

STATE OF NEW YORK

8866

2009-2010 Regular Sessions

IN ASSEMBLY

June 11, 2009

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

AN ACT to amend the tax law and the administrative code of the city of New York, in relation to increasing certain sales and compensating use taxes in cities having a population of one million or more persons

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

1 Section 1. Clause 1 of subparagraph (i) of the opening paragraph of
2 section 1210 of the tax law, as amended by section 3 of part SS-1 of
3 chapter 57 of the laws of 2008, is amended to read as follows:

4 (1) [~~for the period beginning August first, two thousand eight,~~] any
5 such city having a population of one million or more is hereby author-
6 ized and empowered to adopt and amend local laws, ordinances or resol-
7 utions imposing such taxes in any such city, at the rate of four and
8 one-half percent;

9 § 2. Paragraph 4 of subdivision (a) of section 1210 of the tax law, as
10 amended by section 5 of part SS-1 of chapter 57 of the laws of 2008, is
11 amended to read as follows:

12 (4) Notwithstanding any other provision of law to the contrary, any
13 local law enacted by any city of one million or more that imposes the
14 taxes authorized by this subdivision (i) may omit the exception provided
15 in subparagraph (ii) of paragraph three of subdivision (c) of section
16 eleven hundred five of this chapter for receipts from laundering, dry-
17 cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining;
18 (ii) may impose the tax described in paragraph six of subdivision (c) of
19 section eleven hundred five of this chapter at a rate in addition to the
20 rate prescribed by this section not to exceed two percent in multiples
21 of one-half of one percent; (iii) shall provide that the tax described
22 in paragraph six of subdivision (c) of section eleven hundred five of
23 this chapter does not apply to facilities owned and operated by the city
24 or an agency or instrumentality of the city or a public corporation the

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

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1 majority of whose members are appointed by the chief executive officer
2 of the city or the legislative body of the city or both of them; (iv)
3 shall not include any tax on receipts from, or the use of, the services
4 described in paragraph seven of subdivision (c) of section eleven
5 hundred five of this chapter; (v) shall provide that, for purposes of
6 the tax described in subdivision (e) of section eleven hundred five of
7 this chapter, "permanent resident" means any occupant of any room or
8 rooms in a hotel for at least one hundred eighty consecutive days with
9 regard to the period of such occupancy; (vi) may omit the exception
10 provided in paragraph one of subdivision (f) of section eleven hundred
11 five of this chapter for charges to a patron for admission to, or use
12 of, facilities for sporting activities in which the patron is to be a
13 participant, such as bowling alleys and swimming pools; (vii) ~~shall~~
14 ~~not~~ may provide the clothing and footwear exemption in paragraph thirty
15 of subdivision (a) of section eleven hundred fifteen of this chapter
16 ~~[but must exempt clothing and footwear and any item used or consumed to~~
17 ~~make or repair exempt clothing and which becomes a physical component~~
18 ~~part of that exempt clothing]~~, and, notwithstanding any provision of
19 subdivision (d) of this section to the contrary, any local law providing
20 for such exemption or repealing such exemption, may go into effect on
21 any one of the following dates: March first, June first, September first
22 or December first; (viii) shall omit the exemption provided in paragraph
23 forty-one of subdivision (a) of section eleven hundred fifteen of this
24 chapter; (ix) shall omit the exemption provided in subdivision (c) of
25 section eleven hundred fifteen of this chapter insofar as it applies to
26 fuel, gas, electricity, refrigeration and steam, and gas, electric,
27 refrigeration and steam service of whatever nature for use or consump-
28 tion directly and exclusively in the production of gas, electricity,
29 refrigeration or steam; ~~and~~ (x) shall omit, unless such city elects
30 otherwise, the provision for refund or credit contained in clause six of
31 subdivision (a) of section eleven hundred nineteen of this chapter; and
32 (xi) shall provide that section eleven hundred five-C of this chapter
33 does not apply to such taxes, and shall tax receipts from every sale,
34 other than sales for resale, of gas service or electric service of what-
35 ever nature, including the transportation, transmission or distribution
36 of gas or electricity, even if sold separately, at the rate set forth in
37 clause one of subparagraph (i) of the opening paragraph of this section.

