

7236

2015-2016 Regular Sessions

I N A S S E M B L Y

April 29, 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 commercial fuel cell systems and electricity provided by such sources from the sales tax imposed by article 28 of the tax law and omitting such exemption from the taxes imposed pursuant to the authority of article 29 of the tax law, unless a locality elects otherwise; and to repeal subdivisions (n) and (p) of section 1210 of such law relating to tax exemptions imposed by resolution in cities having a population of one million or more persons

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 (kk) to read as follows:
3 (KK) THE FOLLOWING SHALL BE EXEMPT FROM TAX UNDER THIS ARTICLE: (1)
4 RECEIPTS FROM THE RETAIL SALE OF, AND CONSIDERATION GIVEN OR CONTRACTED
5 TO BE GIVEN FOR, OR FOR THE USE OF, COMMERCIAL FUEL CELL SYSTEMS EQUIP-
6 MENT AND THE SERVICE OF INSTALLING SUCH SYSTEMS. FOR THE PURPOSES OF
7 THIS SUBDIVISION, "FUEL CELL ELECTRICITY GENERATING SYSTEMS EQUIPMENT"
8 SHALL MEAN AN ARRANGEMENT OR COMBINATION OF COMPONENTS INSTALLED UPON
9 NON-RESIDENTIAL PREMISES THAT UTILIZE SOLID OXIDE, MOLTEN CARBONATE,
10 PROTON EXCHANGE MEMBRANE OR PHOSPHORIC ACID FUEL CELL THAT IS MANUFAC-
11 TURED, INSTALLED AND OPERATED IN ACCORDANCE WITH APPLICABLE GOVERNMENT
12 AND INDUSTRY STANDARDS. SUCH ARRANGEMENT OR COMPONENTS SHALL NOT INCLUDE
13 EQUIPMENT THAT IS PART OF A NON-FUEL CELL ENERGY SYSTEM.
14 (2) RECEIPTS FROM THE SALE OF ELECTRICITY BY A PERSON PRIMARILY
15 ENGAGED IN THE SALE OF FUEL CELL SYSTEM EQUIPMENT AND/OR ELECTRICITY
16 GENERATED BY SUCH EQUIPMENT PURSUANT TO A WRITTEN AGREEMENT UNDER WHICH
17 THE ELECTRICITY IS GENERATED BY COMMERCIAL FUEL CELL SYSTEM EQUIPMENT
18 THAT IS: (A) OWNED BY A PERSON OTHER THAN THE PURCHASER OF SUCH ELEC-
19 TRICITY; (B) INSTALLED ON THE NON-RESIDENTIAL PREMISES OF THE PURCHASER

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

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1 OF SUCH ELECTRICITY; AND (C) USED TO PROVIDE HEATING, COOLING, HOT WATER
2 OR ELECTRICITY TO SUCH PREMISES.

3 S 2. Paragraphs 1 and 4 of subdivision (a) of section 1210 of the tax
4 law, paragraph 1 as amended by chapter 13 of the laws of 2013, and para-
5 graph 4 as amended by chapter 200 of the laws of 2009, are amended to
6 read as follows:

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

48 (4) Notwithstanding any other provision of law to the contrary, any
49 local law enacted by any city of one million or more that imposes the
50 taxes authorized by this subdivision (i) may omit the exception provided
51 in subparagraph (ii) of paragraph three of subdivision (c) of section
52 eleven hundred five of this chapter for receipts from laundering, dry-
53 cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining;
54 (ii) may impose the tax described in paragraph six of subdivision (c) of
55 section eleven hundred five of this chapter at a rate in addition to the
56 rate prescribed by this section not to exceed two percent in multiples

