

4753--A

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I N S E N A T E

April 15, 2015

Introduced by Sens. GRIFFO, FUNKE, ORTT, PANEPINTO -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- committee discharged and said bill committed to the Committee on Rules

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

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

LBD10464-02-5

1 THAT IS: (A) OWNED BY A PERSON OTHER THAN THE PURCHASER OF SUCH ELEC-
2 TRICITY; (B) INSTALLED ON THE NON-RESIDENTIAL PREMISES OF THE PURCHASER
3 OF SUCH ELECTRICITY; AND (C) USED TO PROVIDE HEATING, COOLING, HOT WATER
4 OR ELECTRICITY TO SUCH PREMISES.

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

9 (1) Either, all of the taxes described in article twenty-eight of this
10 chapter, at the same uniform rate, as to which taxes all provisions of
11 the local laws, ordinances or resolutions imposing such taxes shall be
12 identical, except as to rate and except as otherwise provided, with the
13 corresponding provisions in such article twenty-eight, including the
14 definition and exemption provisions of such article, so far as the
15 provisions of such article twenty-eight can be made applicable to the
16 taxes imposed by such city or county and with such limitations and
17 special provisions as are set forth in this article. The taxes author-
18 ized under this subdivision may not be imposed by a city or county
19 unless the local law, ordinance or resolution imposes such taxes so as
20 to include all portions and all types of receipts, charges or rents,
21 subject to state tax under sections eleven hundred five and eleven
22 hundred ten of this chapter, except as otherwise provided. (i) Any local
23 law, ordinance or resolution enacted by any city of less than one
24 million or by any county or school district, imposing the taxes author-
25 ized by this subdivision, shall, notwithstanding any provision of law to
26 the contrary, exclude from the operation of such local taxes all sales
27 of tangible personal property for use or consumption directly and
28 predominantly in the production of tangible personal property, gas,
29 electricity, refrigeration or steam, for sale, by manufacturing, proc-
30 essing, generating, assembly, refining, mining or extracting; and all
31 sales of tangible personal property for use or consumption predominantly
32 either in the production of tangible personal property, for sale, by
33 farming or in a commercial horse boarding operation, or in both; and,
34 unless such city, county or school district elects otherwise, shall omit
35 the provision for credit or refund contained in clause six of subdivi-
36 sion (a) or subdivision (d) of section eleven hundred nineteen of this
37 chapter. (ii) Any local law, ordinance or resolution enacted by any
38 city, county or school district, imposing the taxes authorized by this
39 subdivision, shall omit the residential solar energy systems equipment
40 exemption provided for in subdivision (ee), the commercial solar energy
41 systems equipment exemption provided for in subdivision (ii), THE
42 COMMERCIAL FUEL CELL SYSTEMS EQUIPMENT AND ELECTRICITY EXEMPTION
43 PROVIDED FOR IN SUBDIVISION (KK) and the clothing and footwear exemption
44 provided for in paragraph thirty of subdivision (a) of section eleven
45 hundred fifteen of this chapter, unless such city, county or school
46 district elects otherwise as to [either] such residential solar energy
47 systems equipment exemption, such commercial solar energy systems equip-
48 ment exemption, COMMERCIAL FUEL CELL SYSTEMS EQUIPMENT AND ELECTRICITY
49 EXEMPTION or 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; [and] (xi) shall
36 provide that section eleven hundred five-C of this chapter does not
37 apply to such taxes, and shall tax receipts from every sale, other than
38 sales for resale, of gas service or electric service of whatever nature,
39 including the transportation, transmission or distribution of gas or
40 electricity, even if sold separately, at the rate set forth in clause
41 one of subparagraph (i) of the opening paragraph of this section; (XII)
42 SHALL OMIT, UNLESS SUCH CITY ELECTS OTHERWISE, THE EXEMPTION FOR COMMER-
43 CIAL FUEL CELL SYSTEMS EQUIPMENT AND ELECTRICITY PROVIDED IN SUBDIVISION
44 (KK) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER. ANY REFERENCE
45 IN THIS CHAPTER OR IN ANY LOCAL LAW, ORDINANCE OR RESOLUTION ENACTED
46 PURSUANT TO THE AUTHORITY OF THIS ARTICLE TO FORMER SUBDIVISIONS (N) OR
47 (P) OF THIS SECTION SHALL BE DEEMED TO BE A REFERENCE TO CLAUSE (XII) OF
48 THIS PARAGRAPH, RESPECTIVELY, AND ANY SUCH LOCAL LAW, ORDINANCE OR
49 RESOLUTION THAT PROVIDES THE EXEMPTIONS PROVIDED IN SUCH FORMER SUBDIVI-
50 SIONS (N) AND/OR (P) SHALL BE DEEMED INSTEAD TO PROVIDE THE EXEMPTIONS
51 PROVIDED IN CLAUSE (XII) OF THIS PARAGRAPH.

