



Sales and Use Tax Exemptions Related to Commercial Fuel Cell Systems Equipment

This memorandum explains the recently enacted sales and use tax exemptions related to commercial fuel cell electricity generating systems equipment.

Part WW of Chapter 60 of the Laws of 2016 provides certain sales and use tax exemptions related to commercial fuel cell electricity generating systems equipment. The new exemptions apply to sales made and services rendered on or after June 1, 2016.

The exemptions apply to the 4% state sales and use tax (sales tax) and the $\frac{3}{8}$ % sales tax imposed by the state in the Metropolitan Commuter Transportation District (MCTD). The new law also allows cities and counties, including New York City, to grant similar exemptions from their local sales taxes.

Exemptions for equipment

Part WW provides an exemption for receipts from the retail sale of commercial fuel cell electricity generating systems equipment. It also provides an exemption for the services of installation and maintenance of such equipment.

Fuel cell electricity generating systems equipment means an electric generating arrangement or combination of components that:

- is installed upon nonresidential premises; and
- utilizes one of the following types of fuel cells:
 - solid oxide,
 - molten carbonate,
 - a proton exchange membrane,
 - phosphoric acid, or
 - a linear generator.

The term *nonresidential premises* means any premises that do not meet the definition of a *residence*.

A *residence* is defined as a dwelling, whether owned or rented, and may include a single-family house, a multi-family building that consists exclusively of residential dwelling units, or a residential dwelling unit or units within such multi-family building, including an apartment, a cooperative apartment or a condominium unit.

A contractor who purchases fuel cell electricity generating systems equipment must submit to the vendor a properly completed [Form ST-120.1](#), *Contractor Exempt Purchase Certificate*, to claim this exemption.

Persons other than contractors who purchase fuel cell electricity generating systems equipment or the services of installing or maintaining the equipment must submit to the vendor or contractor a properly completed [Form ST-121](#), *Exempt Use Certificate*, using Part 3, Box U, to claim this exemption. For purposes of this exemption, persons who purchase this exempt equipment or installation or maintenance services and who are not required to have a *Certificate of Authority* are not required to list a *Certificate of Authority* number on Form ST-121.

Exemption for sales of electricity and hydrogen gas

Part WW also provides an exemption from the 4% state and the 3% MCTD sales and use taxes imposed on sales of nonresidential electricity and hydrogen gas. To qualify, the sales must be made pursuant to a written agreement by a person primarily engaged in the sale of:

- fuel cell electricity generating systems equipment,
- electricity that is generated by such equipment, or
- both.

Primarily engaged means that 50% or more of the person's receipts are derived from such sales.

The electricity or hydrogen gas must be sold to the person with whom the seller has a written agreement, and it must be generated by commercial fuel cell electricity generating systems equipment that is:

- owned by a person other than the purchaser of such electricity;
- installed on the nonresidential premises of the purchaser of such electricity;
- placed in service; and
- used to provide heating, cooling, hot water or electricity to such premises.

Local sales and use tax rates

Publication 718-FC, *Local Sales and Use Tax Rates on Commercial Fuel Cell Electricity Systems Equipment, Electricity, and Hydrogen*, provides a listing of the local sales and use tax rates for qualifying sales of equipment, services, hydrogen gas, and electricity.

Note: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.