1 of one-half of one percent; (iii) shall provide that the tax described
2 in paragraph six of subdivision (c) of section eleven hundred five of
3 this chapter does not apply to facilities owned and operated by the city
4 or an agency or instrumentality of the city or a public corporation the
5 majority of whose members are appointed by the chief executive officer
6 of the city or the legislative body of the city or both of them; (iv)
7 shall not include any tax on receipts from, or the use of, the services
8 described in paragraph seven of subdivision (c) of section eleven
9 hundred five of this chapter; (v) shall provide that, for purposes of
10 the tax described in subdivision (e) of section eleven hundred five of
11 this chapter, "permanent resident" means any occupant of any room or
12 rooms in a hotel for at least one hundred eighty consecutive days with
13 regard to the period of such occupancy; (vi) may omit the exception
14 provided in paragraph one of subdivision (f) of section eleven hundred
15 five of this chapter for charges to a patron for admission to, or use
16 of, facilities for sporting activities in which the patron is to be a
17 participant, such as bowling alleys and swimming pools; (vii) may
18 provide the clothing and footwear exemption in paragraph thirty of
19 subdivision (a) of section eleven hundred fifteen of this chapter, and,
20 notwithstanding any provision of subdivision (d) of this section to the
21 contrary, any local law providing for such exemption or repealing such
22 exemption, may go into effect on any one of the following dates: March
23 first, June first, September first or December first; (viii) shall omit
24 the exemption provided in paragraph forty-one of subdivision (a) of
25 section eleven hundred fifteen of this chapter; (ix) shall omit the
26 exemption provided in subdivision (c) of section eleven hundred fifteen
27 of this chapter insofar as it applies to fuel, gas, electricity, refriger-
28 eration and steam, and gas, electric, refrigeration and steam service of
29 whatever nature for use or consumption directly and exclusively in the
30 production of gas, electricity, refrigeration or steam; (x) shall omit,
31 unless such city elects otherwise, the provision for refund or credit
32 contained in clause six of subdivision (a) or in subdivision (d) of
33 section eleven hundred nineteen of this chapter; [and] (xi) shall
34 provide that section eleven hundred five-C of this chapter does not
35 apply to such taxes, and shall tax receipts from every sale, other than
36 sales for resale, of gas service or electric service of whatever nature,
37 including the transportation, transmission or distribution of gas or
38 electricity, even if sold separately, at the rate set forth in clause
39 one of subparagraph (i) of the opening paragraph of this section; (XII)
40 SHALL OMIT, UNLESS SUCH CITY ELECTS OTHERWISE, THE EXEMPTION FOR COMMER-
41 CIAL FUEL CELL SYSTEMS EQUIPMENT AND ELECTRICITY PROVIDED IN SUBDIVISION
42 (KK) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER. ANY REFERENCE
43 IN THIS CHAPTER OR IN ANY LOCAL LAW, ORDINANCE OR RESOLUTION ENACTED
44 PURSUANT TO THE AUTHORITY OF THIS ARTICLE TO FORMER SUBDIVISIONS (N) OR
45 (P) OF THIS SECTION SHALL BE DEEMED TO BE A REFERENCE TO CLAUSE (XII) OF
46 THIS PARAGRAPH, RESPECTIVELY, AND ANY SUCH LOCAL LAW, ORDINANCE OR
47 RESOLUTION THAT PROVIDES THE EXEMPTIONS PROVIDED IN SUCH FORMER SUBDIVI-
48 SIONS (N) AND/OR (P) SHALL BE DEEMED INSTEAD TO PROVIDE THE EXEMPTIONS
49 PROVIDED IN CLAUSE (XII) OF THIS PARAGRAPH.

50 S 2-a. Paragraphs 1 and 4 of subdivision (a) of section 1210 of the
51 tax law, as amended by section 3 of part Z of chapter 59 of the laws of
52 2015, is amended to read as follows:

53 (1) Either, all of the taxes described in article twenty-eight of this
54 chapter, at the same uniform rate, as to which taxes all provisions of
55 the local laws, ordinances or resolutions imposing such taxes shall be
56 identical, except as to rate and except as otherwise provided, with the

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 and electricity exemption provided for in subdivision (ee), the commer-
29 cial solar energy systems equipment and electricity exemption provided
30 for in subdivision (ii), THE COMMERCIAL FUEL CELL SYSTEMS EQUIPMENT AND
31 ELECTRICITY EXEMPTION PROVIDED FOR IN SUBDIVISION (KK) and the clothing
32 and footwear exemption provided for in paragraph thirty of subdivision
33 (a) of section eleven hundred fifteen of this chapter, unless such city,
34 county or school district elects otherwise as to [either] such residen-
35 tial solar energy systems equipment and electricity exemption, such
36 commercial solar energy systems equipment and electricity exemption,
37 COMMERCIAL FUEL CELL SYSTEMS EQUIPMENT AND ELECTRICITY EXEMPTION or such
38 clothing and footwear exemption.