52 S 2-a. Paragraphs 1 and 4 of subdivision (a) of section 1210 of the
53 tax law, as amended by section 3 of part Z of chapter 59 of the laws of
54 2015, is amended to read as follows:

55 (1) Either, all of the taxes described in article twenty-eight of this
56 chapter, at the same uniform rate, as to which taxes all provisions of

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

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

1 described in paragraph seven of subdivision (c) of section eleven
2 hundred five of this chapter; (v) shall provide that, for purposes of
3 the tax described in subdivision (e) of section eleven hundred five of
4 this chapter, "permanent resident" means any occupant of any room or
5 rooms in a hotel for at least one hundred eighty consecutive days with
6 regard to the period of such occupancy; (vi) may omit the exception
7 provided in paragraph one of subdivision (f) of section eleven hundred
8 five of this chapter for charges to a patron for admission to, or use
9 of, facilities for sporting activities in which the patron is to be a
10 participant, such as bowling alleys and swimming pools; (vii) may
11 provide the clothing and footwear exemption in paragraph thirty of
12 subdivision (a) of section eleven hundred fifteen of this chapter, and,
13 notwithstanding any provision of subdivision (d) of this section to the
14 contrary, any local law providing for such exemption or repealing such
15 exemption, may go into effect on any one of the following dates: March
16 first, June first, September first or December first; (viii) shall omit
17 the exemption provided in paragraph forty-one of subdivision (a) of
18 section eleven hundred fifteen of this chapter; (ix) shall omit the
19 exemption provided in subdivision (c) of section eleven hundred fifteen
20 of this chapter insofar as it applies to fuel, gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of
21 whatever nature for use or consumption directly and exclusively in the
22 production of gas, electricity, refrigeration or steam; (x) shall omit,
23 unless such city elects otherwise, the provision for refund or credit
24 contained in clause six of subdivision (a) or in subdivision (d) of
25 section eleven hundred nineteen of this chapter; (xi) shall provide that
26 section eleven hundred five-C of this chapter does not apply to such
27 taxes, and shall tax receipts from every sale, other than sales for
28 resale, of gas service or electric service of whatever nature, including
29 the transportation, transmission or distribution of gas or electricity,
30 even if sold separately, at the rate set forth in clause one of subparagraph (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, ordinance or resolution that provides the exemptions provided in such former
44 subdivisions (n) and/or (p) shall be deemed instead to provide the
45 exemptions provided in clauses (xii) [and/or], (xiii) AND/OR (XIV) of
46 this paragraph.

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

53 (1) Or, one or more of the taxes described in subdivisions (b), (d),
54 (e) and (f) of section eleven hundred five of this chapter, at the same
55 uniform rate, including the transitional provisions in section eleven
56 hundred six of this chapter covering such taxes, but not the taxes

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

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

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

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

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

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

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

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

provided for therein are applicable and have not been waived, the restriction and notice requirement in section twelve hundred twenty-three of this article shall also apply.

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

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

(a) Any school district which is coterminous with, partly within or wholly within a city having a population of less than one hundred twenty-five thousand, is hereby authorized and empowered, by majority vote of the whole number of its school authorities, to impose for school district purposes, within the territorial limits of such school district and without discrimination between residents and nonresidents thereof, the taxes described in subdivision (b) of section eleven hundred five (but excluding the tax on prepaid telephone calling services) and the taxes described in clauses (E) and (H) of subdivision (a) of section eleven hundred ten, including the transitional provisions in subdivision (b) of section eleven hundred six of this chapter, so far as such provisions can be made applicable to the taxes imposed by such school district and with such limitations and special provisions as are set forth in this article, such taxes to be imposed at the rate of one-half, one, one and one-half, two, two and one-half or three percent which rate shall be uniform for all portions and all types of receipts and uses subject to such taxes. In respect to such taxes, all provisions of the resolution imposing them, except as to rate and except as otherwise provided herein, shall be identical with the corresponding provisions in such article twenty-eight of this chapter, including the applicable definition and exemption provisions of such article, so far as the provisions of such article twenty-eight of this chapter can be made applicable to the taxes imposed by such school district and with such limitations and special provisions as are set forth in this article. The taxes described in subdivision (b) of section eleven hundred five (but excluding the tax on prepaid telephone calling service) and clauses (E) and (H) of subdivision (a) of section eleven hundred ten, including the transitional provision in subdivision (b) of such section eleven hundred six of this chapter, may not be imposed by such school district unless the resolution imposes such taxes so as to include all portions and all types of receipts and uses subject to tax under such subdivision (but excluding the tax on prepaid telephone calling service) and clauses. Provided, however, that, where a school district imposes such taxes, such taxes shall omit 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 school district elects to provide such provision or, if so elected, to repeal such provision, AND SHALL OMIT THE EXEMPTION PROVIDED IN PARAGRAPH TWO OF SUBDIVISION (KK) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER UNLESS SUCH SCHOOL DISTRICT ELECTS OTHERWISE.

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

(a) Any school district which is coterminous with, partly within or wholly within a city having a population of less than one hundred twenty-five thousand, is hereby authorized and empowered, by majority vote of the whole number of its school authorities, to impose for school

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

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

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

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

1 THE MAXIMUM RATES AUTHORIZED UNDER SUBDIVISION (A) OF SECTION TWELVE
2 HUNDRED TEN OF THIS ARTICLE.

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