S T A T E   O F   N E W   Y O R K

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I N A S S E M B L Y

January 26, 2016

Introduced by M. of A. KOLB, OAKS -- 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 excise tax on telecommunications services (Part A); and to amend the tax law, in relation to temporary municipal assistance sales and compensating use taxes for cities of one million or more on telecommunications services (Part B)

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act enacts into law components of legislation relating to the "mobile tax freedom act". Each component is wholly contained within a Part identified as Parts A through B. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes a reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

PART A

Section 1. Subdivision (cc) of section 1115 of the tax law, as added by section 11 of part S of chapter 85 of the laws of 2002, is amended to read as follows:

(cc) Notwithstanding any other provision of law to the contrary, receipts from the sale of mobile telecommunications service [by a home service provider] shall be exempt from the taxes imposed by subparagraph (B) of paragraph one and paragraph two of subdivision (b) of section eleven hundred five of this article [if the mobile telecommunications customer's place of primary use is within a taxing jurisdiction outside this state].

S 2. Paragraphs (a) and (h) of subdivision 1 and paragraph (a) of subdivision 2 of section 186-e of the tax law, paragraph (a) of subdivision 1 as amended by section 2 and paragraph (h) of subdivision 1 as added by section 3 of part S of chapter 85 of the laws of 2002, and

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

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paragraph (a) of subdivision 2 as amended by section 2 of part P of chapter 59 of the laws of 2015, are amended to read as follows:

(a) [(1)] "Gross receipt" means the amount received in or by reason of any sale, conditional or otherwise, of telecommunication services or in or by reason of the furnishing of telecommunication services. [Gross receipt from the sale of mobile telecommunications service provided by a home service provider shall include "charges for mobile telecommunications service" as described in paragraph one of subdivision (l) of section eleven hundred eleven of this chapter, regardless of where the mobile telecommunications service originates, terminates or passes through.] Gross receipt is expressed in money, whether paid in cash, credit or property of any kind or nature, and shall be determined without any deduction therefrom on account of the cost of the service sold or the cost of materials, labor or services used or other costs, interest or discount paid, or any other expenses whatsoever except that there shall, however, be allowed a deduction for bad debts with respect to charges previously subjected to the tax hereunder when the debt has become worthless in accordance with generally accepted accounting principles consistently applied by the taxpayer. "Amount received" for the purpose of the definition of gross receipt, as the term gross receipt is used throughout this article, means the amount charged for the provision of a telecommunication service.

[(2) (A) Any charge for a service or property billed by or for a mobile telecommunications customer's home service provider shall be deemed to be provided by such mobile telecommunications customer's home service provider.

(B) Charges for mobile telecommunications service that are provided or deemed to be provided by a mobile telecommunications customer's home service provider shall be sourced to the taxing jurisdiction where the mobile telecommunications customer's place of primary use is located, regardless of where the mobile telecommunications service originates, terminates or passes through.]

[(h) For the purpose of applying the provisions of this section to mobile telecommunications service, the following terms when used in relation to mobile telecommunications service shall be defined as such terms are defined in section eleven hundred one of this chapter: "mobile telecommunications service," "mobile telecommunications customer," "home service provider," "licensed service area," "reseller," "serving carrier," "place of primary use" and "taxing jurisdiction".]

(a) [(1)] There is hereby imposed an excise tax on the sale of telecommunication services[, except for the sale of mobile telecommunication services that are subject to tax under subparagraph two of this paragraph, by any person which is a provider of telecommunication services,] to be paid by such person, at the rate of three and one-half percent prior to October first, nineteen hundred ninety-eight, three and one-quarter percent from October first, nineteen hundred ninety-eight through December thirty-first, nineteen hundred ninety-nine, and two and one-half percent on and after January first, two thousand of gross receipt from: (i) any intrastate telecommunication services; (ii) any interstate and international telecommunication services (other than interstate and international private telecommunication services) which originate or terminate in this state and which telecommunication services are charged to a service address in this state, regardless of where the amounts charged for such services are billed or ultimately paid; and (iii) interstate and international private telecommunication services, the gross receipt to which the tax shall apply shall be determined as prescribed in subdivision three of this section.

[(2) There is hereby imposed an excise tax on the sale of mobile telecommunication services, by any person which is a provider of telecommunication services, to be paid by such person, at the rate of two and nine-tenths percent on and after May first, two thousand fifteen of gross receipts from any mobile telecommunications service provided by a home service provider where the mobile telecommunications customer's place of primary use is within this state.]

