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

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Introduced by M. of A. TEDISCO, KOLB, SAYWARD, CALHOUN -- Multi-Sponsored by -- M. of A. AMEDORE, BARCLAY, BURLING, BUTLER, CONTE, CROUCH, DUPREY, FINCH, GIGLIO, HAWLEY, P. LOPEZ, McDONOUGH, McKEVITT, J. MILLER, MOLINARO, OAKS, RAIA, SALADINO, THIELE, TOBACCO -- read once and referred to the Committee on Ways and Means

AN ACT enacting the tax relief on energy act; to amend the tax law, in relation to the tax on the furnishing of utility services; in relation to providing a sales and compensating use tax exemption on Energy Star appliances; in relation to a heating credit for qualifying senior citizens living in leased housing; to create the STAR energy rebate program; in relation to establishing a clean energy production credit; in relation to small business energy tax reduction; in relation to credit against the tax imposed on qualified fuel cell electric generating equipment expenditures; and making an appropriation for the STAR energy rebate program

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

Section 1. This act shall be known and may be cited as the "tax relief on energy act".

S 2. Paragraph (b) of subdivision 1 of section 186-a of the tax law, as amended by section 4 of part Y of chapter 63 of the laws of 2000, is amended to read as follows:

(b) a tax equal to (1) two and five-tenths percent on and after January first, two thousand through December thirty-first, two thousand, two and forty-five one hundredths percent from January first, two thousand one through December thirty-first, two thousand one, two and four-tenths percent from January first, two thousand two through December thirty-first, two thousand two, two and twenty-five one hundredths percent from January first, two thousand three through December thirty-first, two thousand three, two and one hundred twenty-five one thousandths percent from January first, two thousand four through December thirty-first, two

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

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thousand four and [two] ZERO percent commencing January first, two thousand five and thereafter of that portion of its gross income derived from the transportation, transmission or distribution of gas or electricity by means of conduits, mains, pipes, wires, lines or the like and (2) two and one-tenth percent from January first, two thousand through December thirty-first, two thousand, two percent from January first, two thousand one through December thirty-first, two thousand one, one and nine-tenths percent from January first, two thousand two through December thirty-first, two thousand two, eighty-five one hundredths of one percent from January first, two thousand three through December thirty-first, two thousand three, four-tenths of one percent from January first, two thousand four through December thirty-first, two thousand four and zero percent commencing January first, two thousand five of all of its other gross income, is hereby imposed upon every utility not taxed under paragraph (a) of this subdivision doing business in this state which is subject to the supervision of the state department of public service which has a gross income for the year ending December thirty-first in excess of five hundred dollars, except motor carriers or brokers subject to such supervision under the public service law; and

S 3. Subdivision (a) of section 1115 of the tax law is amended by adding a new paragraph 44 to read as follows:

(44) ALTERNATIVE ENERGY SYSTEMS AND TANGIBLE PERSONAL PROPERTY USED IN OR ON HABITABLE RESIDENTIAL AND NON-RESIDENTIAL STRUCTURES FOR THE PURPOSE OF IMPROVING THE ENERGY EFFICIENCY OF SUCH STRUCTURES. FOR PURPOSES OF THIS SUBDIVISION: (I) ALTERNATIVE ENERGY SYSTEMS SHALL INCLUDE SYSTEMS WHICH DO NOT RELY ON PETROLEUM PRODUCTS OR NATURAL GAS AS THEIR ENERGY SOURCE OR FUEL CELL ELECTRIC GENERATING EQUIPMENT AS DESCRIBED IN PARAGRAPH TWO OF SUBSECTION (G-2) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER; AND (II) TANGIBLE PERSONAL PROPERTY SHALL INCLUDE ROOF PRODUCTS, WINDOWS, DOORS AND SKYLIGHTS APPROVED BY THE ENERGY STAR PROGRAM AND PRODUCTS, SUCH AS INSULATION AND WEATHERSTRIPPING, THAT IMPROVE THE ENERGY EFFICIENCY OF RESIDENTIAL AND NON-RESIDENTIAL HEATING AND COOLING SYSTEMS.

S 4. The New York State Energy Research and Development Authority, in consultation with manufacturers, retailers, and public interest groups, shall develop public information programs and materials to identify and encourage the sales of products eligible for the tax incentives provided under paragraph 44 of subdivision (a) of section 1115 of the tax law.

S 5. Subdivision (b) of section 1101 of the tax law is amended by adding a new paragraph 37 to read as follows:

