

# STATE OF NEW YORK

1575

2023-2024 Regular Sessions

## IN ASSEMBLY

January 17, 2023

Introduced by M. of A. RIVERA, BARRETT, BRABENEC, BURKE, BURDICK, CARROLL, DAVILA, DILAN, FAHY, GALLAGHER, GLICK, HEVESI, JACOBSON, KELLES, LUNSFORD, LUPARDO, MEEKS, MITAYNES, OTIS, PAULIN, SEAWRIGHT, SILLITTI, SIMON, THIELE, STERN, STECK, L. ROSENTHAL, GUNTHER -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to providing an exemption for geothermal heat pump systems equipment

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

1 Section 1. Subdivision (a) of section 1115 of the tax law is amended  
2 by adding a new paragraph 47 to read as follows:

3 (47) Receipts from the retail sale of residential geothermal heat pump  
4 systems equipment and of the service of installing such systems shall be  
5 exempt from tax under this article. For purposes of this paragraph,  
6 "residential geothermal heat pump system equipment" shall mean an  
7 arrangement or combination of components installed in and around a resi-  
8 dential building that uses the ground or ground water as a thermal ener-  
9 gy source or as a thermal energy sink designed to provide and distribute  
10 heating, and/or cooling, and/or hot water, also commonly referred to as  
11 ground source heat pump systems. Such arrangement or components shall  
12 not include any sort of recreational facility or equipment used as a  
13 storage medium.

14 § 2. Section 1115 of the tax law is amended by adding a new subdivi-  
15 sion (11) to read as follows:

16 (11) Receipts from the retail sale of commercial geothermal heat pump  
17 systems equipment and of the service of installing such systems shall be  
18 exempt from taxes imposed by sections eleven hundred five and eleven  
19 hundred ten of this article. For purposes of this subdivision, "commer-  
20 cial geothermal heat pump system equipment" shall mean an arrangement or  
21 combination of components installed in and around a commercial building  
22 that uses the ground or ground water as a thermal energy source or as a

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

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1 thermal energy sink designed to provide and distribute heating, and/or  
2 cooling, and/or hot water, also commonly referred to as ground source  
3 heat pump systems. Such arrangement or components shall not include any  
4 sort of recreational facility or equipment used as a storage medium.

5 § 3. Subparagraph (xiv) of paragraph 4 of subdivision (a) of section  
6 1210 of the tax law, as added by section 2 of part WW of chapter 60 of  
7 the laws of 2016, is amended and a new subparagraph (xvi) is added to  
8 paragraph 4 to read as follows:

9 [~~(xiv)~~] (xv) shall omit, unless such city elects otherwise, the  
10 exemption for commercial fuel cell electricity generating systems equip-  
11 ment and electricity generated by such equipment provided in subdivision  
12 (kk) of section eleven hundred fifteen of this chapter[~~;~~]; and (xvi)  
13 shall omit unless such city elects otherwise, the residential geothermal  
14 heat pump systems equipment and installation exemption provided for in  
15 paragraph forty-seven of subdivision (a) of section eleven hundred  
16 fifteen of this chapter; and shall omit unless such city elects other-  
17 wise, the commercial geothermal heat pump systems equipment and instal-  
18 lation exemption provided for in subdivision (ll) of section eleven  
19 hundred fifteen of this chapter.

20 § 4. Subparagraph (ii) of paragraph 1 of subdivision (a) of section  
21 1210 of the tax law, as amended by section 5 of part J of chapter 59 of  
22 the laws of 2021, is amended to read as follows:

