

9548

I N   A S S E M B L Y

January 15, 2010

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

AN ACT to amend the tax law, in relation to authorizing the village of Tarrytown to impose hotel or motel occupancy taxes within such village

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-gg to  
2 read as follows:

3     S 1202-GG. OCCUPANCY TAX IN THE VILLAGE OF TARRYTOWN. (1) NOTWITH-  
4 STANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE VILLAGE OF  
5 TARRYTOWN, IN THE COUNTY OF WESTCHESTER, IS HEREBY AUTHORIZED AND  
6 EMPOWERED TO ADOPT AND AMEND LOCAL LAWS IMPOSING IN SUCH VILLAGE A TAX,  
7 IN ADDITION TO ANY OTHER TAX AUTHORIZED AND IMPOSED PURSUANT TO THIS  
8 ARTICLE, SUCH AS THE LEGISLATURE HAS OR WOULD HAVE THE POWER AND AUTHOR-  
9 ITY TO IMPOSE UPON PERSONS OCCUPYING ANY ROOM FOR HIRE IN ANY HOTEL. FOR  
10 THE PURPOSES OF THIS SECTION, THE TERM "HOTEL" SHALL MEAN A BUILDING OR  
11 PORTION OF SUCH BUILDING 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 TARRYTOWN 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 HOTEL OR OTHER SIMILAR PLACE OF PUBLIC ACCOMMODATION OCCUPIED OR TO THE  
23 PERSON ENTITLED TO BE PAID THE RENT OR CHARGE FOR THE ROOM FOR HIRE THE  
24 HOTEL OR OTHER SIMILAR PLACE OF PUBLIC ACCOMMODATION OCCUPIED FOR AND ON  
25 ACCOUNT OF THE VILLAGE OF TARRYTOWN IMPOSING THE TAX AND THAT SUCH OWNER  
26 OR PERSON ENTITLED TO BE PAID THE RENT OR CHARGE SHALL BE LIABLE FOR THE  
27 COLLECTION AND PAYMENT OF THE TAX; AND THAT SUCH OWNER OR PERSON ENTI-  
28 TLED TO BE PAID THE RENT OR CHARGE SHALL HAVE THE SAME RIGHT IN RESPECT

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

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1 TO COLLECTING THE TAX FROM THE PERSON OCCUPYING THE ROOM FOR HIRE IN THE  
2 HOTEL OR OTHER SIMILAR PLACE OF PUBLIC ACCOMMODATION, OR IN RESPECT TO  
3 NONPAYMENT OF THE TAX BY THE PERSON OCCUPYING THE ROOM FOR HIRE IN THE  
4 HOTEL OR SIMILAR PLACE OF PUBLIC ACCOMMODATION, AS IF THE TAXES WERE A  
5 PART OF THE RENT OR CHARGE AND PAYABLE AT THE SAME TIME AS THE RENT OR  
6 CHARGE; PROVIDED, HOWEVER, THAT THE CHIEF FISCAL OFFICER OF THE VILLAGE,  
7 SPECIFIED IN SUCH LOCAL LAWS, SHALL BE JOINED AS A PARTY IN ANY ACTION  
8 OR PROCEEDING BROUGHT TO COLLECT THE TAX BY THE OWNER OR BY THE PERSON  
9 ENTITLED TO BE PAID THE RENT OR CHARGE.

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

13 (5) THIS SECTION SHALL NOT AUTHORIZE THE IMPOSITION OF SUCH TAX UPON  
14 ANY OF THE FOLLOWING:

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

19 B. THE UNITED STATES OF AMERICA, INsofar AS IT IS IMMUNE FROM TAXA-  
20 TION; OR

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

32 D. A PERMANENT RESIDENT OF A HOTEL OR MOTEL. FOR THE PURPOSES OF THIS  
33 SECTION, THE TERM "PERMANENT RESIDENT" SHALL MEAN A NATURAL PERSON OCCU-  
34 PYING ANY ROOM OR ROOMS IN A HOTEL OR MOTEL FOR AT LEAST THIRTY CONSEC-  
35 UTIVE DAYS.

36 (6) ANY FINAL DETERMINATION OF THE AMOUNT OF ANY TAX PAYABLE HEREUNDER  
37 SHALL BE REVIEWABLE FOR ERROR, ILLEGALITY OR UNCONSTITUTIONALITY OR ANY  
38 OTHER REASON WHATSOEVER BY A PROCEEDING UNDER ARTICLE SEVENTY-EIGHT OF  
39 THE CIVIL PRACTICE LAW AND RULES IF APPLICATION THEREFOR IS MADE TO THE  
40 SUPREME COURT WITHIN THIRTY DAYS AFTER GIVING OF THE NOTICE OF SUCH  
41 FINAL DETERMINATION, PROVIDED, HOWEVER, THAT ANY SUCH PROCEEDING UNDER  
42 ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES SHALL NOT BE  
43 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 INSURANCE OF THIS STATE AS TO SOLVENCY  
49 AND RESPONSIBILITY, IN SUCH AMOUNT AS A JUSTICE OF THE SUPREME COURT  
50 SHALL APPROVE TO THE EFFECT THAT IF SUCH PROCEEDING BE DISMISSED OR THE  
51 TAX CONFIRMED THE PETITIONER WILL PAY ALL COSTS AND CHARGES WHICH MAY  
52 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, INTEREST 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 HEREUNDER SHALL HAVE BEEN ERRONEOUSLY, ILLE-  
4 GALLY OR UNCONSTITUTIONALLY COLLECTED AND APPLICATION FOR THE REFUND  
5 THEREOF DULY MADE TO THE PROPER FISCAL OFFICER OR OFFICERS, AND SUCH  
6 OFFICER OR OFFICERS SHALL HAVE MADE A DETERMINATION DENYING SUCH REFUND,  
7 SUCH DETERMINATION SHALL BE REVIEWABLE BY PROCEEDING UNDER ARTICLE  
8 SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES, PROVIDED, HOWEVER,  
9 THAT SUCH PROCEEDING IS INSTITUTED WITHIN THIRTY DAYS AFTER THE GIVING  
10 OF THE NOTICE OF SUCH DENIAL, THAT A FINAL DETERMINATION OF TAX DUE WAS  
11 NOT PREVIOUSLY MADE, AND THAT AN UNDERTAKING IS FILED WITH THE PROPER  
12 FISCAL OFFICER OR OFFICERS IN SUCH AMOUNT AND WITH SUCH SURETIES AS A  
13 JUSTICE OF THE SUPREME COURT SHALL APPROVE TO THE EFFECT THAT IF SUCH  
14 PROCEEDING BE DISMISSED OR THE TAX CONFIRMED, THE PETITIONER WILL PAY  
15 ALL COSTS AND CHARGES WHICH ACCRUE IN THE PROSECUTION OF SUCH PROCEED-  
16 ING.

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) REVENUES RESULTING FROM THE IMPOSITION OF TAX AUTHORIZED BY THIS  
23 SECTION SHALL BE PAID INTO THE TREASURY OF THE VILLAGE OF TARRYTOWN IN  
24 THE COUNTY OF WESTCHESTER AND SHALL BE CREDITED TO AND DEPOSITED IN THE  
25 GENERAL FUND OF THE VILLAGE; AND MAY THEREAFTER BE ALLOCATED AT THE  
26 DISCRETION OF THE BOARD OF LEGISLATORS OF THE VILLAGE OF TARRYTOWN FOR  
27 ANY VILLAGE PURPOSE.

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

32 S 2. This act shall take effect immediately.