

7277

I N S E N A T E

May 9, 2014

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to authorizing the county of Delaware to establish hotel and motel taxes

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-cc to
2 read as follows:
3 S 1202-CC. HOTEL OR MOTEL TAXES IN DELAWARE COUNTY. (1) NOTWITHSTAND-
4 ING ANY OTHER PROVISIONS OF LAW TO THE CONTRARY, THE COUNTY OF DELAWARE
5 IS HEREBY AUTHORIZED AND EMPOWERED TO ADOPT AND AMEND LOCAL LAWS IMPOS-
6 ING IN SUCH COUNTY A TAX, IN ADDITION TO ANY OTHER TAX AUTHORIZED AND
7 IMPOSED PURSUANT TO THIS ARTICLE SUCH AS THE COUNTY LEGISLATURE HAS OR
8 WOULD HAVE THE POWER AND AUTHORITY TO IMPOSE UPON PERSONS OCCUPYING
9 HOTEL OR MOTEL ROOMS IN SUCH COUNTY. FOR THE PURPOSES OF THIS SECTION,
10 THE TERM "HOTEL" OR "MOTEL" SHALL MEAN AND INCLUDE ANY FACILITY PROVID-
11 ING LODGING ON AN OVERNIGHT BASIS AND SHALL INCLUDE THOSE FACILITIES
12 DESIGNATED AND COMMONLY KNOWN AS "BED AND BREAKFAST" AND "TOURIST"
13 FACILITIES.
14 THE RATES OF SUCH TAX SHALL NOT EXCEED TWO PERCENT OF THE PER DIEM
15 RENTAL RATE FOR EACH ROOM, PROVIDED HOWEVER, THAT SUCH TAX SHALL NOT BE
16 APPLICABLE TO A PERMANENT RESIDENT OF A HOTEL OR MOTEL. FOR THE PURPOSES
17 OF THIS SECTION THE TERM "PERMANENT RESIDENT" SHALL MEAN A PERSON OCCU-
18 PYING ANY ROOM OR ROOMS IN A HOTEL OR MOTEL FOR AT LEAST THIRTY CONSEC-
19 UTIVE DAYS.
20 (2) SUCH TAX MAY BE COLLECTED AND ADMINISTERED BY THE COUNTY TREASURER
21 OR OTHER FISCAL OFFICERS OF DELAWARE COUNTY BY SUCH MEANS AND IN SUCH
22 MANNER AS OTHER TAXES WHICH ARE NOW COLLECTED AND ADMINISTERED BY SUCH
23 OFFICERS OR AS OTHERWISE MAY BE PROVIDED BY SUCH LOCAL LAW.
24 (3) SUCH LOCAL LAWS MAY PROVIDE THAT ANY TAX IMPOSED SHALL BE PAID BY
25 THE PERSON LIABLE THEREFOR TO THE OWNER OF THE HOTEL OR MOTEL ROOM OCCU-
26 PIED OR TO THE PERSON ENTITLED TO BE PAID THE RENT OR CHARGE FOR THE
27 HOTEL OR MOTEL ROOM OCCUPIED FOR AND ON ACCOUNT OF THE COUNTY OF DELA-

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

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1 WARE IMPOSING THE TAX AND THAT SUCH OWNER OR PERSON ENTITLED TO BE PAID
2 THE RENT OR CHARGE SHALL BE LIABLE FOR THE COLLECTION AND PAYMENT OF THE
3 TAX; AND THAT SUCH OWNER OR PERSON ENTITLED TO BE PAID THE RENT OR
4 CHARGE SHALL HAVE THE SAME RIGHT IN RESPECT TO COLLECTING THE TAX FROM
5 THE PERSON OCCUPYING THE HOTEL OR MOTEL ROOM, OR IN RESPECT TO NONPAY-
6 MENT OF THE TAX BY THE PERSON OCCUPYING THE HOTEL OR MOTEL ROOM, AS IF
7 THE TAX WERE A PART OF THE RENT OR CHARGE AND PAYABLE AT THE SAME TIME
8 AS THE RENT OR CHARGE; PROVIDED, HOWEVER, THAT THE COUNTY TREASURER OR
9 OTHER FISCAL OFFICERS OF THE COUNTY, SPECIFIED IN SUCH LOCAL LAW, SHALL
10 BE JOINED AS A PARTY IN ANY ACTION OR PROCEEDING BROUGHT TO COLLECT THE
11 TAX BY THE OWNER OR BY THE PERSON ENTITLED TO BE PAID THE RENT OR
12 CHARGE.

