

S. 1797

A. 4768

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

February 6, 2009

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

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

AN ACT to amend the tax law, in relation to authorizing the county of Washington 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 AND MOTEL TAX IN WASHINGTON COUNTY. (1) NOTWITHSTAND-
4 ING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE COUNTY OF WASHINGTON
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 AS THE LEGISLATURE HAS OR WOULD HAVE
8 THE POWER AND AUTHORITY TO IMPOSE UPON PERSONS OCCUPYING HOTEL OR MOTEL
9 ROOMS IN SUCH COUNTY. FOR THE PURPOSES OF THIS SECTION, THE TERM "HOTEL
10 OR MOTEL" SHALL MEAN AND INCLUDE ANY FACILITY PROVIDING LODGING ON AN
11 OVERNIGHT BASIS AND SHALL INCLUDE THOSE FACILITIES DESIGNATED AND
12 COMMONLY KNOWN AS "BED AND BREAKFAST", "INN", "HOUSEKEEPING COTTAGES
13 WITH FOUR OR MORE UNITS", AND "TOURIST FACILITIES".
14 THE RATES OF SUCH TAX SHALL BE ONE-HALF OF ONE PERCENT, ANY WHOLE
15 PERCENT OR ANY COMBINATION OF A WHOLE PERCENT AND ONE-HALF OF ONE
16 PERCENT; PROVIDED THAT SUCH RATES SHALL NOT EXCEED FOUR PERCENT;
17 PROVIDED, HOWEVER, THAT SUCH TAX SHALL NOT BE APPLICABLE TO A PERMANENT
18 RESIDENT OF A HOTEL OR MOTEL. FOR THE PURPOSES OF THIS SECTION, THE TERM
19 "PERMANENT RESIDENT" SHALL MEAN A PERSON OCCUPYING ANY ROOM OR ROOMS IN
20 A HOTEL OR MOTEL FOR AT LEAST THIRTY CONSECUTIVE DAYS.

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

LBD07068-01-9

(2) SUCH TAX MAY BE COLLECTED AND ADMINISTERED BY THE COUNTY TREASURER OR OTHER FISCAL OFFICERS OF THE COUNTY OF WASHINGTON BY SUCH MEANS AND IN SUCH MANNER AS OTHER TAXES WHICH ARE NOW COLLECTED AND ADMINISTERED BY SUCH OFFICERS OR AS OTHERWISE MAY BE PROVIDED BY SUCH LOCAL LAW.

(3) SUCH LOCAL LAWS MAY PROVIDE THAT ANY TAX IMPOSED SHALL BE PAID BY THE PERSON LIABLE THEREFOR TO THE OWNER OF THE HOTEL OR MOTEL ROOM OCCUPIED OR TO THE PERSON ENTITLED TO BE PAID THE RENT OR CHARGE FOR THE HOTEL OR MOTEL ROOM OCCUPIED FOR AND ON ACCOUNT OF THE COUNTY OF WASHINGTON IMPOSING THE TAX AND THAT SUCH OWNER OR PERSON ENTITLED TO BE PAID THE RENT OR CHARGE SHALL BE LIABLE FOR THE COLLECTION AND PAYMENT OF THE TAX; AND THAT SUCH OWNER OR PERSON ENTITLED TO BE PAID THE RENT OR CHARGE SHALL HAVE THE SAME RIGHT IN RESPECT TO COLLECTING THE TAX FROM THE PERSON OCCUPYING THE HOTEL OR MOTEL ROOM, OR IN RESPECT TO NONPAYMENT OF THE TAX BY THE PERSON OCCUPYING THE HOTEL OR MOTEL ROOM, AS IF THE TAX WERE A PART OF THE RENT OR CHARGE AND PAYABLE AT THE SAME TIME AS THE RENT OR CHARGE; PROVIDED, HOWEVER, THAT THE COUNTY TREASURER OR OTHER FISCAL OFFICERS OF THE COUNTY, SPECIFIED IN SUCH LOCAL LAW, SHALL BE JOINED AS A PARTY IN ANY ACTION OR PROCEEDING BROUGHT TO COLLECT THE TAX BY THE OWNER OR BY THE PERSON ENTITLED TO BE PAID THE RENT OR CHARGE.

