

9128--A

I N   A S S E M B L Y

January 29, 2016

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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, refrigeration and steam, and gas, electric, refrigeration and steam service of  
30 whatever nature for use or consumption directly and exclusively in the  
31 production of gas, electricity, refrigeration or steam; (x) shall omit,  
32 unless such city elects otherwise, the provision for refund or credit  
33 contained in clause six of subdivision (a) or in subdivision (d) of  
34 section eleven hundred nineteen of this chapter; (xi) shall provide that  
35 section eleven hundred five-C of this chapter does not apply to such  
36 taxes, and shall tax receipts from every sale, other than sales for  
37 resale, of gas service or electric service of whatever nature, including  
38 the transportation, transmission or distribution of gas or electricity,  
39 even if sold separately, at the rate set forth in clause one of subpara-  
40 graph (i) of the opening paragraph of this section; (xii) shall omit,  
41 unless such city elects otherwise, the exemption for residential solar  
42 energy systems equipment and electricity provided in subdivision (ee) of  
43 section eleven hundred fifteen of this chapter; (xiii) shall omit,  
44 unless such city elects otherwise, the exemption for commercial solar  
45 energy systems equipment and electricity provided in subdivision (ii) of  
46 section eleven hundred fifteen of this chapter; [and] (xiv) shall omit,  
47 unless such city elects otherwise, the exemption for commercial fuel  
48 cell electricity generating systems equipment and electricity generated  
49 by such equipment provided in subdivision (kk) of section eleven hundred  
50 fifteen of this chapter; AND (XV) SHALL OMIT UNLESS SUCH CITY ELECTS  
51 OTHERWISE, THE RESIDENTIAL GEOTHERMAL HEAT PUMP SYSTEMS EQUIPMENT AND  
52 INSTALLATION EXEMPTION PROVIDED FOR IN SUBDIVISION (LL) OF SECTION ELEV-  
53 EN HUNDRED FIFTEEN OF THIS CHAPTER; AND SHALL OMIT UNLESS SUCH CITY  
54 ELECTS OTHERWISE, THE COMMERCIAL GEOTHERMAL HEAT PUMP SYSTEMS EQUIPMENT  
55 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.