23 (ii) Any local law, ordinance or resolution enacted by any city, coun-  
24 ty or school district, imposing the taxes authorized by this subdivi-  
25 sion, shall omit the residential solar energy systems equipment and  
26 electricity exemption provided for in subdivision (ee), the commercial  
27 solar energy systems equipment and electricity exemption provided for in  
28 subdivision (ii), the commercial fuel cell electricity generating  
29 systems equipment and electricity generated by such equipment exemption  
30 provided for in subdivision (kk), the residential geothermal heat pump  
31 systems equipment and installation exemption provided for in paragraph  
32 forty-seven of subdivision (a), the commercial geothermal heat pump  
33 systems equipment and installation exemption provided for in subdivision  
34 (ll) and the clothing and footwear exemption provided for in paragraph  
35 thirty of subdivision (a) of section eleven hundred fifteen of this  
36 chapter, unless such city, county or school district elects otherwise as  
37 to such residential solar energy systems equipment and electricity  
38 exemption, such commercial solar energy systems equipment and electric-  
39 ity exemption, commercial fuel cell electricity generating systems  
40 equipment and electricity generated by such equipment exemption or such  
41 clothing and footwear exemption, such residential geothermal heat pump  
42 systems equipment and installation exemption, such commercial geothermal  
43 heat pump systems equipment and installation exemption or such clothing  
44 and footwear exemption.

45 § 5. Paragraph 1 of subdivision (b) of section 1210 of the tax law, as  
46 amended by section 6 of part J of chapter 59 of the laws of 2021, is  
47 amended to read as follows:

48 (1) Or, one or more of the taxes described in subdivisions (b), (d),  
49 (e) and (f) of section eleven hundred five of this chapter, at the same  
50 uniform rate, including the transitional provisions in section eleven  
51 hundred six of this chapter covering such taxes, but not the taxes  
52 described in subdivisions (a) and (c) of section eleven hundred five of  
53 this chapter. Provided, further, that where the tax described in subdivi-  
54 sion (b) of section eleven hundred five of this chapter is imposed,  
55 the compensating use taxes described in [~~clauses~~] paragraphs (E), (G)  
56 and (H) of subdivision (a) of section eleven hundred ten of this chapter

1 shall also be imposed. Provided, further, that where the taxes described  
2 in subdivision (b) of section eleven hundred five of this chapter are  
3 imposed, such taxes shall omit: (A) the provision for refund or credit  
4 contained in subdivision (d) of section eleven hundred nineteen of this  
5 chapter with respect to such taxes described in such subdivision (b) of  
6 section eleven hundred five unless such city or county elects to provide  
7 such provision or, if so elected, to repeal such provision; (B) the  
8 exemption provided in paragraph two of subdivision (ee) of section eleven  
9 hundred fifteen of this chapter unless such county or city elects  
10 otherwise; (C) the exemption provided in paragraph two of subdivision  
11 (ii) of section eleven hundred fifteen of this chapter, unless such  
12 county or city elects otherwise; ~~and~~ (D) the exemption provided in  
13 paragraph two of subdivision (kk) of section eleven hundred fifteen of  
14 this chapter, unless such county or city elects otherwise; and provided  
15 further that where the tax described in subdivision (f) of such section  
16 eleven hundred five is imposed, such tax shall not apply to charges for  
17 admission to race tracks and simulcast facilities; (E) the exemption  
18 provided in paragraph forty-seven of subdivision (a) of section eleven  
19 hundred fifteen of this chapter, unless such county or city elects  
20 otherwise; and (F) the exemption provided in subdivision (ll) of section  
21 eleven hundred fifteen of this chapter, unless such county or city  
22 elects otherwise.