39 (4) Notwithstanding any other provision of law to the contrary, any
40 local law enacted by any city of one million or more that imposes the
41 taxes authorized by this subdivision (i) may omit the exception provided
42 in subparagraph (ii) of paragraph three of subdivision (c) of section
43 eleven hundred five of this chapter for receipts from laundering, dry-
44 cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining;
45 (ii) may impose the tax described in paragraph six of subdivision (c) of
46 section eleven hundred five of this chapter at a rate in addition to the
47 rate prescribed by this section not to exceed two percent in multiples
48 of one-half of one percent; (iii) shall provide that the tax described
49 in paragraph six of subdivision (c) of section eleven hundred five of
50 this chapter does not apply to facilities owned and operated by the city
51 or an agency or instrumentality of the city or a public corporation the
52 majority of whose members are appointed by the chief executive officer
53 of the city or the legislative body of the city or both of them; (iv)
54 shall not include any tax on receipts from, or the use of, the services
55 described in paragraph seven of subdivision (c) of section eleven
56 hundred five of this chapter; (v) shall provide that, for purposes of

1 the tax described in subdivision (e) of section eleven hundred five of
2 this chapter, "permanent resident" means any occupant of any room or
3 rooms in a hotel for at least one hundred eighty consecutive days with
4 regard to the period of such occupancy; (vi) may omit the exception
5 provided in paragraph one of subdivision (f) of section eleven hundred
6 five of this chapter for charges to a patron for admission to, or use
7 of, facilities for sporting activities in which the patron is to be a
8 participant, such as bowling alleys and swimming pools; (vii) may
9 provide the clothing and footwear exemption in paragraph thirty of
10 subdivision (a) of section eleven hundred fifteen of this chapter, and,
11 notwithstanding any provision of subdivision (d) of this section to the
12 contrary, any local law providing for such exemption or repealing such
13 exemption, may go into effect on any one of the following dates: March
14 first, June first, September first or December first; (viii) shall omit
15 the exemption provided in paragraph forty-one of subdivision (a) of
16 section eleven hundred fifteen of this chapter; (ix) shall omit the
17 exemption provided in subdivision (c) of section eleven hundred fifteen
18 of this chapter insofar as it applies to fuel, gas, electricity, refriger-
19 eration and steam, and gas, electric, refrigeration and steam service of
20 whatever nature for use or consumption directly and exclusively in the
21 production of gas, electricity, refrigeration or steam; (x) shall omit,
22 unless such city elects otherwise, the provision for refund or credit
23 contained in clause six of subdivision (a) or in subdivision (d) of
24 section eleven hundred nineteen of this chapter; (xi) shall provide that
25 section eleven hundred five-C of this chapter does not apply to such
26 taxes, and shall tax receipts from every sale, other than sales for
27 resale, of gas service or electric service of whatever nature, including
28 the transportation, transmission or distribution of gas or electricity,
29 even if sold separately, at the rate set forth in clause one of subpara-
30 graph (i) of the opening paragraph of this section; (xii) shall omit,
31 unless such city elects otherwise, the exemption for residential solar
32 energy systems equipment and electricity provided in subdivision (ee) of
33 section eleven hundred fifteen of this chapter; [and] (xiii) shall omit,
34 unless such city elects otherwise, the exemption for commercial solar
35 energy systems equipment and electricity provided in subdivision (ii) of
36 section eleven hundred fifteen of this chapter; AND (XIV) SHALL OMIT,
37 UNLESS SUCH CITY ELECTS OTHERWISE, THE EXEMPTION FOR COMMERCIAL FUEL
38 CELL SYSTEMS EQUIPMENT AND ELECTRICITY PROVIDED IN SUBDIVISION (KK) OF
39 SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER. Any reference in this
40 chapter or in any local law, ordinance or resolution enacted pursuant to
41 the authority of this article to former subdivisions (n) or (p) of this
42 section shall be deemed to be a reference to clauses (xii) [or], (xiii)
43 OR (XIV) of this paragraph, respectively, and any such local law, ordi-
44 nance or resolution that provides the exemptions provided in such former
45 subdivisions (n) and/or (p) shall be deemed instead to provide the
46 exemptions provided in clauses (xii) [and/or], (xiii) AND/OR (XIV) of
47 this paragraph.

