

STATE OF NEW YORK

3588

2019-2020 Regular Sessions

IN SENATE

February 11, 2019

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue

AN ACT to amend the tax law, in relation to providing an exemption for alternative energy systems from the state's sales and compensating use taxes and authorizing counties and cities to elect such exemption from their sales and use taxes imposed by or pursuant to the authority of such law; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision (b) of section 1101 of the tax law is amended
2 by adding a new paragraph 39 to read as follows:

3 (39) Alternative energy systems. New Energy Star appliances and tangi-
4 ble personal property used in or on habitable residential and non-resi-
5 dential structures for the purpose of improving the energy efficiency of
6 such structures consist of: (i) systems which do not rely on petroleum
7 products or natural gas as their energy source or fuel cell electric
8 generation equipment as described in paragraph two of subsection (g-2)
9 of section six hundred six of this chapter; (ii) new Energy Star appli-
10 ances, including residential refrigerators, freezers, clothing washers
11 (but not a combination washer/dryer unless the clothing is washed and
12 dried in the same compartment), light fixtures which use a pin-based
13 compact fluorescent bulb, non-commercial ceiling fans or ceiling fan and
14 light kits, dishwasher or air conditioners, sold at retail, provided
15 such appliances qualify for and are labeled with, an Energy Star label
16 by the manufacturer, pursuant to an agreement among the manufacturer,
17 the United States environmental protection agency and the United States
18 department of energy; and (iii) tangible personal property that improves
19 the energy efficiency of residential and non-residential heating and
20 cooling systems, including but not limited to, insulation and weather

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

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1 stripping and products, such as roofing, windows, doors and skylights
2 approved by the Energy Star program.

3 § 2. Subdivision (a) of section 1115 of the tax law is amended by
4 adding a new paragraph 45 to read as follows:

5 (45) Alternative energy systems, new Energy Star appliances and tangi-
6 ble personal property used in or on habitable residential and non-resi-
7 dential structures for the purpose of improving the energy efficiency of
8 such structures, as defined in paragraph thirty-nine of subdivision (b)
9 of section eleven hundred one of this article.

10 § 3. Clause 9 of subdivision (b) of section 1107 of the tax law, as
11 amended by section 78 of part A of chapter 56 of the laws of 1998, is
12 amended to read as follows:

13 (9) Except as otherwise provided by law, the [~~exemption~~] exemptions
14 provided for in paragraph thirty of subdivision (a) of section eleven
15 hundred fifteen of this article relating to clothing and footwear and
16 paragraph forty-five of subdivision (a) of section eleven hundred
17 fifteen of this article relating to alternative energy systems shall not
18 apply.

19 § 4. Subdivision (f) of section 1109 of the tax law, as added by
20 section 118-a of part A of chapter 389 of the laws of 1997, is amended
21 to read as follows:

22 (f) The [~~exemption~~] exemptions contained in [~~paragraph~~] paragraphs
23 thirty and forty-five of subdivision (a) of section eleven hundred
24 fifteen of this article shall not apply.

25 § 5. Section 1109 of the tax law is amended by adding a new subdivi-
26 sion (i) to read as follows:

27 (i) Notwithstanding any other provision of state or local law, ordi-
28 nance or resolution to the contrary: (1) In the event that a county,
29 city or school district located in the metropolitan commuter transporta-
30 tion district imposes taxes pursuant to the authority of subpart B of
31 part I of article twenty-nine of this chapter and elects to provide the
32 alternative energy systems exemption authorized in paragraph one of
33 subdivision (a) of section twelve hundred ten of this chapter, or a city
34 located in such district in which the taxes provided for in section
35 eleven hundred seven of this part are in effect elects to provide such
36 alternative energy systems exemption from such taxes pursuant to the
37 authority of subdivision (q) of section twelve hundred ten of this chap-
38 ter, or the taxes provided for in section eleven hundred eight of this
39 part are in effect in a city located in such district, the exemption
40 provided by paragraph forty-five of subdivision (a) of section eleven
41 hundred fifteen of this article shall be applicable in such portion of
42 the metropolitan commuter transportation district in which such county,
43 city or school district is located. The commissioner shall determine and
44 certify to the comptroller the amount of revenue forgone at the rate of
45 one-quarter of one percent under this section in such county, city or
46 school district on account of sales of alternative energy systems in
47 such county, city or school district.

48 (2) Commencing with the sales tax quarterly period which commences on
49 June first, two thousand nineteen, the commissioner shall make such
50 determinations and certifications on the twelfth day of the month
51 following the month in which sales tax quarterly returns are due under
52 section eleven hundred thirty-six of this article with respect to such
53 quarterly period for as long as such alternative energy systems
54 exemptions from such taxes imposed pursuant to the authority of article
55 twenty-nine of this chapter or by section eleven hundred seven or eleven
56 hundred eight of this part are in effect. Neither the commissioner nor

1 the comptroller shall be held liable for any inaccuracy in such determi-
2 nations and certifications. Such determinations and certifications may
3 be based on such information as may be available to the commissioner at
4 the time such determinations and certifications must be made under this
5 subdivision and may be estimated on the basis of percentages or other
6 indices calculated from distributions from prior periods. The commis-
7 sioner shall be authorized to require such information as the commis-
8 sioner deems necessary to comply with the requirements of this subdivi-
9 sion from persons required to file returns under section eleven hundred
10 thirty-six of this article.

