

1180--A

2009-2010 Regular Sessions

I N S E N A T E

January 27, 2009

Introduced by Sen. OPPENHEIMER -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to the imposition of an occupancy tax in the Village of Rye Brook; and providing for the repeal of such provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The tax law is amended by adding a new section 1202-bb to
2 read as follows:
3 S 1202-BB. OCCUPANCY TAX IN THE VILLAGE OF RYE BROOK. (1) NOTWITH-
4 STANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE VILLAGE OF RYE
5 BROOK, IN THE COUNTY OF WESTCHESTER, IS HEREBY AUTHORIZED AND EMPOWERED
6 TO ADOPT AND AMEND LOCAL LAWS IMPOSING IN SUCH VILLAGE A TAX, IN ADDI-
7 TION TO ANY OTHER TAX AUTHORIZED AND IMPOSED PURSUANT TO THIS ARTICLE,
8 SUCH AS THE LEGISLATURE HAS OR WOULD HAVE THE POWER AND AUTHORITY TO
9 IMPOSE UPON PERSONS OCCUPYING ANY ROOM FOR HIRE IN ANY HOTEL. FOR THE
10 PURPOSES OF THIS SECTION, THE TERM "HOTEL" SHALL MEAN A BUILDING OR
11 PORTION OF IT WHICH IS REGULARLY USED AND KEPT OPEN AS SUCH FOR THE
12 LODGING OF GUESTS. THE TERM "HOTEL" INCLUDES AN APARTMENT HOTEL, A MOTEL
13 OR A BOARDING HOUSE, WHETHER OR NOT MEALS ARE SERVED. THE RATE OF SUCH
14 TAX SHALL NOT EXCEED THREE PERCENT OF THE PER DIEM RENTAL RATE FOR EACH
15 ROOM WHETHER SUCH ROOM IS RENTED ON A DAILY OR LONGER BASIS.
16 (2) SUCH TAXES MAY BE COLLECTED AND ADMINISTERED BY THE CHIEF FISCAL
17 OFFICER OF THE VILLAGE OF RYE BROOK BY SUCH MEANS AND IN SUCH MANNER AS
18 OTHER TAXES WHICH ARE NOW COLLECTED AND ADMINISTERED BY SUCH OFFICER OR
19 AS OTHERWISE MAY BE PROVIDED BY SUCH LOCAL LAW.

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

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1 (3) SUCH LOCAL LAWS MAY PROVIDE THAT ANY TAXES IMPOSED SHALL BE PAID
2 BY THE PERSON LIABLE THEREFORE TO THE OWNER OF THE ROOM FOR HIRE IN THE
3 TOURIST HOME, INN, CLUB, HOTEL, MOTEL OR OTHER SIMILAR PLACE OF PUBLIC
4 ACCOMMODATION OCCUPIED OR TO THE PERSON ENTITLED TO BE PAID THE RENT OR
5 CHARGE FOR THE ROOM FOR HIRE IN THE TOURIST HOME, INN, CLUB, HOTEL,
6 MOTEL OR OTHER SIMILAR PLACE OF PUBLIC ACCOMMODATION OCCUPIED FOR AND ON
7 ACCOUNT OF THE VILLAGE OF RYE BROOK IMPOSING THE TAX AND THAT SUCH OWNER
8 OR PERSON ENTITLED TO BE PAID THE RENT OR CHARGE SHALL BE LIABLE FOR THE
9 COLLECTION AND PAYMENT OF THE TAX; AND THAT SUCH OWNER OR PERSON ENTI-
10 TLED TO BE PAID THE RENT OR CHARGE SHALL HAVE THE SAME RIGHT IN RESPECT
11 TO COLLECTING THE TAX FROM THE PERSON OCCUPYING THE ROOM FOR HIRE IN THE
12 TOURIST HOME, INN, CLUB, HOTEL, MOTEL OR OTHER SIMILAR PLACE OF PUBLIC
13 ACCOMMODATION, OR IN RESPECT TO NONPAYMENT OF THE TAX BY THE PERSON
14 OCCUPYING THE ROOM FOR HIRE IN THE TOURIST HOME, INN, CLUB, HOTEL, MOTEL
15 OR SIMILAR PLACE OF PUBLIC ACCOMMODATION, AS IF THE TAXES WERE A PART OF
16 THE RENT OR CHARGE AND PAYABLE AT THE SAME TIME AS THE RENT OR CHARGE;
17 PROVIDED, HOWEVER, THAT THE CHIEF FISCAL OFFICER OF THE VILLAGE, SPECI-
18 FIED IN SUCH LOCAL LAWS, SHALL BE JOINED AS A PARTY IN ANY ACTION OR
19 PROCEEDING BROUGHT TO COLLECT THE TAX BY THE OWNER OR BY THE PERSON
20 ENTITLED TO BE PAID THE RENT OR CHARGE.

