

9103--A

I N A S S E M B L Y

January 26, 2016

Introduced by M. of A. KOLB, OAKS -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to excise tax on telecommunications services (Part A); and to amend the tax law, in relation to temporary municipal assistance sales and compensating use taxes for cities of one million or more on telecommunications services (Part B)

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

1 Section 1. This act enacts into law components of legislation relating
2 to the "mobile tax freedom act". Each component is wholly contained
3 within a Part identified as Parts A through B. The effective date for
4 each particular provision contained within such Part is set forth in the
5 last section of such Part. Any provision in any section contained within
6 a Part, including the effective date of the Part, which makes a refer-
7 ence to a section "of this act", when used in connection with that
8 particular component, shall be deemed to mean and refer to the corre-
9 sponding section of the Part in which it is found. Section three of this
10 act sets forth the general effective date of this act.

11 PART A

12 Section 1. Subdivision (cc) of section 1115 of the tax law, as added
13 by section 11 of part S of chapter 85 of the laws of 2002, is amended to
14 read as follows:

15 (cc) Notwithstanding any other provision of law to the contrary,
16 receipts from the sale of mobile telecommunications service [by a home
17 service provider] shall be exempt from the taxes imposed by subparagraph
18 (B) of paragraph one and paragraph two of subdivision (b) of section
19 eleven hundred five of this article [if the mobile telecommunications
20 customer's place of primary use is within a taxing jurisdiction outside
21 this state].

22 S 2. Paragraphs (a) and (h) of subdivision 1 and paragraph (a) of
23 subdivision 2 of section 186-e of the tax law, paragraph (a) of subdivi-
24 sion 1 as amended by section 2 and paragraph (h) of subdivision 1 as
25 added by section 3 of part S of chapter 85 of the laws of 2002, and

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

LBD13548-05-6

1 paragraph (a) of subdivision 2 as amended by section 2 of part P of
2 chapter 59 of the laws of 2015, are amended to read as follows:

3 (a) [(1)] "Gross receipt" means the amount received in or by reason of
4 any sale, conditional or otherwise, of telecommunication services or in
5 or by reason of the furnishing of telecommunication services. [Gross
6 receipt from the sale of mobile telecommunications service provided by a
7 home service provider shall include "charges for mobile telecommuni-
8 cations service" as described in paragraph one of subdivision (1) of
9 section eleven hundred eleven of this chapter, regardless of where the
10 mobile telecommunications service originates, terminates or passes
11 through.] Gross receipt is expressed in money, whether paid in cash,
12 credit or property of any kind or nature, and shall be determined with-
13 out any deduction therefrom on account of the cost of the service sold
14 or the cost of materials, labor or services used or other costs, inter-
15 est or discount paid, or any other expenses whatsoever except that there
16 shall, however, be allowed a deduction for bad debts with respect to
17 charges previously subjected to the tax hereunder when the debt has
18 become worthless in accordance with generally accepted accounting prin-
19 ciples consistently applied by the taxpayer. "Amount received" for the
20 purpose of the definition of gross receipt, as the term gross receipt is
21 used throughout this article, means the amount charged for the provision
22 of a telecommunication service.

23 [(2) (A) Any charge for a service or property billed by or for a
24 mobile telecommunications customer's home service provider shall be
25 deemed to be provided by such mobile telecommunications customer's home
26 service provider.

27 (B) Charges for mobile telecommunications service that are provided or
28 deemed to be provided by a mobile telecommunications customer's home
29 service provider shall be sourced to the taxing jurisdiction where the
30 mobile telecommunications customer's place of primary use is located,
31 regardless of where the mobile telecommunications service originates,
32 terminates or passes through.]

33 [(h) For the purpose of applying the provisions of this section to
34 mobile telecommunications service, the following terms when used in
35 relation to mobile telecommunications service shall be defined as such
36 terms are defined in section eleven hundred one of this chapter: "mobile
37 telecommunications service," "mobile telecommunications customer," "home
38 service provider," "licensed service area," "reseller," "serving carri-
39 er," "place of primary use" and "taxing jurisdiction".]

