

# STATE OF NEW YORK

5539

2021-2022 Regular Sessions

## IN ASSEMBLY

February 19, 2021

Introduced by M. of A. BARCLAY, MONTESANO, J. M. GIGLIO, BLANKENBUSH, DiPIETRO, FRIEND, BRABENEC, WALSH, B. MILLER, MANKTELOW, ASHBY, GALLAHAN, LEMONDES, NORRIS, SIMPSON -- Multi-Sponsored by -- M. of A. GOODELL, HAWLEY -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to excise tax on telecommunications services (Part A); and to amend the tax law, in relation to temporary municipal assistance sales and compensating use taxes for cities of one million or more on telecommunications services (Part B)

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

1 Section 1. This act enacts into law components of legislation relating  
2 to the "mobile tax freedom act". Each component is wholly contained  
3 within a Part identified as Parts A through B. The effective date for  
4 each particular provision contained within such Part is set forth in the  
5 last section of such Part. Any provision in any section contained within  
6 a Part, including the effective date of the Part, which makes a refer-  
7 ence to a section "of this act", when used in connection with that  
8 particular component, shall be deemed to mean and refer to the corre-  
9 sponding section of the Part in which it is found. Section three of this  
10 act sets forth the general effective date of this act.

11 PART A

12 Section 1. Subdivision (cc) of section 1115 of the tax law, as added  
13 by section 11 of part S of chapter 85 of the laws of 2002, is amended to  
14 read as follows:

15 (cc) Notwithstanding any other provision of law to the contrary,  
16 receipts from the sale of mobile telecommunications service [~~by a home~~  
17 ~~service provider~~] shall be exempt from the taxes imposed by subparagraph  
18 (B) of paragraph one and paragraph two of subdivision (b) of section

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

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1 eleven hundred five of this article [~~if the mobile telecommunications~~  
2 ~~customer's place of primary use is within a taxing jurisdiction outside~~  
3 ~~this state~~].

4 § 2. Paragraphs (a) and (h) of subdivision 1 and paragraph (a) of  
5 subdivision 2 of section 186-e of the tax law, paragraph (a) of subdivi-  
6 sion 1 as amended by section 2 and paragraph (h) of subdivision 1 as  
7 added by section 3 of part S of chapter 85 of the laws of 2002, and  
8 paragraph (a) of subdivision 2 as amended by section 2 of part P of  
9 chapter 59 of the laws of 2015, are amended to read as follows:

10 (a) [~~(1)~~] "Gross receipt" means the amount received in or by reason of  
11 any sale, conditional or otherwise, of telecommunication services or in  
12 or by reason of the furnishing of telecommunication services. [~~Gross~~  
13 ~~receipt from the sale of mobile telecommunications service provided by a~~  
14 ~~home service provider shall include "charges for mobile telecommuni-~~  
15 ~~cations service" as described in paragraph one of subdivision (1) of~~  
16 ~~section eleven hundred eleven of this chapter, regardless of where the~~  
17 ~~mobile telecommunications service originates, terminates or passes~~  
18 ~~through.~~] Gross receipt is expressed in money, whether paid in cash,  
19 credit or property of any kind or nature, and shall be determined with-  
20 out any deduction therefrom on account of the cost of the service sold  
21 or the cost of materials, labor or services used or other costs, inter-  
22 est or discount paid, or any other expenses whatsoever except that there  
23 shall, however, be allowed a deduction for bad debts with respect to  
24 charges previously subjected to the tax hereunder when the debt has  
25 become worthless in accordance with generally accepted accounting prin-  
26 ciples consistently applied by the taxpayer. "Amount received" for the  
27 purpose of the definition of gross receipt, as the term gross receipt is  
28 used throughout this article, means the amount charged for the provision  
29 of a telecommunication service.

