

# STATE OF NEW YORK

9767

## IN ASSEMBLY

April 7, 2022

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

AN ACT to amend the tax law, in relation to authorizing an occupancy tax in the village of Medina

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-z-4 to  
2 read as follows:

3 § 1202-z-4. Occupancy tax in the village of Medina. (1) Notwithstand-  
4 ing any other provision of law to the contrary, the village of Medina,  
5 in the county of Orleans, is hereby authorized and empowered to adopt  
6 and amend local laws imposing in such village a tax, in addition to any  
7 other tax authorized and imposed pursuant to this article, such as the  
8 legislature has or would have the power and authority to impose upon  
9 persons occupying any room for hire in any hotel. For the purposes of  
10 this section, the term "hotel" shall mean a building or portion of it  
11 which is regularly used and kept open as such for the lodging of guests.  
12 The term "hotel" includes an apartment hotel, a motel or a boarding  
13 house, whether or not meals are served. The rate of such tax shall not  
14 exceed two percent of the per diem rental rate for each room whether  
15 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 Medina 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.

20 (3) Such local laws may provide that any taxes imposed shall be paid  
21 by the person liable therefor to the owner of the room for hire in the  
22 tourist home, inn, club, hotel, motel or other similar place of public  
23 accommodation occupied or to the person entitled to be paid the rent or  
24 charge for the room for hire in the tourist home, inn, club, hotel,  
25 motel or other similar place of public accommodation occupied for and on  
26 account of the village of Medina imposing the tax and that such owner or  
27 person entitled to be paid the rent or charge shall be liable for the  
28 collection and payment of the tax; and that such owner or person enti-

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

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1 tled to be paid the rent or charge shall have the same right in respect  
2 to collecting the tax from the person occupying the room for hire in the  
3 tourist home, inn, club, hotel, motel or other similar place of public  
4 accommodation, or in respect to nonpayment of the tax by the person  
5 occupying the room for hire in the tourist home, inn, club, hotel, motel  
6 or similar place of public accommodation, as if the taxes were a part of  
7 the rent or charge and payable at the same time as the rent or charge;  
8 provided, however, that the chief fiscal officer of the village, speci-  
9 fied in such local laws, shall be joined as a party in any action or  
10 proceeding brought to collect the tax by the owner or by the person  
11 entitled to be paid the rent or charge.

12 (4) Such local laws may provide for the filing of returns and the  
13 payment of the taxes on a monthly basis or on the basis of any longer or  
14 shorter period of time.

15 (5) This section shall not authorize the imposition of such tax upon  
16 any of the following:

17 a. The state of New York, or any public corporation (including a  
18 public corporation created pursuant to agreement or compact with another  
19 state or the dominion of Canada), improvement district or other poli-  
20 tical subdivision of the state;

21 b. The United States of America, insofar as it is immune from taxa-  
22 tion; or

23 c. Any corporation or association, or trust, or community chest, fund  
24 or foundation organized and operated exclusively for religious, charita-  
25 ble or educational purposes, or for the prevention of cruelty to chil-  
26 dren or animals, and no part of the net earnings of which inures to the  
27 benefit of any private shareholder or individual and no substantial part  
28 of the activities of which is carrying on propaganda, or otherwise  
29 attempting to influence legislation; provided, however, that nothing in  
30 this paragraph shall include an organization operated for the primary  
31 purpose of carrying on a trade or business for profit, whether or not  
32 all of its profits are payable to one or more organizations described in  
33 this paragraph.

34 d. A permanent resident of a hotel or motel. For the purposes of this  
35 section, the term "permanent resident" shall mean a natural person occu-  
36 pying any room or rooms in a hotel or motel for at least thirty consec-  
37 utive days.

38 (6) Any final determination of the amount of any tax payable hereunder  
39 shall be reviewable for error, illegality or unconstitutionality or any  
40 other reason whatsoever by a proceeding under article seventy-eight of  
41 the civil practice law and rules if application therefor is made to the  
42 supreme court within thirty days after the giving of notice of such  
43 final determination, provided, however, that any such proceeding under  
44 article seventy-eight of the civil practice law and rules shall not be  
45 instituted unless:

46 a. The amount of any tax sought to be reviewed, with such interest and  
47 penalties thereon as may be provided for by local laws or regulations  
48 shall be first deposited and there shall be filed an undertaking, issued  
49 by a surety company authorized to transact business in this state and  
50 approved by the superintendent of financial services of this state as to  
51 solvency and responsibility, in such amount as a justice of the supreme  
52 court shall approve to the effect that if such proceeding be dismissed  
53 or the tax confirmed the petitioner will pay all costs and charges which  
54 may accrue in the prosecution of such proceeding; or

55 b. At the option of the petitioner, such undertaking may be in a sum  
56 sufficient to cover the taxes, interest and penalties stated in such

1 determination plus the costs and charges which may accrue against it in  
2 the prosecution of the proceeding, in which event the petitioner shall  
3 not be required to pay such taxes, interest or penalties as a condition  
4 precedent to the application.

5 (7) Where any taxes imposed hereunder shall have been erroneously,  
6 illegally or unconstitutionally collected and application for the refund  
7 therefor duly made to the proper fiscal officer or officers, and such  
8 officer or officers shall have made a determination denying such refund,  
9 such determination shall be reviewable by a proceeding under article  
10 seventy-eight of the civil practice law and rules, provided, however,  
11 that such proceeding is instituted within thirty days after the giving  
12 of the notice of such denial, that a final determination of tax due was  
13 not previously made, and that an undertaking is filed with the proper  
14 fiscal officer or officers in such amount and with such sureties as a  
15 justice of the supreme court shall approve to the effect that if such  
16 proceeding be dismissed or the taxes confirmed, the petitioner will pay  
17 all costs and charges which may accrue in the prosecution of such  
18 proceeding.

19 (8) Except in the case of a willfully false or fraudulent return with  
20 intent to evade the tax, no assessment of additional tax shall be made  
21 after the expiration of more than three years from the date of the  
22 filing of a return, provided, however, that where no return has been  
23 filed as provided by law the tax may be assessed at any time.

24 (9) All revenues resulting from the imposition of the tax under the  
25 local laws shall be paid into the treasury of the village of Medina and  
26 shall be credited to and deposited in the general fund of such village.  
27 Such revenues may be used for any lawful purpose.

28 (10) Each enactment of such a local law may provide for the imposition  
29 of a hotel or motel tax for a period of time no longer than three years  
30 from the date of its enactment. Nothing in this section shall prohibit  
31 the adoption and enactment of local laws, pursuant to the provisions of  
32 this section, upon the expiration of any other local law adopted pursu-  
33 ant to this section.

34 (11) If any provision of this section or the application thereof to  
35 any person or circumstance shall be held invalid, the remainder of this  
36 section and the application of such provision to other persons or  
37 circumstances shall not be affected thereby.

38 § 2. This act shall take effect immediately.