

9128--A

I N A S S E M B L Y

January 29, 2016

Introduced by M. of A. JAFFEE -- 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 providing an exemption for geothermal heat pump systems equipment

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 (ll) to read as follows:
3 (LL) RECEIPTS FROM THE RETAIL SALE OF RESIDENTIAL GEOTHERMAL HEAT PUMP
4 SYSTEMS EQUIPMENT AND OF THE SERVICE OF INSTALLING SUCH SYSTEMS SHALL BE
5 EXEMPT FROM TAX UNDER THIS ARTICLE. FOR PURPOSES OF THIS SUBDIVISION,
6 "RESIDENTIAL GEOTHERMAL HEAT PUMP SYSTEM EQUIPMENT" SHALL MEAN AN
7 ARRANGEMENT OR COMBINATION OF COMPONENTS INSTALLED IN AND AROUND A RESI-
8 DENTIAL BUILDING THAT USES THE GROUND OR GROUND WATER AS A THERMAL ENER-
9 GY SOURCE OR AS A THERMAL ENERGY SINK DESIGNED TO PROVIDE AND DISTRIBUTE
10 HEATING, AND/OR COOLING, AND/OR HOT WATER, ALSO COMMONLY REFERRED TO AS
11 GROUND SOURCE HEAT PUMP SYSTEMS. SUCH ARRANGEMENT OR COMPONENTS SHALL
12 NOT INCLUDE ANY SORT OF RECREATIONAL FACILITY OR EQUIPMENT USED AS A
13 STORAGE MEDIUM.
14 S 2. Section 1115 of the tax law is amended by adding a new subdivi-
15 sion (mm) to read as follows:
16 (MM) RECEIPTS FROM THE RETAIL SALE OF COMMERCIAL GEOTHERMAL HEAT PUMP
17 SYSTEMS EQUIPMENT AND OF THE SERVICE OF INSTALLING SUCH SYSTEMS SHALL BE
18 EXEMPT FROM TAXES IMPOSED BY SECTIONS ELEVEN HUNDRED FIVE AND ELEVEN
19 HUNDRED TEN OF THIS ARTICLE. FOR PURPOSES OF THIS SUBDIVISION, "COMMER-
20 CIAL GEOTHERMAL HEAT PUMP SYSTEM EQUIPMENT" SHALL MEAN AN ARRANGEMENT OR
21 COMBINATION OF COMPONENTS INSTALLED IN AND AROUND A COMMERCIAL BUILDING
22 THAT USES THE GROUND OR GROUND WATER AS A THERMAL ENERGY SOURCE OR AS A
23 THERMAL ENERGY SINK DESIGNED TO PROVIDE AND DISTRIBUTE HEATING, AND/OR
24 COOLING, AND/OR HOT WATER, ALSO COMMONLY REFERRED TO AS GROUND SOURCE
25 HEAT PUMP SYSTEMS. SUCH ARRANGEMENT OR COMPONENTS SHALL NOT INCLUDE ANY
26 SORT OF RECREATIONAL FACILITY OR EQUIPMENT USED AS A STORAGE MEDIUM.
27 S 3. Paragraphs 1 and 4 of subdivision (a) of section 1210 of the tax
28 law, as amended by section 2 of part WW of chapter 60 of the laws of
29 2016, are amended to read as follows:

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

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

50 (4) Notwithstanding any other provision of law to the contrary, any
51 local law enacted by any city of one million or more that imposes the
52 taxes authorized by this subdivision (i) may omit the exception provided
53 in subparagraph (ii) of paragraph three of subdivision (c) of section
54 eleven hundred five of this chapter for receipts from laundering, dry-
55 cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining;
56 (ii) may impose the tax described in paragraph six of subdivision (c) of