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

26 (d) A local law, ordinance or resolution imposing any tax pursuant to  
27 this section, increasing or decreasing the rate of such tax, repealing  
28 or suspending such tax, exempting from such tax the energy sources and  
29 services described in paragraph three of subdivision (a) or of subdivi-  
30 sion (b) of this section or changing the rate of tax imposed on such  
31 energy sources and services or providing for the credit or refund  
32 described in clause six of subdivision (a) of section eleven hundred  
33 nineteen of this chapter, or electing or repealing the exemption for  
34 residential solar equipment and electricity in subdivision (ee) of  
35 section eleven hundred fifteen of this ~~article~~ chapter, or the  
36 exemption for commercial solar equipment and electricity in subdivision  
37 (ii) of section eleven hundred fifteen of this ~~article~~ chapter, or  
38 electing or repealing the exemption for commercial fuel cell electricity  
39 generating systems equipment and electricity generated by such equipment  
40 in subdivision (kk) of section eleven hundred fifteen of this ~~article~~  
41 chapter, or electing or repealing the exemption for residential geother-  
42 mal heat pump systems equipment and installation in paragraph forty-sev-  
43 en of subdivision (a) of section eleven hundred fifteen of this chapter  
44 or electing or repealing the exemption for commercial geothermal heat  
45 pump systems equipment and installation in subdivision (ll) of section  
46 eleven hundred fifteen of this chapter must go into effect only on one  
47 of the following dates: March first, June first, September first or  
48 December first; provided, that a local law, ordinance or resolution  
49 providing for the exemption described in paragraph thirty of subdivision  
50 (a) of section eleven hundred fifteen of this chapter or repealing any  
51 such exemption or a local law, ordinance or resolution providing for a  
52 refund or credit described in subdivision (d) of section eleven hundred  
53 nineteen of this chapter or repealing such provision so provided must go  
54 into effect only on March first. No such local law, ordinance or resol-  
55 ution shall be effective unless a certified copy of such law, ordinance  
56 or resolution is mailed by registered or certified mail to the commis-

1 sioner at the commissioner's office in Albany at least ninety days prior  
2 to the date it is to become effective. However, the commissioner may  
3 waive and reduce such ninety-day minimum notice requirement to a mailing  
4 of such certified copy by registered or certified mail within a period  
5 of not less than thirty days prior to such effective date if the commis-  
6 sioner deems such action to be consistent with the commissioner's duties  
7 under section twelve hundred fifty of this article and the commissioner  
8 acts by resolution. Where the restriction provided for in section twelve  
9 hundred twenty-three of this article as to the effective date of a tax  
10 and the notice requirement provided for therein are applicable and have  
11 not been waived, the restriction and notice requirement in section  
12 twelve hundred twenty-three of this article shall also apply.

13 § 7. Subdivision (a) of section 1212 of the tax law, as amended by  
14 section 5 of part WW of chapter 60 of the laws of 2016, is amended to  
15 read as follows:

16 (a) Any school district which is coterminous with, partly within or  
17 wholly within a city having a population of less than one hundred twen-  
18 ty-five thousand, is hereby authorized and empowered, by majority vote  
19 of the whole number of its school authorities, to impose for school  
20 district purposes, within the territorial limits of such school district  
21 and without discrimination between residents and nonresidents thereof,  
22 the taxes described in subdivision (b) of section eleven hundred five  
23 (but excluding the tax on prepaid telephone calling services) and the  
24 taxes described in [~~clauses~~] paragraphs (E) and (H) of subdivision (a)  
25 of section eleven hundred ten, including the transitional provisions in  
26 subdivision (b) of section eleven hundred six of this chapter, so far as  
27 such provisions can be made applicable to the taxes imposed by such  
28 school district and with such limitations and special provisions as are  
29 set forth in this article, such taxes to be imposed at the rate of one-  
30 half, one, one and one-half, two, two and one-half or three percent  
31 which rate shall be uniform for all portions and all types of receipts  
32 and uses subject to such taxes. In respect to such taxes, all provisions  
33 of the resolution imposing them, except as to rate and except as other-  
34 wise provided herein, shall be identical with the corresponding  
35 provisions in [~~such~~] article twenty-eight of this chapter, including the  
36 applicable definition and exemption provisions of such article, so far  
37 as the provisions of such article twenty-eight of this chapter can be  
38 made applicable to the taxes imposed by such school district and with  
39 such limitations and special provisions as are set forth in this arti-  
40 cle. The taxes described in subdivision (b) of section eleven hundred  
41 five (but excluding the tax on prepaid telephone calling service) and  
42 [~~clauses~~] paragraphs (E) and (H) of subdivision (a) of section eleven  
43 hundred ten, including the transitional provision in subdivision (b) of  
44 such section eleven hundred six of this chapter, may not be imposed by  
45 such school district unless the resolution imposes such taxes so as to  
46 include all portions and all types of receipts and uses subject to tax  
47 under such subdivision (but excluding the tax on prepaid telephone call-  
48 ing service) and [~~clauses~~] paragraphs. Provided, however, that, where a  
49 school district imposes such taxes, such taxes shall omit the provision  
50 for refund or credit contained in subdivision (d) of section eleven  
51 hundred nineteen of this chapter with respect to such taxes described in  
52 such subdivision (b) of section eleven hundred five unless such school  
53 district elects to provide such provision or, if so elected, to repeal  
54 such provision, and shall omit the exemptions provided in paragraph two  
55 of subdivision (ee) and paragraph two of subdivision (ii) of section  
56 eleven hundred fifteen of this chapter unless such school district

