

4096

2011-2012 Regular Sessions

I N S E N A T E

March 17, 2011

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

AN ACT to amend the tax law, in relation to the imposition of an occu-
pancy tax in the Village of Port Chester; and providing for the repeal
of such provisions upon expiration thereof

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-cc to
2 read as follows:
3 S 1202-CC. OCCUPANCY TAX IN THE VILLAGE OF PORT CHESTER. (1) NOTWITH-
4 STANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE VILLAGE OF PORT
5 CHESTER, 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.
10 FOR THE PURPOSES OF THIS SECTION, THE TERM "HOTEL" SHALL MEAN A BUILDING
11 OR 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 PORT CHESTER BY SUCH MEANS AND IN SUCH MANNER
18 AS OTHER TAXES WHICH ARE NOW COLLECTED AND ADMINISTERED BY SUCH OFFICER
19 OR 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
23 ACCOMMODATION OCCUPIED OR TO THE PERSON ENTITLED TO BE PAID THE RENT OR

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

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

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

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

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

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

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

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

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

51 A. THE AMOUNT OF ANY TAX SOUGHT TO BE REVIEWED, WITH SUCH INTEREST AND
52 PENALTIES THEREON AS MAY BE PROVIDED FOR BY LOCAL LAWS OR REGULATIONS
53 SHALL BE FIRST DEPOSITED AND THERE SHALL BE FILED AN UNDERTAKING, ISSUED
54 BY A SURETY COMPANY AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE AND
55 APPROVED BY THE SUPERINTENDENT OF INSURANCE OF THIS STATE AS TO SOLVENCY
56 AND RESPONSIBILITY, IN SUCH AMOUNT AS A JUSTICE OF THE SUPREME COURT

1 SHALL APPROVE TO THE EFFECT THAT IF SUCH PROCEEDING BE DISMISSED OR THE
2 TAX CONFIRMED THE PETITIONER WILL PAY ALL COSTS AND CHARGES WHICH MAY
3 ACCRUE IN THE PROSECUTION OF SUCH PROCEEDING; OR

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

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

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

29 (9) ALL REVENUES RESULTING FROM THE IMPOSITION OF THE TAX UNDER THE
30 LOCAL LAWS SHALL BE PAID INTO THE TREASURY OF THE VILLAGE OF PORT CHES-
31 TER AND SHALL BE CREDITED TO AND DEPOSITED IN THE GENERAL FUND OF THE
32 VILLAGE. SUCH REVENUES MAY BE USED FOR ANY LAWFUL PURPOSE.

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

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

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