30 [~~(2) (A) Any charge for a service or property billed by or for a~~  
31 ~~mobile telecommunications customer's home service provider shall be~~  
32 ~~deemed to be provided by such mobile telecommunications customer's home~~  
33 ~~service provider.~~

34 [~~(B) Charges for mobile telecommunications service that are provided or~~  
35 ~~deemed to be provided by a mobile telecommunications customer's home~~  
36 ~~service provider shall be sourced to the taxing jurisdiction where the~~  
37 ~~mobile telecommunications customer's place of primary use is located,~~  
38 ~~regardless of where the mobile telecommunications service originates,~~  
39 ~~terminates or passes through.~~]

40 [~~(h) For the purpose of applying the provisions of this section to~~  
41 ~~mobile telecommunications service, the following terms when used in~~  
42 ~~relation to mobile telecommunications service shall be defined as such~~  
43 ~~terms are defined in section eleven hundred one of this chapter: "mobile~~  
44 ~~telecommunications service," "mobile telecommunications customer," "home~~  
45 ~~service provider," "licensed service area," "reseller," "serving carrier,"~~  
46 ~~"place of primary use" and "taxing jurisdiction".]~~

47 (a) [~~(1)~~] There is hereby imposed an excise tax on the sale of tele-  
48 communication services[, ~~except for the sale of mobile telecommunication~~  
49 ~~services that are subject to tax under subparagraph two of this para-~~  
50 ~~graph, by any person which is a provider of telecommunication services,]~~

51 to be paid by such person, at the rate of three and one-half percent  
52 prior to October first, nineteen hundred ninety-eight, three and one-  
53 quarter percent from October first, nineteen hundred ninety-eight  
54 through December thirty-first, nineteen hundred ninety-nine, and two and  
55 one-half percent on and after January first, two thousand of gross  
56 receipt from: (i) any intrastate telecommunication services; (ii) any

1 interstate and international telecommunication services (other than  
2 interstate and international private telecommunication services) which  
3 originate or terminate in this state and which telecommunication  
4 services are charged to a service address in this state, regardless of  
5 where the amounts charged for such services are billed or ultimately  
6 paid; and (iii) interstate and international private telecommunication  
7 services, the gross receipt to which the tax shall apply shall be deter-  
8 mined as prescribed in subdivision three of this section.

9 ~~[(2) There is hereby imposed an excise tax on the sale of mobile tele-~~  
10 ~~communication services, by any person which is a provider of telecommu-~~  
11 ~~nication services, to be paid by such person, at the rate of two and~~  
12 ~~nine tenths percent on and after May first, two thousand fifteen of~~  
13 ~~gross receipts from any mobile telecommunications service provided by a~~  
14 ~~home service provider where the mobile telecommunications customer's~~  
15 ~~place of primary use is within this state.]~~

16 § 3. Paragraph (b) of subdivision 2 of section 186-e of the tax law is  
17 amended by adding a new subparagraph 5 to read as follows:

18 (5) Mobile telecommunications exclusion. The sale of mobile telecommu-  
19 nication service shall in no event constitute a telecommunications  
20 service, and the receipts from the sale of such service are without the  
21 scope of the tax imposed by this section.

22 § 4. Paragraph (b) of subdivision 1 of section 186-c of the tax law,  
23 as amended by section 1 of part P of chapter 59 of the laws of 2015, is  
24 amended to read as follows:

25 (b) ~~[(1)]~~ In addition to the surcharge imposed by paragraph (a) of  
26 this subdivision, there is hereby imposed a surcharge on the gross  
27 receipts from telecommunication services~~[, except for the gross receipts~~  
28 ~~from mobile telecommunication services that are subject to tax under~~  
29 ~~subparagraph two of this paragraph,]~~ relating to the metropolitan commu-  
30 ter transportation district at the rate of seventeen percent of the  
31 state tax rate under section one hundred eighty-six-e of this article.  
32 All the definitions and other provisions of section one hundred eighty-  
33 six-e of this article shall apply to the tax imposed by this subpara-  
34 graph with such modification and limitation as may be necessary (includ-  
35 ing substituting the words "metropolitan commuter transportation  
36 district" for "state" where appropriate) in order to adapt the language  
37 of such section one hundred eighty-six-e of this article to the  
38 surcharge imposed by this subparagraph within such metropolitan commuter  
39 transportation district so as to include (i) any intra-district telecom-  
40 munication services, (ii) any inter-district telecommunication services  
41 which originate or terminate in such district and are charged to a  
42 service address therein regardless of where the amounts charged for such  
43 services are billed or ultimately paid, and (iii) as apportioned to such  
44 district, private telecommunication services. Provided however, such tax  
45 surcharge shall be calculated as if the tax imposed under section one  
46 hundred eighty-six-e of this article were imposed at a rate of three and  
47 one-half percent.

