

6721--A

I N S E N A T E

February 9, 2016

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

AN ACT to amend the tax law, in relation to exempting commercial fuel cell electricity generating 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

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 ELECTRICITY
6 GENERATING SYSTEMS EQUIPMENT AND THE SERVICE OF INSTALLING AND MAINTAIN-
7 ING SUCH SYSTEMS. FOR THE PURPOSES OF THIS SUBDIVISION, "FUEL CELL ELEC-
8 TRICITY GENERATING SYSTEMS EQUIPMENT" SHALL MEAN AN ELECTRIC GENERATING
9 ARRANGEMENT OR COMBINATION OF COMPONENTS INSTALLED UPON NON-RESIDENTIAL
10 PREMISES THAT UTILIZE SOLID OXIDE, MOLTEN CARBONATE, PROTON EXCHANGE
11 MEMBRANE OR PHOSPHORIC ACID FUEL CELL, OR FOR THE PURPOSES OF THIS
12 SECTION ONLY, LINEAR GENERATOR, THAT IS INSTALLED, OPERATED AND LOCATED
13 IN THIS STATE.
14 (2) RECEIPTS FROM THE SALE OF HYDROGEN GAS OR ELECTRICITY BY A PERSON
15 PRIMARILY ENGAGED IN THE SALE OF FUEL CELL ELECTRICITY GENERATING SYSTEM
16 EQUIPMENT AND/OR ELECTRICITY GENERATED BY SUCH EQUIPMENT PURSUANT TO A
17 WRITTEN AGREEMENT UNDER WHICH THE ELECTRICITY IS GENERATED BY COMMERCIAL
18 FUEL CELL ELECTRICITY GENERATING SYSTEM EQUIPMENT THAT IS: (A) OWNED BY
19 A PERSON OTHER THAN THE PURCHASER OF SUCH ELECTRICITY; (B) INSTALLED ON
20 THE NON-RESIDENTIAL PREMISES OF THE PURCHASER OF SUCH ELECTRICITY; (C)
21 PLACED IN SERVICE; AND (D) LOCATED IN THIS STATE TO PROVIDE HEATING,
22 COOLING, HOT WATER OR ELECTRICITY TO SUCH PREMISES.

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

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

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

47 (4) Notwithstanding any other provision of law to the contrary, any
48 local law enacted by any city of one million or more that imposes the
49 taxes authorized by this subdivision (i) may omit the exception provided
50 in subparagraph (ii) of paragraph three of subdivision (c) of section
51 eleven hundred five of this chapter for receipts from laundering, dry-
52 cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining;
53 (ii) may impose the tax described in paragraph six of subdivision (c) of
54 section eleven hundred five of this chapter at a rate in addition to the
55 rate prescribed by this section not to exceed two percent in multiples
56 of one-half of one percent; (iii) shall provide that the tax described

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

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

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

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

30 (d) A local law, ordinance or resolution imposing any tax pursuant to
31 this section, increasing or decreasing the rate of such tax, repealing
32 or suspending such tax, exempting from such tax the energy sources and
33 services described in paragraph three of subdivision (a) or of subdivi-
34 sion (b) of this section or changing the rate of tax imposed on such
35 energy sources and services or providing for the credit or refund
36 described in clause six of subdivision (a) of section eleven hundred
37 nineteen of this chapter, or electing or repealing the exemption for
38 residential solar equipment and electricity in subdivision (ee) of
39 section eleven hundred fifteen of this article, or the exemption for
40 commercial solar equipment and electricity in subdivision (ii) of
41 section eleven hundred fifteen of this article, OR ELECTING OR REPEALING
42 THE EXEMPTION FOR COMMERCIAL FUEL CELL ELECTRICITY GENERATING SYSTEMS
43 EQUIPMENT AND ELECTRICITY GENERATED BY SUCH EQUIPMENT IN SUBDIVISION
44 (KK) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS ARTICLE must go into
45 effect only on one of the following dates: March first, June first,
46 September first or December first; provided, that a local law, ordinance
47 or resolution providing for the exemption described in paragraph thirty
48 of subdivision (a) of section eleven hundred fifteen of this chapter or
49 repealing any such exemption or a local law, ordinance or resolution
50 providing for a refund or credit described in subdivision (d) of section
51 eleven hundred nineteen of this chapter or repealing such provision so
52 provided must go into effect only on March first. No such local law,
53 ordinance or resolution shall be effective unless a certified copy of
54 such law, ordinance or resolution is mailed by registered or certified
55 mail to the commissioner at the commissioner's office in Albany at least
56 ninety days prior to the date it is to become effective. However, the

1 commissioner may waive and reduce such ninety-day minimum notice
2 requirement to a mailing of such certified copy by registered or certi-
3 fied mail within a period of not less than thirty days prior to such
4 effective date if the commissioner deems such action to be consistent
5 with the commissioner's duties under section twelve hundred fifty of
6 this article and the commissioner acts by resolution. Where the
7 restriction provided for in section twelve hundred twenty-three of this
8 article as to the effective date of a tax and the notice requirement
9 provided for therein are applicable and have not been waived, the
10 restriction and notice requirement in section twelve hundred twenty-
11 three of this article shall also apply.

