

# STATE OF NEW YORK

9050

## IN SENATE

October 14, 2020

Introduced by Sen. JORDAN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the tax law, in relation to enacting the "Save our New York state restaurants Act" and creating a limited sales tax exemption for the sale of food and drink at restaurants and taverns from state sales and compensating use taxes and granting municipalities the option to grant such limited exemption

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

1 Section 1. This act shall be known and may be cited as the "Save our  
2 New York state restaurants Act".

3 § 2. Subdivision (a) of section 1115 of the tax law is amended by  
4 adding a new paragraph 46 to read as follows:

5 (46) for the seven day period beginning on the first Sunday which  
6 occurs thirty days after the effective date of this paragraph, the  
7 receipts from every sale of food and drink of any nature or of food  
8 alone, when sold in or by restaurants, taverns or other establishments  
9 in this state; provided however that such exemption shall not include  
10 food or drinks sold by fast food chains. For the purposes of this para-  
11 graph, the term "fast food chains" refers to limited service restau-  
12 rants, where customers order at the counter and pay in advance, which  
13 are large chains with multiple locations nationally.

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

16 (12) Except as otherwise provided by law, the exemption on sales of  
17 food and drink during the one week period provided in paragraph forty-  
18 six of subdivision (a) of section eleven hundred fifteen of this arti-  
19 cle, shall be applicable pursuant to a local law, ordinance or resol-  
20 ution adopted by a city subject to the provisions of this section. Such  
21 city is empowered to adopt or repeal such a local law, ordinance or  
22 resolution. Such adoption or repeal shall also be deemed to amend any  
23 local law, ordinance or resolution enacted by such a city imposing taxes  
24 pursuant to the authority of subdivision (a) of section twelve hundred  
25 ten of this chapter.

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

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1 § 4. Paragraph 1 of subdivision (a) of section 1210 of the tax law is  
2 amended by adding a new subparagraph (iii) to read as follows:

3 (iii) Any local law, ordinance or resolution enacted by any city,  
4 county or school district, imposing the taxes authorized by this subdivi-  
5 vision, shall omit the sales of food and drink at restaurants and  
6 taverns exemption during the one week period as provided for in para-  
7 graph forty-six of subdivision (a) of section eleven hundred fifteen of  
8 this chapter, unless such city, county or school district elects other-  
9 wise; provided that if such a city having a population of one million or  
10 more enacts the resolution described in subdivision (p) of this section  
11 or repeals such resolution, such repeal or resolution shall also be  
12 deemed to amend any local law, ordinance or resolution enacted by such a  
13 city imposing such tax pursuant to the authority of this subdivision,  
14 whether or not such taxes are suspended at the time such city enacts its  
15 resolution pursuant to subdivision (p) of this section or at the time of  
16 any such repeal; provided further that any such local law, ordinance or  
17 resolution and section eleven hundred seven of this chapter, as deemed  
18 to be amended in the event a city of one million or more enacts a resol-  
19 ution pursuant to the authority of subdivision (p) of this section,  
20 shall be further amended, as provided in section twelve hundred eighteen  
21 of this subpart, so that sales of food and drink by restaurants and  
22 taverns in any such local law, ordinance or resolution or in section  
23 eleven hundred seven of this chapter is the same as the state exemption  
24 on sales of food and drink by restaurants and taverns in paragraph  
25 forty-six of subdivision (a) of section eleven hundred fifteen of this  
26 chapter.

27 § 5. Subdivision (d) of section 1210 of the tax law, as amended by  
28 section 4 of part WW of chapter 60 of the laws of 2016, 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; provided further that  
53 a local law, ordinance or resolution providing for the exemption  
54 described in paragraph forty-six of subdivision (a) of section eleven  
55 hundred fifteen of this chapter or repealing any such exemption so  
56 provided and a resolution enacted pursuant to the authority of subdivi-

1 sion (p) of this section provided such exemption or repealing such  
2 exemption so provided may go into effect immediately. No such local law,  
3 ordinance or resolution shall be effective unless a certified copy of  
4 such law, ordinance or resolution is mailed by registered or certified  
5 mail to the commissioner at the commissioner's office in Albany at least  
6 ninety days prior to the date it is to become effective. However, the  
7 commissioner may waive and reduce such ninety-day minimum notice  
8 requirement to a mailing of such certified copy by registered or certi-  
9 fied mail within a period of not less than thirty days prior to such  
10 effective date if the commissioner deems such action to be consistent  
11 with the commissioner's duties under section twelve hundred fifty of  
12 this article and the commissioner acts by resolution. Where the  
13 restriction provided for in section twelve hundred twenty-three of this  
14 article as to the effective date of a tax and the notice requirement  
15 provided for therein are applicable and have not been waived, the  
16 restriction and notice requirement in section twelve hundred twenty-  
17 three of this article shall also apply.

18 § 6. Section 1210 of the tax law is amended by adding a new subdivi-  
19 sion (p) to read as follows:

20 (p) Notwithstanding any other provision of state or local law, ordi-  
21 nance or resolution to the contrary:

22 (1) Any city having a population of one million or more in which the  
23 taxes imposed by section eleven hundred seven of this chapter are in  
24 effect, acting through its local legislative body, is hereby authorized  
25 and empowered to elect to provide the same exemption from such taxes as  
26 the sales of food and drink by restaurants and taverns exemption from  
27 state sales and compensating use taxes described in paragraph forty-six  
28 of subdivision (a) of section eleven hundred fifteen of this chapter by  
29 enacting a resolution in the form set forth in paragraph two of this  
30 subdivision; whereupon, upon compliance with the provisions of subdivi-  
31 sions (d) and (e) of this section, such enactment of such resolution  
32 shall be deemed to be an amendment to such section eleven hundred seven  
33 and such section eleven hundred seven shall be deemed to incorporate  
34 such exemption as if it had been duly enacted by the state legislature  
35 and approved by the governor.

36 (2) Form of Resolution: Be it enacted by the (insert proper title of  
37 local legislative body) as follows:

38 Section 1. Receipts from sales of and consideration given or  
39 contracted to be given for food and drink sold at restaurants and  
40 taverns exempt from state sales and compensating use taxes during a one  
41 week period pursuant to paragraph forty-six of subdivision (a) of  
42 section eleven hundred fifteen of the tax law shall also be exempt from  
43 sales and compensating use taxes imposed in this jurisdiction.

44 2. This resolution shall take effect, (insert the date) and shall  
45 apply to sales made and uses occurring on and after that date although  
46 shall not include sales made or occurring under a prior contract.

47 § 7. This act shall take effect immediately and shall apply to the  
48 seven day period which begins on the first Sunday after 30 days after  
49 the date this act shall have become a law and shall apply in accordance  
50 with the applicable transitional provisions of sections 1106 and 1217 of  
51 the tax law; provided that sections four and five of this act shall  
52 apply to sales made on or after the date such sections shall have taken  
53 effect; and provided further that the commissioner of taxation and  
54 finance shall be authorized on and after the date this act shall have  
55 become a law to adopt and amend any rules or regulations necessary to  
56 implement this act on its effective date.