

5805

2011-2012 Regular Sessions

I N   A S S E M B L Y

March 1, 2011

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Introduced by M. of A. HEVESI -- read once and referred to the Committee  
on Ways and Means

AN ACT to amend the tax law, in relation to providing a sales and  
compensating use tax exemption on non-commercial Energy Star appli-  
ances

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

1     Section 1. Subdivision (b) of section 1101 of the tax law is amended  
2     by adding a new paragraph 37 to read as follows:

3     (37) NEW ENERGY STAR APPLIANCE. A RESIDENTIAL REFRIGERATOR, COMBINA-  
4     TION RESIDENTIAL REFRIGERATOR/FREEZER, RESIDENTIAL FREEZER, RESIDENTIAL  
5     CLOTHES WASHER, RESIDENTIAL COMPACT FLUORESCENT LIGHT BULBS, RESIDENTIAL  
6     BATTERY CHARGER, NON-COMMERCIAL WATER COOLER, NON-COMMERCIAL CEILING FAN  
7     WITH OR WITHOUT A LIGHT, NON-COMMERCIAL CEILING FAN LIGHT KIT, NON-COM-  
8     Mercial DISHWASHER, ROOM OR CENTRAL AIR CONDITIONER, NON-COMMERCIAL  
9     FURNACE, NON-COMMERCIAL BOILER AND NON-COMMERCIAL HOT WATER HEATER,  
10    NON-COMMERCIAL DEHUMIDIFIER, NON-COMMERCIAL PROGRAMMABLE THERMOSTAT AND  
11    NON-COMMERCIAL ROOM AIR CLEANER WHICH IS SOLD FOR THE FIRST TIME AT  
12    RETAIL, PROVIDED SUCH APPLIANCE QUALIFIES FOR, AND IS LABELED WITH, AN  
13    ENERGY STAR LABEL BY THE MANUFACTURER, PURSUANT TO AN AGREEMENT AMONG  
14    THE MANUFACTURER, THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND  
15    THE UNITED STATES DEPARTMENT OF ENERGY.

16    S 2. Subdivision (a) of section 1115 of the tax law is amended by  
17    adding a new paragraph 44 to read as follows:

18    (44) DURING THE FIRST SATURDAY AND SUNDAY OF MAY AND THE FIRST SATUR-  
19    DAY AND SUNDAY OF SEPTEMBER, NEW ENERGY STAR APPLIANCES THAT COST LESS  
20    THAN TWO THOUSAND FIVE HUNDRED DOLLARS, PROVIDED, HOWEVER THAT IF SUCH  
21    APPLIANCES COST THE INDIVIDUAL MORE THAN TWO THOUSAND FIVE HUNDRED  
22    DOLLARS, THE FIRST TWO THOUSAND FIVE HUNDRED DOLLARS SHALL BE EXEMPT  
23    FROM SALES AND USES TAXES.

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

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1 S 3. Clause 9 of subdivision (b) of section 1107 of the tax law, as  
2 amended by section 78 of part A of chapter 56 of the laws of 1998, is  
3 amended to read as follows:

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

9 S 4. Subdivision (f) of section 1109 of the tax law, as added by  
10 section 118-a of part A of chapter 389 of the laws of 1997, is amended  
11 to read as follows:

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

15 S 5. Subparagraph (ii) of paragraph 1 of subdivision (a) of section  
16 1210 of the tax law, as amended by section 3 of part GG of chapter 57 of  
17 the laws of 2010, is amended to read as follows:

18 (ii) Any local law, ordinance or resolution enacted by any city, coun-  
19 ty or school district, imposing the taxes authorized by this subdivi-  
20 sion, shall omit the residential solar energy systems equipment  
21 exemption provided for in subdivision (ee) [and], the clothing and foot-  
22 wear exemption provided for in paragraph thirty of subdivision (a) AND  
23 THE NEW ENERGY STAR APPLIANCES EXEMPTION PROVIDED FOR IN PARAGRAPH  
24 FORTY-FOUR OF SUBDIVISION (A) of section eleven hundred fifteen of this  
25 chapter, unless such city, county or school district elects otherwise as  
26 to either such residential solar energy systems equipment exemption or  
27 such clothing and footwear exemption OR SUCH NEW ENERGY STAR APPLIANCES  
28 EXEMPTION.