1 section eleven hundred five of this chapter at a rate in addition to the
2 rate prescribed by this section not to exceed two percent in multiples
3 of one-half of one percent; (iii) shall provide that the tax described
4 in paragraph six of subdivision (c) of section eleven hundred five of
5 this chapter does not apply to facilities owned and operated by the city
6 or an agency or instrumentality of the city or a public corporation the
7 majority of whose members are appointed by the chief executive officer
8 of the city or the legislative body of the city or both of them; (iv)
9 shall not include any tax on receipts from, or the use of, the services
10 described in paragraph seven of subdivision (c) of section eleven
11 hundred five of this chapter; (v) shall provide that, for purposes of
12 the tax described in subdivision (e) of section eleven hundred five of
13 this chapter, "permanent resident" means any occupant of any room or
14 rooms in a hotel for at least one hundred eighty consecutive days with
15 regard to the period of such occupancy; (vi) may omit the exception
16 provided in paragraph one of subdivision (f) of section eleven hundred
17 five of this chapter for charges to a patron for admission to, or use
18 of, facilities for sporting activities in which the patron is to be a
19 participant, such as bowling alleys and swimming pools; (vii) may
20 provide the clothing and footwear exemption in paragraph thirty of
21 subdivision (a) of section eleven hundred fifteen of this chapter, and,
22 notwithstanding any provision of subdivision (d) of this section to the
23 contrary, any local law providing for such exemption or repealing such
24 exemption, may go into effect on any one of the following dates: March
25 first, June first, September first or December first; (viii) shall omit
26 the exemption provided in paragraph forty-one of subdivision (a) of
27 section eleven hundred fifteen of this chapter; (ix) shall omit the
28 exemption provided in subdivision (c) of section eleven hundred fifteen
29 of this chapter insofar as it applies to fuel, gas, electricity, refriger-
30 eration and steam, and gas, electric, refrigeration and steam service of
31 whatever nature for use or consumption directly and exclusively in the
32 production of gas, electricity, refrigeration or steam; (x) shall omit,
33 unless such city elects otherwise, the provision for refund or credit
34 contained in clause six of subdivision (a) or in subdivision (d) of
35 section eleven hundred nineteen of this chapter; (xi) shall provide that
36 section eleven hundred five-C of this chapter does not apply to such
37 taxes, and shall tax receipts from every sale, other than sales for
38 resale, of gas service or electric service of whatever nature, including
39 the transportation, transmission or distribution of gas or electricity,
40 even if sold separately, at the rate set forth in clause one of subpara-
41 graph (i) of the opening paragraph of this section; (xii) shall omit,
42 unless such city elects otherwise, the exemption for residential solar
43 energy systems equipment and electricity provided in subdivision (ee) of
44 section eleven hundred fifteen of this chapter; (xiii) shall omit,
45 unless such city elects otherwise, the exemption for commercial solar
46 energy systems equipment and electricity provided in subdivision (ii) of
47 section eleven hundred fifteen of this chapter; [and] (xiv) shall omit,
48 unless such city elects otherwise, the exemption for commercial fuel
49 cell electricity generating systems equipment and electricity generated
50 by such equipment provided in subdivision (kk) of section eleven hundred
51 fifteen of this chapter; AND (XV) SHALL OMIT UNLESS SUCH CITY ELECTS
52 OTHERWISE, THE RESIDENTIAL GEOTHERMAL HEAT PUMP SYSTEMS EQUIPMENT AND
53 INSTALLATION EXEMPTION PROVIDED FOR IN SUBDIVISION (LL) OF SECTION ELEV-
54 EN HUNDRED FIFTEEN OF THIS CHAPTER; AND SHALL OMIT UNLESS SUCH CITY
55 ELECTS OTHERWISE, THE COMMERCIAL GEOTHERMAL HEAT PUMP SYSTEMS EQUIPMENT
56 AND INSTALLATION EXEMPTION PROVIDED FOR IN SUBDIVISION (MM) OF SECTION

ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER. Any reference in this chapter or in any local law, ordinance or resolution enacted pursuant to the authority of this article to former subdivisions (n) or (p) of this section shall be deemed to be a reference to clauses (xii) or (xiii) of this paragraph, respectively, and any such local law, ordinance or resolution that provides the exemptions provided in such former subdivisions (n) and/or (p) shall be deemed instead to provide the exemptions provided in clauses (xii) and/or (xiii) of this paragraph.

S 4. Paragraph 1 of subdivision (b) of section 1210 of the tax law, as amended by section 3 of part WW of chapter 60 of the laws of 2016, is amended to read as follows:

(1) Or, one or more of the taxes described in subdivisions (b), (d), (e) and (f) of section eleven hundred five of this chapter, at the same uniform rate, including the transitional provisions in section eleven hundred six of this chapter covering such taxes, but not the taxes described in subdivisions (a) and (c) of section eleven hundred five of this chapter. Provided, further, that where the tax described in subdivision (b) of section eleven hundred five of this chapter is imposed, the compensating use taxes described in clauses (E), (G) and (H) of subdivision (a) of section eleven hundred ten of this chapter shall also be imposed. Provided, further, that where the taxes described in subdivision (b) of section eleven hundred five are imposed, such taxes shall omit: (A) the provision for refund or credit contained in subdivision (d) of section eleven hundred nineteen of this chapter with respect to such taxes described in such subdivision (b) of section eleven hundred five unless such city or county elects to provide such provision or, if so elected, to repeal such provision; (B) the exemption provided in paragraph two of subdivision (ee) of section eleven hundred fifteen of this chapter unless such county or city elects otherwise; (C) the exemption provided in paragraph two of subdivision (ii) of section eleven hundred fifteen of this chapter, unless such county or city elects otherwise; [and] (D) the exemption provided in paragraph two of subdivision (kk) of section eleven hundred fifteen of this chapter, unless such county or city elects otherwise; (E) THE EXEMPTION PROVIDED IN PARAGRAPH TWO OF SUBDIVISION (LL) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER, UNLESS SUCH COUNTY OR CITY ELECTS OTHERWISE; AND (F) THE EXEMPTION PROVIDED IN PARAGRAPH TWO OF SUBDIVISION (MM) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER, UNLESS SUCH COUNTY OR CITY ELECTS OTHERWISE.