(37) NEW ENERGY STAR APPLIANCE. A RESIDENTIAL REFRIGERATOR, COMBINATION RESIDENTIAL REFRIGERATOR/FREEZER, RESIDENTIAL FREEZER, RESIDENTIAL CLOTHES WASHER AND RESIDENTIAL CLOTHES DRYER (INCLUDING A COMBINATION WASHER/DRYER), RESIDENTIAL LIGHT FIXTURE WHICH USES EXCLUSIVELY A PIN-BASED COMPACT FLUORESCENT BULB, NON-COMMERCIAL CEILING FAN WITH OR WITHOUT A LIGHT, NON-COMMERCIAL CEILING FAN LIGHT KIT, NON-COMMERCIAL DISHWASHER, ROOM OR CENTRAL AIR CONDITIONER, NON-COMMERCIAL FURNACE, NON-COMMERCIAL BOILER AND NON-COMMERCIAL HOT WATER HEATER, NON-COMMERCIAL DEHUMIDIFIER, NON-COMMERCIAL AIR-SOURCE AND GEOTHERMAL HEAT PUMP, NON-COMMERCIAL HOME SEALING, NON-COMMERCIAL PROGRAMMABLE THERMOSTAT AND NON-COMMERCIAL ROOM AIR CLEANER WHICH IS SOLD FOR THE FIRST TIME AT RETAIL, PROVIDED SUCH APPLIANCE QUALIFIES FOR, AND IS LABELED WITH, AN ENERGY STAR LABEL BY THE MANUFACTURER, PURSUANT TO AN AGREEMENT AMONG THE MANUFACTURER, THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES DEPARTMENT OF ENERGY.

S 6. Subdivision (a) of section 1115 of the tax law is amended by adding a new paragraph 45 to read as follows:

(45) DURING THE FIRST WEEK OF EACH SALES TAX QUARTER, NEW ENERGY STAR APPLIANCES.

S 7. Clause 9 of subdivision (b) of section 1107 of the tax law, as amended by section 78 of part A of chapter 56 of the laws of 1998, is amended to read as follows:

(9) Except as otherwise provided by law, the [exemption] EXEMPTIONS provided for in paragraph thirty of subdivision (a) of section eleven hundred fifteen relating to clothing and footwear AND PARAGRAPH FORTY-FIVE OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN RELATING TO NEW ENERGY STAR APPLIANCES shall not apply.

S 8. Subdivision (f) of section 1109 of the tax law, as added by section 118-a of part A of chapter 389 of the laws of 1997, is amended to read as follows:

(f) The [exemption] EXEMPTIONS contained in [paragraph] PARAGRAPHS thirty AND FORTY-FIVE of subdivision (a) of section eleven hundred fifteen of this article shall not apply.

S 9. Section 1109 of the tax law is amended by adding a new subdivision (i) to read as follows:

(I) NOTWITHSTANDING ANY OTHER PROVISION OF STATE OR LOCAL LAW, ORDINANCE OR RESOLUTION TO THE CONTRARY: (1) IN THE EVENT THAT A COUNTY, CITY OR SCHOOL DISTRICT LOCATED IN THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT IMPOSES TAXES PURSUANT TO THE AUTHORITY OF SUBPART B OF PART I OF ARTICLE TWENTY-NINE OF THIS CHAPTER AND ELECTS TO PROVIDE THE NEW ENERGY STAR APPLIANCES EXEMPTION AUTHORIZED IN PARAGRAPH ONE OF SUBDIVISION (A) OF SECTION TWELVE HUNDRED TEN OF THIS CHAPTER, OR A CITY LOCATED IN SUCH DISTRICT IN WHICH THE TAXES PROVIDED FOR IN SECTION ELEVEN HUNDRED SEVEN OF THIS PART ARE IN EFFECT ELECTS TO PROVIDE SUCH NEW ENERGY STAR APPLIANCES EXEMPTION FROM SUCH TAXES PURSUANT TO THE AUTHORITY OF SUBDIVISION (P) OF SUCH SECTION TWELVE HUNDRED TEN OR OF SECTION THIRTEEN OF THE CHAPTER OF THE LAWS OF TWO THOUSAND ELEVEN WHICH ADDED THIS SUBDIVISION, OR THE TAXES PROVIDED FOR IN SECTION ELEVEN HUNDRED EIGHT OF THIS PART ARE IN EFFECT IN A CITY LOCATED IN SUCH DISTRICT, THE EXEMPTION PROVIDED BY PARAGRAPH FORTY-FIVE OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS ARTICLE SHALL BE APPLICABLE IN SUCH PORTION OF THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT IN WHICH SUCH COUNTY, CITY OR SCHOOL DISTRICT IS LOCATED. THE COMMISSIONER SHALL DETERMINE AND CERTIFY TO THE COMPTROLLER THE AMOUNT OF REVENUE FORGONE AT THE RATE OF ONE-QUARTER OF ONE PERCENT UNDER THIS SECTION IN SUCH COUNTY, CITY OR SCHOOL DISTRICT ON ACCOUNT OF SALES OF NEW ENERGY STAR APPLIANCES IN SUCH COUNTY, CITY OR SCHOOL DISTRICT.

