

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

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

§ 3. Paragraph 1 of subdivision (a) of section 1210 of the tax law, as amended by section 5 of part J of chapter 59 of the laws of 2021, 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. Notwithstanding the foregoing, a tax imposed by a city or county authorized under this subdivision shall not include the tax imposed on charges for admission to race tracks and simulcast facilities under subdivision (f) of section eleven hundred five of this chapter. (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 aircraft; and, unless such city, county or school district elects otherwise, shall omit the provision for credit or refund contained in clause six of subdivision (a) or subdivision (d) of section eleven hundred nineteen of this chapter. (ii) Any local law, ordinance or resolution enacted by any city, county or school district, imposing the taxes authorized by this subdivision, shall omit the residential solar energy systems equipment and electricity exemption provided for in subdivision (ee), the commercial solar energy systems equipment and electricity exemption provided for in subdivision (ii), the commercial fuel cell electricity generating systems equipment and electricity generated by such equipment exemption provided for in subdivision (kk), the residential energy storage systems equipment and electricity exemption provided for in subdivision (ll), the commercial energy storage systems equipment and electricity exemption provided for in subdivision (mm) and the clothing and footwear exemption provided for in paragraph thirty of subdivision (a) of section 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.