40 (a) [(1)] There is hereby imposed an excise tax on the sale of tele-
41 communication services[, except for the sale of mobile telecommunication
42 services that are subject to tax under subparagraph two of this para-
43 graph, by any person which is a provider of telecommunication services,]
44 to be paid by such person, at the rate of three and one-half percent
45 prior to October first, nineteen hundred ninety-eight, three and one-
46 quarter percent from October first, nineteen hundred ninety-eight
47 through December thirty-first, nineteen hundred ninety-nine, and two and
48 one-half percent on and after January first, two thousand of gross
49 receipt from: (i) any intrastate telecommunication services; (ii) any
50 interstate and international telecommunication services (other than
51 interstate and international private telecommunication services) which
52 originate or terminate in this state and which telecommunication
53 services are charged to a service address in this state, regardless of
54 where the amounts charged for such services are billed or ultimately
55 paid; and (iii) interstate and international private telecommunication

1 services, the gross receipt to which the tax shall apply shall be deter-
2 mined as prescribed in subdivision three of this section.

3 [(2) There is hereby imposed an excise tax on the sale of mobile tele-
4 communication services, by any person which is a provider of telecommu-
5 nication services, to be paid by such person, at the rate of two and
6 nine-tenths percent on and after May first, two thousand fifteen of
7 gross receipts from any mobile telecommunications service provided by a
8 home service provider where the mobile telecommunications customer's
9 place of primary use is within this state.]

10 S 3. Paragraph (b) of subdivision 2 of section 186-e of the tax law is
11 amended by adding a new subparagraph 5 to read as follows:

12 (5) MOBILE TELECOMMUNICATIONS EXCLUSION. THE SALE OF MOBILE TELECOMMU-
13 NICATION SERVICE SHALL IN NO EVENT CONSTITUTE A TELECOMMUNICATIONS
14 SERVICE, AND THE RECEIPTS FROM THE SALE OF SUCH SERVICE ARE WITHOUT THE
15 SCOPE OF THE TAX IMPOSED BY THIS SECTION.

16 S 4. Paragraph (b) of subdivision 1 of section 186-c of the tax law,
17 as amended by section 1 of part P of chapter 59 of the laws of 2015, is
18 amended to read as follows:

19 (b) [(1)] In addition to the surcharge imposed by paragraph (a) of
20 this subdivision, there is hereby imposed a surcharge on the gross
21 receipts from telecommunication services[, except for the gross receipts
22 from mobile telecommunication services that are subject to tax under
23 subparagraph two of this paragraph,] relating to the metropolitan commu-
24 ter transportation district at the rate of seventeen percent of the
25 state tax rate under section one hundred eighty-six-e of this article.
26 All the definitions and other provisions of section one hundred eighty-
27 six-e of this article shall apply to the tax imposed by this subpara-
28 graph with such modification and limitation as may be necessary (includ-
29 ing substituting the words "metropolitan commuter transportation
30 district" for "state" where appropriate) in order to adapt the language
31 of such section one hundred eighty-six-e of this article to the
32 surcharge imposed by this subparagraph within such metropolitan commuter
33 transportation district so as to include (i) any intra-district telecom-
34 munication services, (ii) any inter-district telecommunication services
35 which originate or terminate in such district and are charged to a
36 service address therein regardless of where the amounts charged for such
37 services are billed or ultimately paid, and (iii) as apportioned to such
38 district, private telecommunication services. Provided however, such tax
39 surcharge shall be calculated as if the tax imposed under section one
40 hundred eighty-six-e of this article were imposed at a rate of three and
41 one-half percent.

42 [(2) In addition to the surcharge imposed by paragraph (a) of this
43 subdivision, there is hereby imposed a surcharge on the gross receipts
44 from mobile telecommunication services relating to the metropolitan
45 commuter transportation district at the rate of seven-tenths and two-
46 hundredths and one-thousandth percent on and after May first, two thou-
47 sand fifteen. All the definitions and other provisions of section one
48 hundred eighty-six-e of this article shall apply to the tax imposed by
49 this subparagraph with such modification and limitation as may be neces-
50 sary (including substituting the words "metropolitan commuter transpor-
51 tation district" for "state" where appropriate) in order to adapt the
52 language of such section one hundred eighty-six-e of this article to the
53 surcharge imposed by this subparagraph within such metropolitan commuter
54 transportation district so as to include any mobile telecommunications
55 service provided by a home service provider where the mobile telecommu-

1 nications customer's place of primary use is within such metropolitan
2 commuter transportation district.]

3 S 5. This act shall take effect on the first day of the sales tax
4 quarterly period, as described in subdivision (b) of section 1136 of the
5 tax law, beginning at least ninety days after the date this act shall
6 have become a law and shall apply in accordance with the applicable
7 transitional provisions of sections 1106 and 1217 of the tax law.

