

6250--A

I N S E N A T E

(PREFILED)

January 6, 2016

Introduced by Sen. ORTT -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- reported favorably from said committee and committed to the Committee on Finance -- 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

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

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1 HEAT PUMP SYSTEMS. SUCH ARRANGEMENT OR COMPONENTS SHALL NOT INCLUDE ANY
2 SORT OF RECREATIONAL FACILITY OR EQUIPMENT USED AS A STORAGE MEDIUM.

3 S 3. Paragraphs 1 and 4 of subdivision (a) of section 1210 of the tax
4 law, as amended by section 2 of part WW of chapter 60 of the laws of
5 2016, are amended to read as follows:

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

55 (4) Notwithstanding any other provision of law to the contrary, any
56 local law enacted by any city of one million or more that imposes the

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

1 OTHERWISE, THE RESIDENTIAL GEOTHERMAL HEAT PUMP SYSTEMS EQUIPMENT AND
2 INSTALLATION EXEMPTION PROVIDED FOR IN SUBDIVISION (LL) OF SECTION ELEVEN
3 HUNDRED FIFTEEN OF THIS CHAPTER; AND SHALL OMIT UNLESS SUCH CITY
4 ELECTS OTHERWISE, THE COMMERCIAL GEOTHERMAL HEAT PUMP SYSTEMS EQUIPMENT
5 AND INSTALLATION EXEMPTION PROVIDED FOR IN SUBDIVISION (MM) OF SECTION
6 ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER. Any reference in this chapter
7 or in any local law, ordinance or resolution enacted pursuant to the
8 authority of this article to former subdivisions (n) or (p) of this
9 section shall be deemed to be a reference to clauses (xii) or (xiii) of
10 this paragraph, respectively, and any such local law, ordinance or
11 resolution that provides the exemptions provided in such former subdivi-
12 sions (n) and/or (p) shall be deemed instead to provide the exemptions
13 provided in clauses (xii) and/or (xiii) of this paragraph.

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

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

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

47 (d) A local law, ordinance or resolution imposing any tax pursuant to
48 this section, increasing or decreasing the rate of such tax, repealing
49 or suspending such tax, exempting from such tax the energy sources and
50 services described in paragraph three of subdivision (a) or of subdivi-
51 sion (b) of this section or changing the rate of tax imposed on such
52 energy sources and services or providing for the credit or refund
53 described in clause six of subdivision (a) of section eleven hundred
54 nineteen of this chapter, or electing or repealing the exemption for
55 residential solar equipment and electricity in subdivision (ee) of
56 section eleven hundred fifteen of this article, or the exemption for

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

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

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

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

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

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

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

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

54 (2) WHERE A CITY OF LESS THAN ONE MILLION HAS ELECTED THE EXEMPTION
55 FOR COMMERCIAL GEOTHERMAL HEAT PUMP SYSTEMS EQUIPMENT AND INSTALLATION
56 PROVIDED IN SUBDIVISION (MM) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS

1 CHAPTER, THE COUNTY IN WHICH SUCH CITY IS LOCATED SHALL HAVE THE PRIOR
2 RIGHT TO IMPOSE TAX ON SUCH EXEMPT EQUIPMENT AND/OR INSTALLATION TO THE
3 EXTENT OF ONE HALF OF THE MAXIMUM RATES AUTHORIZED UNDER SUBDIVISION (A)
4 OF SECTION TWELVE HUNDRED TEN OF THIS ARTICLE.

5 S 8. This act shall take effect immediately.