

4130

2013-2014 Regular Sessions

I N   S E N A T E

March 11, 2013

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Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

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  
22    DOLLARS, THE FIRST TWO THOUSAND FIVE HUNDRED DOLLARS SHALL BE EXEMPT  
23    FROM SALES AND USE 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 chapter 406 of the laws of 2012, is  
17 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), the commercial solar energy  
22 systems equipment exemption provided for in subdivision (hh) and the  
23 clothing and footwear exemption provided for in paragraph thirty of  
24 subdivision (a) AND THE NEW ENERGY STAR APPLIANCES EXEMPTION PROVIDED  
25 FOR IN PARAGRAPH FORTY-FOUR OF SUBDIVISION (A) of section eleven hundred  
26 fifteen of this chapter, unless such city, county or school district  
27 elects otherwise as to either such residential solar energy systems  
28 equipment exemption, such commercial solar energy systems equipment  
29 exemption or such clothing and footwear exemption OR SUCH NEW ENERGY  
30 STAR APPLIANCES EXEMPTION.

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

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

copy by registered or certified mail within a period of not less than thirty days prior to such effective date if the commissioner deems such action to be consistent with the commissioner's duties under section twelve hundred fifty of this article and the commissioner acts by resolution. Where the restriction provided for in section twelve hundred twenty-three of this article as to the effective date of a tax and the notice requirement provided for therein are applicable and have not been waived, the restriction and notice requirement in section twelve hundred twenty-three of this article shall also apply.

S 7. Section 1210 of the tax law is amended by adding a new subdivision (q) to read as follows:

(Q) NOTWITHSTANDING ANY OTHER PROVISION OF STATE OR LOCAL LAW, ORDINANCE OR RESOLUTION TO THE CONTRARY:

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

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

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

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

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

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

18 (c) Form of Resolution:

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

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

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

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

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