48 ~~[(2) In addition to the surcharge imposed by paragraph (a) of this~~  
49 ~~subdivision, there is hereby imposed a surcharge on the gross receipts~~  
50 ~~from mobile telecommunication services relating to the metropolitan~~  
51 ~~commuter transportation district at the rate of seven tenths and two~~  
52 ~~hundredths and one thousandth percent on and after May first, two thou-~~  
53 ~~sand fifteen. All the definitions and other provisions of section one~~  
54 ~~hundred eighty-six-e of this article shall apply to the tax imposed by~~  
55 ~~this subparagraph with such modification and limitation as may be neces-~~  
56 ~~sary (including substituting the words "metropolitan commuter transpor-~~

~~tation district" for "state" where appropriate) in order to adapt the language of such section one hundred eighty six e of this article to the surcharge imposed by this subparagraph within such metropolitan commuter transportation district so as to include any mobile telecommunications service provided by a home service provider where the mobile telecommunications customer's place of primary use is within such metropolitan commuter transportation district.]~~

§ 5. This act shall take effect on the first day of the sales tax quarterly period, as described in subdivision (b) of section 1136 of the tax law, beginning at least ninety 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.

#### PART B

Section 1. 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 provided in subdivision (cc) of section eleven hundred fifteen of this article relating to mobile telecommunication services 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.

§ 2. Paragraph 1 of subdivision (a) of section 1210 of the tax law, as amended by section 2 of part WW of chapter 60 of the laws of 2016 and subparagraph (i) as separately amended by section 5 of part Z of chapter 60 of the laws of 2016, is amended to read as follows:

(1) Either, all of the taxes described in article twenty-eight of this chapter, at the same uniform rate, as to which taxes all provisions of the local laws, ordinances or resolutions imposing such taxes shall be identical, except as to rate and except as otherwise provided, with the corresponding provisions in such article twenty-eight, including the definition and exemption provisions of such article, so far as the provisions of such article twenty-eight can be made applicable to the taxes imposed by such city or county and with such limitations and special provisions as are set forth in this article. The taxes authorized under this subdivision may not be imposed by a city or county unless the local law, ordinance or resolution imposes such taxes so as to include all portions and all types of receipts, charges or rents, subject to state tax under sections eleven hundred five and eleven hundred ten of this chapter, except as otherwise provided. (i) Any local law, ordinance or resolution enacted by any city of less than one million or by any county or school district, imposing the taxes authorized by this subdivision, shall, notwithstanding any provision of law to the contrary, exclude from the operation of such local taxes all sales of tangible personal property for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam, for sale, by manufacturing, processing, generating, assembly, refining, mining or extracting; and all sales of tangible personal property for use or consumption predominantly either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both; and all sales of fuel sold for use in commercial aircraft and general aviation

