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

3812--C

Cal. No. 970

2013-2014 Regular Sessions

I N S E N A T E

February 21, 2013

Introduced by Sen. MARCELLINO -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the tax law, in relation to the authority of counties to impose sales and compensating use taxes pursuant to the authority of article 29 of such law; and to repeal certain provisions of section 1210 and 1224 and section 1210-E of such law relating thereto

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

Section 1. Subparagraph (i) of the opening paragraph of section 1210 of the tax law is REPEALED and a new subparagraph (i) is added to read as follows:

(I) WITH RESPECT TO A CITY OF ONE MILLION OR MORE AND THE FOLLOWING COUNTIES (1) ANY SUCH CITY HAVING A POPULATION OF ONE MILLION OR MORE IS HEREBY AUTHORIZED AND EMPOWERED TO ADOPT AND AMEND LOCAL LAWS, ORDINANCES OR RESOLUTIONS IMPOSING SUCH TAXES IN ANY SUCH CITY, AT THE RATE OF FOUR AND ONE-HALF PERCENT;

(2) THE FOLLOWING COUNTIES THAT IMPOSE TAXES DESCRIBED IN SUBDIVISION (A) OF THIS SECTION AT THE RATE OF THREE PERCENT AS AUTHORIZED ABOVE IN THIS PARAGRAPH FOR SUCH COUNTIES ARE HEREBY FURTHER AUTHORIZED AND EMPOWERED TO ADOPT AND AMEND LOCAL LAWS, ORDINANCES, OR RESOLUTIONS IMPOSING SUCH TAXES DESCRIBED IN SUBDIVISION (A) OF THIS SECTION AT THE FOLLOWING ADDITIONAL RATES, IN QUARTER PERCENT INCREMENTS, WHICH RATES ARE ADDITIONAL TO THE THREE PERCENT RATE AUTHORIZED ABOVE IN THIS PARAGRAPH, AND, IN THE CASE OF A COUNTY AUTHORIZED TO IMPOSE MORE THAN ONE

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

LBD08852-06-4

ADDITIONAL RATE, ALSO IN ADDITION TO EACH OTHER, FOR EACH SUCH COUNTY, PROVIDED THAT (A) THE COUNTY OF ROCKLAND MAY IMPOSE ADDITIONAL RATES OF FIVE-EIGHTHS PERCENT AND THREE-EIGHTHS PERCENT, IN LIEU OF IMPOSING SUCH ADDITIONAL RATE IN QUARTER PERCENT INCREMENTS; (B) THE COUNTY OF ONTARIO MAY IMPOSE ADDITIONAL RATES OF ONE-EIGHTH PERCENT AND THREE-EIGHTHS PERCENT, IN LIEU OF IMPOSING SUCH ADDITIONAL RATE IN QUARTER PERCENT INCREMENTS; (C) THREE-QUARTERS PERCENT OF THE ADDITIONAL RATE AUTHORIZED TO BE IMPOSED BY THE COUNTY OF NASSAU SHALL BE SUBJECT TO THE LIMITATION SET FORTH IN SECTION TWELVE HUNDRED SIXTY-TWO-E OF THIS ARTICLE:

(I) ONE-QUARTER OF ONE PERCENT - NONE.

(II) ONE-HALF OF ONE PERCENT - CHAUTAUQUA, ONTARIO, SCHENECTADY.

(III) THREE-QUARTERS OF ONE PERCENT - DUTCHESS, ESSEX, JEFFERSON, LEWIS, ORANGE.

(IV) ONE PERCENT - ALBANY, BROOME, CATTARAUGUS, CAYUGA, CHEMUNG, CHENANGO, CLINTON, COLUMBIA, CORTLAND, DELAWARE, FRANKLIN, FULTON, GENESEE, GREENE, LIVINGSTON, MADISON, MONROE, MONTGOMERY, NIAGARA, ONONDAGA, ORLEANS, OSWEGO, OTSEGO, PUTNAM, RENSSELAER, ROCKLAND, SCHOHARIE, SCHUYLER, SENECA, STEUBEN, SUFFOLK, SULLIVAN, TIOGA, TOMPKINS, ULSTER, WAYNE, WYOMING, YATES.

(V) ONE AND ONE-QUARTER PERCENT - HERKIMER, NASSAU.

(VI) ONE AND ONE-HALF PERCENT - ALLEGANY.

(VII) ONE AND THREE-QUARTERS PERCENT - ERIE, ONEIDA.