S 3. Paragraph (b) of subdivision 2 of section 186-e of the tax law is amended by adding a new subparagraph 5 to read as follows:

(5) MOBILE TELECOMMUNICATIONS EXCLUSION. THE SALE OF MOBILE TELECOMMUNICATION SERVICE SHALL IN NO EVENT CONSTITUTE A TELECOMMUNICATIONS SERVICE, AND THE RECEIPTS FROM THE SALE OF SUCH SERVICE ARE WITHOUT THE SCOPE OF THE TAX IMPOSED BY THIS SECTION.

S 4. Paragraph (b) of subdivision 1 of section 186-c of the tax law, as amended by section 1 of part P of chapter 59 of the laws of 2015, is amended to read as follows:

(b) [(1)] In addition to the surcharge imposed by paragraph (a) of this subdivision, there is hereby imposed a surcharge on the gross receipts from telecommunication services[, except for the gross receipts from mobile telecommunication services that are subject to tax under subparagraph two of this paragraph,] relating to the metropolitan commuter transportation district at the rate of seventeen percent of the state tax rate under section one hundred eighty-six-e of this article. All the definitions and other provisions of section one hundred eighty-six-e of this article shall apply to the tax imposed by this subparagraph with such modification and limitation as may be necessary (including substituting the words "metropolitan commuter transportation district" for "state" where appropriate) in order to adapt the language of such section one hundred eighty-six-e of this article to the surcharge imposed by this subparagraph within such metropolitan commuter transportation district so as to include (i) any intra-district telecommunication services, (ii) any inter-district telecommunication services which originate or terminate in such district and are charged to a service address therein regardless of where the amounts charged for such services are billed or ultimately paid, and (iii) as apportioned to such district, private telecommunication services. Provided however, such tax surcharge shall be calculated as if the tax imposed under section one hundred eighty-six-e of this article were imposed at a rate of three and one-half percent.

[(2) In addition to the surcharge imposed by paragraph (a) of this subdivision, there is hereby imposed a surcharge on the gross receipts from mobile telecommunication services relating to the metropolitan commuter transportation district at the rate of seven-tenths and two-hundredths and one-thousandth percent on and after May first, two thousand fifteen. All the definitions and other provisions of section one hundred eighty-six-e of this article shall apply to the tax imposed by this subparagraph with such modification and limitation as may be necessary (including substituting the words "metropolitan commuter transportation district" for "state" where appropriate) in order to adapt the language of such section one hundred eighty-six-e of this article to the surcharge imposed by this subparagraph within such metropolitan commuter transportation district so as to include any mobile telecommunications service provided by a home service provider where the mobile telecommunications customer's place of primary use is within such metropolitan commuter transportation district.]

S 5. This act shall take effect on the first day of the sales tax quarterly period, as described in subdivision (b) of section 1136 of the tax law, beginning at least ninety days after the date this act shall have become a law and shall apply in accordance with the applicable transitional provisions of sections 1106 and 1217 of the tax law.

PART B

Section 1. Subdivision (b) of section 1107 of the tax law is amended by adding a new clause 12 to read as follows:

(12) EXCEPT AS OTHERWISE PROVIDED BY LAW, THE EXEMPTION PROVIDED IN SUBDIVISION (CC) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS ARTICLE RELATING TO MOBILE TELECOMMUNICATION SERVICES SHALL BE APPLICABLE PURSUANT TO A LOCAL LAW, ORDINANCE OR RESOLUTION ADOPTED BY A CITY SUBJECT TO THE PROVISIONS OF THIS SECTION. SUCH CITY IS EMPOWERED TO ADOPT OR REPEAL SUCH A LOCAL LAW, ORDINANCE OR RESOLUTION. SUCH ADOPTION OR REPEAL SHALL ALSO BE DEEMED TO AMEND ANY LOCAL LAW, ORDINANCE OR RESOLUTION ENACTED BY SUCH A CITY IMPOSING TAXES PURSUANT TO THE AUTHORITY OF SUBDIVISION (A) OF SECTION TWELVE HUNDRED TEN OF THIS CHAPTER.

