

6651--A

I N S E N A T E

January 22, 2010

Introduced by Sen. STEWART-COUSINS -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to authorizing the town of Greenburgh to adopt a local law to impose a hotel/motel occupancy tax for hotels not located in a village; authorizing villages in the town of Greenburgh to adopt a local law to impose a hotel/motel occupancy tax in such villages

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. HOTEL OR MOTEL TAXES IN THE TOWN AND THE VILLAGES OF GREEN-
4 BURGH. (1) NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW TO THE CONTRARY,
5 THE TOWN OF GREENBURGH, WESTCHESTER COUNTY, IS HEREBY AUTHORIZED AND
6 EMPOWERED TO ADOPT AND AMEND LOCAL LAWS IMPOSING IN THOSE PORTIONS OF
7 SUCH TOWN NOT LOCATED WITHIN A VILLAGE, AND EACH VILLAGE IN SUCH TOWN IS
8 HEREBY AUTHORIZED AND EMPOWERED TO ADOPT AND AMEND LOCAL LAWS IMPOSING
9 IN SUCH VILLAGE A TAX, IN ADDITION TO ANY OTHER TAX AUTHORIZED AND
10 IMPOSED PURSUANT TO THIS ARTICLE, AS THE LEGISLATURE HAS OR WOULD HAVE
11 THE POWER AND AUTHORITY TO IMPOSE UPON PERSONS OCCUPYING ROOMS IN HOTELS
12 OR MOTELS IN SUCH TOWN OR VILLAGE THEREIN. FOR THE PURPOSES OF THIS
13 SECTION, THE TERM "HOTEL" SHALL MEAN A BUILDING OR PORTION OF IT WHICH
14 IS REGULARLY USED AND KEPT OPEN AS SUCH FOR THE LODGING OF GUESTS. THE
15 TERM "HOTEL" INCLUDES AN APARTMENT HOTEL, A MOTEL OR A BOARDING HOUSE,
16 WHETHER OR NOT MEALS ARE SERVED. THE RATE OF SUCH TAX SHALL NOT EXCEED
17 THREE PERCENT OF THE PER DIEM RENTAL RATE FOR EACH ROOM WHETHER SUCH
18 ROOM IS RENTED ON A DAILY OR LONGER BASIS.
19 (2) SUCH TAX MAY BE COLLECTED AND ADMINISTERED BY THE COMMISSIONER OF
20 FINANCE OR OTHER FISCAL OFFICER OF THE TOWN OF GREENBURGH OR OF ANY
21 VILLAGE THEREIN, AS THE CASE MAY BE, BY SUCH MEANS AND IN SUCH MANNER AS
22 OTHER TAXES WHICH ARE NOW COLLECTED AND ADMINISTERED BY SUCH OFFICERS IN

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

LBD15394-03-0

1 ACCORDANCE WITH THE TOWN OR VILLAGE CHARTER OR AS OTHERWISE MAY BE
2 PROVIDED BY SUCH LOCAL LAW.

3 (3) SUCH LOCAL LAWS MAY PROVIDE THAT ANY TAX IMPOSED SHALL BE PAID BY
4 THE PERSON LIABLE THEREFOR TO THE OWNER OF THE HOTEL OR MOTEL ROOM OCCU-
5 PIED OR TO THE PERSON ENTITLED TO BE PAID THE RENT OR CHARGE FOR THE
6 HOTEL OR MOTEL ROOM OCCUPIED FOR AND ON ACCOUNT OF THE TOWN OF GREEN-
7 BURGH OR OF ANY VILLAGE THEREIN IMPOSING THE TAX, AND THAT SUCH OWNER OR
8 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 HOTEL OR MOTEL ROOM,
12 OR IN RESPECT TO NONPAYMENT OF THE TAX BY THE PERSON OCCUPYING THE HOTEL
13 OR MOTEL ROOM, AS IF THE TAX WERE A PART OF THE RENT OR CHARGE AND PAYA-
14 BLE AT THE SAME TIME AS THE RENT OR CHARGE; PROVIDED, HOWEVER, THAT THE
15 COMMISSIONER OF FINANCE OR OTHER FISCAL OFFICERS OF THE TOWN OR THE
16 VILLAGE, SPECIFIED IN SUCH LOCAL LAW, SHALL BE JOINED AS A PARTY IN ANY
17 ACTION OR PROCEEDING BROUGHT TO COLLECT THE TAX BY THE OWNER OR BY THE
18 PERSON ENTITLED TO BE PAID THE RENT OR CHARGE.

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

22 (5) THIS SECTION SHALL NOT AUTHORIZE THE IMPOSITION OF SUCH TAX UPON
23 THE FOLLOWING:

24 A. THE STATE OF NEW YORK, OR ANY PUBLIC CORPORATION, INCLUDING A
25 PUBLIC CORPORATION CREATED PURSUANT TO AGREEMENT OR COMPACT WITH ANOTHER
26 STATE OR THE DOMINION OF CANADA, IMPROVEMENT DISTRICT OR OTHER POLITICAL
27 SUBDIVISION OF THE STATE;

28 B. THE UNITED STATES OF AMERICA, INsofar AS IT IS IMMUNE FROM TAXA-
29 TION;

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

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

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

53 A. THE AMOUNT OF ANY TAX SOUGHT TO BE REVIEWED, WITH SUCH INTEREST AND
54 PENALTIES THEREON AS MAY BE PROVIDED FOR BY LOCAL LAW OR REGULATION
55 SHALL BE FIRST DEPOSITED AND THERE IS FILED AN UNDERTAKING, ISSUED BY A
56 SURETY COMPANY AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE AND

1 APPROVED BY THE SUPERINTENDENT OF INSURANCE OF THIS STATE AS TO SOLVENCY
2 AND RESPONSIBILITY, IN SUCH AMOUNT AS A JUSTICE OF THE SUPREME COURT
3 SHALL APPROVE TO THE EFFECT THAT IF SUCH PROCEEDING BE DISMISSED OR THE
4 TAX CONFIRMED THE PETITIONER WILL PAY ALL COSTS AND CHARGES WHICH MAY
5 ACCRUE IN THE PROSECUTION OF SUCH PROCEEDING; OR

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

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

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

31 (9) REVENUES RESULTING FROM THE IMPOSITION OF TAX AUTHORIZED BY THIS
32 SECTION SHALL BE PAID INTO THE TREASURY OF THE TOWN OF GREENBURGH OR OF
33 THE VILLAGE THEREIN, AND SHALL BE CREDITED TO AND DEPOSITED IN THE
34 GENERAL FUND OF THE TOWN OR VILLAGE; AND MAY THEREAFTER BE ALLOCATED AT
35 THE DISCRETION OF THE BOARD OF LEGISLATORS OF THE TOWN OF GREENBURGH OR
36 OF THE VILLAGE THEREIN FOR ANY TOWN OR VILLAGE PURPOSE.

37 (10) THE BOARD OF LEGISLATORS OF THE TOWN OF GREENBURGH OR OF THE
38 VILLAGE THEREIN SHALL ALLOCATE ONE PERCENT OF SUCH REVENUES RESULTING
39 FROM THE IMPOSITION OF TAX AUTHORIZED BY THIS SECTION, TO THE SCHOOL
40 DISTRICT OR DISTRICTS LOCATED IN SUCH TOWN OR VILLAGE THEREIN.

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

45 S 2. This act shall take effect immediately.