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

821

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. GANTT -- read once and referred to the Committee on Local Governments

AN ACT to amend the general city law and the village law, in relation to locally administered utility taxes on mobile telecommunications service

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

Section 1. Section 20-b of the general city law, as amended by chapter 310 of the laws of 1962, the opening paragraph as amended by chapter 287 of the laws of 1979, is amended to read as follows:

S 20-b. Cities authorized to impose taxes on utilities. 1. Notwithstanding any other provisions of law to the contrary, any city of this state, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in any such city a tax such as was imposed by section one hundred eighty-six-a of the tax law, in effect on January first, nineteen hundred fifty-nine, EXCEPT THAT THE TERM "UTILITY" AS DEFINED IN THAT SECTION ALSO INCLUDES ANY PROVIDER OF TELECOMMUNICATION SERVICES, AS DEFINED IN PARAGRAPH (E) OF SUBDIVISION ONE OF SECTION ONE HUNDRED EIGHTY-SIX-E OF THE TAX LAW, AND except that the rate thereof shall not exceed one per centum of gross income or of gross operating income, as the case may be, and may make provision for the collection thereof by the chief fiscal officer of such city; provided, however, that the rate of such tax imposed by the cities of Rochester, Buffalo and Yonkers shall not exceed three per centum of gross income or gross operating income, as the case may be; and provided further that nothing herein contained shall be construed so as to prevent any city from adopting local laws exempting from such tax [omnibus corporations] COMMON CARRIERS subject to the supervision of the [state department of public service] COMMISSIONER OF TRANSPORTATION under article [three-a] FIVE of the [public service] TRANSPORTATION law.

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

LBD03401-01-1

FOR PURPOSES OF ANY TAX IMPOSED PURSUANT TO THE AUTHORITY OF THIS SECTION, THE TERMS "TELEPHONY AND TELEGRAPHY" AND "TELEPHONE AND TELEGRAPH SERVICE" INCLUDE MOBILE TELECOMMUNICATIONS SERVICE.

2. A tax imposed pursuant to this section shall have application only within the territorial limits of any such city, and shall be in addition to any and all other taxes. [This] EXCEPT AS OTHERWISE PROVIDED, THIS section shall not authorize the imposition of a tax on any transaction originating or consummated outside of the territorial limits of any such city, notwithstanding that some act be necessarily performed with respect to such transaction within such limits. ANY TAX ON MOBILE TELECOMMUNICATIONS SERVICE AUTHORIZED TO BE IMPOSED BY THIS SECTION MUST BE IMPOSED ONLY ON MOBILE TELECOMMUNICATIONS SERVICE PROVIDED BY A HOME SERVICE PROVIDER WHERE THE MOBILE TELECOMMUNICATIONS CUSTOMER'S PLACE OF PRIMARY USE IS WITHIN THE TERRITORIAL LIMITS OF THE CITY. FOR PURPOSES OF ANY TAX IMPOSED PURSUANT TO THE AUTHORITY OF THIS SECTION, THE TERMS "MOBILE TELECOMMUNICATIONS SERVICE", "PLACE OF PRIMARY USE", "MOBILE TELECOMMUNICATIONS CUSTOMER", AND "HOME SERVICE PROVIDER" SHALL HAVE THE SAME MEANING AS THOSE TERMS HAVE IN PARAGRAPHS TWENTY-FOUR, TWENTY-SIX AND TWENTY-SEVEN, RESPECTIVELY, OF SUBDIVISION (B) OF SECTION ELEVEN HUNDRED ONE OF THE TAX LAW.

3. Revenues resulting from the imposition of taxes authorized by this section heretofore or hereafter imposed shall be paid into the treasury of the city imposing the same, and shall be credited to and deposited in the general fund of such city.

4. All of the provisions of [section] SECTIONS one hundred eighty-six-a AND ONE HUNDRED EIGHTY-SIX-E of the tax law, so far as the same are or can be made applicable, with such limitations as are set forth in this section, and such modifications as may be necessary in order to adapt such taxes to local conditions shall apply to the taxes authorized by this section.

5. Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation, shall be first deposited and an undertaking filed, in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

6. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay

all costs and charges which may accrue in the prosecution of such proceeding.