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

(1) Either, all of the taxes described in article twenty-eight of this chapter, at the same uniform rate, as to which taxes all provisions of the local laws, ordinances or resolutions imposing such taxes shall be identical, except as to rate and except as otherwise provided, with the corresponding provisions in such article twenty-eight, including the definition and exemption provisions of such article, so far as the provisions of such article twenty-eight can be made applicable to the taxes imposed by such city or county and with such limitations and special provisions as are set forth in this article. The taxes authorized under this subdivision may not be imposed by a city or county unless the local law, ordinance or resolution imposes such taxes so as to include all portions and all types of receipts, charges or rents, subject to state tax under sections eleven hundred five and eleven hundred ten of this chapter, except as otherwise provided. (i) Any local law, ordinance or resolution enacted by any city of less than one million or by any county or school district, imposing the taxes authorized by this subdivision, shall, notwithstanding any provision of law to the contrary, exclude from the operation of such local taxes all sales of tangible personal property for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam, for sale, by manufacturing, processing, generating, assembly, refining, mining or extracting; and all sales of tangible personal property for use or consumption predominantly either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both; and, unless such city, county or school district elects otherwise, shall omit the provision for credit or refund contained in clause six of subdivision (a) or subdivision (d) of section eleven hundred nineteen of this chapter. (ii) Any local law, ordinance or resolution enacted by any city, county or school district, imposing the taxes authorized by this subdivision, shall omit the residential solar energy systems equipment and electricity exemption provided for in subdivision (ee), the commer-

cial solar energy systems equipment and electricity exemption provided for in subdivision (ii) and the clothing and footwear exemption provided for in paragraph thirty of subdivision (a) of section eleven hundred fifteen of this chapter, unless such city, county or school district elects otherwise as to either such residential solar energy systems equipment and electricity exemption, such commercial solar energy systems equipment and electricity exemption or such clothing and footwear exemption. ANY LOCAL LAW, ORDINANCE OR RESOLUTION ENACTED BY ANY CITY, COUNTY OR SCHOOL DISTRICT, IMPOSING THE TAXES AUTHORIZED BY THIS SUBDIVISION, SHALL OMIT THE MOBILE TELECOMMUNICATION SERVICES EXEMPTION PROVIDED FOR IN SUBDIVISION (CC) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER, UNLESS SUCH CITY, COUNTY OR SCHOOL DISTRICT ELECTS OTHERWISE; PROVIDED THAT IF SUCH A CITY HAVING A POPULATION OF ONE MILLION OR MORE ENACTS THE RESOLUTION DESCRIBED IN SUBDIVISION (P) OF THIS SECTION OR REPEALS SUCH RESOLUTION, SUCH RESOLUTION OR REPEAL SHALL ALSO BE DEEMED TO AMEND ANY LOCAL LAW, ORDINANCE OR RESOLUTION ENACTED BY SUCH A CITY IMPOSING SUCH TAXES PURSUANT TO THE AUTHORITY OF THIS SUBDIVISION, WHETHER OR NOT SUCH TAXES ARE SUSPENDED AT THE TIME SUCH CITY ENACTS ITS RESOLUTION PURSUANT TO SUBDIVISION (P) OF THIS SECTION OR AT THE TIME OF SUCH REPEAL; PROVIDED, FURTHER, THAT ANY SUCH LOCAL LAW, ORDINANCE OR RESOLUTION AND SECTION ELEVEN HUNDRED SEVEN OF THIS CHAPTER, AS DEEMED TO BE AMENDED IN THE EVENT A CITY OF ONE MILLION OR MORE ENACTS A RESOLUTION PURSUANT TO THE AUTHORITY OF SUBDIVISION (P) OF THIS SECTION, SHALL BE FURTHER AMENDED, AS PROVIDED IN SECTION TWELVE HUNDRED EIGHTEEN OF THIS SUBPART, SO THAT THE WIRELESS TELECOMMUNICATIONS SERVICES EXEMPTION IN ANY SUCH LOCAL LAW, ORDINANCE OR RESOLUTION OR IN SUCH SECTION ELEVEN HUNDRED SEVEN OF THIS CHAPTER IS THE SAME AS THE MOBILE TELECOMMUNICATION SERVICES EXEMPTION IN SUBDIVISION (CC) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER.

