S T A T E O F N E W Y O R K

6651--B

Cal. No. 590

I N S E N A T E

January 22, 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the tax law, in relation to authorizing the town of Greenburgh to adopt a local law to impose a hotel/motel occupancy tax for hotels not located in a village; authorizing villages in the town of Greenburgh to adopt a local law to impose a hotel/motel occupancy tax in such villages

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The tax law is amended by adding a new section 1202-bb to read as follows:

S 1202-BB. HOTEL OR MOTEL TAXES IN THE TOWN AND THE VILLAGES OF GREENBURGH. (1) NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW TO THE CONTRARY, THE TOWN OF GREENBURGH, WESTCHESTER COUNTY, IS HEREBY AUTHORIZED AND EMPOWERED TO ADOPT AND AMEND LOCAL LAWS IMPOSING IN THOSE PORTIONS OF SUCH TOWN NOT LOCATED WITHIN A VILLAGE, AND EACH VILLAGE IN SUCH TOWN IS HEREBY AUTHORIZED AND EMPOWERED TO ADOPT AND AMEND LOCAL LAWS IMPOSING IN SUCH VILLAGE A TAX, IN ADDITION TO ANY OTHER TAX AUTHORIZED AND IMPOSED PURSUANT TO THIS ARTICLE, AS THE LEGISLATURE HAS OR WOULD HAVE THE POWER AND AUTHORITY TO IMPOSE UPON PERSONS OCCUPYING ROOMS IN HOTELS OR MOTELS IN SUCH TOWN OR VILLAGE THEREIN. FOR THE PURPOSES OF THIS SECTION, THE TERM "HOTEL" SHALL MEAN A BUILDING OR PORTION OF IT WHICH IS REGULARLY USED AND KEPT OPEN AS SUCH FOR THE LODGING OF GUESTS. THE TERM "HOTEL" INCLUDES AN APARTMENT HOTEL, A MOTEL OR A BOARDING HOUSE, WHETHER OR NOT MEALS ARE SERVED. THE RATE OF SUCH TAX SHALL NOT EXCEED THREE PERCENT OF THE PER DIEM RENTAL RATE FOR EACH ROOM WHETHER SUCH ROOM IS RENTED ON A DAILY OR LONGER BASIS.

(2) SUCH TAX MAY BE COLLECTED AND ADMINISTERED BY THE COMMISSIONER OF FINANCE OR OTHER FISCAL OFFICER OF THE TOWN OF GREENBURGH OR OF ANY VILLAGE THEREIN, AS THE CASE MAY BE, BY SUCH MEANS AND IN SUCH MANNER AS OTHER TAXES WHICH ARE NOW COLLECTED AND ADMINISTERED BY SUCH OFFICERS IN

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

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ACCORDANCE WITH THE TOWN OR VILLAGE CHARTER 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 TOWN OF GREENBURGH OR OF ANY VILLAGE THEREIN 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 COMMISSIONER OF FINANCE OR OTHER FISCAL OFFICERS OF THE TOWN OR THE VILLAGE, 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 THE FOLLOWING:

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; AND

D. A PERMANENT RESIDENT OF A HOTEL OR MOTEL. FOR THE PURPOSES OF THIS SECTION, THE TERM "PERMANENT RESIDENT" SHALL MEAN A NATURAL PERSON OCCUPYING ANY ROOM OR ROOMS IN A HOTEL OR MOTEL FOR AT LEAST THIRTY CONSECUTIVE DAYS.

(6) ANY FINAL DETERMINATION OF THE AMOUNT OF ANY TAX PAYABLE HEREUNDER 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 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 AND RESPONSIBILITY, IN SUCH AMOUNT AS A JUSTICE OF THE SUPREME COURT SHALL APPROVE TO THE EFFECT THAT IF SUCH PROCEEDING BE DISMISSED OR THE TAX CONFIRMED THE PETITIONER WILL PAY ALL COSTS AND CHARGES WHICH MAY ACCRUE IN THE PROSECUTION OF SUCH PROCEEDING; OR

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

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

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

(9) REVENUES RESULTING FROM THE IMPOSITION OF TAX AUTHORIZED BY THIS SECTION SHALL BE PAID INTO THE TREASURY OF THE TOWN OF GREENBURGH OR OF THE VILLAGE THEREIN, AND SHALL BE CREDITED TO AND DEPOSITED IN THE GENERAL FUND OF THE TOWN OR VILLAGE; AND MAY THEREAFTER BE ALLOCATED AT THE DISCRETION OF THE BOARD OF LEGISLATORS OF THE TOWN OF GREENBURGH OR OF THE VILLAGE THEREIN FOR ANY TOWN OR VILLAGE PURPOSE.

(10) THE BOARD OF LEGISLATORS OF THE TOWN OF GREENBURGH OR OF THE VILLAGE THEREIN SHALL ALLOCATE ONE-THIRD OF SUCH REVENUES RESULTING FROM THE IMPOSITION OF TAX AUTHORIZED BY THIS SECTION, TO THE SCHOOL DISTRICT OR DISTRICTS LOCATED IN SUCH TOWN OR VILLAGE THEREIN.

(11) THE REVENUE RESERVED FOR SCHOOL DISTRICTS SHALL BE DIVIDED PROPORTIONALLY BETWEEN SCHOOL DISTRICTS WHOLLY OR PARTIALLY WITHIN THE MUNICIPALITY BASED UPON THE NUMBER OF STUDENTS IN EACH SCHOOL DISTRICT. THAT IS, THE MUNICIPALITY SHALL DISTRIBUTE THE TAX REVENUE TO SCHOOL DISTRICTS BASED UPON EACH DIVIDED SCHOOL DISTRICT'S PROPORTION OF THE MUNICIPALITY'S PUBLIC SCHOOL STUDENTS; SCHOOL DISTRICTS MUST HAVE A MINIMUM OF FIVE STUDENTS FROM THE MUNICIPALITY TO RECEIVE A PROPORTIONAL DISTRIBUTION. EACH SCHOOL DISTRICT SHALL DETERMINE THE NUMBER OF FULL-TIME, NON-TUITION STUDENTS WHO RESIDE IN THE MUNICIPALITY AND SUBMIT SUCH DATA TO THE MUNICIPALITY, WHICH DATA WILL BE SUBJECT TO REVIEW BY THE MUNICIPALITY.

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

S 2. This act shall take effect immediately.