38 § 3. Paragraph 4 of subdivision (a) of section 1210 of the tax law, as
39 amended by section 35 of part S-1 of chapter 57 of the laws of 2009, is
40 amended to read as follows:

41 (4) Notwithstanding any other provision of law to the contrary, any
42 local law enacted by any city of one million or more that imposes the
43 taxes authorized by this subdivision (i) may omit the exception provided
44 in subparagraph (ii) of paragraph three of subdivision (c) of section
45 eleven hundred five of this chapter for receipts from laundering, dry-
46 cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining;
47 (ii) may impose the tax described in paragraph six of subdivision (c) of
48 section eleven hundred five of this chapter at a rate in addition to the
49 rate prescribed by this section not to exceed two percent in multiples
50 of one-half of one percent; (iii) shall provide that the tax described
51 in paragraph six of subdivision (c) of section eleven hundred five of
52 this chapter does not apply to facilities owned and operated by the city
53 or an agency or instrumentality of the city or a public corporation the
54 majority of whose members are appointed by the chief executive officer
55 of the city or the legislative body of the city or both of them; (iv)
56 shall not include any tax on receipts from, or the use of, the services

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1 described in paragraph seven of subdivision (c) of section eleven
2 hundred five of this chapter; (v) shall provide that, for purposes of
3 the tax described in subdivision (e) of section eleven hundred five of
4 this chapter, "permanent resident" means any occupant of any room or
5 rooms in a hotel for at least one hundred eighty consecutive days with
6 regard to the period of such occupancy; (vi) may omit the exception
7 provided in paragraph one of subdivision (f) of section eleven hundred
8 five of this chapter for charges to a patron for admission to, or use
9 of, facilities for sporting activities in which the patron is to be a
10 participant, such as bowling alleys and swimming pools; (vii) ~~shall~~
11 ~~not~~ may provide the clothing and footwear exemption in paragraph thirty
12 of subdivision (a) of section eleven hundred fifteen of this chapter
13 ~~[but must exempt clothing and footwear and any item used or consumed to~~
14 ~~make or repair exempt clothing and which becomes a physical component~~
15 ~~part of that exempt clothing], and, notwithstanding any provision of~~
16 subdivision (d) of this section to the contrary, any local law providing
17 for such exemption or repealing such exemption, may go into effect on
18 any one of the following dates: March first, June first, September first
19 or December first; (viii) shall omit the exemption provided in paragraph
20 forty-one of subdivision (a) of section eleven hundred fifteen of this
21 chapter; (ix) shall omit the exemption provided in subdivision (c) of
22 section eleven hundred fifteen of this chapter insofar as it applies to
23 fuel, gas, electricity, refrigeration and steam, and gas, electric,
24 refrigeration and steam service of whatever nature for use or consump-
25 tion directly and exclusively in the production of gas, electricity,
26 refrigeration or steam; ~~and~~ (x) shall omit, unless such city elects
27 otherwise, the provision for refund or credit contained in clause six of
28 subdivision (a) or in subdivision (d) of section eleven hundred nineteen
29 of this chapter; and (xi) shall provide that section eleven hundred
30 five-C of this chapter does not apply to such taxes, and shall tax
31 receipts from every sale, other than sales for resale, of gas service or
32 electric service of whatever nature, including the transportation,
33 transmission or distribution of gas or electricity, even if sold sepa-
34 rately, at the rate set forth in clause one of subparagraph (i) of the
35 opening paragraph of this section.

36 § 4. Paragraphs 2 and 3 of subdivision (a) of section 1212-A of the
37 tax law, paragraph 2 as amended by chapter 190 of the laws of 1990 and
38 paragraph 3 as amended by chapter 525 of the laws of 2008, are amended
39 to read as follows:

40 (2) a tax, at the same uniform rate, but at a rate not to exceed four
41 and one-half per centum, in multiples of one-half of one per centum, on
42 the receipts from every sale of the following services: beauty, barber-
43 ing, hair restoring, manicuring, pedicuring, electrolysis, massage
44 services and similar services, and every sale of services by weight
45 control salons, health salons, gymnasiums, turkish and sauna bath and
46 similar establishments and every charge for the use of such facilities,
47 whether or not any tangible personal property is transferred in conjunc-
48 tion therewith; but excluding services rendered by a physician, osteo-
49 path, dentist, nurse, physiotherapist, chiropractor, podiatrist, optome-
50 trist, ophthalmic dispenser or a person performing similar services
51 licensed under title VIII of the education law, as amended, and exclud-
52 ing such services when performed on pets and other animals.