1 elects otherwise, and shall omit the exemption provided in paragraph two  
2 of subdivision (kk) of section eleven hundred fifteen of this chapter  
3 unless such school district elects otherwise, and shall omit the  
4 exemption provided in paragraph forty-seven of subdivision (a) of  
5 section eleven hundred fifteen of this chapter unless such school  
6 district elects otherwise, and shall omit the exemption provided in  
7 subdivision (ll) of section eleven hundred fifteen of this chapter  
8 unless such school district elects otherwise.

9 § 8. Section 1224 of the tax law is amended by adding two new subdivi-  
10 sions (c-3) and (c-4) to read as follows:

11 (c-3) Notwithstanding any other provision of law: (1) Where a county  
12 containing one or more cities with a population of less than one million  
13 has elected the exemption for residential geothermal heat pump systems  
14 equipment and installation provided in paragraph forty-seven of subdivi-  
15 sion (a) of section eleven hundred fifteen of this chapter, a city with-  
16 in such county shall have the prior right to impose tax on such exempt  
17 equipment and/or installation to the extent of one half of the maximum  
18 rates authorized under subdivision (a) of section twelve hundred ten of  
19 this article;

20 (2) Where a city of less than one million has elected the exemption  
21 for residential geothermal heat pump systems equipment and installation  
22 provided in paragraph forty-seven of subdivision (a) of section eleven  
23 hundred fifteen of this chapter, the county in which such city is  
24 located shall have the prior right to impose tax on such exempt equip-  
25 ment and/or installation to the extent of one half of the maximum rates  
26 authorized under subdivision (a) of section twelve hundred ten of this  
27 article.

28 (c-4) Notwithstanding any other provision of law: (1) Where a county  
29 containing one or more cities with a population of less than one million  
30 has elected the exemption for commercial geothermal heat pump systems  
31 equipment and installation provided in subdivision (ll) of section elev-  
32 en hundred fifteen of this chapter, a city within such county shall have  
33 the prior right to impose tax on such exempt equipment and/or installa-  
34 tion to the extent of one half of the maximum rates authorized under  
35 subdivision (a) of section twelve hundred ten of this article;

36 (2) Where a city of less than one million has elected the exemption  
37 for commercial geothermal heat pump systems equipment and installation  
38 provided in subdivision (ll) of section eleven hundred fifteen of this  
39 chapter, the county in which such city is located shall have the prior  
40 right to impose tax on such exempt equipment and/or installation to the  
41 extent of one half of the maximum rates authorized under subdivision (a)  
42 of section twelve hundred ten of this article.

43 § 9. This act shall take effect on the first day of a sales tax quar-  
44 terly period, as described in subdivision (b) of section 1136 of the tax  
45 law, beginning at least ninety days after the date this act shall have  
46 become a law and shall apply to sales made on or after such date.