S 2. Section 5-530 of the village law is amended to read as follows:

S 5-530 Villages authorized to impose taxes on utilities. l. Notwithstanding any other provisions of law to the contrary, any village is hereby authorized and empowered to adopt and amend local laws imposing in any such village a tax such as was imposed by section one hundred eighty-six-a of the tax law, in effect on January first, nineteen hundred fifty-nine, EXCEPT THAT THE TERM "UTILITY" AS DEFINED IN THAT SECTION ALSO INCLUDES ANY PROVIDER OF TELECOMMUNICATION SERVICES, AS DEFINED IN PARAGRAPH (E) OF SUBDIVISION ONE OF SECTION ONE HUNDRED EIGHTY-SIX-E OF THE TAX LAW, AND except that the rate thereof shall not exceed one per centum of gross income or of gross operating income, as the case may be, and may make provision for the collection thereof by the chief fiscal officer of such village; provided, however, that nothing herein contained shall be construed so as to prevent any village from adopting local laws exempting from such tax [omnibus corporations] COMMON CARRIERS subject to the supervision of the [state department of public service] COMMISSIONER OF TRANSPORTATION under article [three-a] FIVE of the [public service] TRANSPORTATION law. FOR PURPOSES OF ANY TAX IMPOSED PURSUANT TO THE AUTHORITY OF THIS SECTION, THE TERMS "TELEPHONY AND TELEGRAPHY" AND "TELEPHONE AND TELEGRAPH SERVICE" INCLUDE MOBILE TELECOMMUNICATIONS SERVICE.

2. A tax imposed pursuant to this section shall have application only within the territorial limits of any such village, and shall be in addition to any and all other taxes. [This] EXCEPT AS OTHERWISE PROVIDED, THIS section shall not authorize the imposition of a tax on any transaction originating or consummated outside of the territorial limits of any such village, notwithstanding that some act be necessarily performed with respect to such transaction within such limits.

[2.] ANY TAX ON MOBILE TELECOMMUNICATIONS SERVICE AUTHORIZED TO BE IMPOSED BY THIS SECTION MUST BE IMPOSED ONLY ON MOBILE TELECOMMUNICATIONS SERVICE PROVIDED BY A HOME SERVICE PROVIDER WHERE THE MOBILE TELECOMMUNICATIONS CUSTOMER'S PLACE OF PRIMARY USE IS WITHIN THE TERRITORIAL LIMITS OF THE VILLAGE. FOR PURPOSES OF ANY TAX IMPOSED PURSUANT TO THE AUTHORITY OF THIS SECTION, THE TERMS "MOBILE TELECOMMUNICATIONS SERVICE", "PLACE OF PRIMARY USE", "MOBILE TELECOMMUNICATIONS CUSTOMER", AND "HOME SERVICE PROVIDER" SHALL HAVE THE SAME MEANING AS THOSE TERMS HAVE IN PARAGRAPHS TWENTY-FOUR, TWENTY-SIX, AND TWENTY-SEVEN, RESPECTIVELY, OF SUBDIVISION (B) OF SECTION ELEVEN HUNDRED ONE OF THE TAX LAW.

3. Revenues resulting from the imposition of taxes authorized by this section heretofore or hereafter imposed shall be paid to the treasurer of the village imposing the same, and shall be credited to and deposited in the general fund of such village.

[3.] 4. All of the provisions of [section] SECTIONS one hundred eighty-six-a AND ONE HUNDRED EIGHTY-SIX-E of the tax law, so far as the same are or can be made applicable, with such limitations as are set forth in this section, and such modifications as may be necessary in order to adapt such taxes to local conditions shall apply to the taxes authorized by this section.

[4.] 5. Notwithstanding any other provisions of this section or of section one hundred eighty-six-a of the tax law, the words "gross income" shall include:

a. In the case of a utility engaged in selling telephony or telephone service OTHER THAN MOBILE TELECOMMUNICATIONS SERVICE, only receipts from local exchange service wholly consummated within the village; [and]

b. In the case of a utility engaged in selling telegraphy or telegraph service OTHER THAN MOBILE TELECOMMUNICATIONS SERVICE, only receipts from transactions wholly consummated within the village; AND

C. IN THE CASE OF A UTILITY ENGAGED IN SELLING MOBILE TELECOMMUNICATIONS SERVICE, ONLY RECEIPTS FROM SALES OF MOBILE TELECOMMUNICATIONS SERVICE TO MOBILE TELECOMMUNICATIONS CUSTOMERS WITH A PLACE OF PRIMARY USE WITHIN THE VILLAGE.

[5.] 6. Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality, or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if the proceeding is commenced within ninety days after the giving of the notice of such final determination; provided, however, that any such proceeding under said article seventy-eight shall not be instituted unless the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law, ordinance or resolution, shall be first deposited and an undertaking filed, in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

[6.] 7. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is commenced within ninety days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

[7.] 8. Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made with respect to taxes imposed under this section, after the expiration of more than three years from the date of the filing of a return, provided, that where no return has been filed as provided by local law the tax may be assessed at any time.

S 3. Any local law adopted pursuant to the authority of section 20-b of the general city law or section 5-530 of the village law shall be deemed amended to conform to the provisions of sections one and two of this act with respect to taxable periods beginning on or after September 1, 2011, except that any exemption applicable to an omnibus corporation in effect on September 1, 2011, shall not be affected by any amendment made to such provisions.

S 4. This act shall take effect September 1, 2011 and shall apply to taxable periods beginning on and after such date.