53 (3) ~~[for a period beginning no earlier than January first, nineteen~~
54 ~~hundred ninety and ending December thirty-first, two thousand eleven,]~~
55 a tax, at the same uniform rate, but at a rate not to exceed four and
56 one-half per centum, in multiples of one-half of one per centum, on the

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1 receipts from every sale of any or all of the following services in
2 whole or in part: credit-rating, credit reporting, credit adjustment
3 and collection services, including, but not limited to, those services
4 provided by mercantile and consumer credit rating or reporting bureaus
5 or agencies and credit adjustment or collection bureaus or agencies,
6 whether rendered in written or oral form or in any other manner, except
7 to the extent otherwise taxable under article twenty-eight of this chap-
8 ter; notwithstanding the foregoing, collection services shall not
9 include those services performed by a law office or a law and collection
10 office, the maintenance or conduct of which constitutes the practice of
11 law, if the services are performed by an attorney at law who has been
12 duly licensed and admitted to practice law in this state. The local law
13 imposing the taxes authorized by this paragraph may provide for exclu-
14 sions and exemptions in addition to those provided for in such para-
15 graph. Provided, however, that the tax hereby authorized shall not be
16 imposed after November thirtieth, two thousand eleven.

17 § 5. Subdivisions (a) and (b) of section 11-2001 of the administrative
18 code of the city of New York, as added by section 13 of part SS-1 of
19 chapter 57 of the laws of 2008, are amended to read as follows:

20 (a) [~~On and after August first, two thousand eight, there~~] There are
21 hereby imposed and there shall be paid all of the sales and compensating
22 use taxes described in article twenty-eight of the tax law as authorized
23 by subdivision (a) of section twelve hundred ten of the tax law, at the
24 rate of four and one-half percent, provided that the taxes described in
25 paragraph six of subdivision (c) of section eleven hundred five of the
26 tax law shall be imposed and paid at the rate of six percent.

27 (b) Notwithstanding any contrary provision of this section or other
28 law, this section:

29 (1) does not impose tax on (i) receipts from the sale of the services
30 of laundering, dry-cleaning, tailoring, weaving, pressing, shoe repair-
31 ing and shoe shining described in subparagraph (ii) of paragraph three
32 of subdivision (c) of section eleven hundred five of the tax law; (ii)
33 receipts from the sale of services described in paragraph six of subdivi-
34 sion (c) of section eleven hundred five of the tax law at facilities
35 owned and operated by the city or an agency or instrumentality of the
36 city or a public corporation the majority of whose members are appointed
37 by the mayor or the city council or both of them;

38 (2) for purposes of the tax described in subdivision (e) of section
39 eleven hundred five of the tax law, defines "permanent resident" to mean
40 any occupant of any room or rooms in a hotel for at least one hundred
41 eighty consecutive days with regard to the period of such occupancy;

42 (3) does not omit from the tax described in paragraph one of subdivi-
43 sion (f) of section eleven hundred five of the tax law charges to a
44 patron for admission to, or use of, facilities for sporting activities
45 in which such patron is to be a participant, such as bowling alleys and
46 swimming pools;

47 (4) [~~does not provide~~] provides the clothing and footwear exemption in
48 paragraph thirty of subdivision (a) of section eleven hundred fifteen of
49 the tax law [~~but does exempt clothing and footwear and any item used or~~
50 ~~consumed to make or repair exempt clothing and which becomes a physical~~
51 ~~component part of that exempt clothing];~~

52 (5) omits the exemption provided in paragraph forty-one of subdivision
53 (a) of section eleven hundred fifteen of the tax law;

54 (6) omits the exemption provided in subdivision (c) of section eleven
55 hundred fifteen of the tax law insofar as it applies to fuel, gas, elec-
56 tricity, refrigeration and steam, and gas, electric, refrigeration and

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1 steam service of whatever nature for use or consumption directly and
2 exclusively in the production of gas, electricity, refrigeration or
3 steam; ~~and~~

4 (7) omits the provision for refund or credit contained in clause six
5 of subdivision (a) of section eleven hundred nineteen of the tax law;
6 and

7 (8) makes inapplicable section eleven hundred five-C of the tax law,
8 and imposes tax on receipts from every sale, other than sales for
9 resale, of gas service or electric service of whatever nature, including
10 the transportation, transmission or distribution of gas or electricity,
11 even if sold separately, at the rate set forth in subdivision (a) of
12 this section.