(2) COMMENCING WITH THE SALES TAX QUARTERLY PERIOD WHICH COMMENCES ON MARCH FIRST, TWO THOUSAND TWELVE, THE COMMISSIONER SHALL MAKE SUCH DETERMINATIONS AND CERTIFICATIONS ON THE TWELFTH DAY OF THE MONTH FOLLOWING THE MONTH IN WHICH SALES TAX QUARTERLY RETURNS ARE DUE UNDER SECTION ELEVEN HUNDRED THIRTY-SIX OF THIS ARTICLE WITH RESPECT TO SUCH QUARTERLY PERIOD FOR AS LONG AS SUCH NEW ENERGY STAR APPLIANCES EXEMPTIONS FROM SUCH TAXES IMPOSED PURSUANT TO THE AUTHORITY OF ARTICLE TWENTY-NINE OF THIS CHAPTER OR BY SECTION ELEVEN HUNDRED SEVEN OR ELEVEN HUNDRED EIGHT OF THIS PART ARE IN EFFECT. NEITHER THE COMMISSIONER NOR THE COMPTROLLER SHALL BE HELD LIABLE FOR ANY INACCURACY IN SUCH DETERMINATIONS AND CERTIFICATIONS. SUCH DETERMINATIONS AND CERTIFICATIONS MAY BE BASED ON SUCH INFORMATION AS MAY BE AVAILABLE TO THE COMMISSIONER AT THE TIME SUCH DETERMINATIONS AND CERTIFICATIONS MUST BE MADE UNDER THIS SUBDIVISION AND MAY BE ESTIMATED ON THE BASIS OF PERCENTAGES OR OTHER

INDICES CALCULATED FROM DISTRIBUTIONS FROM PRIOR PERIODS. THE COMMISSIONER SHALL BE AUTHORIZED TO REQUIRE SUCH INFORMATION AS THE COMMISSIONER DEEMS NECESSARY TO COMPLY WITH THE REQUIREMENTS OF THIS SUBDIVISION FROM PERSONS REQUIRED TO FILE RETURNS UNDER SUCH SECTION ELEVEN HUNDRED THIRTY-SIX OF THIS ARTICLE.

(3) BY THE FIFTEENTH DAY OF THE MONTH IN WHICH THE COMMISSIONER HAS MADE THE CERTIFICATIONS TO THE COMPTROLLER DESCRIBED IN PARAGRAPH TWO OF THIS SUBDIVISION, THE COMPTROLLER SHALL BILL ANY COUNTY, CITY OR SCHOOL DISTRICT IN SUCH METROPOLITAN COMMUTER TRANSPORTATION DISTRICT WHICH PROVIDES SUCH NEW ENERGY STAR APPLIANCES EXEMPTION, AND ANY CITY IN SUCH DISTRICT IN WHICH THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED SEVEN OF THIS PART ARE IN EFFECT WHICH HAS ELECTED TO PROVIDE SUCH NEW ENERGY STAR APPLIANCES EXEMPTION, AND ANY CITY IN SUCH DISTRICT IN WHICH THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED EIGHT OF THIS PART ARE IN EFFECT, AN AMOUNT EQUAL TO ONE-HALF OF THE AMOUNT CERTIFIED TO THE COMPTROLLER BY THE COMMISSIONER IN RESPECT OF SUCH COUNTY, CITY OR SCHOOL DISTRICT; AND SUCH COUNTY, CITY OR SCHOOL DISTRICT SHALL PAY THE AMOUNT OF SUCH BILL TO THE COMPTROLLER BY THE TWENTY-FIFTH DAY OF SUCH MONTH. THE COMPTROLLER SHALL DEPOSIT ANY SUCH AMOUNTS RECEIVED IN THE MASS TRANSPORTATION OPERATING ASSISTANCE FUND ESTABLISHED BY SECTION EIGHTY-EIGHT-A OF THE STATE FINANCE LAW TO THE CREDIT OF THE METROPOLITAN MASS TRANSPORTATION OPERATING ASSISTANCE ACCOUNT THEREIN.

(4) IN THE EVENT THAT A COUNTY, CITY OR SCHOOL DISTRICT IMPOSING TAX PURSUANT TO THE AUTHORITY OF SUBPART B OF PART I OF ARTICLE TWENTY-NINE OF THIS CHAPTER DOES NOT PAY IN FULL A BILL DESCRIBED IN PARAGRAPH THREE OF THIS SUBDIVISION BY THE TWENTY-FIFTH DAY OF THE MONTH DESCRIBED IN PARAGRAPHS TWO AND THREE OF THIS SUBDIVISION, THE COMPTROLLER SHALL DEDUCT ANY AMOUNT NOT PAID FROM THE AMOUNT OF THE NEXT PAYMENT OR PAYMENTS DUE SUCH COUNTY, CITY OR SCHOOL DISTRICT PURSUANT TO SUBDIVISION (C) OF SECTION TWELVE HUNDRED SIXTY-ONE OF THIS CHAPTER UNTIL SUCH AMOUNT NOT PAID HAS BEEN RECOVERED. THE COMPTROLLER SHALL DEPOSIT THE AMOUNTS SO DEDUCTED AND RECOVERED IN THE MASS TRANSPORTATION OPERATING ASSISTANCE FUND TO BE CREDITED AS PROVIDED IN PARAGRAPH THREE OF THIS SUBDIVISION.