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

16 (5) THIS SECTION SHALL NOT AUTHORIZE THE IMPOSITION OF SUCH TAX UPON
17 ANY TRANSACTION, BY OR WITH ANY OF THE FOLLOWING IN ACCORDANCE WITH
18 SECTION TWELVE HUNDRED THIRTY OF THIS ARTICLE:

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

23 B. THE UNITED STATES OF AMERICA, INSOFAR AS IT IS IMMUNE FROM TAXA-
24 TION;

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

36 (6) ANY FINAL DETERMINATION OF THE AMOUNT OF ANY TAX PAYABLE PURSUANT
37 TO THIS SECTION SHALL BE REVIEWABLE FOR ERROR, ILLEGALITY OR UNCONSTITU-
38 TIONALITY OR ANY OTHER REASON WHATSOEVER BY A PROCEEDING UNDER ARTICLE
39 SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES IF APPLICATION THERE-
40 FOR IS MADE TO THE SUPREME COURT WITHIN THIRTY DAYS AFTER THE GIVING OF
41 THE NOTICE OF SUCH FINAL DETERMINATION, PROVIDED, HOWEVER, THAT ANY SUCH
42 PROCEEDING UNDER ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND
43 RULES SHALL NOT BE INSTITUTED UNLESS:

44 A. THE AMOUNT OF ANY TAX SOUGHT TO BE REVIEWED, WITH SUCH INTEREST AND
45 PENALTIES THEREON AS MAY BE PROVIDED FOR BY LOCAL LAW OR REGULATION
46 SHALL BE FIRST DEPOSITED AND THERE IS FILED AN UNDERTAKING, ISSUED BY A
47 SURETY COMPANY AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE AND
48 APPROVED BY THE SUPERINTENDENT OF FINANCIAL SERVICES OF THIS STATE AS TO
49 SOLVENCY AND RESPONSIBILITY, IN SUCH AMOUNT AS A JUSTICE OF THE SUPREME
50 COURT SHALL APPROVE TO THE EFFECT THAT IF SUCH PROCEEDING BE DISMISSED
51 OR THE TAX CONFIRMED THE PETITIONER WILL PAY ALL COSTS AND CHARGES WHICH
52 MAY ACCRUE IN THE PROSECUTION OF SUCH PROCEEDING; OR

53 B. AT THE OPTION OF THE PETITIONER SUCH UNDERTAKING MAY BE IN A SUM
54 SUFFICIENT TO COVER THE TAXES, INTERESTS AND PENALTIES STATED IN SUCH
55 DETERMINATION PLUS THE COSTS AND CHARGES WHICH MAY ACCRUE AGAINST IT IN
56 THE PROSECUTION OF THE PROCEEDING, IN WHICH EVENT THE PETITIONER SHALL

1 NOT BE REQUIRED TO PAY SUCH TAXES, INTEREST OR PENALTIES AS A CONDITION
2 PRECEDENT TO THE APPLICATION.

3 (7) WHERE ANY TAX IMPOSED PURSUANT TO THIS SECTION SHALL HAVE BEEN
4 ERRONEOUSLY, ILLEGALLY OR UNCONSTITUTIONALLY COLLECTED AND APPLICATION
5 FOR THE REFUND THEREOF DULY MADE TO THE PROPER FISCAL OFFICER OR OFFI-
6 CERS, AND SUCH OFFICER OR OFFICERS SHALL HAVE MADE A DETERMINATION DENY-
7 ING SUCH REFUND, SUCH DETERMINATION SHALL BE REVIEWABLE BY A PROCEEDING
8 UNDER ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES,
9 PROVIDED, HOWEVER, THAT SUCH PROCEEDING IS INSTITUTED WITHIN THIRTY DAYS
10 AFTER THE GIVING OF THE NOTICE OF SUCH DENIAL, THAT A FINAL DETERMI-
11 NATION OF TAX DUE WAS NOT PREVIOUSLY MADE, AND THAT AN UNDERTAKING IS
12 FILED WITH THE PROPER FISCAL OFFICER OR OFFICERS IN SUCH AMOUNT AND WITH
13 SUCH SURETIES AS A JUSTICE OF THE SUPREME COURT SHALL APPROVE TO THE
14 EFFECT THAT IF SUCH PROCEEDING BE DISMISSED OR THE TAX CONFIRMED, THE
15 PETITIONER WILL PAY ALL COSTS AND CHARGES WHICH MAY ACCRUE IN THE PROSE-
16 CUTION OF SUCH PROCEEDING.

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

22 (9) ALL REVENUES RESULTING FROM THE IMPOSITION OF THE TAX UNDER THE
23 LOCAL LAWS SHALL BE PAID INTO THE TREASURY OF THE COUNTY OF DELAWARE AND
24 SHALL BE CREDITED TO AND DEPOSITED IN THE GENERAL FUND OF THE COUNTY.

25 (10) IF ANY PROVISION OF THIS SECTION OR THE APPLICATION THEREOF TO
26 ANY PERSON OR CIRCUMSTANCE SHALL BE HELD INVALID, THE REMAINDER OF THIS
27 SECTION AND THE APPLICATION OF SUCH PROVISION TO OTHER PERSONS OR
28 CIRCUMSTANCES SHALL NOT BE AFFECTED THEREBY.

29 (11) EACH ENACTMENT OF SUCH LOCAL LAW MAY PROVIDE FOR THE IMPOSITION
30 OF A HOTEL OR MOTEL TAX FOR A PERIOD OF TIME NO LONGER THAN THREE YEARS
31 FROM THE EFFECTIVE DATE OF ITS ENACTMENT. NOTHING IN THIS SECTION SHALL
32 PROHIBIT THE ADOPTION AND ENACTMENT OF LOCAL LAWS, PURSUANT TO THE
33 PROVISIONS OF THIS SECTION, UPON THE EXPIRATION OF ANY OTHER LOCAL LAW
34 ADOPTED PURSUANT TO THIS SECTION.

35 S 2. This act shall take effect immediately.