48 S 3. Paragraph 1 of subdivision (b) of section 1210 of the tax law,
49 paragraph 1 as amended by section 36 of part S-1 of chapter 57 of the
50 laws of 2009, is amended to read as follows:

51 (1) Or, one or more of the taxes described in subdivisions (b), (d),
52 (e) and (f) of section eleven hundred five of this chapter, at the same
53 uniform rate, including the transitional provisions in section eleven
54 hundred six of this chapter covering such taxes, but not the taxes
55 described in subdivisions (a) and (c) of section eleven hundred five of
56 this chapter. Provided, further, that where the tax described in subdi-

1 vision (b) of section eleven hundred five of this chapter is imposed,
2 the compensating use taxes described in clauses (E), (G) and (H) of
3 subdivision (a) of section eleven hundred ten of this chapter shall also
4 be imposed. Provided, further, that where the taxes described in subdivi-
5 sion (b) of section eleven hundred five are imposed, such taxes shall
6 omit: (A) the provision for refund or credit contained in subdivision
7 (d) of section eleven hundred nineteen of this chapter with respect to
8 such taxes described in such subdivision (b) of section eleven hundred
9 five unless such city or county elects to provide such provision or, if
10 so elected, to repeal such provision; (B) THE EXEMPTION PROVIDED IN
11 PARAGRAPH TWO OF SUBDIVISION (KK) OF SECTION ELEVEN HUNDRED FIFTEEN OF
12 THIS CHAPTER, UNLESS SUCH COUNTY OR CITY ELECTS OTHERWISE.

13 S 3-a. Paragraph 1 of subdivision (b) of section 1210 of the tax law,
14 as amended by section 4 of part Z of chapter 59 of the laws of 2015, is
15 amended to read as follows:

16 (1) Or, one or more of the taxes described in subdivisions (b), (d),
17 (e) and (f) of section eleven hundred five of this chapter, at the same
18 uniform rate, including the transitional provisions in section eleven
19 hundred six of this chapter covering such taxes, but not the taxes
20 described in subdivisions (a) and (c) of section eleven hundred five of
21 this chapter. Provided, further, that where the tax described in subdivi-
22 sion (b) of section eleven hundred five of this chapter is imposed,
23 the compensating use taxes described in clauses (E), (G) and (H) of
24 subdivision (a) of section eleven hundred ten of this chapter shall also
25 be imposed. Provided, further, that where the taxes described in subdivi-
26 sion (b) of section eleven hundred five are imposed, such taxes shall
27 omit: (A) the provision for refund or credit contained in subdivision
28 (d) of section eleven hundred nineteen of this chapter with respect to
29 such taxes described in such subdivision (b) of section eleven hundred
30 five unless such city or county elects to provide such provision or, if
31 so elected, to repeal such provision; (B) the exemption provided in
32 paragraph two of subdivision (ee) of section eleven hundred fifteen of
33 this chapter unless such county or city elects otherwise; [and] (C) the
34 exemption provided in paragraph two of subdivision (ii) of section elev-
35 en hundred fifteen of this chapter, unless such county or city elects
36 otherwise; AND (D) THE EXEMPTION PROVIDED IN PARAGRAPH TWO OF SUBDIVI-
37 SION (KK) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER, UNLESS SUCH
38 COUNTY OR CITY ELECTS OTHERWISE.