1 aircraft; and, unless such city, county or school district elects other-  
2 wise, shall omit the provision for credit or refund contained in clause  
3 six of subdivision (a) or subdivision (d) of section eleven hundred  
4 nineteen of this chapter. (ii) Any local law, ordinance or resolution  
5 enacted by any city, county or school district, imposing the taxes  
6 authorized by this subdivision, shall omit the residential solar energy  
7 systems equipment and electricity exemption provided for in subdivision  
8 (ee), the commercial solar energy systems equipment and electricity  
9 exemption provided for in subdivision (ii), the commercial fuel cell  
10 electricity generating systems equipment and electricity generated by  
11 such equipment exemption provided for in subdivision (kk) and the cloth-  
12 ing and footwear exemption provided for in paragraph thirty of subdivi-  
13 sion (a) of section eleven hundred fifteen of this chapter, unless such  
14 city, county or school district elects otherwise as to such residential  
15 solar energy systems equipment and electricity exemption, such commer-  
16 cial solar energy systems equipment and electricity exemption, commer-  
17 cial fuel cell electricity generating systems equipment and electricity  
18 generated by such equipment exemption or such clothing and footwear  
19 exemption. Any local law, ordinance or resolution enacted by any city,  
20 county or school district, imposing the taxes authorized by this subdivi-  
21 vision, shall omit the mobile telecommunication services exemption  
22 provided for in subdivision (cc) of section eleven hundred fifteen of  
23 this chapter, unless such city, county or school district elects other-  
24 wise; provided that if such a city having a population of one million or  
25 more enacts the resolution described in subdivision (q) of this section  
26 or repeals such resolution, such resolution or repeal shall also be  
27 deemed to amend any local law, ordinance or resolution enacted by such a  
28 city imposing such taxes pursuant to the authority of this subdivision,  
29 whether or not such taxes are suspended at the time such city enacts its  
30 resolution pursuant to subdivision (q) of this section or at the time of  
31 such repeal; provided, further, that any such local law, ordinance or  
32 resolution and section eleven hundred seven of this chapter, as deemed  
33 to be amended in the event a city of one million or more enacts a resol-  
34 ution pursuant to the authority of subdivision (q) of this section,  
35 shall be further amended, as provided in section twelve hundred eighteen  
36 of this subpart, so that the wireless telecommunications services  
37 exemption in any such local law, ordinance or resolution or in such  
38 section eleven hundred seven of this chapter is the same as the mobile  
39 telecommunication services exemption in subdivision (cc) of section  
40 eleven hundred fifteen of this chapter. (iii) Any local law, ordinance  
41 or resolution enacted by any city, county or school district, imposing  
42 the taxes authorized by this subdivision, shall omit the residential  
43 solar energy systems equipment and electricity exemption provided for in  
44 subdivision (ee), the commercial solar energy systems equipment and  
45 electricity exemption provided for in subdivision (ii) and the clothing  
46 and footwear exemption provided for in paragraph thirty of subdivision  
47 (a) of section eleven hundred fifteen of this chapter, unless such city,  
48 county or school district elects otherwise as to either such residential  
49 solar energy systems equipment and electricity exemption, such commer-  
50 cial solar energy systems equipment and electricity exemption or such  
51 clothing and footwear exemption.

52 § 3. Subdivision (d) of section 1210 of the tax law, as amended by  
53 section 4 of part WW of chapter 60 of the laws of 2016, is amended to  
54 read as follows:

55 (d) A local law, ordinance or resolution imposing any tax pursuant to  
56 this section, increasing or decreasing the rate of such tax, repealing

1 or suspending such tax, exempting from such tax the energy sources and  
2 services described in paragraph three of subdivision (a) or of subdivi-  
3 sion (b) of this section or changing the rate of tax imposed on such  
4 energy sources and services or providing for the credit or refund  
5 described in clause six of subdivision (a) of section eleven hundred  
6 nineteen of this chapter, or electing or repealing the exemption for  
7 residential solar equipment and electricity in subdivision (ee) of  
8 section eleven hundred fifteen of this [~~article~~] chapter, or the  
9 exemption for commercial solar equipment and electricity in subdivision  
10 (ii) of section eleven hundred fifteen of this [~~article~~] chapter, or  
11 electing or repealing the exemption for commercial fuel cell electricity  
12 generating systems equipment and electricity generated by such equipment  
13 in subdivision (kk) of section eleven hundred fifteen of this article  
14 must go into effect only on one of the following dates: March first,  
15 June first, September first or December first; provided, that a local  
16 law, ordinance or resolution providing for the exemption described in  
17 paragraph thirty of subdivision (a) of section eleven hundred fifteen of  
18 this chapter or repealing any such exemption or a local law, ordinance  
19 or resolution providing for a refund or credit described in subdivision  
20 (d) of section eleven hundred nineteen of this chapter or repealing such  
21 provision so provided must go into effect only on March first; provided,  
22 further, that a local law, ordinance or resolution providing for the  
23 exemption described in subdivision (cc) of section eleven hundred  
24 fifteen of this chapter or repealing any such exemption so provided and  
25 a resolution enacted pursuant to the authority of subdivision (q) of  
26 this section providing such exemption or repealing such exemption so  
27 provided may go into effect immediately. No such local law, ordinance  
28 or resolution shall be effective unless a certified copy of such law,  
29 ordinance or resolution is mailed by registered or certified mail to the  
30 commissioner at the commissioner's office in Albany at least ninety days  
31 prior to the date it is to become effective. However, the commissioner  
32 may waive and reduce such ninety-day minimum notice requirement to a  
33 mailing of such certified copy by registered or certified mail within a  
34 period of not less than thirty days prior to such effective date if the  
35 commissioner deems such action to be consistent with the commissioner's  
36 duties under section twelve hundred fifty of this article and the  
37 commissioner acts by resolution. Where the restriction provided for in  
38 section twelve hundred twenty-three of this article as to the effective  
39 date of a tax and the notice requirement provided for therein are appli-  
40 cable and have not been waived, the restriction and notice requirement  
41 in section twelve hundred twenty-three of this article shall also apply.