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

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

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

B. THE UNITED STATES OF AMERICA, INSOFAR AS IT IS IMMUNE FROM TAXATION;

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

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

A. THE AMOUNT OF ANY TAX SOUGHT TO BE REVIEWED, WITH SUCH INTEREST AND PENALTIES THEREON AS MAY BE PROVIDED FOR BY LOCAL LAW OR REGULATION SHALL BE FIRST DEPOSITED AND THERE IS FILED AN UNDERTAKING, ISSUED BY A SURETY COMPANY AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE AND APPROVED BY THE SUPERINTENDENT OF INSURANCE OF THIS STATE AS TO SOLVENCY

1 AND RESPONSIBILITY, IN SUCH AMOUNT AS A JUSTICE OF THE SUPREME COURT
2 SHALL APPROVE TO THE EFFECT THAT IF SUCH PROCEEDING BE DISMISSED OR THE
3 TAX CONFIRMED THE PETITIONER WILL PAY ALL COSTS AND CHARGES WHICH MAY
4 ACCRUE IN THE PROSECUTION OF SUCH PROCEEDING; OR

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

11 (7) WHERE ANY TAX IMPOSED PURSUANT TO THIS SECTION SHALL HAVE BEEN
12 ERRONEOUSLY, ILLEGALLY OR UNCONSTITUTIONALLY COLLECTED AND APPLICATION
13 FOR THE REFUND THEREOF DULY MADE TO THE PROPER FISCAL OFFICER OR OFFI-
14 CERS, AND SUCH OFFICER OR OFFICERS SHALL HAVE MADE A DETERMINATION DENY-
15 ING SUCH REFUND, SUCH DETERMINATION SHALL BE REVIEWABLE BY A PROCEEDING
16 UNDER ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES,
17 PROVIDED, HOWEVER, THAT SUCH PROCEEDING IS INSTITUTED WITHIN THIRTY DAYS
18 AFTER THE GIVING OF THE NOTICE OF SUCH DENIAL, THAT A FINAL DETERMI-
19 NATION OF TAX DUE WAS NOT PREVIOUSLY MADE, AND THAT AN UNDERTAKING IS
20 FILED WITH THE PROPER FISCAL OFFICER OR OFFICERS IN SUCH AMOUNT AND WITH
21 SUCH SURETIES AS A JUSTICE OF THE SUPREME COURT SHALL APPROVE TO THE
22 EFFECT THAT IF SUCH PROCEEDING BE DISMISSED OR THE TAX CONFIRMED, THE
23 PETITIONER WILL PAY ALL COSTS AND CHARGES WHICH ACCRUE IN THE PROSE-
24 CUTION OF SUCH PROCEEDING.

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

30 (9) ALL REVENUES RESULTING FROM THE IMPOSITION OF THE TAX UNDER THE
31 LOCAL LAWS SHALL BE PAID INTO THE TREASURY OF THE COUNTY OF WASHINGTON
32 AND SHALL BE CREDITED TO AND DEPOSITED IN THE GENERAL FUND OF THE COUN-
33 TY, THEREAFTER TO BE ALLOCATED FOR TOURISM PROMOTION AND TOURIST AND
34 CONVENTION DEVELOPMENT; PROVIDED, HOWEVER, THAT SUCH LOCAL LAWS SHALL
35 PROVIDE THAT THE COUNTY OF WASHINGTON SHALL BE AUTHORIZED TO RETAIN UP
36 TO A MAXIMUM OF FIFTEEN PERCENT OF SUCH REVENUES TO DEFER THE NECESSARY
37 EXPENSES OF SUCH COUNTY IN ADMINISTERING SUCH TAX. THE REVENUES DERIVED
38 FROM SUCH TAX, AFTER DEDUCTING THE AMOUNT PROVIDED FOR ADMINISTERING THE
39 TAX, AS PROVIDED BY LOCAL LAW, SHALL BE ALLOCATED TO PROMOTE TOURISM IN,
40 PRESERVE THE HERITAGE OF, AND CELEBRATE THE AGRICULTURAL COMMUNITY IN
41 THE COUNTY OF WASHINGTON THROUGH THE PROMOTION OF TOURIST ACTIVITIES,
42 CONVENTIONS, TRADE SHOWS, SPECIAL EVENTS, AND OTHER DIRECTLY RELATED AND
43 SUPPORTING ACTIVITIES.

44 (10) IF ANY PROVISION OF THIS SECTION OR THE APPLICATION THEREOF TO
45 ANY PERSON OR CIRCUMSTANCE SHALL BE HELD INVALID, THE REMAINDER OF THIS
46 SECTION AND THE APPLICATION OF SUCH PROVISION TO OTHER PERSONS OR
47 CIRCUMSTANCES SHALL NOT BE AFFECTED THEREBY.

48 S 2. This act shall take effect immediately.