(5) IN THE EVENT THAT A CITY IN WHICH THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED SEVEN OF THIS PART ARE IN EFFECT DOES NOT PAY IN FULL A BILL DESCRIBED IN PARAGRAPH THREE OF THIS SUBDIVISION BY THE TWENTY-FIFTH DAY OF THE MONTH DESCRIBED IN PARAGRAPHS TWO AND THREE OF THIS SUBDIVISION, THE COMPTROLLER SHALL DEDUCT ANY AMOUNT NOT PAID FROM THE AMOUNT OF THE NEXT PAYMENT OR PAYMENTS DUE SUCH CITY, WITH RESPECT TO TAXES, PENALTY AND INTEREST IMPOSED PURSUANT TO THE AUTHORITY OF SECTION TWELVE HUNDRED TWELVE-A OF THIS CHAPTER, PURSUANT TO SUBDIVISION (C) OF SECTION TWELVE HUNDRED SIXTY-ONE OF THIS CHAPTER, UNTIL SUCH AMOUNT NOT PAID HAS BEEN RECOVERED. THE COMPTROLLER SHALL DEPOSIT THE AMOUNTS SO DEDUCTED AND RECOVERED IN THE MASS TRANSPORTATION OPERATING ASSISTANCE FUND TO BE CREDITED AS PROVIDED IN PARAGRAPH THREE OF THIS SUBDIVISION.

(6) IN THE EVENT THAT A CITY IN WHICH THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED EIGHT OF THIS PART ARE IN EFFECT DOES NOT PAY IN FULL A BILL DESCRIBED IN PARAGRAPH THREE OF THIS SUBDIVISION BY THE TWENTY-FIFTH DAY OF THE MONTH DESCRIBED IN PARAGRAPHS TWO AND THREE OF THIS SUBDIVISION, THE COMPTROLLER SHALL DEDUCT ANY AMOUNT NOT PAID FROM THE AMOUNT OF ANY OTHER MONEYS DUE SUCH CITY FROM THE COMPTROLLER, NOT OTHERWISE PLEDGED, DEDICATED OR ENCUMBERED PURSUANT TO OTHER STATE LAW, UNTIL SUCH AMOUNT NOT PAID HAS BEEN RECOVERED. THE COMPTROLLER SHALL DEPOSIT THE AMOUNTS SO DEDUCTED AND RECOVERED IN THE MASS TRANSPORTATION

OPERATING ASSISTANCE FUND TO BE CREDITED AS PROVIDED IN PARAGRAPH THREE OF THIS SUBDIVISION.

(7) THE COMMISSIONER SHALL CERTIFY THE AMOUNT OF ANY OVER CALCULATION OR UNDER CALCULATION OF ANY CERTIFICATION REQUIRED TO BE MADE TO THE COMPTROLLER UNDER PARAGRAPH THREE OF THIS SUBDIVISION AS SOON AFTER ITS DISCOVERY AS REASONABLY POSSIBLE AND SUBSEQUENT BILLS TO A CITY, COUNTY OR SCHOOL DISTRICT TO WHICH THE OVER CALCULATION OR UNDER CALCULATION RELATES SHALL BE ADJUSTED ACCORDINGLY, PROVIDED THAT THE COMPTROLLER MAY ADJUST SUCH NUMBER OF SUBSEQUENT BILLS AS THE COMPTROLLER SHALL CONSIDER REASONABLE IN VIEW OF THE AMOUNT OF THE ADJUSTMENT AND ALL OTHER FACTS AND CIRCUMSTANCES.

(8) ON THE SAME DATE THAT THE COMPTROLLER IS REQUIRED TO BILL A COUNTY, CITY OR SCHOOL DISTRICT AN AMOUNT AS PROVIDED IN PARAGRAPH THREE OF THIS SUBDIVISION, THE COMPTROLLER SHALL, AFTER HAVING FIRST MADE ANY DEPOSITS REQUIRED BY SECTION NINETY-TWO-R OF THE STATE FINANCE LAW AND ONLY TO THE EXTENT THAT THERE ARE MONEYS REMAINING AFTER HAVING MADE SUCH REQUIRED DEPOSITS, WITHDRAW FROM THE STATE TREASURY, TO THE DEBIT OF THE GENERAL FUND, AN AMOUNT EQUAL TO THE TOTAL OF THE AMOUNTS REQUIRED TO BE BILLED TO COUNTIES, CITIES AND SCHOOL DISTRICTS PURSUANT TO SUCH SUBDIVISION THREE AND DEPOSIT SUCH TOTAL AMOUNT IN THE MASS TRANSPORTATION OPERATING ASSISTANCE FUND TO BE CREDITED AS PROVIDED IN SUCH PARAGRAPH THREE. THE AMOUNT OF ANY OVER CALCULATION OR UNDER CALCULATION DETERMINED IN PARAGRAPH SEVEN OF THIS SUBDIVISION SHALL LIKEWISE BE APPLIED TO THE AMOUNTS REQUIRED TO BE DEPOSITED UNDER THIS PARAGRAPH, SO THAT THE AMOUNTS DEPOSITED UNDER THIS PARAGRAPH EQUAL THE TOTAL OF THE AMOUNTS REQUIRED TO BE BILLED TO COUNTIES, CITIES AND SCHOOL DISTRICTS UNDER SUCH PARAGRAPH THREE, AS ADJUSTED, PURSUANT TO PARAGRAPH SEVEN OF THIS SUBDIVISION.

S 10. Subparagraph (ii) of paragraph 1 of subdivision (a) of section 1210 of the tax law, as amended by section 3 of part GG of chapter 57 of the laws of 2010, is amended to read as follows:

(ii) Any local law, ordinance or resolution enacted by any city, county or school district, imposing the taxes authorized by this subdivision, shall omit the residential solar energy systems equipment exemption provided for in subdivision (ee) [and], the clothing and footwear exemption provided for in paragraph thirty of subdivision (a) AND THE NEW ENERGY STAR APPLIANCES EXEMPTION PROVIDED FOR IN PARAGRAPH FORTY-FIVE OF SUBDIVISION (A) of section eleven hundred fifteen of this chapter, unless such city, county or school district elects otherwise as to either such residential solar energy systems equipment exemption or such clothing and footwear exemption.