39 S 4. Subdivision (d) of section 1210 of the tax law, as amended by
40 section 37 of part S-1 of chapter 57 of the laws of 2009, is amended to
41 read as follows:

42 (d) A local law, ordinance or resolution imposing any tax pursuant to
43 this section, increasing or decreasing the rate of such tax, repealing
44 or suspending such tax, exempting from such tax the energy sources and
45 services described in paragraph three of subdivision (a) or of subdivi-
46 sion (b) of this section or changing the rate of tax imposed on such
47 energy sources and services or providing for the credit or refund
48 described in clause six of subdivision (a) of section eleven hundred
49 nineteen of this chapter, OR ELECTING OR REPEALING THE EXEMPTION FOR
50 COMMERCIAL FUEL CELL EQUIPMENT AND ELECTRICITY IN SUBDIVISION (KK) OF
51 SECTION ELEVEN HUNDRED FIFTEEN OF THIS ARTICLE must go into effect only
52 on one of the following dates: March first, June first, September first
53 or December first; provided, that a local law, ordinance or resolution
54 providing for the exemption described in paragraph thirty of subdivision
55 (a) of section eleven hundred fifteen of this chapter or repealing any
56 such exemption or a local law, ordinance or resolution providing for a

1 refund or credit described in subdivision (d) of section eleven hundred
2 nineteen of this chapter or repealing such provision so provided must go
3 into effect only on March first. No such local law, ordinance or resol-
4 ution shall be effective unless a certified copy of such law, ordinance
5 or resolution is mailed by registered or certified mail to the commis-
6 sioner at the commissioner's office in Albany at least ninety days prior
7 to the date it is to become effective. However, the commissioner may
8 waive and reduce such ninety-day minimum notice requirement to a mailing
9 of such certified copy by registered or certified mail within a period
10 of not less than thirty days prior to such effective date if the commis-
11 sioner deems such action to be consistent with the commissioner's duties
12 under section twelve hundred fifty of this article and the commissioner
13 acts by resolution. Where the restriction provided for in section twelve
14 hundred twenty-three of this article as to the effective date of a tax
15 and the notice requirement provided for therein are applicable and have
16 not been waived, the restriction and notice requirement in section
17 twelve hundred twenty-three of this article shall also apply.

18 S 4-a Subdivision (d) of section 1210 of the tax law, as amended by
19 section 4-a of part Z of chapter 59 of the laws of 2015, is amended to
20 read as follows:

21 (d) A local law, ordinance or resolution imposing any tax pursuant to
22 this section, increasing or decreasing the rate of such tax, repealing
23 or suspending such tax, exempting from such tax the energy sources and
24 services described in paragraph three of subdivision (a) or of subdivi-
25 sion (b) of this section or changing the rate of tax imposed on such
26 energy sources and services or providing for the credit or refund
27 described in clause six of subdivision (a) of section eleven hundred
28 nineteen of this chapter, or electing or repealing the exemption for
29 residential solar equipment and electricity in subdivision (ee) of
30 section eleven hundred fifteen of this article, or the exemption for
31 commercial solar equipment and electricity in subdivision (ii) of
32 section eleven hundred fifteen of this article, OR ELECTING OR REPEALING
33 THE EXEMPTION FOR COMMERCIAL FUEL CELL EQUIPMENT AND ELECTRICITY IN
34 SUBDIVISION (KK) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS ARTICLE must
35 go into effect only on one of the following dates: March first, June
36 first, September first or December first; provided, that a local law,
37 ordinance or resolution providing for the exemption described in para-
38 graph thirty of subdivision (a) of section eleven hundred fifteen of
39 this chapter or repealing any such exemption or a local law, ordinance
40 or resolution providing for a refund or credit described in subdivision
41 (d) of section eleven hundred nineteen of this chapter or repealing such
42 provision so provided must go into effect only on March first. No such
43 local law, ordinance or resolution shall be effective unless a certified
44 copy of such law, ordinance or resolution is mailed by registered or
45 certified mail to the commissioner at the commissioner's office in Alba-
46 ny at least ninety days prior to the date it is to become effective.
47 However, the commissioner may waive and reduce such ninety-day minimum
48 notice requirement to a mailing of such certified copy by registered or
49 certified mail within a period of not less than thirty days prior to
50 such effective date if the commissioner deems such action to be consist-
51 ent with the commissioner's duties under section twelve hundred fifty of
52 this article and the commissioner acts by resolution. Where the
53 restriction provided for in section twelve hundred twenty-three of this
54 article as to the effective date of a tax and the notice requirement
55 provided for therein are applicable and have not been waived, the

1 restriction and notice requirement in section twelve hundred twenty-
2 three of this article shall also apply.