21 (4) SUCH LOCAL LAWS MAY PROVIDE FOR THE FILING OF RETURNS AND THE
22 PAYMENT OF THE TAXES ON A MONTHLY BASIS OR ON THE BASIS OF ANY LONGER OR
23 SHORTER PERIOD OF TIME.

24 (5) THIS SECTION SHALL NOT AUTHORIZE THE IMPOSITION OF SUCH TAX UPON
25 ANY OF THE FOLLOWING:

26 A. THE STATE OF NEW YORK, OR ANY PUBLIC CORPORATION (INCLUDING A
27 PUBLIC CORPORATION CREATED PURSUANT TO AGREEMENT OR COMPACT WITH ANOTHER
28 STATE OR THE DOMINION OF CANADA), IMPROVEMENT DISTRICT OR OTHER POLI-
29 TICAL SUBDIVISION OF THE STATE;

30 B. THE UNITED STATES OF AMERICA, INSOFAR AS IT IS IMMUNE FROM TAXA-
31 TION; OR

32 C. ANY CORPORATION OR ASSOCIATION, OR TRUST, OR COMMUNITY CHEST, FUND
33 OR FOUNDATION ORGANIZED AND OPERATED EXCLUSIVELY FOR RELIGIOUS, CHARITA-
34 BLE OR EDUCATIONAL PURPOSES, OR FOR THE PREVENTION OF CRUELTY TO CHIL-
35 DREN OR ANIMALS, AND NO PART OF THE NET EARNINGS OF WHICH INURES TO THE
36 BENEFIT OF ANY PRIVATE SHAREHOLDER OR INDIVIDUAL AND NO SUBSTANTIAL PART
37 OF THE ACTIVITIES OF WHICH IS CARRYING ON PROPAGANDA, OR OTHERWISE
38 ATTEMPTING TO INFLUENCE LEGISLATION; PROVIDED, HOWEVER, THAT NOTHING IN
39 THIS PARAGRAPH SHALL INCLUDE AN ORGANIZATION OPERATED FOR THE PRIMARY
40 PURPOSE OF CARRYING ON A TRADE OR BUSINESS FOR PROFIT, WHETHER OR NOT
41 ALL OF ITS PROFITS ARE PAYABLE TO ONE OR MORE ORGANIZATIONS DESCRIBED IN
42 THIS PARAGRAPH.

43 D. A PERMANENT RESIDENT OF A HOTEL OR MOTEL. FOR THE PURPOSES OF THIS
44 SECTION, THE TERM "PERMANENT RESIDENT" SHALL MEAN A NATURAL PERSON OCCU-
45 PYING ANY ROOM OR ROOMS IN A HOTEL OR MOTEL FOR AT LEAST THIRTY CONSEC-
46 UTIVE DAYS.

47 (6) ANY FINAL DETERMINATION OF THE AMOUNT OF ANY TAX PAYABLE HEREUNDER
48 SHALL BE REVIEWABLE FOR ERROR, ILLEGALITY OR UNCONSTITUTIONALITY OR ANY
49 OTHER REASON WHATSOEVER BY A PROCEEDING UNDER ARTICLE SEVENTY-EIGHT OF
50 THE CIVIL PRACTICE LAW AND RULES IF APPLICATION THEREFOR IS MADE TO THE
51 SUPREME COURT WITHIN THIRTY DAYS AFTER THE GIVING OF NOTICE OF SUCH
52 FINAL DETERMINATION, PROVIDED, HOWEVER, THAT ANY SUCH PROCEEDING UNDER
53 ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES SHALL NOT BE
54 INSTITUTED UNLESS:

55 A. THE AMOUNT OF ANY TAX SOUGHT TO BE REVIEWED, WITH SUCH INTEREST AND
56 PENALTIES THEREON AS MAY BE PROVIDED FOR BY LOCAL LAWS OR REGULATIONS

1 SHALL BE FIRST DEPOSITED AND THERE SHALL BE FILED AN UNDERTAKING, ISSUED
2 BY A SURETY COMPANY AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE AND
3 APPROVED BY THE SUPERINTENDENT OF INSURANCE OF THIS STATE AS TO SOLVENCY
4 AND RESPONSIBILITY, IN SUCH AMOUNT AS A JUSTICE OF THE SUPREME COURT
5 SHALL APPROVE TO THE EFFECT THAT IF SUCH PROCEEDING BE DISMISSED OR THE
6 TAX CONFIRMED THE PETITIONER WILL PAY ALL COSTS AND CHARGES WHICH MAY
7 ACCRUE IN THE PROSECUTION OF SUCH PROCEEDING; OR