8

PART B

9 Section 1. Subdivision (b) of section 1107 of the tax law is amended
10 by adding a new clause 12 to read as follows:

11 (12) EXCEPT AS OTHERWISE PROVIDED BY LAW, THE EXEMPTION PROVIDED IN
12 SUBDIVISION (CC) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS ARTICLE
13 RELATING TO MOBILE TELECOMMUNICATION SERVICES SHALL BE APPLICABLE PURSU-
14 ANT TO A LOCAL LAW, ORDINANCE OR RESOLUTION ADOPTED BY A CITY SUBJECT TO
15 THE PROVISIONS OF THIS SECTION. SUCH CITY IS EMPOWERED TO ADOPT OR
16 REPEAL SUCH A LOCAL LAW, ORDINANCE OR RESOLUTION. SUCH ADOPTION OR
17 REPEAL SHALL ALSO BE DEEMED TO AMEND ANY LOCAL LAW, ORDINANCE OR RESOL-
18 UTION ENACTED BY SUCH A CITY IMPOSING TAXES PURSUANT TO THE AUTHORITY OF
19 SUBDIVISION (A) OF SECTION TWELVE HUNDRED TEN OF THIS CHAPTER.

20 S 2. Paragraph 1 of subdivision (a) of section 1210 of the tax law, as
21 amended by section 3 of part Z of chapter 59 of the laws of 2015, is
22 amended to read as follows:

23 (1) Either, all of the taxes described in article twenty-eight of this
24 chapter, at the same uniform rate, as to which taxes all provisions of
25 the local laws, ordinances or resolutions imposing such taxes shall be
26 identical, except as to rate and except as otherwise provided, with the
27 corresponding provisions in such article twenty-eight, including the
28 definition and exemption provisions of such article, so far as the
29 provisions of such article twenty-eight can be made applicable to the
30 taxes imposed by such city or county and with such limitations and
31 special provisions as are set forth in this article. The taxes author-
32 ized under this subdivision may not be imposed by a city or county
33 unless the local law, ordinance or resolution imposes such taxes so as
34 to include all portions and all types of receipts, charges or rents,
35 subject to state tax under sections eleven hundred five and eleven
36 hundred ten of this chapter, except as otherwise provided. (i) Any local
37 law, ordinance or resolution enacted by any city of less than one
38 million or by any county or school district, imposing the taxes author-
39 ized by this subdivision, shall, notwithstanding any provision of law to
40 the contrary, exclude from the operation of such local taxes all sales
41 of tangible personal property for use or consumption directly and
42 predominantly in the production of tangible personal property, gas,
43 electricity, refrigeration or steam, for sale, by manufacturing, proc-
44 essing, generating, assembly, refining, mining or extracting; and all
45 sales of tangible personal property for use or consumption predominantly
46 either in the production of tangible personal property, for sale, by
47 farming or in a commercial horse boarding operation, or in both; and,
48 unless such city, county or school district elects otherwise, shall omit
49 the provision for credit or refund contained in clause six of subdivi-
50 sion (a) or subdivision (d) of section eleven hundred nineteen of this
51 chapter. (ii) Any local law, ordinance or resolution enacted by any
52 city, county or school district, imposing the taxes authorized by this
53 subdivision, shall omit the residential solar energy systems equipment
54 and electricity exemption provided for in subdivision (ee), the commer-