S 2. Subparagraph (ii) of the opening paragraph of section 1210 of the tax law is REPEALED and a new subparagraph (ii) is added to read as follows:

(II) THE FOLLOWING CITIES THAT IMPOSE TAXES DESCRIBED IN SUBDIVISION (A) OF THIS SECTION AT THE RATE OF ONE AND ONE-HALF PERCENT OR HIGHER AS AUTHORIZED ABOVE IN THIS PARAGRAPH FOR SUCH CITIES ARE HEREBY FURTHER AUTHORIZED AND EMPOWERED TO ADOPT AND AMEND LOCAL LAWS, ORDINANCES, OR RESOLUTIONS IMPOSING SUCH TAXES DESCRIBED IN SUBDIVISION (A) OF THIS SECTION AT THE FOLLOWING ADDITIONAL RATES, IN QUARTER PERCENT INCREMENTS, WHICH RATES ARE ADDITIONAL TO THE ONE AND ONE-HALF PERCENT OR HIGHER RATES AUTHORIZED ABOVE IN THIS PARAGRAPH AND, IN THE CASE OF A CITY AUTHORIZED TO IMPOSE MORE THAN ONE ADDITIONAL RATE, ALSO IN ADDITION TO EACH OTHER, FOR EACH SUCH CITY:

(1) ONE-QUARTER OF ONE PERCENT - NONE.

(2) ONE-HALF OF ONE PERCENT - NONE.

(3) THREE-QUARTERS OF ONE PERCENT - NONE.

(4) ONE PERCENT - MOUNT VERNON; YONKERS; OSWEGO, FOR THE PERIOD BEGINNING DECEMBER FIRST, TWO THOUSAND FOURTEEN, AND ENDING NOVEMBER THIRTIETH, TWO THOUSAND SIXTEEN; NEW ROCHELLE, FOR THE PERIOD BEGINNING JANUARY FIRST, TWO THOUSAND FIFTEEN, AND ENDING DECEMBER THIRTY-FIRST, TWO THOUSAND SIXTEEN; WHITE PLAINS, FOR THE PERIOD BEGINNING SEPTEMBER FIRST, TWO THOUSAND FOURTEEN, AND ENDING AUGUST THIRTY-FIRST, TWO THOUSAND SIXTEEN.

(5) ONE AND ONE-QUARTER PERCENT - NONE.

(6) ONE AND ONE-HALF PERCENT - NONE.

(7) ONE AND THREE-QUARTERS PERCENT - NONE.

S 3. Subparagraph (iii) of the opening paragraph of section 1210 of the tax law is REPEALED and a new subparagraph (iii) is added to read as follows:

(III) THE MAXIMUM RATE REFERRED TO IN SECTION TWELVE HUNDRED TWENTY-FOUR OF THIS ARTICLE SHALL BE CALCULATED WITHOUT REFERENCE TO THE ADDITIONAL RATES AUTHORIZED FOR COUNTIES, OTHER THAN THE COUNTIES OF CAYUGA, CORTLAND, FULTON, MADISON, AND OTSEGO IN SUBPARAGRAPH (I) AND THE CITIES IN SUBPARAGRAPH (II) OF THIS PARAGRAPH.

S 4. Section 1210 of the tax law is amended by adding a new subdivision (q) to read as follows:

(Q) NOTWITHSTANDING ANY PROVISION OF THIS SECTION OR ANY OTHER LAW, A COUNTY MAY, BY A MAJORITY VOTE OF ITS GOVERNING BODY, PASS A LOCAL LAW, ORDINANCE OR RESOLUTION TO IMPOSE THE ADDITIONAL RATE OR RATES OF SUCH SALES AND COMPENSATING USE TAXES AUTHORIZED BY CLAUSE TWO OF SUBPARAGRAPH (I) OF THE OPENING PARAGRAPH OF THIS SECTION FOR A PERIOD NOT TO EXCEED TWO YEARS. ANY SUCH LOCAL LAW, ORDINANCE, OR RESOLUTION SHALL ALSO BE SUBJECT TO THE PROVISIONS OF SUBDIVISIONS (D) AND (E) OF THIS SECTION.

S 5. Section 1210-E of the tax law is REPEALED.

S 6. Subdivisions (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (t), (u), (v), (w), (x), (y), (z), (z-1), (aa), (bb), (cc), (dd), (ee), (ff) and (gg) of section 1224 of the tax law are REPEALED.

