

2448--A

2013-2014 Regular Sessions

I N   S E N A T E

January 17, 2013

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Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to exempting the sale and installation of commercial fuel cell electric generating equipment from state sales and compensating use tax and granting municipalities the option to grant such exemption

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

1     Section 1. Section 1115 of the tax law is amended by adding a new  
2     subdivision (jj) to read as follows:  
3     (JJ) RECEIPTS FROM THE RETAIL SALE OF COMMERCIAL FUEL CELL ELECTRIC  
4     GENERATING SYSTEMS EQUIPMENT AND OF THE SERVICE OF INSTALLING SUCH  
5     SYSTEMS SHALL BE EXEMPT FROM TAXES IMPOSED BY SECTION ELEVEN HUNDRED  
6     FIVE AND ELEVEN HUNDRED ELEVEN OF THIS ARTICLE. FOR THE PURPOSES OF THIS  
7     SUBDIVISION, "FUEL CELL ELECTRICITY GENERATING SYSTEMS EQUIPMENT" SHALL  
8     MEAN AN ARRANGEMENT OR COMBINATION OF COMPONENTS INSTALLED UPON NON-RE-  
9     SIDENTIAL PREMISES THAT UTILIZE A SOLID OXIDE, MOLTEN CARBONATE, PROTON  
10    EXCHANGE MEMBRANE OR PHOSPHORIC ACID FUEL CELL THAT IS MANUFACTURED,  
11    INSTALLED AND OPERATED IN ACCORDANCE WITH APPLICABLE GOVERNMENT AND  
12    INDUSTRY STANDARDS. SUCH ARRANGEMENT OR COMPONENTS SHALL NOT INCLUDE  
13    EQUIPMENT THAT IS PART OF A NON-FUEL CELL ENERGY SYSTEM.  
14    S 2. Paragraph 1 of subdivision (a) of section 1210 of the tax law, as  
15    amended by chapter 13 of the laws of 2013, is amended to read as  
16    follows:  
17    (1) Either, all of the taxes described in article twenty-eight of this  
18    chapter, at the same uniform rate, as to which taxes all provisions of  
19    the local laws, ordinances or resolutions imposing such taxes shall be  
20    identical, except as to rate and except as otherwise provided, with the

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

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1 corresponding provisions in such article twenty-eight, including the  
2 definition and exemption provisions of such article, so far as the  
3 provisions of such article twenty-eight can be made applicable to the  
4 taxes imposed by such city or county and with such limitations and  
5 special provisions as are set forth in this article. The taxes author-  
6 ized under this subdivision may not be imposed by a city or county  
7 unless the local law, ordinance or resolution imposes such taxes so as  
8 to include all portions and all types of receipts, charges or rents,  
9 subject to state tax under sections eleven hundred five and eleven  
10 hundred ten of this chapter, except as otherwise provided. (i) Any local  
11 law, ordinance or resolution enacted by any city of less than one  
12 million or by any county or school district, imposing the taxes author-  
13 ized by this subdivision, shall, notwithstanding any provision of law to  
14 the contrary, exclude from the operation of such local taxes all sales  
15 of tangible personal property for use or consumption directly and  
16 predominantly in the production of tangible personal property, gas,  
17 electricity, refrigeration or steam, for sale, by manufacturing, proc-  
18 essing, generating, assembly, refining, mining or extracting; and all  
19 sales of tangible personal property for use or consumption predominantly  
20 either in the production of tangible personal property, for sale, by  
21 farming or in a commercial horse boarding operation, or in both; and,  
22 unless such city, county or school district elects otherwise, shall omit  
23 the provision for credit or refund contained in clause six of subdivi-  
24 sion (a) or subdivision (d) of section eleven hundred nineteen of this  
25 chapter. (ii) Any local law, ordinance or resolution enacted by any  
26 city, county or school district, imposing the taxes authorized by this  
27 subdivision, shall omit the residential solar energy systems equipment  
28 exemption provided for in subdivision (ee), the commercial solar energy  
29 systems equipment exemption provided for in subdivision (ii), THE  
30 COMMERCIAL FUEL CELL ELECTRIC GENERATING EQUIPMENT EXEMPTION PROVIDED  
31 FOR IN SUBDIVISION (JJ), and the clothing and footwear exemption  
32 provided for in paragraph thirty of subdivision (a) of section eleven  
33 hundred fifteen of this chapter, unless such city, county or school  
34 district elects otherwise as to either such residential solar energy  
35 systems equipment exemption, such commercial solar energy systems equip-  
36 ment exemption, SUCH COMMERCIAL FUEL CELL ELECTRIC GENERATING EXEMPTION,  
37 or such clothing and footwear exemption.

38 S 3. Section 1210 of the tax law is amended by adding a new subdivi-  
39 sion (q) to read as follows:

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

42 (1) ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE IN WHICH THE  
43 TAXES IMPOSED BY SECTION ELEVEN HUNDRED SEVEN OF THIS CHAPTER ARE IN  
44 EFFECT, ACTING THROUGH ITS LOCAL LEGISLATIVE BODY, IS HEREBY AUTHORIZED  
45 AND EMPOWERED TO ELECT TO PROVIDE THE SAME EXEMPTIONS FROM SUCH TAXES AS  
46 THE COMMERCIAL FUEL CELL ELECTRIC GENERATING EQUIPMENT EXEMPTION FROM  
47 STATE SALES AND COMPENSATING USE TAXES DESCRIBED IN SUBDIVISION (JJ) OF  
48 SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER BY ENACTING A RESOLUTION  
49 IN THE FORM SET FORTH IN PARAGRAPH TWO OF THIS SUBDIVISION; WHEREUPON,  
50 UPON COMPLIANCE WITH THE PROVISIONS OF SUBDIVISIONS (D) AND (E) OF THIS  
51 SECTION, SUCH ENACTMENT OF SUCH RESOLUTION SHALL BE DEEMED TO BE AN  
52 AMENDMENT TO SUCH SECTION ELEVEN HUNDRED SEVEN AND SUCH SECTION ELEVEN  
53 HUNDRED SEVEN SHALL BE DEEMED TO INCORPORATE SUCH EXEMPTIONS AS IF THEY  
54 HAD BEEN DULY ENACTED BY THE STATE LEGISLATURE AND APPROVED BY THE  
55 GOVERNOR.

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

3 SECTION ONE. RECEIPTS FROM SALES OF AND CONSIDERATION GIVEN OR  
4 CONTRACTED TO BE GIVEN FOR, OR FOR THE USE OF, PROPERTY AND SERVICES  
5 EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES PURSUANT TO SUBDIVI-  
6 SION (JJ) OF SECTION 1115 OF THE TAX LAW SHALL ALSO BE EXEMPT FROM SALES  
7 AND COMPENSATING USE TAXES IMPOSED IN THIS JURISDICTION.

8 SECTION TWO. THIS RESOLUTION SHALL TAKE EFFECT JANUARY 1, (INSERT THE  
9 YEAR, BUT NOT EARLIER THAN THE YEAR 2013) AND SHALL APPLY TO SALES MADE,  
10 SERVICES RENDERED AND USES OCCURRING ON OR AFTER THAT DATE IN ACCORDANCE  
11 WITH THE APPLICABLE TRANSITIONAL PROVISIONS IN SECTIONS 1106, 1216 AND  
12 1217 OF THE NEW YORK TAX LAW.

13 S 4. This act shall take effect immediately, provided that section one  
14 of this act shall take effect on the first of January next succeeding  
15 the date on which this act shall have become a law.