1 cial solar energy systems equipment and electricity exemption provided
2 for in subdivision (ii) and the clothing and footwear exemption provided
3 for in paragraph thirty of subdivision (a) of section eleven hundred
4 fifteen of this chapter, unless such city, county or school district
5 elects otherwise as to either such residential solar energy systems
6 equipment and electricity exemption, such commercial solar energy
7 systems equipment and electricity exemption or such clothing and foot-
8 wear exemption. ANY LOCAL LAW, ORDINANCE OR RESOLUTION ENACTED BY ANY
9 CITY, COUNTY OR SCHOOL DISTRICT, IMPOSING THE TAXES AUTHORIZED BY THIS
10 SUBDIVISION, SHALL OMIT THE MOBILE TELECOMMUNICATION SERVICES EXEMPTION
11 PROVIDED FOR IN SUBDIVISION (CC) OF SECTION ELEVEN HUNDRED FIFTEEN OF
12 THIS CHAPTER, UNLESS SUCH CITY, COUNTY OR SCHOOL DISTRICT ELECTS OTHER-
13 WISE; PROVIDED THAT IF SUCH A CITY HAVING A POPULATION OF ONE MILLION OR
14 MORE ENACTS THE RESOLUTION DESCRIBED IN SUBDIVISION (P) OF THIS SECTION
15 OR REPEALS SUCH RESOLUTION, SUCH RESOLUTION OR REPEAL SHALL ALSO BE
16 DEEMED TO AMEND ANY LOCAL LAW, ORDINANCE OR RESOLUTION ENACTED BY SUCH A
17 CITY IMPOSING SUCH TAXES PURSUANT TO THE AUTHORITY OF THIS SUBDIVISION,
18 WHETHER OR NOT SUCH TAXES ARE SUSPENDED AT THE TIME SUCH CITY ENACTS ITS
19 RESOLUTION PURSUANT TO SUBDIVISION (P) OF THIS SECTION OR AT THE TIME OF
20 SUCH REPEAL; PROVIDED, FURTHER, THAT ANY SUCH LOCAL LAW, ORDINANCE OR
21 RESOLUTION AND SECTION ELEVEN HUNDRED SEVEN OF THIS CHAPTER, AS DEEMED
22 TO BE AMENDED IN THE EVENT A CITY OF ONE MILLION OR MORE ENACTS A RESOL-
23 UTION PURSUANT TO THE AUTHORITY OF SUBDIVISION (P) OF THIS SECTION,
24 SHALL BE FURTHER AMENDED, AS PROVIDED IN SECTION TWELVE HUNDRED EIGHTEEN
25 OF THIS SUBPART, SO THAT THE WIRELESS TELECOMMUNICATIONS SERVICES
26 EXEMPTION IN ANY SUCH LOCAL LAW, ORDINANCE OR RESOLUTION OR IN SUCH
27 SECTION ELEVEN HUNDRED SEVEN OF THIS CHAPTER IS THE SAME AS THE MOBILE
28 TELECOMMUNICATION SERVICES EXEMPTION IN SUBDIVISION (CC) OF SECTION
29 ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER.

30 S 3. Subdivision (d) of section 1210 of the tax law, as amended by
31 section 4-a of part Z of chapter 59 of the laws of 2015, is amended to
32 read as follows:

33 (d) A local law, ordinance or resolution imposing any tax pursuant to
34 this section, increasing or decreasing the rate of such tax, repealing
35 or suspending such tax, exempting from such tax the energy sources and
36 services described in paragraph three of subdivision (a) or of subdivi-
37 sion (b) of this section or changing the rate of tax imposed on such
38 energy sources and services or providing for the credit or refund
39 described in clause six of subdivision (a) of section eleven hundred
40 nineteen of this chapter, or electing or repealing the exemption for
41 residential solar equipment and electricity in subdivision (ee) of
42 section eleven hundred fifteen of this [article] CHAPTER, or the
43 exemption for commercial solar equipment and electricity in subdivision
44 (ii) of section eleven hundred fifteen of this [article] CHAPTER must go
45 into effect only on one of the following dates: March first, June first,
46 September first or December first; provided, that a local law, ordinance
47 or resolution providing for the exemption described in paragraph thirty
48 of subdivision (a) of section eleven hundred fifteen of this chapter or
49 repealing any such exemption or a local law, ordinance or resolution
50 providing for a refund or credit described in subdivision (d) of section
51 eleven hundred nineteen of this chapter or repealing such provision so
52 provided must go into effect only on March first; PROVIDED, FURTHER,
53 THAT A LOCAL LAW, ORDINANCE OR RESOLUTION PROVIDING FOR THE EXEMPTION
54 DESCRIBED IN SUBDIVISION (CC) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS
55 CHAPTER OR REPEALING ANY SUCH EXEMPTION SO PROVIDED AND A RESOLUTION
56 ENACTED PURSUANT TO THE AUTHORITY OF SUBDIVISION (P) OF THIS SECTION

