S T A T E O F N E W Y O R K

S. 6965 A. 9475

S E N A T E - A S S E M B L Y

March 10, 2016

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

IN ASSEMBLY -- Introduced by M. of A. TEDISCO -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to authorizing the town of Clifton Park to establish hotel and motel taxes

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

Section 1. The tax law is amended by adding a new section 1202-dd to read as follows:

S 1202-DD. HOTEL OR MOTEL TAXES IN THE TOWN OF CLIFTON PARK. (1) NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW TO THE CONTRARY, THE TOWN OF CLIFTON PARK IN THE COUNTY OF SARATOGA IS HEREBY AUTHORIZED AND EMPOWERED TO ADOPT AND AMEND LOCAL LAWS IMPOSING IN SUCH TOWN A TAX, IN ADDITION TO ANY OTHER TAX AUTHORIZED AND IMPOSED PURSUANT TO THIS ARTICLE SUCH AS THE TOWN BOARD HAS OR WOULD HAVE THE POWER AND AUTHORITY TO IMPOSE UPON PERSONS OCCUPYING HOTEL OR MOTEL ROOMS IN SUCH TOWN. FOR THE PURPOSES OF THIS SECTION, THE TERM "HOTEL" OR "MOTEL" SHALL MEAN AND INCLUDE ANY FACILITY PROVIDING LODGING ON AN OVERNIGHT BASIS AND SHALL INCLUDE THOSE FACILITIES DESIGNATED AND COMMONLY KNOWN AS "BED AND BREAKFAST" AND "TOURIST" FACILITIES, BUT SHALL NOT APPLY TO ANY SUCH FACILITIES HAVING LESS THAN FOUR RENTABLE UNITS.

THE RATES OF SUCH TAX SHALL NOT EXCEED ONE AND ONE-HALF PERCENT OF THE PER DIEM RENTAL RATE FOR EACH ROOM, PROVIDED HOWEVER, THAT SUCH TAX SHALL NOT BE APPLICABLE TO A PERMANENT RESIDENT OF A HOTEL OR MOTEL. FOR THE PURPOSES OF THIS SECTION THE TERM "PERMANENT RESIDENT" SHALL MEAN A PERSON OCCUPYING ANY ROOM OR ROOMS IN A HOTEL OR MOTEL FOR AT LEAST THIRTY CONSECUTIVE DAYS.

(2) SUCH TAX MAY BE COLLECTED AND ADMINISTERED BY THE CHIEF FISCAL OFFICER OF THE TOWN OF CLIFTON PARK BY SUCH MEANS AND IN SUCH MANNER AS OTHER TAXES WHICH ARE NOW COLLECTED AND ADMINISTERED BY SUCH OFFICER OR 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.

LBD14457-01-6

(3) SUCH LOCAL LAWS MAY PROVIDE THAT ANY TAX IMPOSED SHALL BE PAID BY THE PERSON LIABLE THEREFOR TO THE OWNER OF THE HOTEL OR MOTEL ROOM OCCUPIED OR TO THE PERSON ENTITLED TO BE PAID THE RENT OR CHARGE FOR THE HOTEL OR MOTEL ROOM OCCUPIED FOR AND ON ACCOUNT OF THE TOWN OF CLIFTON PARK IMPOSING THE TAX AND THAT SUCH OWNER OR PERSON ENTITLED TO BE PAID THE RENT OR CHARGE SHALL BE LIABLE FOR THE COLLECTION AND PAYMENT OF THE TAX; AND THAT SUCH OWNER OR PERSON ENTITLED TO BE PAID THE RENT OR CHARGE SHALL HAVE THE SAME RIGHT IN RESPECT TO COLLECTING THE TAX FROM THE PERSON OCCUPYING THE HOTEL OR MOTEL ROOM, OR IN RESPECT TO NONPAYMENT OF THE TAX BY THE PERSON OCCUPYING THE HOTEL OR MOTEL ROOM, AS IF THE TAX WERE A PART OF THE RENT OR CHARGE AND PAYABLE AT THE SAME TIME AS THE RENT OR CHARGE; PROVIDED, HOWEVER, THAT THE CHIEF FISCAL OFFICER OF THE TOWN, SPECIFIED IN SUCH LOCAL LAW, SHALL BE JOINED AS A PARTY IN ANY ACTION OR PROCEEDING BROUGHT TO COLLECT THE TAX BY THE OWNER OR BY THE PERSON ENTITLED TO BE PAID THE RENT OR CHARGE.

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

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

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

B. THE UNITED STATES OF AMERICA, INSOFAR AS IT IS IMMUNE FROM TAXATION;

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

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

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

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

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

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

(9) ALL REVENUES RESULTING FROM THE IMPOSITION OF THE TAX UNDER THE LOCAL LAWS SHALL BE PAID INTO THE TREASURY OF THE TOWN OF CLIFTON PARK AND SHALL BE CREDITED TO AND DEPOSITED IN A CAPITAL RESERVE ACCOUNT TO PROMOTE TOURISM AND ECONOMIC DEVELOPMENT WITHIN THE TOWN OF CLIFTON PARK. THE TOWN OF CLIFTON PARK IS AUTHORIZED TO DEDICATE FUNDS DERIVED FROM COLLECTIONS TO FUND ACTIVITIES TO SUPPORT TRAVEL AND TOURISM, INCLUDING PARTNERSHIPS WITH THE SOUTHERN SARATOGA COUNTY CHAMBER OF COMMERCE FOR DEDICATED STAFF TO PROMOTE ECONOMIC DEVELOPMENT, TOURISM AND BUSINESS TO BUSINESS RELATIONSHIPS AND OPPORTUNITIES. ELEMENTS OF ECONOMIC DEVELOPMENT EXPENDITURES AUTHORIZED BY THIS SECTION INCLUDE PURPOSES AND PROJECTS IMPROVING PUBLIC SAFETY, ENVIRONMENTAL PROTECTION INCLUDING STORM WATER MANAGEMENT, TRANSPORTATION IMPROVEMENTS AND BEAUTIFICATION PROJECTS WITHIN THE HOTEL DISTRICT AREA BOUNDED BY CLIFTON COUNTRY ROAD AT ITS INTERSECTION WITH CLIFTON PARK CENTER ROAD ALONG CLIFTON PARK CENTER ROAD AND SITTERLY ROAD TO WOODIN ROAD, THEN TO THE CROSSING BOULEVARD, TO ITS INTERSECTION WITH ROUTE 9, PROCEEDING NORTH TO THE INTERSECTION WITH MEYER ROAD, WEST ACROSS INTERSTATE 87 TO PLANK ROAD AT ITS CLOSEST LOCATION TO INTERSTATE 87, AND UP TO STATE ROUTE 146, WEST BACK TO CLIFTON COUNTRY ROAD.

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

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

S 2. This act shall take effect immediately.