S 3. Subdivision (d) of section 1210 of the tax law, as amended by section 4-a of part Z of chapter 59 of the laws of 2015, 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] CHAPTER, or the exemption for commercial solar equipment and electricity in subdivision (ii) of section eleven hundred fifteen of this [article] CHAPTER must go into effect only on one of the following dates: March first, June first, September first or December first; provided, that a local law, ordinance or resolution providing for the exemption described in paragraph thirty of subdivision (a) of section eleven hundred fifteen of this chapter or repealing any such exemption or a local law, ordinance or resolution providing for a refund or credit described in subdivision (d) of section eleven hundred nineteen of this chapter or repealing such provision so provided must go into effect only on March first; PROVIDED, FURTHER, THAT A LOCAL LAW, ORDINANCE OR RESOLUTION PROVIDING FOR THE EXEMPTION DESCRIBED IN SUBDIVISION (CC) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER OR REPEALING ANY SUCH EXEMPTION SO PROVIDED AND A RESOLUTION ENACTED PURSUANT TO THE AUTHORITY OF SUBDIVISION (P) OF THIS SECTION

PROVIDING SUCH EXEMPTION OR REPEALING SUCH EXEMPTION SO PROVIDED MAY GO INTO EFFECT IMMEDIATELY. No such local law, ordinance or resolution shall be effective unless a certified copy of such law, ordinance or resolution is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least ninety days prior to the date it is to become effective. However, the commissioner may waive and reduce such ninety-day minimum notice requirement to a mailing of such certified copy by registered or certified mail within a period of not less than thirty days prior to such effective date if the commissioner deems such action to be consistent with the commissioner's duties under section twelve hundred fifty of this article and the commissioner acts by resolution. Where the restriction provided for in section twelve hundred twenty-three of this 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 4. Section 1210 of the tax law is amended by adding a new subdivision (p) to read as follows:

(P) NOTWITHSTANDING ANY OTHER PROVISION OF STATE OR LOCAL LAW, ORDINANCE OR RESOLUTION TO THE CONTRARY: (1) ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE IN WHICH THE TAXES IMPOSED BY SECTION ELEVEN HUNDRED SEVEN OF THIS CHAPTER ARE IN EFFECT, ACTING THROUGH ITS LOCAL LEGISLATIVE BODY, IS HEREBY AUTHORIZED AND EMPOWERED TO ELECT TO PROVIDE THE EXEMPTION FROM SUCH TAXES FOR THE SAME MOBILE COMMUNICATIONS SERVICES EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES DESCRIBED IN SUBDIVISION (CC) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER BY ENACTING A RESOLUTION IN THE FORM SET FORTH IN PARAGRAPH TWO OF THIS SUBDIVISION; WHEREUPON, UPON COMPLIANCE WITH THE PROVISIONS OF SUBDIVISIONS (D) AND (E) OF THIS SECTION, SUCH ENACTMENT OF SUCH RESOLUTION SHALL BE DEEMED TO BE AN AMENDMENT TO SUCH SECTION ELEVEN HUNDRED SEVEN AND SUCH SECTION ELEVEN HUNDRED SEVEN SHALL BE DEEMED TO INCORPORATE SUCH EXEMPTION AS IF IT HAD BEEN DULY ENACTED BY THE STATE LEGISLATURE AND APPROVED BY THE GOVERNOR.

(2) FORM OF RESOLUTION: BE IT ENACTED BY THE (INSERT PROPER TITLE OF LOCAL LEGISLATIVE BODY) AS FOLLOWS:

SECTION ONE. RECEIPTS FROM SALES OF AND CONSIDERATION GIVEN OR CONTRACTED TO BE GIVEN FOR PURCHASES OF MOBILE TELECOMMUNICATIONS SERVICES EXEMPT FROM STATE SALES AND COMPENSATING USE TAXES PURSUANT TO SUBDIVISION (CC) OF SECTION ELEVEN HUNDRED FIFTEEN OF THE TAX LAW SHALL ALSO BE EXEMPT FROM SALES AND COMPENSATING USE TAXES IMPOSED IN THIS JURISDICTION.

SECTION TWO. THIS RESOLUTION SHALL TAKE EFFECT, (INSERT THE DATE) AND SHALL APPLY TO SALES MADE AND USES OCCURRING ON AND AFTER THAT DATE ALTHOUGH MADE OR OCCURRING UNDER A PRIOR CONTRACT.

S 5. The commissioner of taxation and finance is hereby authorized to implement the provisions of this act with respect to the elimination of the imposition of sales tax, additional taxes, and supplemental taxes on wireless telecommunications services and all other taxes so addressed by this act.

S 6. This act shall take effect on the first day of the sales tax quarterly period, as described in subdivision (b) of section 1136 of the tax law, beginning at least ninety days after the date this act shall have become a law and shall apply in accordance with the applicable transitional provisions of sections 1106 and 1217 of the tax law.

S 2. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

S 3. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through B of this act shall be as specifically set forth in the last section of such Parts.