S 7. Section 1224 of the tax law is amended by adding four new subdivisions (d), (e), (f), and (g) to read as follows:

(D) FOR PURPOSES OF THIS SECTION, THE TERM "PRIOR RIGHT" SHALL MEAN THE PREFERENTIAL RIGHT TO IMPOSE ANY TAX DESCRIBED IN SECTIONS TWELVE HUNDRED TWO AND TWELVE HUNDRED THREE, OR TWELVE HUNDRED TEN AND TWELVE HUNDRED ELEVEN, OF THIS ARTICLE AND THEREBY TO PREEMPT SUCH TAX AND TO PRECLUDE ANOTHER MUNICIPAL CORPORATION FROM IMPOSING OR CONTINUING THE IMPOSITION OF SUCH TAX TO THE EXTENT THAT SUCH RIGHT IS EXERCISED. HOWEVER, THE RIGHT OF PREEMPTION SHALL ONLY APPLY WITHIN THE TERRITORIAL LIMITS OF THE TAXING JURISDICTION HAVING THE RIGHT OR PREEMPTION.

(E) EACH OF THE FOLLOWING COUNTIES AND CITIES SHALL HAVE THE SOLE RIGHT TO IMPOSE THE FOLLOWING ADDITIONAL RATE OF SALES AND COMPENSATING USE TAXES IN EXCESS OF THREE PERCENT THAT SUCH COUNTY OR CITY IS AUTHORIZED TO IMPOSE PURSUANT TO THE AUTHORITY OF SUBDIVISION (A) OF SECTION TWELVE HUNDRED TEN OF THIS ARTICLE. SUCH ADDITIONAL RATES OF TAX SHALL NOT BE SUBJECT TO PREEMPTION.

(1) COUNTIES:

(A) ONE-QUARTER OF ONE PERCENT - NONE.

(B) ONE-HALF OF ONE PERCENT - CHAUTAUQUA, ONTARIO, SCHENECTADY.

(C) THREE-QUARTERS OF ONE PERCENT - DUTCHESS, ESSEX, JEFFERSON, LEWIS, ORANGE.

(D) ONE PERCENT - ALBANY, BROOME, CATTARAUGUS, CHEMUNG, CHENANGO, CLINTON, COLUMBIA, DELAWARE, FRANKLIN, GENESEE, GREENE, LIVINGSTON, MONROE, MONTGOMERY, NIAGARA, ONONDAGA, ORLEANS, OTSEGO, PUTNAM, RENSSELAER, ROCKLAND, SCHOHARIE, SCHUYLER, SENECA, STEUBEN, SUFFOLK, SULLIVAN, TIOGA, TOMPKINS, ULSTER, WAYNE, WYOMING, YATES.

(E) ONE AND ONE-QUARTER PERCENT - HERKIMER, NASSAU.

(F) ONE AND ONE-HALF PERCENT - ALLEGANY.

(G) ONE AND THREE-QUARTERS PERCENT - ERIE, ONEIDA.

(2) CITIES:

(A) ONE-QUARTER OF ONE PERCENT - NONE.

(B) ONE-HALF OF ONE PERCENT - NONE.

(C) THREE-QUARTERS OF ONE PERCENT - NONE.

(D) ONE PERCENT - MOUNT VERNON, NEW ROCHELLE, WHITE PLAINS, YONKERS.

(F) EACH OF THE FOLLOWING CITIES IS AUTHORIZED TO PREEMPT THE TAXES IMPOSED BY THE COUNTY IN WHICH IT IS LOCATED PURSUANT TO THE AUTHORITY OF SUBDIVISION (A) OF SECTION TWELVE HUNDRED TEN OF THIS ARTICLE, TO THE EXTENT OF ONE-HALF THE MAXIMUM AGGREGATE RATE AUTHORIZED UNDER SECTION TWELVE HUNDRED TEN OF THIS ARTICLE, INCLUDING THE ADDITIONAL RATE THAT THE COUNTY IN WHICH SUCH CITY IS LOCATED IS AUTHORIZED TO IMPOSE: AUBURN, IN CAYUGA COUNTY; CORTLAND, IN CORTLAND COUNTY; GLOVERSVILLE AND

JOHNSTOWN, IN FULTON COUNTY; ONEIDA, IN MADISON COUNTY; ONEONTA, IN OTSEGO COUNTY. AS OF THE DATE THIS SUBDIVISION TAKES EFFECT, ANY SUCH PREEMPTION BY SUCH A CITY IN EFFECT ON SUCH DATE SHALL CONTINUE IN FULL FORCE AND EFFECT UNTIL THE EFFECTIVE DATE OF A LOCAL LAW, ORDINANCE, OR RESOLUTION ADOPTED OR AMENDED BY THE CITY TO CHANGE SUCH PREEMPTION, PROVIDED SUCH A CITY'S RATE OF TAX IN EXCESS OF ONE AND ONE-HALF PERCENT SHALL NOT CONTINUE IN EFFECT IF THE COUNTY IN WHICH IT IS LOCATED DOES NOT EXTEND ITS ADDITIONAL RATE IN EXCESS OF THREE PERCENT. ANY PREEMPTION BY SUCH A CITY TO TAKE EFFECT UNDER THIS SUBDIVISION AFTER THE DATE THIS SUBDIVISION TAKES EFFECT SHALL BE SUBJECT TO THE NOTICE REQUIREMENTS IN SECTION TWELVE HUNDRED TWENTY-THREE OF THIS SUBPART AND TO THE OTHER REQUIREMENTS OF THIS ARTICLE.