S 5. Subdivision (d) of section 1210 of the tax law, as amended by section 4 of part WW of chapter 60 of the laws of 2016, is amended to read as follows:

(d) A local law, ordinance or resolution imposing any tax pursuant to this section, increasing or decreasing the rate of such tax, repealing or suspending such tax, exempting from such tax the energy sources and services described in paragraph three of subdivision (a) or of subdivision (b) of this section or changing the rate of tax imposed on such energy sources and services or providing for the credit or refund described in clause six of subdivision (a) of section eleven hundred nineteen of this chapter, or electing or repealing the exemption for residential solar equipment and electricity in subdivision (ee) of section eleven hundred fifteen of this article, or the exemption for commercial solar equipment and electricity in subdivision (ii) of section eleven hundred fifteen of this article, or electing or repealing the exemption for commercial fuel cell electricity generating systems equipment and electricity generated by such equipment in subdivision (kk) of section eleven hundred fifteen of this article, OR ELECTING OR

1 REPEALING THE EXEMPTION FOR RESIDENTIAL GEOTHERMAL HEAT PUMP SYSTEMS
2 EQUIPMENT AND INSTALLATION IN SUBDIVISION (LL) OF SECTION ELEVEN HUNDRED
3 FIFTEEN OF THIS ARTICLE, OR ELECTING OR REPEALING THE EXEMPTION FOR
4 COMMERCIAL GEOTHERMAL HEAT PUMP SYSTEMS EQUIPMENT AND INSTALLATION IN
5 SUBDIVISION (MM) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS ARTICLE must
6 go into effect only on one of the following dates: March first, June
7 first, September first or December first; provided, that a local law,
8 ordinance or resolution providing for the exemption described in para-
9 graph thirty of subdivision (a) of section eleven hundred fifteen of
10 this chapter or repealing any such exemption or a local law, ordinance
11 or resolution providing for a refund or credit described in subdivision
12 (d) of section eleven hundred nineteen of this chapter or repealing such
13 provision so provided must go into effect only on March first. No such
14 local law, ordinance or resolution shall be effective unless a certified
15 copy of such law, ordinance or resolution is mailed by registered or
16 certified mail to the commissioner at the commissioner's office in Alba-
17 ny at least ninety days prior to the date it is to become effective.
18 However, the commissioner may waive and reduce such ninety-day minimum
19 notice requirement to a mailing of such certified copy by registered or
20 certified mail within a period of not less than thirty days prior to
21 such effective date if the commissioner deems such action to be consist-
22 ent with the commissioner's duties under section twelve hundred fifty of
23 this article and the commissioner acts by resolution. Where the
24 restriction provided for in section twelve hundred twenty-three of this
25 article as to the effective date of a tax and the notice requirement
26 provided for therein are applicable and have not been waived, the
27 restriction and notice requirement in section twelve hundred twenty-
28 three of this article shall also apply.

29 S 6. Subdivision (a) of section 1212 of the tax law, as amended by
30 section 5 of part WW of chapter 60 of the laws of 2016, is amended to
31 read as follows:

32 (a) Any school district which is coterminous with, partly within or
33 wholly within a city having a population of less than one hundred twen-
34 ty-five thousand, is hereby authorized and empowered, by majority vote
35 of the whole number of its school authorities, to impose for school
36 district purposes, within the territorial limits of such school district
37 and without discrimination between residents and nonresidents thereof,
38 the taxes described in subdivision (b) of section eleven hundred five
39 (but excluding the tax on prepaid telephone calling services) and the
40 taxes described in clauses (E) and (H) of subdivision (a) of section
41 eleven hundred ten, including the transitional provisions in subdivision
42 (b) of section eleven hundred six of this chapter, so far as such
43 provisions can be made applicable to the taxes imposed by such school
44 district and with such limitations and special provisions as are set
45 forth in this article, such taxes to be imposed at the rate of one-half,
46 one, one and one-half, two, two and one-half or three percent which rate
47 shall be uniform for all portions and all types of receipts and uses
48 subject to such taxes. In respect to such taxes, all provisions of the
49 resolution imposing them, except as to rate and except as otherwise
50 provided herein, shall be identical with the corresponding provisions in
51 such article twenty-eight of this chapter, including the applicable
52 definition and exemption provisions of such article, so far as the
53 provisions of such article twenty-eight of this chapter can be made
54 applicable to the taxes imposed by such school district and with such
55 limitations and special provisions as are set forth in this article. The
56 taxes described in subdivision (b) of section eleven hundred five (but