3 S 5. Subdivisions (n) and (p) of section 1210 of the tax law are
4 REPEALED.

5 S 6. Subdivision (a) of section 1212 of the tax law, as amended by
6 section 40 of part S-1 of chapter 57 of the laws of 2009, is amended to
7 read as follows:

8 (a) Any school district which is coterminous with, partly within or
9 wholly within a city having a population of less than one hundred twen-
10 ty-five thousand, is hereby authorized and empowered, by majority vote
11 of the whole number of its school authorities, to impose for school
12 district purposes, within the territorial limits of such school district
13 and without discrimination between residents and nonresidents thereof,
14 the taxes described in subdivision (b) of section eleven hundred five
15 (but excluding the tax on prepaid telephone calling services) and the
16 taxes described in clauses (E) and (H) of subdivision (a) of section
17 eleven hundred ten, including the transitional provisions in subdivision
18 (b) of section eleven hundred six of this chapter, so far as such
19 provisions can be made applicable to the taxes imposed by such school
20 district and with such limitations and special provisions as are set
21 forth in this article, such taxes to be imposed at the rate of one-half,
22 one, one and one-half, two, two and one-half or three percent which rate
23 shall be uniform for all portions and all types of receipts and uses
24 subject to such taxes. In respect to such taxes, all provisions of the
25 resolution imposing them, except as to rate and except as otherwise
26 provided herein, shall be identical with the corresponding provisions in
27 such article twenty-eight of this chapter, including the applicable
28 definition and exemption provisions of such article, so far as the
29 provisions of such article twenty-eight of this chapter can be made
30 applicable to the taxes imposed by such school district and with such
31 limitations and special provisions as are set forth in this article. The
32 taxes described in subdivision (b) of section eleven hundred five (but
33 excluding the tax on prepaid telephone calling service) and clauses (E)
34 and (H) of subdivision (a) of section eleven hundred ten, including the
35 transitional provision in subdivision (b) of such section eleven hundred
36 six of this chapter, may not be imposed by such school district unless
37 the resolution imposes such taxes so as to include all portions and all
38 types of receipts and uses subject to tax under such subdivision (but
39 excluding the tax on prepaid telephone calling service) and clauses.
40 Provided, however, that, where a school district imposes such taxes,
41 such taxes shall omit the provision for refund or credit contained in
42 subdivision (d) of section eleven hundred nineteen of this chapter with
43 respect to such taxes described in such subdivision (b) of section elev-
44 en hundred five unless such school district elects to provide such
45 provision or, if so elected, to repeal such provision, AND SHALL OMIT
46 THE EXEMPTION PROVIDED IN PARAGRAPH TWO OF SUBDIVISION (KK) OF SECTION
47 ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER UNLESS SUCH SCHOOL DISTRICT
48 ELECTS OTHERWISE.

49 S 6-a. Subdivision (a) of section 1212 of the tax law, as amended by
50 section 6 of part Z of chapter 59 of the laws of 2015, is amended to
51 read as follows:

52 (a) Any school district which is coterminous with, partly within or
53 wholly within a city having a population of less than one hundred twen-
54 ty-five thousand, is hereby authorized and empowered, by majority vote
55 of the whole number of its school authorities, to impose for school
56 district purposes, within the territorial limits of such school district