1 PROVIDING SUCH EXEMPTION OR REPEALING SUCH EXEMPTION SO PROVIDED MAY GO
2 INTO EFFECT IMMEDIATELY. No such local law, ordinance or resolution
3 shall be effective unless a certified copy of such law, ordinance or
4 resolution is mailed by registered or certified mail to the commissioner
5 at the commissioner's office in Albany at least ninety days prior to the
6 date it is to become effective. However, the commissioner may waive and
7 reduce such ninety-day minimum notice requirement to a mailing of such
8 certified copy by registered or certified mail within a period of not
9 less than thirty days prior to such effective date if the commissioner
10 deems such action to be consistent with the commissioner's duties under
11 section twelve hundred fifty of this article and the commissioner acts
12 by resolution. Where the restriction provided for in section twelve
13 hundred twenty-three of this article as to the effective date of a tax
14 and the notice requirement provided for therein are applicable and have
15 not been waived, the restriction and notice requirement in section
16 twelve hundred twenty-three of this article shall also apply.

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

19 (P) NOTWITHSTANDING ANY OTHER PROVISION OF STATE OR LOCAL LAW, ORDI-
20 NANCE OR RESOLUTION TO THE CONTRARY: (1) ANY CITY HAVING A POPULATION OF
21 ONE MILLION OR MORE IN WHICH THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED
22 SEVEN OF THIS CHAPTER ARE IN EFFECT, ACTING THROUGH ITS LOCAL LEGISLA-
23 TIVE BODY, IS HEREBY AUTHORIZED AND EMPOWERED TO ELECT TO PROVIDE THE
24 EXEMPTION FROM SUCH TAXES FOR THE SAME MOBILE COMMUNICATIONS SERVICES
25 EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES DESCRIBED IN SUBDIVI-
26 SION (CC) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER BY ENACTING
27 A RESOLUTION IN THE FORM SET FORTH IN PARAGRAPH TWO OF THIS SUBDIVISION;
28 WHEREUPON, UPON COMPLIANCE WITH THE PROVISIONS OF SUBDIVISIONS (D) AND
29 (E) OF THIS SECTION, SUCH ENACTMENT OF SUCH RESOLUTION SHALL BE DEEMED
30 TO BE AN AMENDMENT TO SUCH SECTION ELEVEN HUNDRED SEVEN AND SUCH SECTION
31 ELEVEN HUNDRED SEVEN SHALL BE DEEMED TO INCORPORATE SUCH EXEMPTION AS IF
32 IT HAD BEEN DULY ENACTED BY THE STATE LEGISLATURE AND APPROVED BY THE
33 GOVERNOR.

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

36 SECTION ONE. RECEIPTS FROM SALES OF AND CONSIDERATION GIVEN OR
37 CONTRACTED TO BE GIVEN FOR PURCHASES OF MOBILE TELECOMMUNICATIONS
38 SERVICES EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES PURSUANT TO
39 SUBDIVISION (CC) OF SECTION ELEVEN HUNDRED FIFTEEN OF THE TAX LAW SHALL
40 ALSO BE EXEMPT FROM SALES AND COMPENSATING USE TAXES IMPOSED IN THIS
41 JURISDICTION.

42 SECTION TWO. THIS RESOLUTION SHALL TAKE EFFECT, (INSERT THE DATE) AND
43 SHALL APPLY TO SALES MADE AND USES OCCURRING ON AND AFTER THAT DATE
44 ALTHOUGH MADE OR OCCURRING UNDER A PRIOR CONTRACT.

45 S 5. The commissioner of taxation and finance is hereby authorized to
46 implement the provisions of this act with respect to the elimination of
47 the imposition of sales tax, additional taxes, and supplemental taxes on
48 wireless telecommunications services and all other taxes so addressed by
49 this act.

50 S 6. This act shall take effect on the first day of the sales tax
51 quarterly period, as described in subdivision (b) of section 1136 of the
52 tax law, beginning at least ninety days after the date this act shall
53 have become a law and shall apply in accordance with the applicable
54 transitional provisions of sections 1106 and 1217 of the tax law.

55 S 2. Severability. If any clause, sentence, paragraph, section or part
56 of this act shall be adjudged by any court of competent jurisdiction to

1 be invalid and after exhaustion of all further judicial review, the
2 judgment shall not affect, impair, or invalidate the remainder thereof,
3 but shall be confined in its operation to the clause, sentence, para-
4 graph, section or part of this act directly involved in the controversy
5 in which the judgment shall have been rendered.

6 S 3. This act shall take effect immediately provided, however, that
7 the applicable effective date of Parts A through B of this act shall be
8 as specifically set forth in the last section of such Parts.