

1886

2009-2010 Regular Sessions

I N S E N A T E

February 9, 2009

Introduced by Sen. OPPENHEIMER -- 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 the imposition of an occupancy tax in the city of New Rochelle; 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-aa to
2 read as follows:

3 S 1202-AA. OCCUPANCY TAX IN THE CITY OF NEW ROCHELLE. (1) NOTWITH-
4 STANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE CITY OF NEW
5 ROCHELLE, IN THE COUNTY OF WESTCHESTER, IS HEREBY AUTHORIZED AND
6 EMPOWERED TO ADOPT AND AMEND LOCAL LAWS IMPOSING IN SUCH CITY A TAX, IN
7 ADDITION TO ANY OTHER TAX AUTHORIZED AND IMPOSED PURSUANT TO THIS ARTI-
8 CLE, SUCH AS THE LEGISLATURE HAS OR WOULD HAVE THE POWER AND AUTHORITY
9 TO IMPOSE UPON PERSONS OCCUPYING ANY ROOM FOR HIRE IN ANY HOTEL. FOR THE
10 PURPOSES OF THIS SECTION, THE TERM "HOTEL" SHALL MEAN A BUILDING OR
11 PORTION THEREOF WHICH IS REGULARLY UTILIZED AND KEPT OPEN FOR THE LODG-
12 ING OF GUESTS. THE TERM "HOTEL" INCLUDES AN APARTMENT HOTEL, A MOTEL, OR
13 A BOARDING HOUSE, WHETHER OR NOT MEALS ARE SERVED. THE RATE OF SUCH TAX
14 SHALL NOT EXCEED THREE PERCENT OF THE PER DIEM RENTAL RATE FOR EACH ROOM
15 WHETHER SUCH ROOM IS RENTED ON A DAILY OR LONGER BASIS PERIOD OF TIME.

16 (2) SUCH TAXES MAY BE COLLECTED AND ADMINISTERED BY THE CHIEF FISCAL
17 OFFICER OF THE CITY OF NEW ROCHELLE 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 IN

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

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1 THE HOTEL OR OTHER SIMILAR PLACE OF PUBLIC ACCOMMODATION OCCUPIED FOR
2 AND ON ACCOUNT OF THE CITY OF NEW ROCHELLE IMPOSING THE TAX AND THAT
3 SUCH OWNER OR PERSON ENTITLED TO BE PAID THE RENT OR CHARGE SHALL BE
4 LIABLE FOR THE COLLECTION AND PAYMENT OF SUCH TAX; AND THAT SUCH OWNER
5 OR PERSON ENTITLED TO BE PAID THE RENT OR CHARGE SHALL HAVE THE SAME
6 RIGHT IN RESPECT TO COLLECTING THE TAX FROM THE PERSON OCCUPYING THE
7 ROOM FOR HIRE IN THE HOTEL OR OTHER SIMILAR PLACE OF PUBLIC ACCOMMO-
8 DATION, OR IN RESPECT TO NONPAYMENT OF THE TAX BY THE PERSON OCCUPYING
9 THE ROOM FOR HIRE IN THE HOTEL OR SIMILAR PLACE OF PUBLIC ACCOMMODATION,
10 AS IF THE TAXES WERE A PART OF THE RENT OR CHARGE AND PAYABLE AT THE
11 SAME TIME AS THE RENT OR CHARGE; PROVIDED, HOWEVER, THAT THE CHIEF
12 FISCAL OFFICER OF THE CITY, SPECIFIED IN SUCH LOCAL LAWS, SHALL BE
13 JOINED AS A PARTY IN ANY ACTION OR PROCEEDING BROUGHT TO COLLECT THE TAX
14 BY THE OWNER OR BY THE 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;

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; OR

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 SUCH ARTICLE SEVENTY-EIGHT SHALL NOT BE 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 LAWS OR REGULATIONS
50 SHALL BE FIRST DEPOSITED AND THERE SHALL BE FILED AN UNDERTAKING, ISSUED
51 BY A 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 TAXES IMPOSED HEREUNDER SHALL HAVE BEEN ERRONEOUSLY
8 ILLEGALLY OR UNCONSTITUTIONALLY COLLECTED AND APPLICATION FOR THE REFUND
9 THEREFOR 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 TAXES 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 WILLFULLY 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 THE CITY OF NEW ROCHELLE
28 AND SHALL BE CREDITED TO AND DEPOSITED IN THE GENERAL FUND OF THE CITY.
29 SUCH REVENUES MAY BE USED FOR ANY LAWFUL PURPOSE.

30 (10) EACH ENACTMENT OF SUCH A LOCAL LAW MAY PROVIDE FOR THE IMPOSITION
31 OF A HOTEL OR MOTEL TAX FOR A PERIOD OF TIME NO LONGER THAN THREE YEARS
32 FROM THE DATE OF ITS ENACTMENT. NOTHING IN THIS SECTION SHALL PROHIBIT
33 THE ADOPTION AND ENACTMENT OF LOCAL LAWS, PURSUANT TO THE PROVISIONS OF
34 THIS SECTION, UPON THE EXPIRATION OF ANY OTHER LOCAL LAW ADOPTED PURSU-
35 ANT TO THIS SECTION.

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

40 S 2. This act shall take effect immediately and shall expire and be
41 deemed repealed three years after such date.