29 S 6. Subdivision (d) of section 1210 of the tax law, as amended by  
30 section 37 of part S-1 of chapter 57 of the laws of 2009, is amended to  
31 read as follows:

32 (d) A local law, ordinance or resolution imposing any tax pursuant to  
33 this section, increasing or decreasing the rate of such tax, repealing  
34 or suspending such tax, exempting from such tax the energy sources and  
35 services described in paragraph three of subdivision (a) or of subdivi-  
36 sion (b) of this section or changing the rate of tax imposed on such  
37 energy sources and services or providing for the credit or refund  
38 described in clause six of subdivision (a) of section eleven hundred  
39 nineteen of this chapter must go into effect only on one of the follow-  
40 ing dates: March first, June first, September first or December first;  
41 provided, that a local law, ordinance or resolution providing for the  
42 exemption described in paragraph thirty OR FORTY-FOUR of subdivision (a)  
43 of section eleven hundred fifteen of this chapter or repealing any such  
44 exemption or a local law, ordinance or resolution providing for a refund  
45 or credit described in subdivision (d) of section eleven hundred nine-  
46 teen of this chapter or repealing such provision so provided OR A RESOL-  
47 UTION ENACTED PURSUANT TO THE AUTHORITY OF SUBDIVISION (P) OF THIS  
48 SECTION PROVIDING SUCH EXEMPTION must go into effect only on March  
49 first. No such local law, ordinance or resolution shall be effective  
50 unless a certified copy of such law, ordinance or resolution is mailed  
51 by registered or certified mail to the commissioner at the commission-  
52 er's office in Albany at least ninety days prior to the date it is to  
53 become effective. However, the commissioner may waive and reduce such  
54 ninety-day minimum notice requirement to a mailing of such certified  
55 copy by registered or certified mail within a period of not less than  
56 thirty days prior to such effective date if the commissioner deems such

1 action to be consistent with the commissioner's duties under section  
2 twelve hundred fifty of this article and the commissioner acts by resol-  
3 ution. Where the restriction provided for in section twelve hundred  
4 twenty-three of this article as to the effective date of a tax and the  
5 notice requirement provided for therein are applicable and have not been  
6 waived, the restriction and notice requirement in section twelve hundred  
7 twenty-three of this article shall also apply.

8 S 7. Section 1210 of the tax law is amended by adding a new subdivi-  
9 sion (p) to read as follows:

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

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

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

28 SECTION ONE. RECEIPTS FROM SALES OF AND CONSIDERATION GIVEN OR  
29 CONTRACTED TO BE GIVEN FOR, OR FOR THE USE OF, NEW ENERGY STAR APPLI-  
30 ANCES EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES PURSUANT TO  
31 PARAGRAPH 44 OF SUBDIVISION (A) OF SECTION 1115 OF THE NEW YORK TAX LAW  
32 SHALL ALSO BE EXEMPT FROM SALES AND COMPENSATING USE TAXES IMPOSED IN  
33 THIS JURISDICTION, DURING THE SAME PERIODS SET FORTH IN SUCH PARAGRAPH  
34 44.

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

39 S 8. Notwithstanding any other provision of state or local law, ordi-  
40 nance or resolution to the contrary: (a) Any county or city imposing  
41 sales and compensating use taxes pursuant to the authority of subpart B  
42 of part 1 of article 29 of the tax law, acting through its local legis-  
43 lative body, is hereby authorized and empowered to elect to provide the  
44 exemption from such taxes for new Energy Star appliances exempt from  
45 state sales and compensating use taxes described in paragraph 44 of  
46 subdivision (a) of section 1115 of the tax law, for the periods  
47 described therein, whether such taxes are imposed by local law, ordi-  
48 nance or resolution, by enacting a resolution exactly in the form set  
49 forth in subdivision (c) of this section; whereupon, upon compliance  
50 with the provisions of subdivision (d) of this section, such enactment  
51 of such resolution shall be deemed to amend such local law, ordinance or  
52 resolution imposing such taxes, and such local law, ordinance or resol-  
53 ution shall thenceforth be deemed to incorporate such exemption for such  
54 periods.

55 (b) Any city of one million or more in which the taxes imposed by  
56 section 1107 of the tax law are in effect, acting through its local

1 legislative body, is hereby authorized and empowered to elect to provide  
2 the exemption from such taxes for the same new Energy Star appliances  
3 exempt from state sales and compensating use taxes described in para-  
4 graph 44 of subdivision (a) of section 1115 of the tax law, for the  
5 periods described therein, by enacting a resolution exactly in the form  
6 set forth in subdivision (c) of this section; whereupon, upon compliance  
7 with the provisions of subdivision (d) of this section, such enactment  
8 of such resolution shall be deemed to amend such section 1107 of the tax  
9 law and such section 1107 shall thenceforth be deemed to incorporate  
10 such exemption for such periods as if it had been duly enacted by the  
11 state legislature and approved by the governor and such resolution shall  
12 also be deemed to amend any local law, ordinance or resolution enacted  
13 by such a city imposing such taxes pursuant to the authority of subdivi-  
14 sion (a) of section 1210 of the tax law, whether or not such taxes are  
15 suspended at the time such city enacts its resolution.

16 (c) Form of Resolution:

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

19 Section one: The (county or city) of (insert locality's name) hereby  
20 elects the annual first weekend in May and the first weekend in Septem-  
21 ber new Energy Star appliance exemption period commencing in the fall of  
22 2012.

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

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

33 S 9. This act shall take effect immediately and shall apply to sales  
34 made and uses occurring during exemption periods on or after that date  
35 in accordance with the applicable transitional provisions of sections  
36 1106 and 1217 of the tax law.