(G) NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION OR OTHER LAW, IF THE COUNTY OF DUTCHESS, THE COUNTY OF ORANGE OR THE COUNTY OF ROCKLAND WITHDRAWS FROM THE METROPOLITAN COMMUTER TRANSPORTATION DISTRICT AND IMPOSES THE ADDITIONAL THREE-EIGHTHS PERCENT RATE OF TAX, THE NET COLLECTIONS FROM WHICH THE COUNTY HAS SET ASIDE FOR MASS TRANSPORTATION PURPOSES, AS AUTHORIZED BY SUBPARAGRAPH (IV) OF THE OPENING PARAGRAPH OF SECTION TWELVE HUNDRED TEN OF THIS ARTICLE, SUCH ADDITIONAL THREE-EIGHTHS PERCENT RATE OF TAX SHALL BE IN ADDITION TO ANY OTHER ADDITIONAL RATE OF TAX SUCH COUNTY IS AUTHORIZED TO IMPOSE AND SHALL NOT BE SUBJECT TO PREEMPTION AND SUCH COUNTY SHALL NOT INCLUDE SUCH ADDITIONAL THREE-EIGHTHS PERCENT RATE OF TAX IN DETERMINING ITS ADDITIONAL RATE OF TAX ON THE AREA OF THE COUNTY OUTSIDE ANY CITY IN THE COUNTY IMPOSING TAX FOR PURPOSES OF SUBDIVISION (D) OF SECTION TWELVE HUNDRED SIXTY-TWO OF THIS ARTICLE.

S 8. The tax law is amended by adding three new sections 1262-t, 1262-u and 1262-v to read as follows:

S 1262-T. ONEIDA COUNTY NET COLLECTIONS FROM ADDITIONAL RATE OF TAX. NET COLLECTIONS FROM AN ADDITIONAL THREE-QUARTERS PERCENT RATE OF ONEIDA COUNTY'S SALES AND COMPENSATING USE TAXES IMPOSED PURSUANT TO THE AUTHORITY OF CLAUSE TWO OF SUBPARAGRAPH (I) OF THE OPENING PARAGRAPH OF SECTION TWELVE HUNDRED TEN OF THIS ARTICLE SHALL NOT BE SUBJECT TO ANY REVENUE DISTRIBUTION AGREEMENT ENTERED INTO BY THE COUNTY AND THE CITIES IN THE COUNTY UNDER SUBDIVISION (C) OF SECTION TWELVE HUNDRED SIXTY-TWO OF THIS PART.

S 1262-U. CLINTON COUNTY NET COLLECTIONS FROM ADDITIONAL RATE OF TAX. NET COLLECTIONS FROM ANY ADDITIONAL RATE OF SALES AND COMPENSATING USE TAXES CLINTON COUNTY IMPOSES PURSUANT TO THE AUTHORITY OF CLAUSE TWO OF SUBPARAGRAPH (I) OF THE OPENING PARAGRAPH OF SECTION TWELVE HUNDRED TEN OF THIS ARTICLE SHALL BE PAID TO THE COUNTY AND THE COUNTY SHALL SET ASIDE SUCH NET COLLECTIONS AND USE THEM SOLELY FOR COUNTY PURPOSES. SUCH NET COLLECTIONS SHALL NOT BE SUBJECT TO ANY REVENUE DISTRIBUTION AGREEMENT ENTERED INTO BY THE COUNTY AND THE CITY IN THE COUNTY UNDER SUBDIVISION (C) OF SECTION TWELVE HUNDRED SIXTY-TWO OF THIS PART.

