

7277

I N   S E N A T E

May 9, 2014

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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.