

3123

2009-2010 Regular Sessions

I N A S S E M B L Y

January 23, 2009

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

AN ACT to amend the tax law, in relation to authorizing the city of
White Plains to impose an occupancy tax

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-aa to
2 read as follows:
3 S 1202-AA. OCCUPANCY TAX IN THE CITY OF WHITE PLAINS. (1) NOTWITH-
4 STANDING ANY OTHER PROVISIONS OF LAW TO THE CONTRARY, THE CITY OF WHITE
5 PLAINS, IN THE COUNTY OF WESTCHESTER, IS HEREBY AUTHORIZED AND EMPOWERED
6 TO ADOPT AND AMEND LOCAL LAWS IMPOSING IN SUCH CITY A TAX, IN ADDITION
7 TO ANY OTHER TAX AUTHORIZED AND IMPOSED PURSUANT TO THIS ARTICLE, SUCH
8 AS THE LEGISLATURE HAS OR WOULD HAVE THE POWER AND AUTHORITY TO IMPOSE
9 UPON PERSONS OCCUPYING ANY ROOM FOR HIRE IN ANY HOTEL. FOR THE PURPOSES
10 OF THIS SECTION, THE TERM "HOTEL" SHALL MEAN A BUILDING OR PORTION OF IT
11 WHICH IS REGULARLY USED AND KEPT OPEN AS SUCH FOR THE LODGING OF GUESTS.
12 THE TERM "HOTEL" INCLUDES AN APARTMENT HOTEL, A MOTEL OR A BOARDING
13 HOUSE, WHETHER OR NOT MEALS ARE SERVED. THE RATE OF SUCH TAX SHALL NOT
14 EXCEED THREE PERCENT OF THE PER DIEM RENTAL RATE FOR EACH ROOM WHETHER
15 SUCH ROOM IS RENTED ON A DAILY OR LONGER BASIS.
16 (2) SUCH TAX MAY BE COLLECTED AND ADMINISTERED BY THE CHIEF FISCAL
17 OFFICER OF THE CITY OF WHITE PLAINS 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 LAWS.
20 (3) SUCH LOCAL LAWS MAY PROVIDE THAT ANY TAX IMPOSED SHALL BE PAID BY
21 THE PERSON LIABLE THEREFOR TO THE OWNER OF THE ROOM FOR HIRE IN THE
22 HOTEL OR TO THE PERSON ENTITLED TO BE PAID THE RENT OR CHARGE FOR THE
23 ROOM FOR HIRE IN THE HOTEL OCCUPIED FOR AND ON ACCOUNT OF THE CITY OF
24 WHITE PLAINS IMPOSING THE TAX AND THAT SUCH OWNER OR PERSON ENTITLED TO
25 BE PAID THE RENT OR CHARGE SHALL BE LIABLE FOR THE COLLECTION AND

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

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

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

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

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

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

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

33 D. A PERMANENT RESIDENT OF A HOTEL. FOR THE PURPOSES OF THIS SECTION,
34 THE TERM "PERMANENT RESIDENT" SHALL MEAN A NATURAL PERSON OCCUPYING ANY
35 ROOM OR ROOMS IN A HOTEL FOR AT LEAST THIRTY CONSECUTIVE 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 THE GIVING OF NOTICE OF SUCH
41 FINAL DETERMINATION, PROVIDED, HOWEVER, THAT ANY SUCH PROCEEDING UNDER
42 SUCH ARTICLE SEVENTY-EIGHT SHALL NOT BE INSTITUTED UNLESS:

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

52 B. AT THE OPTION OF THE PETITIONER, SUCH UNDERTAKING MAY BE IN A SUM
53 SUFFICIENT TO COVER THE TAXES, INTEREST AND PENALTIES STATED IN SUCH
54 DETERMINATION PLUS THE COSTS AND CHARGES WHICH MAY ACCRUE AGAINST IT IN
55 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 TAXES IMPOSED HEREUNDER SHALL HAVE BEEN ERRONEOUSLY,
4 ILLEGALLY OR UNCONSTITUTIONALLY COLLECTED AND APPLICATION FOR THE REFUND
5 THEREFOR 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 A 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 TAXES CONFIRMED, THE PETITIONER WILL PAY
15 ALL COSTS AND CHARGES WHICH MAY ACCRUE IN THE PROSECUTION OF SUCH
16 PROCEEDING.

17 (8) EXCEPT IN THE CASE OF A WILLFULLY 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) ALL REVENUES RESULTING FROM THE IMPOSITION OF THE TAX UNDER THE
23 LOCAL LAWS SHALL BE PAID INTO THE TREASURY OF THE CITY OF WHITE PLAINS
24 AND SHALL BE CREDITED TO AND DEPOSITED IN THE GENERAL FUND OF THE CITY.
25 SUCH REVENUES MAY BE USED FOR ANY LAWFUL PURPOSE.

26 (10) EACH ENACTMENT OF SUCH A LOCAL LAW MAY PROVIDE FOR THE IMPOSITION
27 OF A HOTEL TAX FOR A PERIOD TO EXPIRE ON DECEMBER THIRTY-FIRST, TWO
28 THOUSAND TWELVE. NOTHING IN THIS SECTION SHALL PROHIBIT THE ADOPTION
29 AND ENACTMENT OF LOCAL LAWS, PURSUANT TO THE PROVISIONS OF THIS SECTION,
30 UPON THE EXPIRATION OF ANY OTHER LOCAL LAW ADOPTED PURSUANT TO THIS
31 SECTION.

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

36 S 2. This act shall take effect immediately.