred, PROVIDED, HOWEVER, THAT ANY RECIPIENT OF BENEFITS RECEIVING BENEFITS FOR PROPERTY DEFINED AS AN ELECTRIC GENERATING FACILITY SHALL FILE SUCH STATEMENT BIANNUALLY. This statement shall be in a form determined by the department and may be in any format the department determines, in its discretion, is appropriate, including electronic format. The department shall have authority to terminate such benefits upon failure of a recipient to file such statement by the appropriate taxable status date. The burden of proof shall be on the recipient to establish continuing eligibility for benefits and the department shall have the authority to require that statements filed under this subdivision be certified.

S 6. Subdivision q of section 11-268 of the administrative code of the city of New York, as added by local law number 47 of the city of New York for the year 2008, is amended to read as follows:

q. "Utility property" means property and equipment as described in paragraphs (c), (d), (e), (f) and (i) of subdivision twelve of section one hundred two of the real property tax law that is used in the ordinary course of business by its owner or any other entity or property as described in paragraphs (a) and (b) of subdivision twelve of section one hundred two of such law that is owned by any entity that uses in the ordinary course of business property and equipment as described in paragraphs (c), (d), (e), (f) and (i) of subdivision twelve of section one hundred two of such law, without regard to the classification of such property and equipment for real property tax purposes pursuant to section eighteen hundred two of such law, except that any such property and equipment used solely to serve the building to which they are attached shall not be deemed utility property. NOTWITHSTANDING ANY PROVISION OF THIS PART TO THE CONTRARY, ELECTRIC GENERATING FACILITIES SHALL NOT BE CONSIDERED UTILITY PROPERTY. FOR PURPOSES OF THIS PART, "ELECTRIC GENERATING FACILITY" SHALL MEAN A GENERATING UNIT THAT IS DETERMINED BY THE NEW YORK INDEPENDENT SYSTEM OPERATOR TO SATISFY THE DEFINITION OF A GENERATOR SET FORTH IN SECTION 2.7 OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR'S MARKET ADMINISTRATION AND CONTROL AREA SERVICES TARIFF, AS SUCH DEFINITION EXISTED AS OF APRIL FIRST, TWO THOUSAND ELEVEN. AN "ELECTRIC GENERATING FACILITY" UNDER THIS PART INCLUDES ALL REAL PROPERTY USED IN CONNECTION WITH THE GENERATION OF ELECTRICITY, AND ANY FACILITIES USED TO INTERCONNECT THE ELECTRIC GENERATOR FACILITY WITH THE ELECTRIC TRANSMISSION OR DISTRIBUTION SYSTEM, BUT SHALL NOT INCLUDE ANY FACILITIES WHICH ARE PART OF THE ELECTRIC TRANSMISSION OR DISTRIBUTION SYSTEM; IT MAY BE COMPRISED OF A SINGLE TURBINE AND GENERATOR OR MULTIPLE TURBINES AND GENERATORS LOCATED AT THE SAME SITE. NOTWITHSTANDING ANY PROVISION OF THIS PART TO THE CONTRARY, AN ELECTRIC GENERATOR FACILITY SHALL BE CONSIDERED INDUSTRIAL PROPERTY, PROVIDED HOWEVER THAT THE BENEFIT PERIOD FOR AN ELECTRIC GENERATOR FACILITY SHALL NOT EXCEED FIFTEEN YEARS.

S 7. Paragraph 1 of subdivision a of section 11-271 of the administrative code of the city of New York, as added by local law number 47 of the city of New York for the year 2008, is amended to read as follows:

(1) Application for benefits pursuant to this part may be made immediately following the effective date of the local law that added this section and, EXCEPT FOR APPLICATIONS FOR BENEFITS PURSUANT TO THIS PART BY ELECTRIC GENERATING FACILITIES, continuing until March first, two thousand [eleven] FIFTEEN.

S 8. Section 11-271 of the administrative code of the city of New York is amended by adding a new subdivision c to read as follows:

C. (1) EXCEPT FOR BENEFITS GRANTED PURSUANT TO THIS PART TO ELECTRIC GENERATING FACILITIES, NO BENEFITS PURSUANT TO THIS PART SHALL BE GRANTED FOR CONSTRUCTION WORK PERFORMED PURSUANT TO A BUILDING PERMIT ISSUED AFTER APRIL FIRST, TWO THOUSAND FIFTEEN.

(2) IF NO BUILDING PERMIT WAS REQUIRED, THEN, EXCEPT FOR ELECTRIC GENERATING FACILITIES, NO BENEFITS PURSUANT TO THIS PART SHALL BE GRANTED FOR CONSTRUCTION WORK THAT IS NOT COMMENCED ON OR BEFORE APRIL FIRST, TWO THOUSAND FIFTEEN.

S 9. Subdivision a of section 11-272 of the administrative code of the city of New York, as added by local law number 47 of the city of New York for the year 2008, is amended to read as follows:

a. Continuing use. For the duration of the benefit period, the recipient of benefits shall file biennially with the department, on or before the appropriate taxable status date, a statement of the continuing use of such property and any changes in use that have occurred, PROVIDED, HOWEVER, THAT ANY RECIPIENT OF BENEFITS RECEIVING BENEFITS FOR PROPERTY DEFINED AS AN ELECTRIC GENERATING FACILITY SHALL FILE SUCH STATEMENT BIANNUALLY. This statement shall be in a form determined by the department and may be in any format the department determines, in its discretion, is appropriate, including electronic format. The department shall have authority to terminate such benefits upon failure of a recipient to file such statement by the appropriate taxable status date. The burden of proof shall be on the recipient to establish continuing eligibility for benefits and the department shall have the authority to require that statements filed under this subdivision be certified.

S 10. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2011.