42 § 4. Section 1210 of the tax law is amended by adding a new subdivi-  
43 sion (q) to read as follows:

44 (q) Notwithstanding any other provision of state or local law, ordi-  
45 nance or resolution to the contrary: (1) Any city having a population of  
46 one million or more in which the taxes imposed by section eleven hundred  
47 seven of this chapter are in effect, acting through its local legisla-  
48 tive body, is hereby authorized and empowered to elect to provide the  
49 exemption from such taxes for the same mobile communications services  
50 exempt from state sales and compensating use taxes described in subdivi-  
51 sion (cc) of section eleven hundred fifteen of this chapter by enacting  
52 a resolution in the form set forth in paragraph two of this subdivision;  
53 whereupon, upon compliance with the provisions of subdivisions (d) and  
54 (e) of this section, such enactment of such resolution shall be deemed  
55 to be an amendment to such section eleven hundred seven and such section  
56 eleven hundred seven shall be deemed to incorporate such exemption as if

1 it had been duly enacted by the state legislature and approved by the  
2 governor.

3 (2) Form of resolution: Be it enacted by the (insert proper title of  
4 local legislative body) as follows:

5 Section one. Receipts from sales of and consideration given or  
6 contracted to be given for purchases of mobile telecommunications  
7 services exempt from state sales and compensating use taxes pursuant to  
8 subdivision (cc) of section eleven hundred fifteen of the tax law shall  
9 also be exempt from sales and compensating use taxes imposed in this  
10 jurisdiction.

11 Section two. This resolution shall take effect, (insert the date) and  
12 shall apply to sales made and uses occurring on and after that date  
13 although made or occurring under a prior contract.

14 § 5. The commissioner of taxation and finance is hereby authorized to  
15 implement the provisions of this act with respect to the elimination of  
16 the imposition of sales tax, additional taxes, and supplemental taxes on  
17 wireless telecommunications services and all other taxes so addressed by  
18 this act.

19 § 6. This act shall take effect on the first day of the sales tax  
20 quarterly period, as described in subdivision (b) of section 1136 of the  
21 tax law, beginning at least ninety days after the date this act shall  
22 have become a law and shall apply in accordance with the applicable  
23 transitional provisions of sections 1106 and 1217 of the tax law.

24 § 2. Severability. If any clause, sentence, paragraph, section or part  
25 of this act shall be adjudged by any court of competent jurisdiction to  
26 be invalid and after exhaustion of all further judicial review, the  
27 judgment shall not affect, impair, or invalidate the remainder thereof,  
28 but shall be confined in its operation to the clause, sentence, para-  
29 graph, section or part of this act directly involved in the controversy  
30 in which the judgment shall have been rendered.

31 § 3. This act shall take effect immediately provided, however, that  
32 the applicable effective date of Parts A through B of this act shall be  
33 as specifically set forth in the last section of such Parts.