8 B. AT THE OPTION OF THE PETITIONER, SUCH UNDERTAKING MAY BE IN A SUM
9 SUFFICIENT TO COVER THE TAXES, INTERESTS AND PENALTIES STATED IN SUCH
10 DETERMINATION PLUS THE COSTS AND CHARGES WHICH MAY ACCRUE AGAINST IT IN
11 THE PROSECUTION OF THE PROCEEDING, IN WHICH EVENT THE PETITIONER SHALL
12 NOT BE REQUIRED TO PAY SUCH TAXES, INTEREST OR PENALTIES AS A CONDITION
13 PRECEDENT TO THE APPLICATION.

14 (7) WHERE ANY TAXES IMPOSED HEREUNDER SHALL HAVE BEEN ERRONEOUSLY,
15 ILLEGALLY OR UNCONSTITUTIONALLY COLLECTED AND APPLICATION FOR THE REFUND
16 THEREFOR DULY MADE TO THE PROPER FISCAL OFFICER OR OFFICERS, AND SUCH
17 OFFICER OR OFFICERS SHALL HAVE MADE A DETERMINATION DENYING SUCH REFUND,
18 SUCH DETERMINATION SHALL BE REVIEWABLE BY A PROCEEDING UNDER ARTICLE
19 SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES, PROVIDED, HOWEVER,
20 THAT SUCH PROCEEDING IS INSTITUTED WITHIN THIRTY DAYS AFTER THE GIVING
21 OF THE NOTICE OF SUCH DENIAL, THAT A FINAL DETERMINATION OF TAX DUE WAS
22 NOT PREVIOUSLY MADE, AND THAT AN UNDERTAKING IS FILED WITH THE PROPER
23 FISCAL OFFICER OR OFFICERS IN SUCH AMOUNT AND WITH SUCH SURETIES AS A
24 JUSTICE OF THE SUPREME COURT SHALL APPROVE TO THE EFFECT THAT IF SUCH
25 PROCEEDING BE DISMISSED OR THE TAXES CONFIRMED, THE PETITIONER WILL PAY
26 ALL COSTS AND CHARGES WHICH MAY ACCRUE IN THE PROSECUTION OF SUCH
27 PROCEEDING.

28 (8) EXCEPT IN THE CASE OF A WILLFULLY FALSE OR FRAUDULENT RETURN WITH
29 INTENT TO EVADE THE TAX, NO ASSESSMENT OF ADDITIONAL TAX SHALL BE MADE
30 AFTER THE EXPIRATION OF MORE THAN THREE YEARS FROM THE DATE OF THE
31 FILING OF A RETURN, PROVIDED, HOWEVER, THAT WHERE NO RETURN HAS BEEN
32 FILED AS PROVIDED BY LAW THE TAX MAY BE ASSESSED AT ANY TIME.

33 (9) ALL REVENUES RESULTING FROM THE IMPOSITION OF THE TAX UNDER THE
34 LOCAL LAWS SHALL BE PAID INTO THE TREASURY OF THE VILLAGE OF RYE BROOK
35 AND SHALL BE CREDITED TO AND DEPOSITED IN THE GENERAL FUND OF THE
36 VILLAGE. SUCH REVENUES MAY BE USED FOR ANY LAWFUL PURPOSE.

37 (10) EACH ENACTMENT OF SUCH A LOCAL LAW MAY PROVIDE FOR THE IMPOSITION
38 OF A HOTEL OR MOTEL TAX FOR A PERIOD OF TIME NO LONGER THAN THREE YEARS
39 FROM THE DATE OF ITS ENACTMENT. NOTHING IN THIS SECTION SHALL PROHIBIT
40 THE ADOPTION AND ENACTMENT OF LOCAL LAWS, PURSUANT TO THE PROVISIONS OF
41 THIS SECTION, UPON THE EXPIRATION OF ANY OTHER LOCAL LAW ADOPTED PURSU-
42 ANT TO THIS SECTION.

43 (11) IF ANY PROVISION OF THIS SECTION OR THE APPLICATION THEREOF TO
44 ANY PERSON OR CIRCUMSTANCE SHALL BE HELD INVALID, THE REMAINDER OF THIS
45 SECTION AND THE APPLICATION OF SUCH PROVISION TO OTHER PERSONS OR
46 CIRCUMSTANCES SHALL NOT BE AFFECTED THEREBY.

47 S 2. This act shall take effect immediately and shall expire and be
48 deemed repealed three years after such date.