

5063

2011-2012 Regular Sessions

I N   S E N A T E

May 3, 2011

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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 town of North Castle; 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-x to  
2     read as follows:  
3     S 1202-X. OCCUPANCY TAX IN THE TOWN OF NORTH CASTLE. (1) NOTWITHSTAND-  
4     ING ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE TOWN OF NORTH  
5     CASTLE, IN THE COUNTY OF WESTCHESTER, IS HEREBY AUTHORIZED AND EMPOWERED  
6     TO ADOPT AND AMEND LOCAL LAWS IMPOSING IN SUCH TOWN A TAX, IN ADDITION  
7     TO ANY OTHER TAX AUTHORIZED AND IMPOSED PURSUANT TO THIS ARTICLE, SUCH  
8     AS THE LEGISLATURE HAS OR WOULD HAVE THE POWER AND AUTHORITY TO IMPOSE  
9     UPON PERSONS OCCUPYING ANY ROOM FOR HIRE IN ANY HOTEL. FOR THE PURPOSES  
10    OF THIS SECTION, THE TERM "HOTEL" SHALL MEAN A BUILDING OR PORTION OF IT  
11    WHICH IS REGULARLY USED AND KEPT OPEN AS SUCH FOR THE LODGING OF GUESTS.  
12    THE TERM "HOTEL" INCLUDES AN APARTMENT HOTEL, A MOTEL OR A BOARDING  
13    HOUSE, WHETHER OR NOT MEALS ARE SERVED. THE RATE OF SUCH TAX SHALL NOT  
14    EXCEED THREE PERCENT OF THE PER DIEM RENTAL RATE FOR EACH ROOM WHETHER  
15    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 TOWN OF NORTH CASTLE 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 THEREFOR 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 TOWN OF NORTH CASTLE IMPOSING THE TAX AND THAT SUCH OWNER  
4 OR PERSON ENTITLED TO BE PAID THE RENT OR CHARGE SHALL BE LIABLE FOR THE  
5 COLLECTION AND PAYMENT OF THE TAX; AND THAT SUCH OWNER OR PERSON ENTI-  
6 TLED TO BE PAID THE RENT OR CHARGE SHALL HAVE THE SAME RIGHT IN RESPECT  
7 TO COLLECTING THE TAX FROM THE PERSON OCCUPYING THE ROOM FOR HIRE IN THE  
8 TOURIST HOME, INN, CLUB, HOTEL, MOTEL OR OTHER SIMILAR PLACE OF PUBLIC  
9 ACCOMMODATION, OR IN RESPECT TO NONPAYMENT OF THE TAX BY THE PERSON  
10 OCCUPYING THE ROOM FOR HIRE IN THE TOURIST HOME, INN, CLUB, HOTEL, MOTEL  
11 OR SIMILAR PLACE OF PUBLIC ACCOMMODATION, AS IF THE TAXES WERE A PART OF  
12 THE RENT OR CHARGE AND PAYABLE AT THE SAME TIME AS THE RENT OR CHARGE;  
13 PROVIDED, HOWEVER, THAT THE CHIEF FISCAL OFFICER OF THE TOWN, SPECIFIED  
14 IN SUCH LOCAL LAWS, SHALL BE JOINED AS A PARTY IN ANY ACTION OR PROCEED-  
15 ING BROUGHT TO COLLECT THE TAX BY THE OWNER OR BY THE PERSON ENTITLED TO  
16 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 TOWN OF NORTH CASTLE  
31 AND SHALL BE CREDITED TO AND DEPOSITED IN THE GENERAL FUND OF THE TOWN.  
32 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.