

STATE OF NEW YORK

7316

2021-2022 Regular Sessions

IN ASSEMBLY

May 5, 2021

Introduced by M. of A. CUSICK -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to establishing a sales tax exemption for energy storage

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

Section 1. Section 1115 of the tax law is amended by adding two new subdivisions (ll) and (mm) to read as follows:

(1l) The following shall be exempt from tax under this article: (1) Receipts from the retail sale of, and consideration given or contracted to be given for, or for the use of, residential energy storage systems equipment and the service of installing such systems. For the purposes of this subdivision, "residential energy storage systems equipment" shall mean an arrangement or combination of components installed in a residence that stores electricity for use at a later time to provide heating, cooling, hot water and/or electricity.

(2) Receipts from the sale of electricity by a person primarily engaged in the sale of energy storage system equipment and/or electricity generated by such equipment pursuant to a written agreement under which such electricity is generated by residential energy system storage equipment that is: (A) owned by a person other than the purchaser of such electricity; (B) installed on residential property of the purchaser of such electricity; and (C) used to provide heating, cooling, hot water or electricity.

(mm) The following shall be exempt from tax under this article: (1) Receipts from the retail sale of, and consideration given or contracted to be given for, or for the use of, commercial energy storage systems equipment and the costs of installing such systems. For the purposes of this subdivision, "commercial energy storage systems equipment" shall mean an arrangement or combination of components installed upon non-re-

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

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1 residential premises that stores electricity for use at a later time to
2 provide heating, cooling, hot water and/or electricity.

3 (2) Receipts from the sale of electricity by a person primarily
4 engaged in the sale of energy storage system equipment and/or electric-
5 ity generated by such equipment pursuant to a written agreement under
6 which the electricity is generated by commercial energy system equipment
7 that is: (A) owned by a person other than the purchaser of such elec-
8 tricity; (B) installed on the non-residential premises of the purchaser
9 of such electricity; and (C) used to provide heating, cooling, hot water
10 or electricity to such premises.

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

15 (1) Either, all of the taxes described in article twenty-eight of this
16 chapter, at the same uniform rate, as to which taxes all provisions of
17 the local laws, ordinances or resolutions imposing such taxes shall be
18 identical, except as to rate and except as otherwise provided, with the
19 corresponding provisions in such article twenty-eight, including the
20 definition and exemption provisions of such article, so far as the
21 provisions of such article twenty-eight can be made applicable to the
22 taxes imposed by such city or county and with such limitations and
23 special provisions as are set forth in this article. The taxes author-
24 ized under this subdivision may not be imposed by a city or county
25 unless the local law, ordinance or resolution imposes such taxes so as
26 to include all portions and all types of receipts, charges or rents,
27 subject to state tax under sections eleven hundred five and eleven
28 hundred ten of this chapter, except as otherwise provided. (i) Any
29 local law, ordinance or resolution enacted by any city of less than one
30 million or by any county or school district, imposing the taxes author-
31 ized by this subdivision, shall, notwithstanding any provision of law to
32 the contrary, exclude from the operation of such local taxes all sales
33 of tangible personal property for use or consumption directly and
34 predominantly in the production of tangible personal property, gas,
35 electricity, refrigeration or steam, for sale, by manufacturing, proc-
36 essing, generating, assembly, refining, mining or extracting; and all
37 sales of tangible personal property for use or consumption predominantly
38 either in the production of tangible personal property, for sale, by
39 farming or in a commercial horse boarding operation, or in both; and all
40 sales of fuel sold for use in commercial aircraft and general aviation
41 aircraft; and, unless such city, county or school district elects other-
42 wise, shall omit the provision for credit or refund contained in clause
43 six of subdivision (a) or subdivision (d) of section eleven hundred
44 nineteen of this chapter. (ii) Any local law, ordinance or resolution
45 enacted by any city, county or school district, imposing the taxes
46 authorized by this subdivision, shall omit the residential solar energy
47 systems equipment and electricity exemption provided for in subdivision
48 (ee), the commercial solar energy systems equipment and electricity
49 exemption provided for in subdivision (ii), the commercial fuel cell
50 electricity generating systems equipment and electricity generated by
51 such equipment exemption provided for in subdivision (kk), the residen-
52 tial energy storage systems equipment and electricity exemption provided
53 for in subdivision (ll), the commercial energy storage systems equipment
54 and electricity exemption provided for in subdivision (mm) and the
55 clothing and footwear exemption provided for in paragraph thirty of
56 subdivision (a) of section eleven hundred fifteen of this chapter,

