

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

3033--A

2011-2012 Regular Sessions

I N S E N A T E

February 7, 2011

Introduced by Sen. OPPENHEIMER -- 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

AN ACT to amend the tax law, in relation to the imposition of an occupancy tax in the village of Mamaroneck; and providing for the repeal of such provisions upon expiration thereof

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-x to
2 read as follows:
3 S 1202-X. OCCUPANCY TAX IN THE VILLAGE OF MAMARONECK. (1) NOTWITH-
4 STANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE VILLAGE OF
5 MAMARONECK, 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 IT WHICH IS REGULARLY USED AND KEPT OPEN AS SUCH FOR THE
12 LODGING OF GUESTS. THE TERM "HOTEL" INCLUDES AN APARTMENT HOTEL, A MOTEL
13 OR A BOARDING HOUSE, WHETHER OR NOT MEALS ARE SERVED. THE RATE OF SUCH
14 TAX SHALL NOT EXCEED THREE PERCENT OF THE PER DIEM RENTAL RATE FOR EACH
15 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 MAMARONECK 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 THEREFORE TO THE OWNER OF THE ROOM FOR HIRE IN THE
22 TOURIST HOME, INN, CLUB, HOTEL, MOTEL OR OTHER SIMILAR PLACE OF PUBLIC

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

LBD08374-02-1

1 ACCOMMODATION OCCUPIED OR TO THE PERSON ENTITLED TO BE PAID THE RENT OR
2 CHARGE FOR THE ROOM FOR HIRE IN THE TOURIST HOME, INN, CLUB, HOTEL,
3 MOTEL OR OTHER SIMILAR PLACE OF PUBLIC ACCOMMODATION OCCUPIED FOR AND ON
4 ACCOUNT OF THE VILLAGE OF MAMARONECK IMPOSING THE TAX AND THAT SUCH
5 OWNER OR PERSON ENTITLED TO BE PAID THE RENT OR CHARGE SHALL BE LIABLE
6 FOR THE COLLECTION AND PAYMENT OF THE TAX; AND THAT SUCH OWNER OR PERSON
7 ENTITLED TO BE PAID THE RENT OR CHARGE SHALL HAVE THE SAME RIGHT IN
8 RESPECT TO COLLECTING THE TAX FROM THE PERSON OCCUPYING THE ROOM FOR
9 HIRE IN THE TOURIST HOME, INN, CLUB, HOTEL, MOTEL OR OTHER SIMILAR PLACE
10 OF PUBLIC ACCOMMODATION, OR IN RESPECT TO NONPAYMENT OF THE TAX BY THE
11 PERSON OCCUPYING THE ROOM FOR HIRE IN THE TOURIST HOME, INN, CLUB,
12 HOTEL, MOTEL OR SIMILAR PLACE OF PUBLIC ACCOMMODATION, AS IF THE TAXES
13 WERE A PART OF THE RENT OR CHARGE AND PAYABLE AT THE SAME TIME AS THE
14 RENT OR CHARGE; PROVIDED, HOWEVER, THAT THE CHIEF FISCAL OFFICER OF THE
15 VILLAGE, SPECIFIED IN SUCH LOCAL LAWS, SHALL BE JOINED AS A PARTY IN ANY
16 ACTION OR PROCEEDING BROUGHT TO COLLECT THE TAX BY THE OWNER OR BY THE
17 PERSON ENTITLED TO BE PAID THE RENT OR CHARGE.

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

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

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

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

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

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

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

52 A. THE AMOUNT OF ANY TAX SOUGHT TO BE REVIEWED, WITH SUCH INTEREST AND
53 PENALTIES THEREON AS MAY BE PROVIDED FOR BY LOCAL LAWS OR REGULATIONS
54 SHALL BE FIRST DEPOSITED AND THERE SHALL BE FILED AN UNDERTAKING, ISSUED
55 BY A SURETY COMPANY AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE AND
56 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 TAXES IMPOSED HEREUNDER SHALL HAVE BEEN ERRONEOUSLY,
12 ILLEGALLY OR UNCONSTITUTIONALLY COLLECTED AND APPLICATION FOR THE REFUND
13 THEREFOR DULY MADE TO THE PROPER FISCAL OFFICER OR OFFICERS, AND SUCH
14 OFFICER OR OFFICERS SHALL HAVE MADE A DETERMINATION DENYING SUCH REFUND,
15 SUCH DETERMINATION SHALL BE REVIEWABLE BY A PROCEEDING UNDER ARTICLE
16 SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES, PROVIDED, HOWEVER,
17 THAT SUCH PROCEEDING IS INSTITUTED WITHIN THIRTY DAYS AFTER THE GIVING
18 OF THE NOTICE OF SUCH DENIAL, THAT A FINAL DETERMINATION OF TAX DUE WAS
19 NOT PREVIOUSLY MADE, AND THAT AN UNDERTAKING IS FILED WITH THE PROPER
20 FISCAL OFFICER OR OFFICERS IN SUCH AMOUNT AND WITH SUCH SURETIES AS A
21 JUSTICE OF THE SUPREME COURT SHALL APPROVE TO THE EFFECT THAT IF SUCH
22 PROCEEDING BE DISMISSED OR THE TAXES CONFIRMED, THE PETITIONER WILL PAY
23 ALL COSTS AND CHARGES WHICH MAY ACCRUE IN THE PROSECUTION OF SUCH
24 PROCEEDING.

25 (8) EXCEPT IN THE CASE OF A WILLFULLY 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 VILLAGE OF MAMARONECK
32 AND SHALL BE CREDITED TO AND DEPOSITED IN THE GENERAL FUND OF THE
33 VILLAGE. SUCH REVENUES MAY BE USED FOR ANY LAWFUL PURPOSE.

34 (10) EACH ENACTMENT OF SUCH A LOCAL LAW MAY PROVIDE FOR THE IMPOSITION
35 OF A HOTEL OR MOTEL TAX FOR A PERIOD OF TIME NO LONGER THAN THREE YEARS
36 FROM THE DATE OF ITS ENACTMENT. NOTHING IN THIS SECTION SHALL PROHIBIT
37 THE ADOPTION AND ENACTMENT OF LOCAL LAWS, PURSUANT TO THE PROVISIONS OF
38 THIS SECTION, UPON THE EXPIRATION OF ANY OTHER LOCAL LAW ADOPTED PURSU-
39 ANT TO THIS SECTION.

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

44 S 2. This act shall take effect immediately and shall expire and be
45 deemed repealed three years after such date.