11 (3) By the fifteenth day of the month in which the commissioner has
12 made the certifications to the comptroller described in paragraph two of
13 this subdivision, the comptroller shall bill any county, city or school
14 district in such metropolitan commuter transportation district which
15 provides such alternative energy systems exemption, and any city in such
16 district in which the taxes imposed by section eleven hundred seven of
17 this part are in effect which has elected to provide such alternative
18 energy systems exemption, and any city in such district in which the
19 taxes imposed by section eleven hundred eight of this part are in
20 effect, an amount equal to one-half of the amount certified to the comp-
21 troller by the commissioner in respect of such county, city or school
22 district; and such county, city or school district shall pay the amount
23 of such bill to the comptroller by the twenty-fifth day of such month.
24 The comptroller shall deposit any such amounts received in the mass
25 transportation operating assistance fund established by section eighty-
26 eight-a of the state finance law to the credit of the metropolitan mass
27 transportation operating assistance account therein.

28 (4) In the event that a county, city or school district imposing tax
29 pursuant to the authority of subpart B of part I of article twenty-nine
30 of this chapter does not pay in full a bill described in paragraph three
31 of this subdivision by the twenty-fifth day of the month described in
32 paragraphs two and three of this subdivision, the comptroller shall
33 deduct any amount not paid from the amount of the next payment or
34 payments due such county, city or school district pursuant to subdivi-
35 sion (c) of section twelve hundred sixty-one of this chapter until such
36 amount not paid has been recovered. The comptroller shall deposit the
37 amounts so deducted and recovered in the mass transportation operating
38 assistance fund to be credited as provided in paragraph three of this
39 subdivision.

40 (5) In the event that a city in which the taxes imposed by section
41 eleven hundred seven of this part are in effect does not pay in full a
42 bill described in paragraph three of this subdivision by the twenty-
43 fifth day of the month described in paragraphs two and three of this
44 subdivision, the comptroller shall deduct any amount not paid from the
45 amount of the next payment or payments due such city, with respect to
46 taxes, penalty and interest imposed pursuant to the authority of section
47 twelve hundred twelve-a of this chapter, pursuant to subdivision (c) of
48 section twelve hundred sixty-one of this chapter, until such amount not
49 paid has been recovered. The comptroller shall deposit the amounts so
50 deducted and recovered in the mass transportation operating assistance
51 fund to be credited as provided in paragraph three of this subdivision.

52 (6) In the event that a city in which the taxes imposed by section
53 eleven hundred eight of this part are in effect does not pay in full a
54 bill described in paragraph three of this subdivision by the twenty-
55 fifth day of the month described in paragraphs two and three of this
56 subdivision, the comptroller shall deduct any amount not paid from the

1 amount of any other moneys due such city from the comptroller, not
2 otherwise pledged, dedicated or encumbered pursuant to other state law,
3 until such amount not paid has been recovered. The comptroller shall
4 deposit the amounts so deducted and recovered in the mass transportation
5 operating assistance fund to be credited as provided in paragraph three
6 of this subdivision.

7 (7) The commissioner shall certify the amount of any over calculation
8 or under calculation of any certification required to be made to the
9 comptroller under paragraph three of this subdivision as soon after its
10 discovery as reasonably possible and subsequent bills to a city, county
11 or school district to which the over calculation or under calculation
12 relates shall be adjusted accordingly, provided that the comptroller may
13 adjust such number of subsequent bills as the comptroller shall consider
14 reasonable in view of the amount of the adjustment and all other facts
15 and circumstances.

16 (8) On the same date that the comptroller is required to bill a coun-
17 ty, city or school district an amount as provided in paragraph three of
18 this subdivision, the comptroller shall, after having first made any
19 deposits required by section ninety-two-r of the state finance law and
20 only to the extent that there are moneys remaining after having made
21 such required deposits, withdraw from the state treasury, to the debit
22 of the general fund, an amount equal to the total of the amounts
23 required to be billed to counties, cities and school districts pursuant
24 to such paragraph three and deposit such total amount in the mass trans-
25 portation operating assistance fund to be credited as provided in such
26 paragraph three. The amount of any over calculation or under calculation
27 determined in paragraph seven of this subdivision shall likewise be
28 applied to the amounts required to be deposited under this paragraph, so
29 that the amounts deposited under this paragraph equal the total of the
30 amounts required to be billed to counties, cities and school districts
31 under such paragraph three, as adjusted, pursuant to paragraph seven of
32 this subdivision.