1 unless such city, county or school district elects otherwise as to such
2 residential solar energy systems equipment and electricity exemption,
3 such commercial solar energy systems equipment and electricity
4 exemption, commercial fuel cell electricity generating systems equipment
5 and electricity generated by such equipment exemption or such clothing
6 and footwear exemption.

7 § 3. Paragraph 1 of subdivision (a) of section 1210 of the tax law, as
8 amended by section 5 of part J of chapter 59 of the laws of 2021, is
9 amended to read as follows:

10 (1) Either, all of the taxes described in article twenty-eight of this
11 chapter, at the same uniform rate, as to which taxes all provisions of
12 the local laws, ordinances or resolutions imposing such taxes shall be
13 identical, except as to rate and except as otherwise provided, with the
14 corresponding provisions in such article twenty-eight, including the
15 definition and exemption provisions of such article, so far as the
16 provisions of such article twenty-eight can be made applicable to the
17 taxes imposed by such city or county and with such limitations and
18 special provisions as are set forth in this article. The taxes author-
19 ized under this subdivision may not be imposed by a city or county
20 unless the local law, ordinance or resolution imposes such taxes so as
21 to include all portions and all types of receipts, charges or rents,
22 subject to state tax under sections eleven hundred five and eleven
23 hundred ten of this chapter, except as otherwise provided. Notwith-
24 standing the foregoing, a tax imposed by a city or county authorized
25 under this subdivision shall not include the tax imposed on charges for
26 admission to race tracks and simulcast facilities under subdivision (f)
27 of section eleven hundred five of this chapter. (i) Any local law, ordi-
28 nance or resolution enacted by any city of less than one million or by
29 any county or school district, imposing the taxes authorized by this
30 subdivision, shall, notwithstanding any provision of law to the contra-
31 ry, exclude from the operation of such local taxes all sales of tangible
32 personal property for use or consumption directly and predominantly in
33 the production of tangible personal property, gas, electricity, refrig-
34 eration or steam, for sale, by manufacturing, processing, generating,
35 assembly, refining, mining or extracting; and all sales of tangible
36 personal property for use or consumption predominantly either in the
37 production of tangible personal property, for sale, by farming or in a
38 commercial horse boarding operation, or in both; and all sales of fuel
39 sold for use in commercial aircraft and general aviation aircraft; and,
40 unless such city, county or school district elects otherwise, shall omit
41 the provision for credit or refund contained in clause six of subdivi-
42 sion (a) or subdivision (d) of section eleven hundred nineteen of this
43 chapter. (ii) Any local law, ordinance or resolution enacted by any
44 city, county or school district, imposing the taxes authorized by this
45 subdivision, shall omit the residential solar energy systems equipment
46 and electricity exemption provided for in subdivision (ee), the commer-
47 cial solar energy systems equipment and electricity exemption provided
48 for in subdivision (ii), the commercial fuel cell electricity generating
49 systems equipment and electricity generated by such equipment exemption
50 provided for in subdivision (kk), the residential energy storage systems
51 equipment and electricity exemption provided for in subdivision (ll),
52 the commercial energy storage systems equipment and electricity
53 exemption provided for in subdivision (mm) and the clothing and footwear
54 exemption provided for in paragraph thirty of subdivision (a) of section
55 eleven hundred fifteen of this chapter, unless such city, county or
56 school district elects otherwise as to such residential solar energy

1 systems equipment and electricity exemption, such commercial solar ener-
2 gy systems equipment and electricity exemption, commercial fuel cell
3 electricity generating systems equipment and electricity generated by
4 such equipment exemption or such clothing and footwear exemption.

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

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

50 § 5. This act shall take effect immediately; provided, however, that
51 section three of this act shall take effect on the same date and in the
52 same manner as part J of chapter 59 of the laws of 2021 takes effect.