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2011-2012 Regular Sessions

I N   S E N A T E

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Introduced by Sens. YOUNG, MAZIARZ, RANZENHOFER -- 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 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. Paragraph 1 of subdivision (a) of section 1210 of the tax law, as  
17    amended by section 3 of part GG of chapter 57 of the laws of 2010, is  
18    amended to read as follows:

19    (1) 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  
21    the local laws, ordinances or resolutions imposing such taxes shall be  
22    identical, except as to rate and except as otherwise provided, with the

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

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

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

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

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

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

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

1 IT HAD BEEN DULY ENACTED BY THE STATE LEGISLATURE AND APPROVED BY THE  
2 GOVERNOR.

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

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

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

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

19 S 7. This act shall take effect on the first day of the sales tax  
20 quarterly period, as described in subdivision (b) of section 1136 of the  
21 tax law, next commencing at least 90 days after this act shall have  
22 become a law and shall apply in accordance with the applicable transi-  
23 tional provisions of sections 1106 and 1217 of the tax law.