

4753

2015-2016 Regular Sessions

I N S E N A T E

April 15, 2015

Introduced by Sens. GRIFFO, FUNKE, ORTT -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

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 (jj) to read as follows:
3 (JJ) 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
18 THAT IS: (A) OWNED BY A PERSON OTHER THAN THE PURCHASER OF SUCH ELEC-

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

LBD10464-01-5

1 TRICITY; (B) INSTALLED ON THE NON-RESIDENTIAL PREMISES OF THE PURCHASER
2 OF SUCH ELECTRICITY; AND (C) USED TO PROVIDE HEATING, COOLING, HOT WATER
3 OR ELECTRICITY TO SUCH PREMISES.

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

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

49 (4) Notwithstanding any other provision of law to the contrary, any
50 local law enacted by any city of one million or more that imposes the
51 taxes authorized by this subdivision (i) may omit the exception provided
52 in subparagraph (ii) of paragraph three of subdivision (c) of section
53 eleven hundred five of this chapter for receipts from laundering, dry-
54 cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining;
55 (ii) may impose the tax described in paragraph six of subdivision (c) of
56 section eleven hundred five of this chapter at a rate in addition to the

1 rate prescribed by this section not to exceed two percent in multiples
2 of one-half of one percent; (iii) shall provide that the tax described
3 in paragraph six of subdivision (c) of section eleven hundred five of
4 this chapter does not apply to facilities owned and operated by the city
5 or an agency or instrumentality of the city or a public corporation the
6 majority of whose members are appointed by the chief executive officer
7 of the city or the legislative body of the city or both of them; (iv)
8 shall not include any tax on receipts from, or the use of, the services
9 described in paragraph seven of subdivision (c) of section eleven
10 hundred five of this chapter; (v) shall provide that, for purposes of
11 the tax described in subdivision (e) of section eleven hundred five of
12 this chapter, "permanent resident" means any occupant of any room or
13 rooms in a hotel for at least one hundred eighty consecutive days with
14 regard to the period of such occupancy; (vi) may omit the exception
15 provided in paragraph one of subdivision (f) of section eleven hundred
16 five of this chapter for charges to a patron for admission to, or use
17 of, facilities for sporting activities in which the patron is to be a
18 participant, such as bowling alleys and swimming pools; (vii) may
19 provide the clothing and footwear exemption in paragraph thirty of
20 subdivision (a) of section eleven hundred fifteen of this chapter, and,
21 notwithstanding any provision of subdivision (d) of this section to the
22 contrary, any local law providing for such exemption or repealing such
23 exemption, may go into effect on any one of the following dates: March
24 first, June first, September first or December first; (viii) shall omit
25 the exemption provided in paragraph forty-one of subdivision (a) of
26 section eleven hundred fifteen of this chapter; (ix) shall omit the
27 exemption provided in subdivision (c) of section eleven hundred fifteen
28 of this chapter insofar as it applies to fuel, gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of
29 whatever nature for use or consumption directly and exclusively in the
30 production of gas, electricity, refrigeration or steam; (x) shall omit,
31 unless such city elects otherwise, the provision for refund or credit
32 contained in clause six of subdivision (a) or in subdivision (d) of
33 section eleven hundred nineteen of this chapter; [and] (xi) shall
34 provide that section eleven hundred five-C of this chapter does not
35 apply to such taxes, and shall tax receipts from every sale, other than
36 sales for resale, of gas service or electric service of whatever nature,
37 including the transportation, transmission or distribution of gas or
38 electricity, even if sold separately, at the rate set forth in clause
39 one of subparagraph (i) of the opening paragraph of this section; (XII)
40 SHALL OMIT, UNLESS SUCH CITY ELECTS OTHERWISE, THE EXEMPTION FOR COMMER-
41 CIAL FUEL CELL SYSTEMS EQUIPMENT AND ELECTRICITY PROVIDED IN SUBDIVISION
42 (JJ) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS CHAPTER. ANY REFERENCE
43 IN THIS CHAPTER OR IN ANY LOCAL LAW, ORDINANCE OR RESOLUTION ENACTED
44 PURSUANT TO THE AUTHORITY OF THIS ARTICLE TO FORMER SUBDIVISIONS (N) OR
45 (P) OF THIS SECTION SHALL BE DEEMED TO BE A REFERENCE TO CLAUSE (XII) OF
46 THIS PARAGRAPH, RESPECTIVELY, AND ANY SUCH LOCAL LAW, ORDINANCE OR
47 RESOLUTION THAT PROVIDES THE EXEMPTIONS PROVIDED IN SUCH FORMER SUBDIVI-
48 SIONS (N) AND/OR (P) SHALL BE DEEMED INSTEAD TO PROVIDE THE EXEMPTIONS
49 PROVIDED IN CLAUSE (XII) OF THIS PARAGRAPH.

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

54 (1) Or, one or more of the taxes described in subdivisions (b), (d),
55 (e) and (f) of section eleven hundred five of this chapter, at the same
56 uniform rate, including the transitional provisions in section eleven

1 hundred six of this chapter covering such taxes, but not the taxes
2 described in subdivisions (a) and (c) of section eleven hundred five of
3 this chapter. Provided, further, that where the tax described in subdivi-
4 sion (b) of section eleven hundred five of this chapter is imposed,
5 the compensating use taxes described in clauses (E), (G) and (H) of
6 subdivision (a) of section eleven hundred ten of this chapter shall also
7 be imposed. Provided, further, that where the taxes described in subdivi-
8 sion (b) of section eleven hundred five are imposed, such taxes shall
9 omit: (A) the provision for refund or credit contained in subdivision
10 (d) of section eleven hundred nineteen of this chapter with respect to
11 such taxes described in such subdivision (b) of section eleven hundred
12 five unless such city or county elects to provide such provision or, if
13 so elected, to repeal such provision; (B) THE EXEMPTION PROVIDED IN
14 PARAGRAPH TWO OF SUBDIVISION (JJ) OF SECTION ELEVEN HUNDRED FIFTEEN OF
15 THIS CHAPTER, UNLESS SUCH COUNTY OR CITY ELECTS OTHERWISE.

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

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

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

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

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

42 S 7. Section 1224 of the tax law is amended by adding a new subdivi-
43 sion (c-1) to read as follows:

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

52 (2) WHERE A CITY OF LESS THAN ONE MILLION HAS ELECTED THE EXEMPTION
53 FOR COMMERCIAL FUEL CELL SYSTEMS EQUIPMENT AND ELECTRICITY PROVIDED IN
54 SUBDIVISION (JJ) OF SUCH SECTION ELEVEN HUNDRED FIFTEEN, THE COUNTY IN
55 WHICH SUCH CITY IS LOCATED SHALL HAVE THE PRIOR RIGHT TO IMPOSE TAX ON
56 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 and shall apply in
4 accordance with the applicable transitional provisions in sections 1106
5 and 1217 of the tax law.