

1073

2009-2010 Regular Sessions

I N   S E N A T E

January 23, 2009

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

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.

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

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

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

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

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

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

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

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

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

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

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

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

26 (9) ALL REVENUES RESULTING FROM THE IMPOSITION OF THE TAX UNDER THE  
27 LOCAL LAWS SHALL BE PAID INTO THE TREASURY OF SCHOHARIE COUNTY AND SHALL  
28 BE CREDITED TO AND DEPOSITED IN THE GENERAL FUND OF THE COUNTY;  
29 PROVIDED, HOWEVER, THAT SUCH LOCAL LAWS SHALL PROVIDE THAT: (A) THE  
30 COUNTY SHALL BE AUTHORIZED TO DEDICATE A PORTION OF SUCH REVENUE TO  
31 PROMOTE TOURISM AND OTHER FORMS OF BUSINESS IN THE COUNTY; AND (B) THE  
32 COUNTY SHALL BE AUTHORIZED TO RETAIN UP TO A MAXIMUM OF TEN PERCENT OF  
33 SUCH REVENUE TO DEFER THE NECESSARY EXPENSES OF THE COUNTY IN ADMINIS-  
34 TERING SUCH TAX.

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

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

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