33 § 6. Subparagraph (ii) of paragraph 1 of subdivision (a) of section
34 1210 of the tax law, as amended by section 2 of part WW of chapter 60 of
35 the laws of 2016, is amended to read as follows:

36 (ii) Any local law, ordinance or resolution enacted by any city, coun-
37 ty or school district, imposing the taxes authorized by this subdivi-
38 sion, shall omit the residential solar energy systems equipment and
39 electricity exemption provided for in subdivision (ee), the commercial
40 solar energy systems equipment and electricity exemption provided for in
41 subdivision (ii), the commercial fuel cell electricity generating
42 systems equipment and electricity generated by such equipment 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 and the alternative energy systems
46 exemption provided for in paragraph forty-five of subdivision (a) of
47 section eleven hundred fifteen of this chapter, unless such city, county
48 or school district elects otherwise as to such residential solar energy
49 systems equipment and electricity exemption, such commercial solar ener-
50 gy systems equipment and electricity exemption, commercial fuel cell
51 electricity generating systems equipment and electricity generated by
52 such equipment exemption ~~[or]~~, such clothing and footwear exemption or
53 such alternative energy systems exemption.

54 § 7. Subdivision (d) of section 1210 of the tax law, as amended by
55 section 4 of part WW of chapter 60 of the laws of 2016, is amended to
56 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, or the exemption for commercial solar equipment and electricity in subdivision (ii) of section eleven hundred fifteen of this article, or electing or repealing the exemption for commercial fuel cell electricity generating systems equipment and electricity generated by such equipment in subdivision (kk) of section eleven hundred fifteen of this article 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 or forty-five 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. 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.

§ 8. 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 alternative energy systems exempt from state sales and compensating use taxes described in paragraph forty-five of subdivision (a) of section eleven hundred fifteen of this chapter by enacting a resolution exactly 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, or for the use of, alternative energy systems exempt from state sales and compensating use taxes pursuant to paragraph forty-five of subdivision (a) of section 1115 of the New York tax law shall also be exempt from sales and compensating use taxes imposed in this jurisdiction.

Section two. This resolution shall take effect March 1, (insert the year, but not earlier than the year 2020) and shall apply to sales made and uses occurring on or after such date in accordance with the applicable transitional provisions of sections 1106 and 1217 of the New York tax law.

§ 9. Notwithstanding any other provision of state or local law, ordinance or resolution to the contrary: (a) Any county or city imposing sales and compensating use taxes pursuant to the authority of subpart B of part 1 of article 29 of the tax law, acting through its local legislative body, is hereby authorized and empowered to elect to provide the exemption from such taxes for alternative energy systems exempt from state sales and compensating use taxes described in paragraph 45 of subdivision (a) of section 1115 of the tax law, whether such taxes are imposed by local law, ordinance or resolution, by enacting a resolution exactly in the form set forth in subdivision (c) of this section; whereupon, upon compliance with the provisions of subdivision (d) of this section, such enactment of such resolution shall be deemed to amend such local law, ordinance or resolution imposing such taxes, and such local law, ordinance or resolution shall thenceforth be deemed to incorporate such exemption.

(b) Any city of one million or more in which the taxes imposed by section 1107 of the tax law 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 alternative energy systems exempt from state sales and compensating use taxes described in paragraph 45 of subdivision (a) of section 1115 of the tax law by enacting a resolution exactly in the form set forth in subdivision (c) of this section; whereupon, upon compliance with the provisions of subdivision (d) of this section, such enactment of such resolution shall be deemed to amend such section 1107 of the tax law and such section 1107 shall thenceforth be deemed to incorporate such exemption as if it had been duly enacted by the state legislature and approved by the governor and such resolution 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 subdivision (a) of section 1210 of the tax law, whether or not such taxes are suspended at the time such city enacts its resolution.

(c) Form of Resolution:

Be it enacted by the (insert proper title of local legislative body) as follows:

Section one: The (county or city) of (insert locality's name) hereby elects the alternative energy systems exemption commencing in January of 2020.

Section two: This resolution shall take effect immediately and shall apply to sales made and uses occurring on or after such date, in accordance with applicable transitional provisions of the New York tax law.

(d) A resolution adopted pursuant to this section shall be effective only if it is adopted exactly as set forth in subdivision (c) of this

1 section and such county or city adopts it by December 31, 2019, mails a
2 certified copy of it to the commissioner of taxation and finance by
3 certified mail by such date and otherwise complies with the requirements
4 of subdivisions (d) and (e) of section 1210 of the tax law.

5 § 10. This act shall take effect immediately and shall expire and be
6 deemed repealed two years after such date and shall apply to sales made
7 and uses occurring during exemption periods on or after that date in
8 accordance with the applicable transitional provisions of sections 1106
9 and 1217 of the tax law.