

# STATE OF NEW YORK

9059--A

## IN SENATE

May 6, 2022

Introduced by Sen. REICHLIN-MELNICK -- 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 imposition of an occupancy tax in the village of Briarcliff Manor; and providing for the repeal of such provisions upon expiration thereof

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-hh to  
2 read as follows:

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

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

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

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

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

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

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

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

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

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

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

1 or the tax confirmed the petitioner will pay all costs and charges which  
2 may accrue in the prosecution of such proceeding; or

3 b. At the option of the petitioner, such undertaking may be in a sum  
4 sufficient to cover the taxes, interest and penalties stated in such  
5 determination plus the costs and charges which may accrue against it in  
6 the prosecution of the proceeding, in which event the petitioner shall  
7 not be required to pay such taxes, interest or penalties as a condition  
8 precedent to the application.

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

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

28 (9) All revenues resulting from the imposition of the tax under the  
29 local laws shall be paid into the treasury of the village of Briarcliff  
30 Manor and shall be credited to and deposited in the general fund of such  
31 village. Such revenues may be used for any lawful purpose.

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

38 (11) If any provision of this section or the application thereof to  
39 any person or circumstance shall be held invalid, the remainder of this  
40 section and the application of such provision to other persons or  
41 circumstances shall not be affected thereby.

42 § 2. This act shall take effect immediately and shall expire December  
43 31, 2025, when upon such date the provisions of this act shall be deemed  
44 repealed.