S 1262-V. ONTARIO COUNTY NET COLLECTIONS FROM ADDITIONAL RATE OF TAX. NOTWITHSTANDING ANY LAW TO THE CONTRARY, AFTER ONTARIO COUNTY ALLOCATES NET COLLECTIONS FROM ITS ADDITIONAL ONE-EIGHTH OF ONE PERCENT RATE OF SALES AND COMPENSATING USE TAXES PURSUANT TO THE AUTHORITY OF SECTION TWELVE HUNDRED SIXTY-TWO-R OF THIS PART, AS ADDED BY CHAPTER THIRTY-SEVEN OF THE LAWS OF TWO THOUSAND SIX, NET COLLECTIONS FROM THE COUNTY'S ADDITIONAL THREE-EIGHTHS OF ONE PERCENT RATE OF SUCH TAXES SHALL BE SET ASIDE FOR COUNTY PURPOSES AND SHALL NOT BE SUBJECT TO ANY AGREEMENT ENTERED INTO BY THE COUNTY AND THE CITIES IN THE COUNTY UNDER SUBDIVISION (C) OF SECTION TWELVE HUNDRED SIXTY-TWO OR SECTION TWELVE HUNDRED

SIXTY-TWO-R OF THIS PART, AS ADDED BY CHAPTER THIRTY-SEVEN OF THE LAWS OF TWO THOUSAND SIX.

S 9. Section 1262-s of the tax law, as amended by chapter 328 of the laws of 2013, is amended to read as follows:

S 1262-s. Disposition of net collections from the additional one-quarter of one percent rate of sales and compensating use taxes in the county of Herkimer. Notwithstanding any contrary provision of law, if the county of Herkimer imposes the additional one-quarter of one percent rate of sales and compensating use taxes IN EXCESS OF FOUR PERCENT authorized by THE OPENING PARAGRAPH OF section twelve hundred [ten-E] TEN of this article [for all or any portion of the period beginning December first, two thousand seven and ending November thirtieth, two thousand fifteen], the county shall use all net collections from such additional one-quarter of one percent rate to pay the county's expenses for the construction of additional correctional facilities. The net collections from [the] SUCH additional rate imposed [pursuant to section twelve hundred ten-E] shall be deposited in a special fund to be created by such county separate and apart from any other funds and accounts of the county. Any and all remaining net collections from such additional tax, after the expenses of such construction are paid, shall be deposited by the county of Herkimer in the general fund of such county for any county purpose.

S 10. The tax law is amended by adding a new section 1265 to read as follows:

S 1265. REFERENCES TO CERTAIN PROVISIONS AUTHORIZING ADDITIONAL RATES OR TO EXPIRATIONS OF A PERIOD. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY: ANY REFERENCE IN ANY SECTION OF THIS CHAPTER OR OTHER LAW, OR IN ANY LOCAL LAW, ORDINANCE, OR RESOLUTION ADOPTED PURSUANT TO THE AUTHORITY OF THIS ARTICLE, OR IN ANY AGREEMENT ENTERED INTO BY A COUNTY AND ALL THE CITIES IN THAT COUNTY UNDER SUBDIVISION (C) OF SECTION TWELVE HUNDRED SIXTY-TWO OF THIS PART, TO NET COLLECTIONS OR REVENUES FROM A TAX IMPOSED BY A COUNTY OR CITY PURSUANT TO THE AUTHORITY OF A CLAUSE, OR TO A SUBCLAUSE OF A CLAUSE, OF SUBPARAGRAPH (I) OR (II) OF THE OPENING PARAGRAPH OF SECTION TWELVE HUNDRED TEN OF THIS ARTICLE REPEALED BY SECTION ONE OR TWO OF THE CHAPTER OF THE LAWS OF TWO THOUSAND FOURTEEN THAT ADDED THIS SECTION OR TO SECTION TWELVE HUNDRED TEN-E OF THIS ARTICLE REPEALED BY SECTION FIVE OF SUCH CHAPTER OF THE LAWS OF TWO THOUSAND FOURTEEN SHALL BE DEEMED TO BE A REFERENCE TO NET COLLECTIONS OR REVENUES FROM A TAX IMPOSED BY THAT COUNTY OR CITY PURSUANT TO THE AUTHORITY OF THE EQUIVALENT PROVISION OF CLAUSE TWO OF SUBPARAGRAPH (I) OR TO SUBPARAGRAPH (II) OF THE OPENING PARAGRAPH OF SUCH SECTION TWELVE HUNDRED TEN AS ADDED BY SUCH SECTION ONE OR TWO OF SUCH CHAPTER OF THE LAWS OF TWO THOUSAND FOURTEEN.

S 11. Severability. If any provision of this act shall for any reason be finally adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act, but shall be confined in its operation to the provision directly involved in the controversy in which such judgment shall have been rendered. It it hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provision had not been included in this act.

S 12. This act shall take effect immediately.