STATE OF NEW YORK

2566--B

2021-2022 Regular Sessions

IN SENATE

January 21, 2021

Introduced by Sens. JORDAN, BORRELLO, GALLIVAN, HELMING, ORTT, TEDISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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:

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

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

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

§ 3. 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 on sales of food and drink during the thirty day period provided in paragraph forty-six of subdivision (a) of section eleven hundred fifteen of this

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

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article, 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.

§ 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 a local law, ordinance or resolution providing for the exemption described in paragraph forty-six of subdivision (a) 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 provided 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.

§ 6. 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 same exemption from such taxes as the sales of food and drink by restaurants and taverns exemption from state sales and compensating use taxes described in paragraph forty-six of subdivision (a) 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 1. Receipts from sales of and consideration given or contracted to be given for food and drink sold at restaurants and taverns exempt from state sales and compensating use taxes during a thirty day period pursuant to paragraph forty-six of subdivision (a) of section eleven hundred fifteen of this chapter shall also be exempt from sales and compensating use taxes imposed in this jurisdiction.

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

§ 7. This act shall take effect immediately and shall apply to the thirty day period which begins on the first Sunday after 30 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; provided that sections four and five of this act shall apply to sales made on or after the date such sections shall have taken effect. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.