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

9267

I N A S S E M B L Y

February 10, 2016

Introduced by M. of A. ABINANTI -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to authorizing suburban towns to adopt a local law to impose a hotel/motel occupancy tax for hotels located in a suburban town; 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:

Section 1. The tax law is amended by adding a new section 1204-a to read as follows:

S 1204-A. HOTEL OR MOTEL TAXES ADMINISTERED BY SUBURBAN TOWNS AND VILLAGES THEREIN. (A) NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW TO THE CONTRARY, ANY TOWN THAT HAS ELECTED TO BECOME A SUBURBAN TOWN UNDER THE PROVISIONS OF ARTICLE THREE-A OF THE TOWN LAW IS HEREBY AUTHORIZED AND EMPOWERED TO ADOPT AND AMEND LOCAL LAWS IMPOSING A TAX ON PERSONS OCCUPYING ROOMS IN HOTELS OR MOTELS:

(1) IN SUCH SUBURBAN TOWN, AS THE LEGISLATURE HAS OR WOULD HAVE THE POWER AND AUTHORITY TO IMPOSE, IN ADDITION TO ANY OTHER TAX AUTHORIZED AND IMPOSED PURSUANT TO THIS ARTICLE; AND

(2) IN ANY VILLAGE LOCATED IN SUCH SUBURBAN TOWN IF THE LEGISLATURE OF SUCH VILLAGE AUTHORIZES THE IMPOSITION OF SUCH TAX AS REQUIRED BY ITS LOCAL LAWS.

(B) 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.

(C) 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.

(D) SUCH TAX MAY BE COLLECTED AND ADMINISTERED BY THE COMMISSIONER OF FINANCE OR OTHER FISCAL OFFICER OF THE SUBURBAN TOWN FOR THE BENEFITS OF THE SUBURBAN TOWN AND THE VILLAGES THEREIN, AS THE CASE MAY BE, BY SUCH MEANS AND IN SUCH MANNER AS OTHER TAXES WHICH ARE NOW COLLECTED AND

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

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ADMINISTERED BY SUCH OFFICER IN ACCORDANCE WITH THE SUBURBAN TOWN CHARTER OR AS OTHERWISE MAY BE PROVIDED BY SUCH LOCAL LAW.

(E) 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 SUBURBAN TOWN AND THE VILLAGES 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 SUCH SUBURBAN TOWN, 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.

(F) 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.

(G) THIS SECTION SHALL NOT AUTHORIZE THE IMPOSITION OF SUCH TAX UPON THE FOLLOWING:

(1) 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;

(2) THE UNITED STATES OF AMERICA, INSOFAR AS IT IS IMMUNE FROM TAXATION; AND

(3) 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.

(H) 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:

(1) 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 FINANCIAL SERVICES 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

(2) 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.

(I) 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.

(J) 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.

(K) REVENUES RESULTING FROM THE IMPOSITION OF TAX AUTHORIZED BY THIS SECTION SHALL BE PAID INTO THE TREASURY OF THE SUBURBAN TOWN, AND SHALL BE CREDITED AND DISTRIBUTED TO THE GENERAL FUND OF SUCH SUBURBAN TOWN OR VILLAGE THEREIN AS FOLLOWS:

(1) REVENUES RESULTING FROM THE IMPOSITION OF THE TAX ON HOTELS OR MOTELS LOCATED WHOLLY WITHIN THE SUBURBAN TOWN SHALL BE CREDITED TO AND DEPOSITED IN THE GENERAL FUND OF SUCH SUBURBAN TOWN; AND MAY THEREAFTER BE ALLOCATED AT THE DISCRETION OF THE BOARD OF LEGISLATORS OF SUCH SUBURBAN TOWN FOR ANY TOWN PURPOSE; AND

(2) REVENUES RESULTING FROM THE IMPOSITION OF THE TAX ON HOTELS OR MOTELS LOCATED IN A VILLAGE OF A SUBURBAN TOWN SHALL BE CREDITED TO AND DEPOSITED IN THE GENERAL FUND OF SUCH VILLAGE; AND MAY THEREAFTER BE ALLOCATED AT THE DISCRETION OF THE BOARD OF LEGISLATORS OF SUCH VILLAGE FOR ANY VILLAGE PURPOSE;

(L) SUBURBAN TOWNS THAT COLLECT AND DISTRIBUTE REVENUES FROM THE IMPOSITION OF THE TAX ON HOTELS OR MOTELS LOCATED IN VILLAGES LOCATED IN SUCH TOWN SHALL BE ENTITLED TO COLLECT AN ADMINISTRATIVE FEE OF THREE PERCENT OF SUCH REVENUES RESULTING FROM THE IMPOSITION OF TAX AUTHORIZED BY THIS SECTION TO COVER THE ADMINISTRATIVE COSTS OF THE COLLECTION AND DISTRIBUTION OF THE REVENUE FOR SUCH VILLAGE OR VILLAGES.

(M) 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.

(N) EACH ENACTMENT OF SUCH A LOCAL LAW MAY PROVIDE FOR THE IMPOSITION OF A HOTEL OR MOTEL TAX FOR A PERIOD OF TIME NO LONGER THAN THREE YEARS FROM THE DATE OF ITS ENACTMENT. NOTHING IN THIS SECTION SHALL PROHIBIT THE ADOPTION AND ENACTMENT OF LOCAL LAWS, PURSUANT TO THE PROVISIONS OF

THIS SECTION, UPON THE EXPIRATION OF ANY OTHER LOCAL LAW ADOPTED PURSUANT TO THIS SECTION.

S 2. This act shall take effect immediately and shall expire and be deemed repealed September 1, 2019.