

# STATE OF NEW YORK

3277--A

2021-2022 Regular Sessions

## IN SENATE

January 28, 2021

Introduced by Sen. PARKER -- 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

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:

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

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

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

19 (mm) The following shall be exempt from tax under this article: (1)  
20 Receipts from the retail sale of, and consideration given or contracted  
21 to be given for, or for the use of, commercial energy storage systems  
22 equipment and the costs of installing such systems. For the purposes of  
23 this subdivision, "commercial energy storage systems equipment" shall

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

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1 mean an arrangement or combination of components installed upon non-re-  
2 sidential premises that stores electricity for use at a later time to  
3 provide heating, cooling, hot water and/or electricity.

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

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

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

1 subdivision (a) of section eleven hundred fifteen of this chapter,  
2 unless such city, county or school district elects otherwise as to such  
3 residential solar energy systems equipment and electricity exemption,  
4 such commercial solar energy systems equipment and electricity  
5 exemption, commercial fuel cell electricity generating systems equipment  
6 and electricity generated by such equipment exemption or such clothing  
7 and footwear exemption.

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

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

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

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

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

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