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

6017

2015-2016 Regular Sessions

I N A S S E M B L Y

March 10, 2015

Introduced by M. of A. SIMOTAS -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to exempting the sale or lease and installation of commercial fuel cell electric generating equipment or the sale of electricity generated by such 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:

Section 1.Section 1115 of the tax law is amended by adding a new subdivision (jj) to read as follows:

(JJ) (1) RECEIPTS FROM THE RETAIL SALE OF COMMERCIAL FUEL CELL ELECTRIC GENERATING SYSTEMS EQUIPMENT AND OF THE SERVICE OF INSTALLING SUCH SYSTEMS SHALL BE EXEMPT FROM TAXES IMPOSED BY SECTIONS ELEVEN HUNDRED FIVE AND ELEVEN HUNDRED ELEVEN OF THIS ARTICLE.

(2) RECEIPTS FROM THE LEASE OF FUEL CELL ELECTRICITY GENERATING SYSTEMS EQUIPMENT AND OF THE SERVICE OF INSTALLING SUCH SYSTEMS UNDER A WRITTEN AGREEMENT THAT SPANS AT LEAST TEN YEARS WHERE SUCH EQUIPMENT OWNED BY A PERSON OTHER THAN THE TAXPAYER IS INSTALLED IN CONNECTION WITH A COMMERCIAL PROPERTY WHICH IS (I) LOCATED IN THIS STATE AND (II) WHICH IS USED BY THE TAXPAYER AT HIS OR HER COMMERCIAL PREMISES AT THE TIME THE FUEL CELL ELECTRICITY GENERATING SYSTEM IS PLACED INTO SERVICE SHALL BE EXEMPT FROM TAXES IMPOSED BY SECTIONS ELEVEN HUNDRED FIVE AND ELEVEN HUNDRED ELEVEN OF THIS ARTICLE.

(3) RECEIPTS FROM PURCHASE OF POWER UNDER A WRITTEN AGREEMENT THAT SPANS AT LEAST TEN YEARS WHEREUNDER THE POWER PURCHASED IN GENERATED BY FUEL CELL ELECTRICITY GENERATING SYSTEMS EQUIPMENT OWNED BY A PERSON OTHER THAN THE TAXPAYER WHICH IS INSTALLED IN CONNECTION WITH COMMERCIAL PROPERTY WHICH IS (I) LOCATED IN THIS STATE AND (II) USED BY THE TAXPAYER FOR COMMERCIAL PURPOSES SHALL BE EXEMPT FROM THE TAXES IMPOSED BY SECTIONS ELEVEN HUNDRED FIVE AND ELEVEN HUNDRED ELEVEN OF THIS ARTICLE.

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

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(4) FOR THE PURPOSES OF THIS SUBDIVISION, "FUEL CELL ELECTRICITY GENERATING SYSTEMS EQUIPMENT" SHALL MEAN AN ARRANGEMENT OR COMBINATION OF COMPONENTS INSTALLED UPON NON-RESIDENTIAL PREMISES THAT UTILIZE A SOLID OXIDE, MOLTEN CARBONATE, PROTON EXCHANGE MEMBRANE OR PHOSPHORIC ACID FUEL CELL THAT IS MANUFACTURED, INSTALLED AND OPERATED IN ACCORDANCE WITH APPLICABLE GOVERNMENT AND INDUSTRY STANDARDS. SUCH ARRANGEMENT OR COMPONENTS SHALL NOT INCLUDE EQUIPMENT THAT IS PART OF A NON-FUEL CELL ENERGY SYSTEM.

S 2. Paragraph 1 of subdivision (a) of section 1210 of the tax law, as amended by chapter 13 of the laws of 2013, is amended to read as follows:

(1) Either, all of the taxes described in article twenty-eight of this chapter, at the same uniform rate, as to which taxes all provisions of the local laws, ordinances or resolutions imposing such taxes shall be identical, except as to rate and except as otherwise provided, with the corresponding provisions in such article twenty-eight, including the definition and exemption provisions of such article, so far as the provisions of such article twenty-eight can be made applicable to the taxes imposed by such city or county and with such limitations and special provisions as are set forth in this article. The taxes authorized under this subdivision may not be imposed by a city or county unless the local law, ordinance or resolution imposes such taxes so as to include all portions and all types of receipts, charges or rents, subject to state tax under sections eleven hundred five and eleven hundred ten of this chapter, except as otherwise provided. (i) Any local law, ordinance or resolution enacted by any city of less than one million or by any county or school district, imposing the taxes authorized by this subdivision, shall, notwithstanding any provision of law to the contrary, exclude from the operation of such local taxes all sales of tangible personal property for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam, for sale, by manufacturing, processing, generating, assembly, refining, mining or extracting; and all sales of tangible personal property for use or consumption predominantly either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both; and, unless such city, county or school district elects otherwise, shall omit the provision for credit or refund contained in clause six of subdivision (a) or subdivision (d) of section eleven hundred nineteen of this chapter. (ii) Any local law, ordinance or resolution enacted by any city, county or school district, imposing the taxes authorized by this subdivision, shall omit the residential solar energy systems equipment exemption provided for in subdivision (ee), the commercial solar energy systems equipment exemption provided for in subdivision (ii), THE COMMERCIAL FUEL CELL ELECTRIC GENERATING EQUIPMENT EXEMPTION PROVIDED FOR IN SUBDIVISION (JJ), and the clothing and footwear exemption provided for in paragraph thirty of subdivision (a) of section eleven hundred fifteen of this chapter, unless such city, county or school district elects otherwise as to either such residential solar energy systems equipment exemption, such commercial solar energy systems equipment exemption, SUCH COMMERCIAL FUEL CELL ELECTRIC GENERATING EXEMPTION, or such clothing and footwear exemption.

S 3. 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 SAME EXEMPTIONS FROM SUCH TAXES AS THE COMMERCIAL FUEL CELL ELECTRIC GENERATING EQUIPMENT EXEMPTION FROM STATE SALES AND COMPENSATING USE TAXES DESCRIBED IN SUBDIVISION (JJ) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER BY ENACTING A RESOLUTION 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 EXEMPTIONS AS IF THEY 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, PROPERTY AND SERVICES EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES PURSUANT TO SUBDIVISION (JJ) OF SECTION 1115 OF THE TAX LAW SHALL ALSO BE EXEMPT FROM SALES AND COMPENSATING USE TAXES IMPOSED IN THIS JURISDICTION.

SECTION TWO. THIS RESOLUTION SHALL TAKE EFFECT JANUARY 1, (INSERT THE YEAR, BUT NOT EARLIER THAN THE YEAR 2016) AND SHALL APPLY TO SALES MADE, SERVICES RENDERED AND USES OCCURRING ON OR AFTER THAT DATE IN ACCORDANCE WITH THE APPLICABLE TRANSITIONAL PROVISIONS IN SECTIONS 1106, 1216 AND 1217 OF THE NEW YORK TAX LAW.

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