

5805

2011-2012 Regular Sessions

I N A S S E M B L Y

March 1, 2011

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 appliances

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, 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.