

4956--A

2013-2014 Regular Sessions

I N   A S S E M B L Y

February 13, 2013

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Introduced by M. of A. CUSICK -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to taxpayer relief on cell phone taxes

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

1     Section 1. Section 1109 of the tax law is amended by adding a new  
2     subdivision (i) to read as follows:  
3     (I) THE EXEMPTION CONTAINED IN SUBDIVISION (CC) OF SECTION ELEVEN  
4     HUNDRED FIFTEEN OF THIS ARTICLE SHALL NOT APPLY.  
5     S 2. Subdivision (cc) of section 1115 of the tax law, as added by  
6     section 11 of part S of chapter 85 of the laws of 2002, is amended to  
7     read as follows:  
8     (cc) Notwithstanding any other provision of law to the contrary,  
9     receipts from the sale of mobile telecommunications service [by a home  
10    service provider] shall be exempt from the taxes imposed by subparagraph  
11    (B) of paragraph one and paragraph two of subdivision (b) of section  
12    eleven hundred five of this article [if the mobile telecommunications  
13    customer's place of primary use is within a taxing jurisdiction outside  
14    this state].  
15    S 3. Paragraph 1 of subdivision (a) of section 1210 of the tax law, as  
16    amended by chapter 13 of the laws of 2013, is amended to read as  
17    follows:  
18    (1) Either, all of the taxes described in article twenty-eight of this  
19    chapter, at the same uniform rate, as to which taxes all provisions of  
20    the local laws, ordinances or resolutions imposing such taxes shall be  
21    identical, except as to rate and except as otherwise provided, with the  
22    corresponding provisions in such article twenty-eight, including the

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

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

37 S 4. Section 1210 of the tax law is amended by adding a new subdivi-  
38 sion (q) to read as follows:

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

41 (1) ANY CITY, COUNTY OR SCHOOL DISTRICT, ACTING THROUGH ITS GOVERNING  
42 BODY, IS HEREBY AUTHORIZED AND EMPOWERED TO ELECT TO PROVIDE THE SAME  
43 EXEMPTIONS FROM SUCH TAXES AS THE MOBILE TELECOMMUNICATIONS SERVICE  
44 EXEMPTION FROM STATE SALES AND COMPENSATING USE TAXES DESCRIBED IN  
45 SUBDIVISION (CC) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER BY  
46 ENACTING A RESOLUTION IN THE FORM SET FORTH IN PARAGRAPH TWO OF THIS  
47 SUBDIVISION; ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE WHERE-  
48 UPON, UPON COMPLIANCE WITH THE PROVISIONS OF SUBDIVISIONS (D) AND (E) OF  
49 THIS SECTION, SUCH ENACTMENT OF SUCH RESOLUTION SHALL BE DEEMED TO BE AN  
50 AMENDMENT TO SUCH SECTION ELEVEN HUNDRED SEVEN AND SUCH SECTION ELEVEN  
51 HUNDRED SEVEN SHALL BE DEEMED TO INCORPORATE SUCH EXEMPTIONS AS IF THEY  
52 HAD BEEN DULY ENACTED BY THE STATE LEGISLATURE AND APPROVED BY THE  
53 GOVERNOR.

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

1 SECTION ONE. RECEIPTS FROM SALES OF AND CONSIDERATION GIVEN OR  
2 CONTRACTED TO BE GIVEN FOR, OR FOR THE USE OF, MOBILE TELECOMMUNICATIONS  
3 SERVICE EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES PURSUANT TO  
4 SUBDIVISION (CC) OF SECTION 1115 OF THE TAX LAW SHALL ALSO BE EXEMPT  
5 FROM SALES AND COMPENSATING USE TAXES IMPOSED IN THIS JURISDICTION.

6 SECTION TWO. THIS RESOLUTION SHALL TAKE EFFECT MARCH 1, (INSERT THE  
7 YEAR, BUT NOT EARLIER THAN THE YEAR 2015) AND SHALL APPLY TO SALES MADE,  
8 SERVICES RENDERED AND USES OCCURRING ON AND AFTER THAT DATE IN ACCORD-  
9 ANCE WITH THE APPLICABLE TRANSITIONAL PROVISIONS IN SECTIONS 1106, 1216  
10 AND 1217 OF THE NEW YORK TAX LAW.

11 S 5. This act shall take effect immediately; provided, however, that  
12 sections one and two of this act shall take effect March 1, 2015.