

ASSEMBLY, No. 733

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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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

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 3/8/2021)

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

6
7 **BE IT ENACTED** *by the Senate and General Assembly of the State*
8 *of New Jersey:*

9
10 1. Section 45 of P.L.1980, c.105 (C.54:32B-8.33) is amended
11 to read as follows:

12 45. Receipts from sales of solar energy and fuel cell devices or
13 systems designed to provide heating or cooling, or electrical or
14 mechanical power by collecting and transferring solar-generated
15 energy or by converting the chemical energy of a fuel and an
16 oxidant into electricity through a non-combustive electrochemical
17 process, and including mechanical or chemical devices for storing
18 solar- and fuel cell-generated energy, are exempt from the tax
19 imposed under the Sales and Use Tax Act. The **【**Director of the
20 Division of Energy Planning and Conservation in the Department of
21 Energy**】** Board of Public Utilities shall establish standards with
22 respect to the technical sufficiency of solar energy systems for
23 purposes of qualification for exemption.
24 (cf: P.L.1980, c.105, s.45)

25
26 2. Section 26 of P.L.1997, c.162 (C.54:32B-8.46) is amended
27 to read as follows:

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

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

41 (b) Is sold by a municipal electric utility in existence as of
42 December 31, 1995, and used within its municipal boundaries.
43 However, a municipal electric utility's receipts from the sale,
44 exchange, delivery or use of electricity used by customers outside
45 of its municipal boundaries and within its franchise area existing as

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 of December 31, 1995 shall be subject to tax. If a municipal
2 electric utility makes sales of electricity used outside of its
3 franchise area existing as of December 31, 1995, then receipts from
4 those sales of electricity by the municipal electric utility shall be
5 subject to tax under P.L.1966, c.30;

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

20 (3) Is sold for resale; or

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

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

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

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

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

1 located a co-generation facility or self-generation unit that
2 generated the electricity;

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

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

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

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

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

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

32

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

42

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

STATEMENT

This bill provides an exemption from the sales and use tax for sales of fuel cell devices and systems, and sales of tangible personal property powered by fuel cells. The bill also exempts from the tax: sales of propane; natural gas and utility service that are used as a fuel in a fuel cell device or system; and sales of electricity generated by a fuel cell.

In general, fuel cells use a source of energy or another fuel (such as hydrogen) and an oxidant to generate electricity through an electrochemical reaction without combustion. The electricity generated by fuel cells is clean, safe, and reliable, and can be depended upon to provide electrical power for a wide variety of residential, industrial, and commercial applications, including vehicles and material handling equipment, back-up or emergency electricity generation units, and off-grid power stations for homes, businesses, and utilities.

This bill provides an exemption under the sales and use tax to recognize these benefits and encourage the continued deployment of fuel cell technologies in this State. Under the bill, the current exemption for solar energy devices and systems is expanded to exempt sales of fuel cell devices and systems 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. In doing so, the bill exempts from tax sales of mechanical or chemical devices used to store fuel cell-generated energy.

The bill also provides a stand-alone exemption from the sales and use tax for 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. Under the bill, this exemption is included to ensure vehicles and material handling equipment (not already exempt from tax under the exemption for sales of zero-emission vehicles), electronic devices, and other consumer and commercial products that rely on an embedded fuel cell for electrical power are permitted to be sold tax free.

In addition, the bill amends the sales and use tax to exempt from the tax: sales of propane; natural gas and utility service that are used as a fuel in a fuel cell device or system; and sales of electricity generated by a fuel cell. Hydrogen, the fuel most commonly used in fuel cells, may be created from propane and natural gas.

The bill takes effect immediately upon enactment and provides for the sales and use tax exemptions to apply to sales made, uses occurring, and billing periods starting on or after the first day of the fourth month next following the date of enactment.