

# STATE OF NEW YORK

5004

2023-2024 Regular Sessions

## IN SENATE

February 21, 2023

Introduced by Sens. SANDERS, ADDABBO, CLEARE, COONEY, GIANARIS, HARCKHAM, HOYLMAN-SIGAL, KAVANAGH, KRUEGER, MAY, SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue

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  
23 thermal energy sink designed to provide and distribute heating, and/or

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

LBD02393-01-3

cooling, and/or hot water, also commonly referred to as ground source heat pump systems. Such arrangement or components shall not include any sort of recreational facility or equipment used as a storage medium.

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

~~[(xiv)]~~ (xv) shall omit, unless such city elects otherwise, the exemption for commercial fuel cell electricity generating systems equipment and electricity generated by such equipment provided in subdivision (kk) of section eleven hundred fifteen of this chapter~~[-]; and (xvi)~~ shall omit unless such city elects otherwise, the residential geothermal heat pump systems equipment and installation exemption provided for in paragraph forty-seven of subdivision (a) of section eleven hundred fifteen of this chapter; and shall omit unless such city elects otherwise, the commercial geothermal heat pump systems equipment and installation exemption provided for in subdivision (ll) of section eleven hundred fifteen of this chapter.

§ 4. Subparagraph (ii) of 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:

(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 geothermal heat pump systems equipment and installation exemption provided for in paragraph forty-seven of subdivision (a), the commercial geothermal heat pump systems equipment and installation exemption provided for in subdivision (ll) 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 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, such residential geothermal heat pump systems equipment and installation exemption, such commercial geothermal heat pump systems equipment and installation exemption or such clothing and footwear exemption.

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

(1) Or, one or more of the taxes described in subdivisions (b), (d), (e) and (f) of section eleven hundred five of this chapter, at the same uniform rate, including the transitional provisions in section eleven hundred six of this chapter covering such taxes, but not the taxes described in subdivisions (a) and (c) of section eleven hundred five of this chapter. Provided, further, that where the tax described in subdivision (b) of section eleven hundred five of this chapter is imposed, the compensating use taxes described in ~~[clauses]~~ paragraphs (E), (G) and (H) of subdivision (a) of section eleven hundred ten of this chapter shall also be imposed. Provided, further, that where the taxes described

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

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

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

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

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

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

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

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

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

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

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

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

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