

6423

I N S E N A T E

(PREFILED)

January 6, 2010

Introduced by Sen. STEWART-COUSINS -- 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 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 ASSEM-
BLY, 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

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

LBD15142-01-9

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

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

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

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

21 B. THE UNITED STATES OF AMERICA, INSOFAR AS IT IS IMMUNE FROM TAXA-
22 TION; OR

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

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

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 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, INTEREST 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 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 ACCRUE IN THE PROSECUTION OF SUCH PROCEED-
18 ING.

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

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

34 S 2. This act shall take effect immediately.