S 11. Subdivision (d) of section 1210 of the tax law, as amended by section 37 of part S-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(d) A local law, ordinance or resolution imposing any tax pursuant to this section, increasing or decreasing the rate of such tax, repealing or suspending such tax, exempting from such tax the energy sources and services described in paragraph three of subdivision (a) or of subdivision (b) of this section or changing the rate of tax imposed on such energy sources and services or providing for the credit or refund described in clause six of subdivision (a) of section eleven hundred nineteen of this chapter must go into effect only on one of the following dates: March first, June first, September first or December first; provided, that a local law, ordinance or resolution providing for the exemption described in paragraph thirty OR FORTY-FIVE of subdivision (a) of section eleven hundred fifteen of this chapter or repealing any such

exemption or a local law, ordinance or resolution providing for a refund or credit described in subdivision (d) of section eleven hundred nineteen of this chapter or repealing such provision so provided must go into effect only on March first. No such local law, ordinance or resolution shall be effective unless a certified copy of such law, ordinance or resolution is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least ninety days prior to the date it is to become effective. However, the commissioner may waive and reduce such ninety-day minimum notice requirement to a mailing of such certified copy by registered or certified mail within a period of not less than thirty days prior to such effective date if the commissioner deems such action to be consistent with the commissioner's duties under section twelve hundred fifty of this article and the commissioner acts by resolution. Where the restriction provided for in section twelve hundred twenty-three of this article as to the effective date of a tax and the notice requirement provided for therein are applicable and have not been waived, the restriction and notice requirement in section twelve hundred twenty-three of this article shall also apply.

S 12. Section 1210 of the tax law is amended by adding a new subdivision (p) to read as follows:

(P) NOTWITHSTANDING ANY OTHER PROVISION OF STATE OR LOCAL LAW, ORDINANCE OR RESOLUTION TO THE CONTRARY:

(1) ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE IN WHICH THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED SEVEN OF THIS CHAPTER ARE IN EFFECT, ACTING THROUGH ITS LOCAL LEGISLATIVE BODY, IS HEREBY AUTHORIZED AND EMPOWERED TO ELECT TO PROVIDE THE EXEMPTION FROM SUCH TAXES FOR THE SAME NEW ENERGY STAR APPLIANCES EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES, DURING THE SAME PERIODS EACH YEAR, DESCRIBED IN PARAGRAPH FORTY-FIVE OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER BY ENACTING A RESOLUTION EXACTLY IN THE FORM SET FORTH IN PARAGRAPH TWO OF THIS SUBDIVISION; WHEREUPON, UPON COMPLIANCE WITH THE PROVISIONS OF SUBDIVISIONS (D) AND (E) OF THIS SECTION, SUCH ENACTMENT OF SUCH RESOLUTION SHALL BE DEEMED TO BE AN AMENDMENT TO SUCH SECTION ELEVEN HUNDRED SEVEN AND SUCH SECTION ELEVEN HUNDRED SEVEN SHALL BE DEEMED TO INCORPORATE SUCH EXEMPTION AS IF IT HAD BEEN DULY ENACTED BY THE STATE LEGISLATURE AND APPROVED BY THE GOVERNOR.

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

SECTION ONE. RECEIPTS FROM SALES OF AND CONSIDERATION GIVEN OR CONTRACTED TO BE GIVEN FOR, OR FOR THE USE OF, NEW ENERGY STAR APPLIANCES EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES PURSUANT TO PARAGRAPH 45 OF SUBDIVISION (A) OF SECTION 1115 OF THE NEW YORK TAX LAW SHALL ALSO BE EXEMPT FROM SALES AND COMPENSATING USE TAXES IMPOSED IN THIS JURISDICTION, DURING THE SAME PERIODS SET FORTH IN SUCH PARAGRAPH 45.

SECTION TWO. THIS RESOLUTION SHALL TAKE EFFECT MARCH 1, 2012 AND SHALL APPLY TO SALES MADE AND USES OCCURRING DURING THE APPLICABLE EXEMPTIONS PERIODS EACH YEAR, IN ACCORDANCE WITH THE APPLICABLE TRANSITIONAL PROVISIONS OF SECTIONS 1106 AND 1217 OF THE NEW YORK TAX LAW.

S 13. Notwithstanding any other provision of state or local law, ordinance or resolution to the contrary: (a) Any county or city imposing sales and compensating use taxes pursuant to the authority of subpart B of part 1 of article 29 of the tax law, acting through its local legislative body, is hereby authorized and empowered to elect to provide the exemption from such taxes for new Energy Star appliances exempt from state sales and compensating use taxes described in paragraph 45 of

subdivision (a) of section 1115 of the tax law, for the periods described therein, whether such taxes are imposed by local law, ordinance or resolution, by enacting a resolution exactly in the form set forth in subdivision (c) of this section; whereupon, upon compliance with the provisions of subdivision (d) of this section, such enactment of such resolution shall be deemed to amend such local law, ordinance or resolution imposing such taxes, and such local law, ordinance or resolution shall thenceforth be deemed to incorporate such exemption for such periods.