1 and without discrimination between residents and nonresidents thereof,
2 the taxes described in subdivision (b) of section eleven hundred five
3 (but excluding the tax on prepaid telephone calling services) and the
4 taxes described in clauses (E) and (H) of subdivision (a) of section
5 eleven hundred ten, including the transitional provisions in subdivision
6 (b) of section eleven hundred six of this chapter, so far as such
7 provisions can be made applicable to the taxes imposed by such school
8 district and with such limitations and special provisions as are set
9 forth in this article, such taxes to be imposed at the rate of one-half,
10 one, one and one-half, two, two and one-half or three percent which rate
11 shall be uniform for all portions and all types of receipts and uses
12 subject to such taxes. In respect to such taxes, all provisions of the
13 resolution imposing them, except as to rate and except as otherwise
14 provided herein, shall be identical with the corresponding provisions in
15 such article twenty-eight of this chapter, including the applicable
16 definition and exemption provisions of such article, so far as the
17 provisions of such article twenty-eight of this chapter can be made
18 applicable to the taxes imposed by such school district and with such
19 limitations and special provisions as are set forth in this article. The
20 taxes described in subdivision (b) of section eleven hundred five (but
21 excluding the tax on prepaid telephone calling service) and clauses (E)
22 and (H) of subdivision (a) of section eleven hundred ten, including the
23 transitional provision in subdivision (b) of such section eleven hundred
24 six of this chapter, may not be imposed by such school district unless
25 the resolution imposes such taxes so as to include all portions and all
26 types of receipts and uses subject to tax under such subdivision (but
27 excluding the tax on prepaid telephone calling service) and clauses.
28 Provided, however, that, where a school district imposes such taxes,
29 such taxes shall omit the provision for refund or credit contained in
30 subdivision (d) of section eleven hundred nineteen of this chapter with
31 respect to such taxes described in such subdivision (b) of section eleven
32 hundred five unless such school district elects to provide such
33 provision or, if so elected, to repeal such provision, and shall omit
34 the exemptions provided in paragraph two of subdivision (ee) and para-
35 graph two of subdivision (ii) of section eleven hundred fifteen of this
36 chapter unless such school district elects otherwise, AND SHALL OMIT THE
37 EXEMPTION PROVIDED IN PARAGRAPH TWO OF SUBDIVISION (KK) OF SECTION ELEVEN
38 HUNDRED FIFTEEN OF THIS CHAPTER UNLESS SUCH SCHOOL DISTRICT ELECTS
39 OTHERWISE.

40 S 7. Section 1224 of the tax law is amended by adding a new subdivi-
41 sion (c-2) to read as follows:

42 (C-2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW: (1) WHERE A COUNTY
43 CONTAINING ONE OR MORE CITIES WITH A POPULATION OF LESS THAN ONE MILLION
44 HAS ELECTED THE EXEMPTION FOR COMMERCIAL FUEL CELL SYSTEMS EQUIPMENT AND
45 ELECTRICITY PROVIDED IN SUBDIVISION (KK) OF SUCH SECTION ELEVEN HUNDRED
46 FIFTEEN, A CITY WITHIN SUCH COUNTY SHALL HAVE THE PRIOR RIGHT TO IMPOSE
47 TAX ON SUCH EXEMPT EQUIPMENT AND/OR ELECTRICITY TO THE EXTENT OF ONE
48 HALF OF THE MAXIMUM RATES AUTHORIZED UNDER SUBDIVISION (A) OF SECTION
49 TWELVE HUNDRED TEN OF THIS ARTICLE;

50 (2) WHERE A CITY OF LESS THAN ONE MILLION HAS ELECTED THE EXEMPTION
51 FOR COMMERCIAL FUEL CELL SYSTEMS EQUIPMENT AND ELECTRICITY PROVIDED IN
52 SUBDIVISION (KK) OF SUCH SECTION ELEVEN HUNDRED FIFTEEN, THE COUNTY IN
53 WHICH SUCH CITY IS LOCATED SHALL HAVE THE PRIOR RIGHT TO IMPOSE TAX ON
54 SUCH EXEMPT EQUIPMENT AND/OR ELECTRICITY TO THE EXTENT OF ONE HALF OF
55 THE MAXIMUM RATES AUTHORIZED UNDER SUBDIVISION (A) OF SECTION TWELVE
56 HUNDRED TEN OF THIS ARTICLE.

1 S 8. This act shall take effect December 1, 2015; provided, however,
2 that sections two-a, three-a, four-a and six-a of this act shall take
3 effect on the same date and same manner as part Z of chapter 59 of the
4 laws of 2015, takes effect, and this act shall apply in accordance with
5 the applicable transitional provisions in sections 1106 and 1217 of the
6 tax law.