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**ASSEMBLY, No. 2963**

**STATE OF NEW JERSEY**

**218th LEGISLATURE**

INTRODUCED FEBRUARY 8, 2018

**Sponsored by:**

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**District 37 (Bergen)**

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**District 33 (Hudson)**

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**District 20 (Union)**

**Co-Sponsored by:**

**Assemblyman A.M.Bucco**

**SYNOPSIS**

     Provides sales and use tax exemption for sales of fuel cell devices and systems and certain tangible personal property powered by fuel cells.

**CURRENT VERSION OF TEXT**

     As reported by the Assembly Commerce and Economic Development Committee on May 7, 2018, with amendments.

**An Act** providing an exemption from the sales and use tax for sales of fuel cell devices and systems and certain tangible personal property powered by fuel cells, amending P.L.1980, c.105 and P.L.1997, c.162 and supplementing P.L.1966, c.30 (C.54:32B-1 et seq.).

     **Be It Enacted***by the Senate and General Assembly of the State of New Jersey:*

     1.    Section 45 of P.L.1980, c.105 (C.54:32B-8.33) is amended to read as follows:

     45.  Receipts from sales of solar energy and fuel cell devices or systems designed to provide heating or cooling, or electrical or mechanical power by collecting and transferring solar-generated energy or by converting the chemical energy of a fuel and an oxidant into electricity through a non-combustive electrochemical process, and including mechanical or chemical devices for storing solar- and fuel cell-generated energy, are exempt from the tax imposed under the Sales and Use Tax Act.  The **[**Director of the Division of Energy Planning and Conservation in the Department of Energy**]** Board of Public Utilities shall establish standards with respect to the technical sufficiency of solar energy systems for purposes of qualification for exemption.

(cf: P.L.1980, c.105, s.45)

     2.    Section 26 of P.L.1997, c.162 (C.54:32B-8.46) is amended to read as follows:

     26.  a.  Receipts from the sale, exchange, delivery or use of electricity are exempt from the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) if the electricity:

     (1) (a) Is sold by a municipal electric corporation in existence as of December 31, 1995 and used within its municipal boundaries except if the customer is located within a franchise area served by an electric public utility other than the municipal electric corporation.  If a municipal electric corporation makes sales of electricity used outside of its municipal boundaries or within a franchise area served by an electric public utility other than the municipal electric corporation, then receipts from those sales of electricity by the municipal electric corporation shall be subject to tax under P.L.1966, c.30; or

     (b)   Is sold by a municipal electric utility in existence as of December 31, 1995, and used within its municipal boundaries.  However, a municipal electric utility's receipts from the sale, exchange, delivery or use of electricity used by customers outside of its municipal boundaries and within its franchise area existing as of December 31, 1995 shall be subject to tax.  If a municipal electric utility makes sales of electricity used outside of its franchise area existing as of December 31, 1995, then receipts from those sales of electricity by the municipal electric utility shall be subject to tax under P.L.1966, c.30;

     (2)   Was generated by a facility located on the user's property or property purchased or leased from the user by the person owning the generation facility and such property is contiguous to the user's property, and the electricity was consumed by the one on-site end user on the user's property, and was not transported to the user over wires that cross a property line or public thoroughfare unless the property line or public thoroughfare merely bifurcated the user's or generation facility owner's otherwise contiguous property or the electricity was consumed by an affiliated user on the same site, or by a non-affiliated user on the same site with an electric distribution system which is integrated and interconnected with the user on or before March 10, 1997; the director may promulgate rules and regulations and issue guidance with respect to all issues related to affiliated users; **[**or**]**

     (3)   Is sold for resale; or

     (4)   Is generated by a fuel cell device or system that is designed to provide heating or cooling, or electrical or mechanical power by converting the chemical energy of a fuel and an oxidant into electricity through a non-combustive electrochemical process.

     For the purpose of electric sales by an on-site generation facility pursuant to this subsection, an end use customer's property shall be considered contiguous to the property on which the on-site generation facility serving that customer is located if the customer is purchasing thermal energy services produced by the facility, for use for heating or cooling, or both, regardless of any intervening property, public thoroughfare, or transportation or utility-owned right-of-way.

     The State Treasurer shall monitor monies deposited into the Energy Tax Receipts Property Tax Relief Fund on an annual basis and may report the results of the State Treasurer's analysis on the fund to the Governor and the Legislature, along with any recommendations on the exemptions in this subsection.

     b.    Receipts from the purchase or use of the following are exempt from the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.):

     (1)   Natural gas or utility service that is used to generate electricity that is sold for resale or to an end user other than the end user upon whose property is located a co-generation facility or self-generation unit that generated the electricity or upon the property purchased or leased from the end user by the person owning the co-generation facility or self-generation unit if such property is contiguous to the user's property and is the property upon which is located a co-generation facility or self-generation unit that generated the electricity;

     (2)   Natural gas and utility service that is used for co-generation at any site at which a co-generation facility was in operation on or before March 10, 1997, or for which an application for an operating permit or a construction permit and a certificate of operation in order to comply with air quality standards under P.L.1954, c.212 (C.26:2C-1 et seq.) has been filed with the Department of Environmental Protection on or before March 10, 1997, to produce electricity for use on that site; **[**and**]**

     (3)   Natural gas and utility service that is used for co-generation at a co-generation facility that is constructed after January 1, 2010 ; **1[**and**]1**

     (4)   Natural gas and utility service that is used as a fuel in a fuel cell device or system that is designed to provide heating or cooling, or electrical or mechanical power by converting the chemical energy of a fuel and an oxidant into electricity through a non-combustive electrochemical process **1**; and

     (5) Propane that is used as a fuel in a fuel cell device or system that is designed to provide heating or cooling, or electrical or mechanical power by converting the chemical energy of a fuel and an oxidant into electricity through a non-combustive electrochemical process**1**.

     c.     Notwithstanding any provisions of this section to the contrary, any co-generation facility that was in operation prior to January 1, 2010 and was subject to the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) for the purchase and use of natural gas and utility service for co-generation purposes shall continue to be subject to, and responsible for payment of, such tax after the effective date of P.L.2009, c.240 (C.48:3-77.1 et al.).

(cf: P.L.2009, c.240, s.3)

     3.    (New section) Receipts from sales of tangible personal property powered directly and exclusively by a fuel cell device or system that is designed to provide heating or cooling, or electrical or mechanical power to the tangible personal property, as an integrated, component part of the tangible personal property, by converting the chemical energy of a fuel and an oxidant into electricity through a non-combustive electrochemical process are exempt from the tax imposed pursuant to the “Sales and Use Tax Act,” P.L.1966, c.30 (C.54:32B-1 et seq.).

     4.    This act shall take effect immediately and apply to all receipts received from sales made, uses occurring, and billing periods starting on or after the first day of the fourth month next following the date of enactment.