(b) Any city of one million or more in which the taxes imposed by section 1107 of the tax law are in effect, acting through its local legislative body, is hereby authorized and empowered to elect to provide the exemption from such taxes for the same new Energy Star appliances exempt from state sales and compensating use taxes described in paragraph 45 of subdivision (a) of section 1115 of the tax law, for the periods described therein, by enacting a resolution exactly in the form set forth in subdivision (c) of this section; whereupon, upon compliance with the provisions of subdivision (d) of this section, such enactment of such resolution shall be deemed to amend such section 1107 of the tax law and such section 1107 shall thenceforth be deemed to incorporate such exemption for such periods as if it had been duly enacted by the state legislature and approved by the governor and such resolution shall also be deemed to amend any local law, ordinance or resolution enacted by such a city imposing such taxes pursuant to the authority of subdivision (a) of section 1210 of the tax law, whether or not such taxes are suspended at the time such city enacts its resolution.

(c) Form of Resolution:

Be it enacted by the (insert proper title of local legislative body) as follows:

Section one: The (county or city) of (insert locality's name) hereby elects the two annual one-week new Energy Star appliance exemption periods commencing in the fall of 2012.

Section two: This resolution shall take effect immediately and shall apply to sales made and uses occurring during the applicable periods each year, in accordance with applicable transitional provisions of the New York Tax Law.

(d) A resolution adopted pursuant to this section shall be effective only if it is adopted exactly as set forth in subdivision (c) of this section and such county or city adopts it by March 1, 2012, mails a certified copy of it to the commissioner of taxation and finance by certified mail by such date and otherwise complies with the requirements of subdivisions (d) and (e) of section 1210 of the tax law.

S 14. Section 606 of the tax law is amended by adding a new subsection (ss) to read as follows:

(SS) SENIOR CITIZEN HEATING CREDIT. (1) ALLOWANCE OF CREDIT. FOR THE TAXABLE YEAR TWO THOUSAND TWELVE, A TAXPAYER SHALL BE ALLOWED A CREDIT EQUAL TO ONE HUNDRED DOLLARS, TO BE APPLIED AS HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(2) QUALIFICATIONS FOR CREDIT. IN ORDER TO QUALIFY FOR THE CREDIT, THE ELIGIBLE TAXPAYER SHALL: (A) HAVE ATTAINED THE AGE OF SIXTY-FIVE BEFORE THE BEGINNING OF OR DURING THE TAXABLE YEAR;

(B) LEASE HIS OR HER PRIMARY PLACE OF RESIDENCE; IN THE CASE OF A RESIDENCE LEASED BY A HUSBAND AND WIFE OR BY SIBLINGS, ONE OF THE LESSEES MUST BE AT LEAST SIXTY-FIVE YEARS OLD;

(C) HAVE AN AGGREGATE ADJUSTED GROSS INCOME OF ALL MEMBERS OF THE RESIDENCE AS REPORTED FOR FEDERAL INCOME TAX PURPOSES, OR WHICH WOULD BE

REPORTED AS ADJUSTED GROSS INCOME IF A FEDERAL INCOME TAX RETURN WERE REQUIRED TO BE FILED, OF LESS THAN SIXTY-SIX THOUSAND FIFTY DOLLARS; AND

(D) PAY THE COST OF HEATING SUCH RESIDENCE.

(3) HUSBAND AND WIFE. IN THE CASE OF A HUSBAND AND WIFE WHO FILE A JOINT FEDERAL RETURN BUT WHO ARE REQUIRED TO DETERMINE THEIR NEW YORK TAXES SEPARATELY, THE CREDIT ALLOWED PURSUANT TO THIS SUBSECTION MAY BE APPLIED AGAINST THE TAX OF EITHER FILER OR DIVIDED BETWEEN THEM AS THEY MAY ELECT.

(4) APPLICATION OF CREDIT. IF THE AMOUNT OF THE CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

S 15. The STAR energy rebate program of 2012-2013. 1. Notwithstanding any other provision of law to the contrary, senior citizens meeting the eligibility requirements for the enhanced STAR exemption pursuant to subdivision 4 of section 425 of the real property tax law for the 2012-2013 school year and receiving STAR benefits for such school year, shall be entitled to an additional STAR energy rebate check of two hundred dollars in accordance with the provisions of this section and sections fourteen and sixteen of this act.

2. The state board of real property services is hereby authorized and shall furnish to the commissioner of taxation and finance the names and addresses of all eligible senior citizen owner or owners of real property in accordance with this section. Every tax collecting officer shall cooperate with such state board and the department of taxation and finance to furnish any information necessary to identify eligible senior citizen property owner or owners for the purposes of sections fourteen through sixteen of this act.

3. The department of taxation and finance shall issue such STAR energy rebate checks within thirty days of receipt of such names and addresses of eligible owners, but no later than March 1, 2013.