1 excluding the tax on prepaid telephone calling service) and clauses (E)
2 and (H) of subdivision (a) of section eleven hundred ten, including the
3 transitional provision in subdivision (b) of such section eleven hundred
4 six of this chapter, may not be imposed by such school district unless
5 the resolution imposes such taxes so as to include all portions and all
6 types of receipts and uses subject to tax under such subdivision (but
7 excluding the tax on prepaid telephone calling service) and clauses.
8 Provided, however, that, where a school district imposes such taxes,
9 such taxes shall omit the provision for refund or credit contained in
10 subdivision (d) of section eleven hundred nineteen of this chapter with
11 respect to such taxes described in such subdivision (b) of section elev-
12 en hundred five unless such school district elects to provide such
13 provision or, if so elected, to repeal such provision, and shall omit
14 the exemptions provided in paragraph two of subdivision (ee) and para-
15 graph two of subdivision (ii) of section eleven hundred fifteen of this
16 chapter unless such school district elects otherwise, and shall omit the
17 exemption provided in paragraph two of subdivision (kk) of section elev-
18 en hundred fifteen of this chapter unless such school district elects
19 otherwise, AND SHALL OMIT THE EXEMPTION PROVIDED IN SUBDIVISION (ll) OF
20 SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER UNLESS SUCH SCHOOL
21 DISTRICT ELECTS OTHERWISE, AND SHALL OMIT THE EXEMPTION PROVIDED IN
22 SUBDIVISION (mm) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER
23 UNLESS SUCH SCHOOL DISTRICT ELECTS OTHERWISE.

24 S 7. Section 1224 of the tax law is amended by adding two new subdivi-
25 sions (c-3) and (c-4) to read as follows:

26 (C-3) NOTWITHSTANDING ANY OTHER PROVISION OF LAW: (1) WHERE A COUNTY
27 CONTAINING ONE OR MORE CITIES WITH A POPULATION OF LESS THAN ONE MILLION
28 HAS ELECTED THE EXEMPTION FOR RESIDENTIAL GEOTHERMAL HEAT PUMP SYSTEMS
29 EQUIPMENT AND INSTALLATION PROVIDED IN SUBDIVISION (ll) OF SECTION ELEV-
30 EN HUNDRED FIFTEEN OF THIS CHAPTER, A CITY WITHIN SUCH COUNTY SHALL HAVE
31 THE PRIOR RIGHT TO IMPOSE TAX ON SUCH EXEMPT EQUIPMENT AND/OR INSTALLA-
32 TION TO THE EXTENT OF ONE HALF OF THE MAXIMUM RATES AUTHORIZED UNDER
33 SUBDIVISION (A) OF SECTION TWELVE HUNDRED TEN OF THIS ARTICLE;

34 (2) WHERE A CITY OF LESS THAN ONE MILLION HAS ELECTED THE EXEMPTION
35 FOR RESIDENTIAL GEOTHERMAL HEAT PUMP SYSTEMS EQUIPMENT AND INSTALLATION
36 PROVIDED IN SUBDIVISION (ll) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS
37 CHAPTER, THE COUNTY IN WHICH SUCH CITY IS LOCATED SHALL HAVE THE PRIOR
38 RIGHT TO IMPOSE TAX ON SUCH EXEMPT EQUIPMENT AND/OR INSTALLATION TO THE
39 EXTENT OF ONE HALF OF THE MAXIMUM RATES AUTHORIZED UNDER SUBDIVISION (A)
40 OF SECTION TWELVE HUNDRED TEN OF THIS ARTICLE.

41 (C-4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW: (1) WHERE A COUNTY
42 CONTAINING ONE OR MORE CITIES WITH A POPULATION OF LESS THAN ONE MILLION
43 HAS ELECTED THE EXEMPTION FOR COMMERCIAL GEOTHERMAL HEAT PUMP SYSTEMS
44 EQUIPMENT AND INSTALLATION PROVIDED IN SUBDIVISION (mm) OF SECTION ELEV-
45 EN HUNDRED FIFTEEN OF THIS CHAPTER, A CITY WITHIN SUCH COUNTY SHALL HAVE
46 THE PRIOR RIGHT TO IMPOSE TAX ON SUCH EXEMPT EQUIPMENT AND/OR INSTALLA-
47 TION TO THE EXTENT OF ONE HALF OF THE MAXIMUM RATES AUTHORIZED UNDER
48 SUBDIVISION (A) OF SECTION TWELVE HUNDRED TEN OF THIS ARTICLE;

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

56 S 8. This act shall take effect immediately.