

4718

2009-2010 Regular Sessions

I N   A S S E M B L Y

February 5, 2009

---

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

AN ACT to amend the tax law, in relation to authorizing the county of Schoharie to impose hotel or 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-aa to  
2 read as follows:

3     S 1202-AA. HOTEL OR MOTEL TAXES IN SCHOHARIE COUNTY. (1) NOTWITHSTAND-  
4 ING ANY OTHER PROVISIONS OF LAW TO THE CONTRARY, THE COUNTY OF SCHOHARIE  
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 BOARD OF SUPERVISORS 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 FOUR 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 SCHOHARIE 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-

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

LBD04241-01-9

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

15   (4) SUCH LOCAL LAWS MAY PROVIDE FOR THE FILING OF RETURNS AND THE  
16   PAYMENT OF THE TAX 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 TRANSACTION, BY OR WITH ANY OF THE FOLLOWING IN ACCORDANCE WITH  
20   SECTION TWELVE HUNDRED THIRTY OF THIS ARTICLE:

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

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

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

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 THE 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 LAW OR REGULATION  
48   SHALL BE FIRST DEPOSITED AND THERE IS FILED AN UNDERTAKING, ISSUED BY A  
49   SURETY COMPANY AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE AND  
50   APPROVED BY THE SUPERINTENDENT OF INSURANCE OF THIS STATE AS TO SOLVENCY  
51   AND RESPONSIBILITY, IN SUCH AMOUNT AS A JUSTICE OF THE SUPREME COURT  
52   SHALL APPROVE TO THE EFFECT THAT IF SUCH PROCEEDING BE DISMISSED OR THE  
53   TAX CONFIRMED THE PETITIONER WILL PAY ALL COSTS AND CHARGES WHICH MAY  
54   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, INTERESTS 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 TAX IMPOSED HEREUNDER SHALL HAVE BEEN ERRONEOUSLY, ILLE-  
6 GALLY OR UNCONSTITUTIONALLY COLLECTED AND APPLICATION FOR THE REFUND  
7 THEREOF 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 TAX 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 WILFULLY 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 SCHOHARIE COUNTY AND SHALL  
26 BE CREDITED TO AND DEPOSITED IN THE GENERAL FUND OF THE COUNTY;  
27 PROVIDED, HOWEVER, THAT SUCH LOCAL LAWS SHALL PROVIDE THAT: (A) THE  
28 COUNTY SHALL BE AUTHORIZED TO DEDICATE A PORTION OF SUCH REVENUE TO  
29 PROMOTE TOURISM AND OTHER FORMS OF BUSINESS IN THE COUNTY; AND (B) THE  
30 COUNTY SHALL BE AUTHORIZED TO RETAIN UP TO A MAXIMUM OF TEN PERCENT OF  
31 SUCH REVENUE TO DEFER THE NECESSARY EXPENSES OF THE COUNTY IN ADMINIS-  
32 TERING SUCH TAX.

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

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

43 S 2. This act shall take effect on the first of the month next  
44 succeeding the date on which it shall have become a law.