4. Notwithstanding section 1310 of the surrogate's court procedure act, any rebate to a decedent may be made to the decedent's surviving spouse unless the final assessment roll is in the name of the decedent's executor or administrator. Payment of a rebate upon such ownership information shall relieve the commissioner of taxation and finance and the department of taxation and finance from all liability to any owner of the property, or the estate, trust, assigns, successors, heirs or representatives of any such owner, with respect to such payment, and such persons shall have no right to commence a court action or proceeding or to any other legal recourse against the state, the commissioner of taxation and finance or the department of taxation and finance or any officer or employee of state or local government involved in the administration of this program, to recover such payment. Provided, however, nothing in the previous sentence shall be construed to bar any other right of action of such persons with respect to such payment under the laws of this state.

5. The commissioner of taxation and finance shall be authorized to recover any erroneous rebate by notifying the payee of the amount thereof. If such erroneous rebate is not returned within thirty days, the commissioner of taxation and finance is authorized to treat the erroneous rebate as an erroneous refund of income tax pursuant to the provisions of paragraph 5 of subsection (c) of section 683 of the tax law.

6. The commissioner of taxation and finance and the state board of real property services shall be authorized to make such rules and regulations as may be deemed necessary for the performance of his or her duties under this act, including but not limited to rules and regulations which shall advise tax collecting officers of procedures for furnishing ownership information to the state board of real property services and the department of taxation and finance, advise tax collecting officers and tax rebate payees of procedures for the correction of erroneous ownership information and erroneous rebate checks and establish procedures for the recovery of the value of undelivered and uncashed rebate checks.

S 16. The sum of one hundred twenty-eight million dollars ($128,000,000), or so much thereof as may be necessary, is hereby appropriated to the department of taxation and finance out of any moneys in the state treasury in the general fund to the credit of the state purposes account, not otherwise appropriated, and made immediately available, for the purpose of carrying out the provisions of this section and sections fourteen and fifteen of this act. Such moneys shall be payable on the audit and warrant of the comptroller on vouchers certified or approved by the commissioner of taxation and finance in the manner prescribed by law.

S 17. The tax law is amended by adding a new section 35 to read as follows:

S 35. CLEAN ENERGY PRODUCTION CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER SUBJECT TO TAX UNDER ARTICLES NINE, NINE-A, AND TWENTY-TWO OF THIS CHAPTER SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX, PURSUANT TO THE PROVISIONS REFERENCED IN SUBDIVISION (D) OF THIS SECTION, TO BE COMPUTED AS HEREINAFTER PROVIDED.

(B) DEFINITIONS. (1) THE TERM "CLEAN ENERGY TECHNOLOGY" SHALL MEAN ANY OF THE FOLLOWING ENERGY SOURCES:

(I) SOLAR;

(II) WIND;

(III) HYDROELECTRIC DAM OR OTHER WATER SOURCE;

(IV) GEOTHERMAL; OR

(V) BIOMASS.

(2) THE TERM "QUALIFIED CLEAN ENERGY PRODUCTION FACILITY" SHALL MEAN AN ELECTRICITY GENERATION FACILITY USING A CLEAN ENERGY TECHNOLOGY, WITH A MINIMUM OF TEN MEGAWATTS OF GENERATION CAPACITY, THAT IS PLACED IN SERVICE AFTER JULY THIRTY-FIRST, TWO THOUSAND TWELVE.

(C) APPLICATION OF THE CREDIT. (1) THE AMOUNT OF CREDIT SHALL EQUAL THE PRODUCT OF ONE CENT AND THE TOTAL KILOWATT-HOURS OF ELECTRICITY GENERATED AT A QUALIFIED CLEAN ENERGY PRODUCTION FACILITY.

(2) THE CREDIT MAY BE ALLOWED FOR THE FIRST FIVE YEARS OF ELECTRICITY GENERATION AT A QUALIFIED CLEAN ENERGY PRODUCTION FACILITY.

(D) CROSS-REFERENCES. FOR APPLICATION OF THE CREDIT PROVIDED FOR IN THIS SECTION, SEE THE FOLLOWING PROVISIONS OF THIS CHAPTER:

(1) ARTICLE 9: SECTION 187-Q,

(2) ARTICLE 9-A: SECTION 210: SUBDIVISION 43,

(3) ARTICLE 22: SECTION 606: SUBSECTION (TT).

S 18. The tax law is amended by adding a new section 187-q to read as follows:

S 187-Q. CLEAN ENERGY PRODUCTION CREDIT. 1. ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY OF THIS CHAPTER, AGAINST THE TAXES IMPOSED BY SECTIONS ONE HUNDRED EIGHTY-THREE, ONE HUNDRED EIGHTY-FOUR AND ONE HUNDRED EIGHTY-FIVE OF THIS ARTICLE. PROVIDED, HOWEVER, THAT THE AMOUNT OF SUCH CRED-

IT ALLOWABLE AGAINST THE TAX IMPOSED BY SECTION ONE HUNDRED EIGHTY-FOUR OF THIS ARTICLE SHALL BE THE EXCESS OF THE AMOUNT OF SUCH CREDIT OVER THE AMOUNT OF ANY CREDIT ALLOWED BY THIS SECTION AGAINST THE TAX IMPOSED BY SECTION ONE HUNDRED EIGHTY-THREE OF THIS ARTICLE.