13 § 6. Subdivision (a) of section 11-2002 of the administrative code of
14 the city of New York, as amended by chapter 525 of the laws of 2008, is
15 amended to read as follows:

16 (a) ~~[For the period commencing August first, two thousand eight, and~~
17 ~~ending December thirty-first, two thousand eleven, there]~~ There are
18 hereby imposed and there shall be paid sales taxes at the rate of four
19 and one-half percent on receipts from every sale of the services of
20 beauty, barbering, hair restoring, manicuring, pedicuring, electrolysis,
21 massage services and similar services, and every sale of services by
22 weight control salons, health salons, gymnasiums, turkish and sauna bath
23 and similar establishments and every charge for the use of such facili-
24 ties, whether or not any tangible personal property is transferred in
25 conjunction therewith; but excluding services rendered by a physician,
26 osteopath, dentist, nurse, physiotherapist, chiropractor, podiatrist,
27 optometrist, ophthalmic dispenser or a person performing similar
28 services licensed under title eight of the education law, as amended,
29 and excluding such services when performed on pets and other animals, as
30 authorized by subdivision (a) of section twelve hundred twelve-A of the
31 tax law. Provided, however, that the tax hereby imposed shall not be
32 imposed after November thirtieth, two thousand eleven.

33 § 7. The opening paragraph of subdivision (a) of section 11-2040 of
34 the administrative code of the city of New York, as amended by chapter
35 525 of the laws of 2008, is amended to read as follows:

36 ~~[On and after September first, nineteen hundred seventy-five, there]~~
37 There is hereby imposed within the city and there shall be paid a tax at
38 the rate of four and one-half percent upon the receipts from every sale,
39 except for resale, of the following services, provided, however, that
40 the tax hereby imposed shall not be imposed after ~~[December thirty-~~
41 ~~first]~~ November thirtieth, two thousand eleven, on receipts from sales
42 of the services specified in paragraph one of this subdivision:

43 § 8. This act shall take effect on the first day of the month next
44 commencing after it shall have become a law and shall apply to sales
45 made, uses occurring and services rendered on or after that date in
46 accordance with applicable transitional provisions in sections 1106 and
47 1217 of the tax law; provided, however, that section three of this act
48 shall take effect on the same date and in the same manner as section 35
49 of part S-1 of chapter 57 of the laws of 2009, as amended, takes effect.

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A8866

SPONSOR: Farrell (MS)

TITLE OF BILL: An act to amend the tax law and the administrative code of the city of New York, in relation to increasing certain sales and compensating use taxes in cities having a population of one million or more persons

SUMMARY OF PROVISIONS: Sections one and four of this bill amend Sections 1210 and 1212-A of the Tax Law, respectively, to authorize cities with a population of one million or more to increase from four percent to four and one-half percent the rate of certain sales and compensating use taxes imposed by such cities. Sections five, seven and eight of the bill amend the New York City Administrative Code ("Code") to implement such increase in New York City.

Section two of this bill amends Section 1210 of the Tax Law to authorize cities having a population of one million or more to provide the exemption from City sales and compensating use tax on clothing and footwear that cost less than one hundred ten dollars. Section two also amends Section 1210 to impose the City sales tax on the transmission and distribution of electric and natural gas service, even when the electricity or natural gas service is purchased separately from the transmission and distribution service. Section three of this bill makes the same amendments to the version of Section 1210 of the Tax Law that will take effect on September 1, 2009. Section six amends the New York City Administrative Code to provide the exemption from City sales and compensating use tax on clothing and footwear that cost less than one hundred ten dollars.

Section nine of this bill provides that the bill will take effect on the first day of the month succeeding the month in which it was enacted.

REASONS FOR SUPPORT: A one-half percent increase in the City sales and use tax rate will increase City tax revenues by over \$500 million annually and will support necessary City services for those who live and work in New York City. Approximately 18% of the City's sales tax revenues are paid by tourists. Of the portion paid by City residents, approximately 40% is paid for by the 21% of City households with annual incomes greater than \$80,000. The repeal of the City clothing exemption for purchases costing \$110 and above will increase City tax revenues by approximately about \$120 million annually, also supporting City services. The City will maintain the exemption for clothing and footwear purchases costing under \$110, paralleling the NYS sales tax exemption on clothing, which will help families with costs for necessary clothing and footwear purchases. The repeal of the City sales tax exemption on the electric and natural gas transmission and distribution service for unbundled energy bills is estimated to increase City tax revenues by about \$80 million annually. This change repeals a loophole that enabled

some energy purchasers to avoid the transmission and distribution sales tax that the vast majority of energy consumers pay each month. Repealing this exemption ensures parity for all ratepayers and energy providers in the marketplace. These revenue actions will enable to City to balance its FY 2010 budget. If these revenues are not realized, the City will be forced to curtail essential services and lay off both professional and support staff throughout the City.

Accordingly, the Mayor urges the earliest possible favorable consideration of this proposal by the Legislature. Respectfully submitted,

