

1234--A

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. ABINANTI -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 specified villages in the towns of Greenburgh and Mount Pleasant to adopt local laws to impose a hotel/motel occupancy tax in such villages; 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-cc to
2 read as follows:
3 S 1202-CC. HOTEL OR MOTEL TAXES IN THE TOWN OF GREENBURGH AND SPECI-
4 FIED VILLAGES THEREIN AND IN THE VILLAGE OF SLEEPY HOLLOW. (1) NOTWITH-
5 STANDING ANY OTHER PROVISIONS OF LAW TO THE CONTRARY, THE FOLLOWING
6 MUNICIPALITIES ARE HEREBY AUTHORIZED AND EMPOWERED TO ADOPT AND AMEND
7 LOCAL LAWS IMPOSING A TAX ON PERSONS OCCUPYING ROOMS IN HOTELS OR MOTELS
8 IN SUCH TOWNS OR VILLAGES THEREIN, AS THE LEGISLATURE HAS OR WOULD HAVE
9 THE POWER AND AUTHORITY TO IMPOSE, IN ADDITION TO ANY OTHER TAX AUTHOR-
10 IZED AND IMPOSED PURSUANT TO THIS ARTICLE:
11 A. THE TOWN OF GREENBURGH, WESTCHESTER COUNTY, IN THOSE PORTIONS OF
12 SUCH TOWN NOT LOCATED WITHIN A VILLAGE;
13 B. THE VILLAGES OF TARRYTOWN, IRVINGTON, ARDSLEY, ELMSFORD, DOBBS
14 FERRY, HASTINGS-ON-HUDSON SITUATE IN THE TOWN OF GREENBURGH; AND
15 C. THE VILLAGE OF SLEEPY HOLLOW SITUATE IN THE TOWN OF MOUNT PLEASANT,
16 WESTCHESTER COUNTY.
17 (2) FOR THE PURPOSES OF THIS SECTION, THE TERM "HOTEL" SHALL MEAN A
18 BUILDING OR PORTION OF IT WHICH IS REGULARLY USED AND KEPT OPEN AS SUCH

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

LBD03643-02-3

FOR THE LODGING OF GUESTS. THE TERM "HOTEL" INCLUDES AN APARTMENT HOTEL, A MOTEL OR A BOARDING HOUSE, WHETHER OR NOT MEALS ARE SERVED.

(3) 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.

(4) SUCH TAX MAY BE COLLECTED AND ADMINISTERED BY THE COMMISSIONER OF FINANCE OR OTHER FISCAL OFFICER OF THE TOWN OF GREENBURGH OR OF ANY SPECIFIED VILLAGE THEREIN OR OF THE VILLAGE OF SLEEPY HOLLOW SITUATE IN THE TOWN OF MOUNT PLEASANT, 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 ACCORDANCE WITH THE TOWN OR VILLAGE CHARTER OR AS OTHERWISE MAY BE PROVIDED BY SUCH LOCAL LAW.

(5) 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 SPECIFIED VILLAGE THEREIN OR OF THE VILLAGE OF SLEEPY HOLLOW SITUATE IN THE TOWN OF MOUNT PLEASANT 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 SUCH TOWNS OR VILLAGES, 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.

(6) 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.

(7) 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; AND

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.

(8) 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

1 FINAL DETERMINATION, PROVIDED, HOWEVER, THAT ANY SUCH PROCEEDING UNDER
2 ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES SHALL NOT BE
3 INSTITUTED UNLESS:

4 A. THE AMOUNT OF ANY TAX SOUGHT TO BE REVIEWED, WITH SUCH INTEREST AND
5 PENALTIES THEREON AS MAY BE PROVIDED FOR BY LOCAL LAW OR REGULATION
6 SHALL BE FIRST DEPOSITED AND THERE IS FILED AN UNDERTAKING, ISSUED BY A
7 SURETY COMPANY AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE AND
8 APPROVED BY THE SUPERINTENDENT OF FINANCIAL SERVICES OF THIS STATE AS TO
9 SOLVENCY AND RESPONSIBILITY, IN SUCH AMOUNT AS A JUSTICE OF THE SUPREME
10 COURT SHALL APPROVE TO THE EFFECT THAT IF SUCH PROCEEDING BE DISMISSED
11 OR THE TAX CONFIRMED THE PETITIONER WILL PAY ALL COSTS AND CHARGES WHICH
12 MAY ACCRUE IN THE PROSECUTION OF SUCH PROCEEDING; OR

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

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

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

38 (11) REVENUES RESULTING FROM THE IMPOSITION OF TAX AUTHORIZED BY THIS
39 SECTION SHALL BE PAID INTO THE TREASURY OF THE TOWN OF GREENBURGH OR OF
40 THE SPECIFIED VILLAGE THEREIN OR OF THE VILLAGE OF SLEEPY HOLLOW SITUATE
41 IN THE TOWN OF MOUNT PLEASANT, AND SHALL BE CREDITED TO AND DEPOSITED IN
42 THE GENERAL FUND OF SUCH TOWN OR VILLAGE; AND MAY THEREAFTER BE ALLO-
43 CATED AT THE DISCRETION OF THE BOARD OF LEGISLATORS OF THE TOWN OF
44 GREENBURGH OR OF THE SPECIFIED VILLAGE THEREIN OR OF THE VILLAGE OF
45 SLEEPY HOLLOW SITUATE IN THE TOWN OF MOUNT PLEASANT FOR ANY TOWN OR
46 VILLAGE PURPOSE, PROVIDED SUCH TOWN OR VILLAGE COMPLIES WITH THE
47 PROVISIONS OF SUBDIVISION THIRTEEN OF THIS SECTION.

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

52 (13) THE BOARD OF LEGISLATORS OF THE TOWN OF GREENBURGH OR OF THE
53 SPECIFIED VILLAGES THEREIN AND OF THE VILLAGE OF SLEEPY HOLLOW SITUATE
54 IN THE TOWN OF MOUNT PLEASANT SHALL ALLOCATE ONE-SIXTH OF SUCH REVENUES
55 RESULTING FROM THE IMPOSITION OF TAX AUTHORIZED BY THIS SECTION, FOR THE

1 PURPOSE OF PROMOTING ECONOMIC DEVELOPMENT AND TOURISM WITHIN SUCH TOWN
2 OR VILLAGE.

3 (14) THE TOWN OF GREENBURGH, THE SPECIFIED VILLAGES THEREIN, AND THE
4 VILLAGE OF SLEEPY HOLLOW SHALL CONSULT WITH HOTEL AND MOTEL REPRESEN-
5 TATIVES WITHIN SUCH TOWN OR VILLAGE TO DETERMINE HOW TO BEST APPROPRIATE
6 THE MONEY ALLOCATED PURSUANT TO SUBDIVISION THIRTEEN OF THIS SECTION.

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

13 S 2. This act shall take effect immediately, and shall expire and be
14 deemed repealed September 1, 2016.