2. APPLICATION OF CREDIT. IN NO EVENT SHALL THE CREDIT UNDER THIS SECTION BE ALLOWED IN AN AMOUNT WHICH WILL REDUCE THE TAX PAYABLE TO LESS THAN THE APPLICABLE MINIMUM TAX FIXED BY SECTION ONE HUNDRED EIGHTY-THREE OR ONE HUNDRED EIGHTY-FIVE OF THIS ARTICLE. IF, HOWEVER, THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SECTION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT NOT THUS DEDUCTIBLE IN SUCH TAXABLE YEAR SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

S 19. Section 210 of the tax law is amended by adding a new subdivision 43 to read as follows:

43. CLEAN ENERGY PRODUCTION CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER OF THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE OF THIS SECTION. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

S 20. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xxxii) to read as follows:

(XXXII) CLEAN ENERGY PRODUCTION CREDIT UNDER SUBSECTION (TT)	AMOUNT OF CREDIT FOR CLEAN ENERGY PRODUCTION UNDER SUBDIVISION FORTY-THREE OF SECTION TWO HUNDRED TEN

S 21. Section 606 of the tax law is amended by adding a new subsection (tt) to read as follows:

(TT) CLEAN ENERGY PRODUCTION CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(2) APPLICATION OF CREDIT. IF THE AMOUNT OF THE CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED EIGHTY-SIX OF THIS ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST SHALL BE PAID THEREON.

S 22. Subdivision (a) of section 1210 of the tax law is amended by adding a new paragraph 3-a to read as follows:

(3-A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, COUNTIES, MAY, BY LOCAL LAW, PROVIDE THAT THE TAXES IMPOSED, PURSUANT TO

THIS SUBDIVISION, BY SUCH COUNTY ON THE RETAIL SALE OR USE OF FUEL OIL AND COAL USED FOR BUSINESS PURPOSES, THE RETAIL SALE OR USE OF WOOD USED FOR BUSINESS HEATING PURPOSES AND THE SALE, OTHER THAN FOR RESALE, OF PROPANE (EXCEPT WHEN SOLD IN CONTAINERS OF LESS THAN ONE HUNDRED POUNDS), NATURAL GAS, ELECTRICITY, STEAM AND GAS, ELECTRIC AND STEAM SERVICES USED FOR BUSINESS PURPOSES MAY BE IMPOSED AT A LOWER RATE THAN THE UNIFORM LOCAL RATE IMPOSED PURSUANT TO THE OPENING PARAGRAPH OF THIS SECTION, AS LONG AS SUCH RATE IS ONE OF THE RATES AUTHORIZED BY SUCH PARAGRAPH OR SUCH SALE OR USE MAY BE EXEMPTED FROM SUCH TAXES. PROVIDED, HOWEVER, SUCH LOWER RATE SHALL APPLY TO ALL SUCH ENERGY SOURCES AND SERVICES AND AT THE SAME RATE AND NO SUCH EXEMPTION MAY BE ENACTED UNLESS SUCH EXEMPTION APPLIES TO ALL SUCH ENERGY SOURCES AND SERVICES. THE PROVISIONS OF THIS PARAGRAPH SHALL NOT APPLY TO A SALE OR USE OF (I) DIESEL MOTOR FUEL WHICH INVOLVES A DELIVERY AT A FILLING STATION OR INTO A REPOSITORY WHICH IS EQUIPPED WITH A HOSE OR OTHER APPARATUS BY WHICH SUCH FUEL CAN BE DISPENSED INTO THE FUEL TANK OF A MOTOR VEHICLE AND (II) ENHANCED DIESEL MOTOR FUEL EXCEPT IN THE CASE OF A SALE OR USE OF SUCH ENHANCED DIESEL MOTOR FUEL USED EXCLUSIVELY FOR BUSINESS PURPOSES WHICH IS DELIVERED INTO A STORAGE TANK WHICH IS NOT EQUIPPED WITH A HOSE OR OTHER APPARATUS BY WHICH SUCH FUEL CAN BE DISPENSED INTO THE FUEL TANK OF A MOTOR VEHICLE AND SUCH STORAGE TANK IS ATTACHED TO THE HEATING UNIT BURNING SUCH FUEL.

S 23. Paragraph 1 of subsection (g-2) of section 606 of the tax law, as amended by section 3 of part C-1 of chapter 57 of the laws of 2009, is amended to read as follows:

(1) General. [For taxable years beginning before January first, two thousand nine, an] AN individual taxpayer shall be allowed a credit against the tax imposed by this article equal to [twenty] TWENTY-FIVE percent of qualified fuel cell electric generating equipment expenditures. This credit shall not exceed one thousand five hundred dollars per generating unit with respect to any taxable year. The credit provided for herein shall be allowed with respect to the taxable year in which the fuel cell electric generating equipment is placed in service.

S 24. This act shall take effect immediately, provided, however:

(a) that sections three through thirteen of this act shall apply to sales made and uses occurring during exemption periods on or after the effective date of this act in accordance with the applicable transitional provisions of sections 1106 and 1217 of the tax law;

(b) sections fourteen and twenty-three of this act shall apply to taxable years beginning on and after January 1, 2011; and

(c) sections seventeen through twenty-one of this act shall apply to taxable years beginning on or after January 1, 2012.