

52--A

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. HEVESI -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 39 to read as follows:

3 (39) 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

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

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1 DOLLARS, THE FIRST TWO THOUSAND FIVE HUNDRED DOLLARS SHALL BE EXEMPT  
2 FROM SALES AND USE TAXES.

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

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

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

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

17 S 5. Subparagraph (ii) of paragraph 1 of subdivision (a) of section  
18 1210 of the tax law, as amended by chapter 13 of the laws of 2013, is  
19 amended to read as follows:

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

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

36 (d) A local law, ordinance or resolution imposing any tax pursuant to  
37 this section, increasing or decreasing the rate of such tax, repealing  
38 or suspending such tax, exempting from such tax the energy sources and  
39 services described in paragraph three of subdivision (a) or of subdivi-  
40 sion (b) of this section or changing the rate of tax imposed on such  
41 energy sources and services or providing for the credit or refund  
42 described in clause six of subdivision (a) of section eleven hundred  
43 nineteen of this chapter must go into effect only on one of the follow-  
44 ing dates: March first, June first, September first or December first;  
45 provided, that a local law, ordinance or resolution providing for the  
46 exemption described in paragraph thirty OR FORTY-FOUR of subdivision (a)  
47 of section eleven hundred fifteen of this chapter or repealing any such  
48 exemption or a local law, ordinance or resolution providing for a refund  
49 or credit described in subdivision (d) of section eleven hundred nine-  
50 teen of this chapter or repealing such provision so provided OR A RESOL-  
51 UTION ENACTED PURSUANT TO THE AUTHORITY OF SUBDIVISION (Q) OF THIS  
52 SECTION PROVIDING SUCH EXEMPTION must go into effect only on March  
53 first. No such local law, ordinance or resolution shall be effective  
54 unless a certified copy of such law, ordinance or resolution is mailed  
55 by registered or certified mail to the commissioner at the commission-  
56 er's office in Albany at least ninety days prior to the date it is to

1 become effective. However, the commissioner may waive and reduce such  
2 ninety-day minimum notice requirement to a mailing of such certified  
3 copy by registered or certified mail within a period of not less than  
4 thirty days prior to such effective date if the commissioner deems such  
5 action to be consistent with the commissioner's duties under section  
6 twelve hundred fifty of this article and the commissioner acts by resol-  
7 ution. Where the restriction provided for in section twelve hundred  
8 twenty-three of this article as to the effective date of a tax and the  
9 notice requirement provided for therein are applicable and have not been  
10 waived, the restriction and notice requirement in section twelve hundred  
11 twenty-three of this article shall also apply.

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

14 (Q) NOTWITHSTANDING ANY OTHER PROVISION OF STATE OR LOCAL LAW, ORDI-  
15 NANCE OR RESOLUTION TO THE CONTRARY:

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

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

32 SECTION ONE. RECEIPTS FROM SALES OF AND CONSIDERATION GIVEN OR  
33 CONTRACTED TO BE GIVEN FOR, OR FOR THE USE OF, NEW ENERGY STAR APPLI-  
34 ANCES EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES PURSUANT TO  
35 PARAGRAPH 44 OF SUBDIVISION (A) OF SECTION 1115 OF THE NEW YORK TAX LAW  
36 SHALL ALSO BE EXEMPT FROM SALES AND COMPENSATING USE TAXES IMPOSED IN  
37 THIS JURISDICTION, DURING THE SAME PERIODS SET FORTH IN SUCH PARAGRAPH  
38 44.

39 SECTION TWO. THIS RESOLUTION SHALL TAKE EFFECT MARCH 1, 2015 AND SHALL  
40 APPLY TO SALES MADE AND USES OCCURRING DURING THE APPLICABLE EXEMPTIONS  
41 PERIODS EACH YEAR, IN ACCORDANCE WITH THE APPLICABLE TRANSITIONAL  
42 PROVISIONS OF SECTIONS 1106 AND 1217 OF THE NEW YORK TAX LAW.

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

1 ution shall thenceforth be deemed to incorporate such exemption for such  
2 periods.

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

20 (c) Form of Resolution:

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

23 Section one: The (county or city) of (insert locality's name) hereby  
24 elects the annual first weekend in May and the first weekend in Septem-  
25 ber new Energy Star appliance exemption period commencing in the fall of  
26 2013.

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

31 (d) A resolution adopted pursuant to this section shall be effective  
32 only if it is adopted exactly as set forth in subdivision (c) of this  
33 section and such county or city adopts it by March 1, 2015, mails a  
34 certified copy of it to the commissioner of taxation and finance by  
35 certified mail by such date and otherwise complies with the requirements  
36 of subdivisions (d) and (e) of section 1210 of the tax law.

37 S 9. This act shall take effect immediately and shall apply to sales  
38 made and uses occurring during exemption periods on or after that date  
39 in accordance with the applicable transitional provisions of sections  
40 1106 and 1217 of the tax law.