

STATE OF NEW YORK

1704--A

2021-2022 Regular Sessions

IN ASSEMBLY

January 11, 2021

Introduced by M. of A. SANTABARBARA, STERN -- 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 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 thirty 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 thirty day period provided in paragraph
18 forty-six of subdivision (a) of section eleven hundred fifteen of this
19 article, shall be applicable pursuant to a local law, ordinance or
20 resolution adopted by a city subject to the provisions of this section.
21 Such city is empowered to adopt or repeal such a local law, ordinance or

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

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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.

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

(iii) Any local law, ordinance or resolution enacted by any city, county or school district, imposing the taxes authorized by this subdivision, shall include the sales of food and drink at restaurants and taverns exemption during the thirty day period as provided for in paragraph forty-six of subdivision (a) 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 repeal or resolution shall also be deemed to amend any local law, ordinance or resolution enacted by such a city imposing such tax 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 any 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 sales of food and drink by restaurants and taverns in any such local law, ordinance or resolution or in section eleven hundred seven of this chapter is the same as the state exemption on sales of food and drink by restaurants and taverns in paragraph forty-six of subdivision (a) of section eleven hundred fifteen of this chapter.

§ 5. Subdivision (d) of section 1210 of the tax law, as amended by section 4 of part WW of chapter 60 of the laws of 2016, 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, 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 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

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

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

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

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

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

42 Section 1. Receipts from sales of and consideration given or
43 contracted to be given for food and drink sold at restaurants and
44 taverns exempt from state sales and compensating use taxes during a
45 thirty day period pursuant to paragraph forty-six of subdivision (a) of
46 section eleven hundred fifteen of this chapter shall also be exempt from
47 sales and compensating use taxes imposed in this jurisdiction.

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

51 § 7. This act shall take effect immediately and shall apply to the
52 thirty day period which begins on the first Sunday after 30 days after
53 the date this act shall have become a law and shall apply in accordance
54 with the applicable transitional provisions of sections 1106 and 1217 of
55 the tax law; provided that sections four and five of this act shall
56 apply to sales made on or after the date such sections shall have taken

1 effect. Effective immediately, the addition, amendment and/or repeal of
2 any rule or regulation necessary for the implementation of this act on
3 its effective date are authorized to be made and completed on or before
4 such effective date.