

5940

2009-2010 Regular Sessions

I N S E N A T E

June 19, 2009

Introduced by Sen. LEIBELL -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the tax law, in relation to authorizing the city of Peekskill to impose hotel or motel taxes within such city

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 THE CITY OF PEEKSKILL. (1) NOTWITH-  
4 STANDING ANY OTHER PROVISIONS OF LAW TO THE CONTRARY, THE CITY OF PEEKS-  
5 KILL IS HEREBY AUTHORIZED AND EMPOWERED TO ADOPT AND AMEND LOCAL LAWS  
6 IMPOSING IN SUCH CITY A TAX, IN ADDITION TO ANY OTHER TAX AUTHORIZED AND  
7 IMPOSED PURSUANT TO THIS ARTICLE SUCH AS THE LEGISLATURE HAS OR WOULD  
8 HAVE THE POWER AND AUTHORITY TO IMPOSE UPON PERSONS OCCUPYING HOTEL OR  
9 MOTEL ROOMS IN SUCH CITY. FOR THE PURPOSES OF THIS SECTION, THE TERM  
10 "HOTEL" OR "MOTEL" SHALL MEAN AND INCLUDE ANY FACILITY CONSISTING OF  
11 RENTABLE UNITS AND PROVIDING LODGING ON AN OVERNIGHT BASIS AND SHALL  
12 INCLUDE THOSE FACILITIES DESIGNATED AND COMMONLY KNOWN AS "BED AND  
13 BREAKFAST" AND "TOURIST" FACILITIES.

14 THE RATES OF SUCH TAX SHALL NOT EXCEED THREE 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 NINETY CONSEC-  
19 UTIVE DAYS.

20 (2) SUCH TAX MAY BE COLLECTED AND ADMINISTERED BY THE CHIEF FISCAL  
21 OFFICER OF THE CITY OF PEEKSKILL BY SUCH MEANS AND IN SUCH MANNER AS  
22 OTHER TAXES WHICH ARE NOW COLLECTED AND ADMINISTERED BY SUCH OFFICER OR  
23 AS OTHERWISE MAY BE PROVIDED BY SUCH LOCAL LAW.

24 (3) SUCH LOCAL LAWS MAY PROVIDE THAT ANY TAX IMPOSED SHALL BE PAID BY  
25 THE PERSON LIABLE THEREFOR TO THE OWNER OF THE HOTEL OR MOTEL ROOM OCCU-

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

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1 PIED OR TO THE PERSON ENTITLED TO BE PAID THE RENT OR CHARGE FOR THE  
2 HOTEL OR MOTEL ROOM OCCUPIED FOR AND ON ACCOUNT OF THE CITY OF PEEKSKILL  
3 IMPOSING THE TAX AND THAT SUCH OWNER OR PERSON ENTITLED TO BE PAID THE  
4 RENT OR CHARGE SHALL BE LIABLE FOR THE COLLECTION AND PAYMENT OF THE  
5 TAX; AND THAT SUCH OWNER OR PERSON ENTITLED TO BE PAID THE RENT OR  
6 CHARGE SHALL HAVE THE SAME RIGHT IN RESPECT TO COLLECTING THE TAX FROM  
7 THE PERSON OCCUPYING THE HOTEL OR MOTEL ROOM, OR IN RESPECT TO NONPAY-  
8 MENT OF THE TAX BY THE PERSON OCCUPYING THE HOTEL OR MOTEL ROOM, AS IF  
9 THE TAX WERE A PART OF THE RENT OR CHARGE AND PAYABLE AT THE SAME TIME  
10 AS THE RENT OR CHARGE; PROVIDED, HOWEVER, THAT THE CHIEF FISCAL OFFICER  
11 OF THE CITY, SPECIFIED IN SUCH LOCAL LAW, SHALL BE JOINED AS A PARTY IN  
12 ANY ACTION OR PROCEEDING BROUGHT TO COLLECT THE TAX BY THE OWNER OR BY  
13 THE PERSON ENTITLED TO BE PAID THE RENT OR CHARGE.

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

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

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.

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

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

54 B. AT THE OPTION OF THE PETITIONER SUCH UNDERTAKING MAY BE IN A SUM  
55 SUFFICIENT TO COVER THE TAXES, INTERESTS AND PENALTIES STATED IN SUCH  
56 DETERMINATION PLUS THE COSTS AND CHARGES WHICH MAY ACCRUE AGAINST IT IN

1 THE PROSECUTION OF THE PROCEEDING, IN WHICH EVENT THE PETITIONER SHALL  
2 NOT BE REQUIRED TO PAY SUCH TAXES, INTEREST OR PENALTIES AS A CONDITION  
3 PRECEDENT TO THE APPLICATION.

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

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

23 (9) ALL REVENUES RESULTING FROM THE IMPOSITION OF THE TAX UNDER THE  
24 LOCAL LAWS SHALL BE PAID INTO THE TREASURY OF THE CITY OF PEEKSKILL AND  
25 SHALL BE CREDITED TO AND DEPOSITED IN THE GENERAL FUND OF THE CITY; AND  
26 THE LOCAL LAW SHALL PROVIDE THAT THE CITY SHALL BE AUTHORIZED TO RETAIN  
27 THE NECESSARY REVENUE TO DEFER THE EXPENSE OF THE CITY IN ADMINISTERING  
28 SUCH TAX AND THE BALANCE OF SUCH REVENUES SHALL BE ALLOCATED TO ENHANCE  
29 THE GENERAL ECONOMY OF THE CITY OF PEEKSKILL.

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.