12 S 5. Subdivision (a) of section 1212 of the tax law, as amended by
13 section 6 of part Z of chapter 59 of the laws of 2015, is amended to
14 read as follows:

15 (a) Any school district which is coterminous with, partly within or
16 wholly within a city having a population of less than one hundred twen-
17 ty-five thousand, is hereby authorized and empowered, by majority vote
18 of the whole number of its school authorities, to impose for school
19 district purposes, within the territorial limits of such school district
20 and without discrimination between residents and nonresidents thereof,
21 the taxes described in subdivision (b) of section eleven hundred five
22 (but excluding the tax on prepaid telephone calling services) and the
23 taxes described in clauses (E) and (H) of subdivision (a) of section
24 eleven hundred ten, including the transitional provisions in subdivision
25 (b) of section eleven hundred six of this chapter, so far as such
26 provisions can be made applicable to the taxes imposed by such school
27 district and with such limitations and special provisions as are set
28 forth in this article, such taxes to be imposed at the rate of one-half,
29 one, one and one-half, two, two and one-half or three percent which rate
30 shall be uniform for all portions and all types of receipts and uses
31 subject to such taxes. In respect to such taxes, all provisions of the
32 resolution imposing them, except as to rate and except as otherwise
33 provided herein, shall be identical with the corresponding provisions in
34 such article twenty-eight of this chapter, including the applicable
35 definition and exemption provisions of such article, so far as the
36 provisions of such article twenty-eight of this chapter can be made
37 applicable to the taxes imposed by such school district and with such
38 limitations and special provisions as are set forth in this article. The
39 taxes described in subdivision (b) of section eleven hundred five (but
40 excluding the tax on prepaid telephone calling service) and clauses (E)
41 and (H) of subdivision (a) of section eleven hundred ten, including the
42 transitional provision in subdivision (b) of such section eleven hundred
43 six of this chapter, may not be imposed by such school district unless
44 the resolution imposes such taxes so as to include all portions and all
45 types of receipts and uses subject to tax under such subdivision (but
46 excluding the tax on prepaid telephone calling service) and clauses.
47 Provided, however, that, where a school district imposes such taxes,
48 such taxes shall omit the provision for refund or credit contained in
49 subdivision (d) of section eleven hundred nineteen of this chapter with
50 respect to such taxes described in such subdivision (b) of section elev-
51 en hundred five unless such school district elects to provide such
52 provision or, if so elected, to repeal such provision, and shall omit
53 the exemptions provided in paragraph two of subdivision (ee) and para-
54 graph two of subdivision (ii) of section eleven hundred fifteen of this
55 chapter unless such school district elects otherwise, AND SHALL OMIT THE
56 EXEMPTION PROVIDED IN PARAGRAPH TWO OF SUBDIVISION (KK) OF SECTION ELEV-

1 EN HUNDRED FIFTEEN OF THIS CHAPTER UNLESS SUCH SCHOOL DISTRICT ELECTS
2 OTHERWISE.

3 S 6. Section 1224 of the tax law is amended by adding a new subdivi-
4 sion (c-2) to read as follows:

5 (C-2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW: (1) WHERE A COUNTY
6 CONTAINING ONE OR MORE CITIES WITH A POPULATION OF LESS THAN ONE MILLION
7 HAS ELECTED THE EXEMPTION FOR COMMERCIAL FUEL CELL ELECTRICITY GENERAT-
8 ING SYSTEMS EQUIPMENT AND ELECTRICITY GENERATED BY SUCH EQUIPMENT
9 PROVIDED IN SUBDIVISION (KK) OF SUCH SECTION ELEVEN HUNDRED FIFTEEN, A
10 CITY WITHIN SUCH COUNTY SHALL HAVE THE PRIOR RIGHT TO IMPOSE TAX ON SUCH
11 EXEMPT EQUIPMENT AND/OR ELECTRICITY TO THE EXTENT OF ONE HALF OF THE
12 MAXIMUM RATES AUTHORIZED UNDER SUBDIVISION (A) OF SECTION TWELVE HUNDRED
13 TEN OF THIS ARTICLE;

14 (2) WHERE A CITY OF LESS THAN ONE MILLION HAS ELECTED THE EXEMPTION
15 FOR COMMERCIAL FUEL CELL ELECTRICITY GENERATING SYSTEMS EQUIPMENT AND
16 ELECTRICITY GENERATED BY SUCH EQUIPMENT PROVIDED IN SUBDIVISION (KK) OF
17 SUCH SECTION ELEVEN HUNDRED FIFTEEN, THE COUNTY IN WHICH SUCH CITY IS
18 LOCATED SHALL HAVE THE PRIOR RIGHT TO IMPOSE TAX ON SUCH EXEMPT EQUIP-
19 MENT AND/OR ELECTRICITY TO THE EXTENT OF ONE HALF OF THE MAXIMUM RATES
20 AUTHORIZED UNDER SUBDIVISION (A) OF SECTION TWELVE HUNDRED TEN OF THIS
21 ARTICLE.

22 S 7. This act shall take effect June 1, 2016 and shall apply in
23 accordance with the applicable transitional provisions in sections 1106
24 and 1217 of the tax law.