

3819

2015-2016 Regular Sessions

I N   S E N A T E

February 18, 2015

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Introduced by Sen. LARKIN -- 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 a hotel and motel tax in the town of Woodbury; 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 WOODBURY. (1) NOTWITH-  
4     STANDING ANY OTHER PROVISIONS OF LAW TO THE CONTRARY, THE TOWN OF WOOD-  
5     BURY, IN THE COUNTY OF ORANGE, IS HEREBY AUTHORIZED AND EMPOWERED TO  
6     ADOPT AND AMEND LOCAL LAWS IMPOSING IN SUCH TOWN A TAX, IN ADDITION TO  
7     ANY OTHER TAX AUTHORIZED AND IMPOSED PURSUANT TO THIS ARTICLE SUCH AS  
8     THE LEGISLATURE HAS OR WOULD HAVE THE POWER AND AUTHORITY TO IMPOSE UPON  
9     NON-RESIDENT PERSONS OCCUPYING HOTEL OR MOTEL ROOMS IN SUCH TOWN. FOR  
10    THE PURPOSES OF THIS SECTION, THE TERM "HOTEL" OR "MOTEL" SHALL MEAN AND  
11    INCLUDE ANY FACILITY CONSISTING OF RENTABLE UNITS AND PROVIDING LODGING  
12    ON AN OVERNIGHT BASIS AND SHALL INCLUDE THOSE FACILITIES DESIGNATED AND  
13    COMMONLY KNOWN AS "BED AND BREAKFAST" AND "TOURIST" FACILITIES. THE  
14    RATES OF SUCH TAX SHALL NOT EXCEED FIVE PERCENT OF THE PER DIEM RENTAL  
15    RATE FOR EACH ROOM, PROVIDED HOWEVER, THAT SUCH TAX SHALL NOT BE APPLI-  
16    CABLE TO A PERMANENT RESIDENT OF A HOTEL OR MOTEL. FOR THE PURPOSES OF  
17    THIS SECTION THE TERM "PERMANENT RESIDENT" SHALL MEAN A PERSON OCCUPYING  
18    ANY ROOM OR ROOMS IN A HOTEL OR MOTEL FOR AT LEAST NINETY CONSECUTIVE  
19    DAYS. FOR THE PURPOSES OF THIS SECTION THE TERM "NON-RESIDENT" SHALL  
20    MEAN A PERSON NOT A RESIDENT OF THE STATE OF NEW YORK.  
21    (2) SUCH TAX MAY BE COLLECTED AND ADMINISTERED BY THE CHIEF FISCAL  
22    OFFICER OF THE TOWN OF WOODBURY BY SUCH MEANS AND IN SUCH MANNER AS

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

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1 OTHER TAXES WHICH ARE NOW COLLECTED AND ADMINISTERED BY SUCH OFFICER OR  
2 AS OTHERWISE MAY BE PROVIDED BY SUCH LOCAL LAW.

3 (3) SUCH LOCAL LAWS MAY PROVIDE THAT ANY TAX IMPOSED SHALL BE PAID BY  
4 THE PERSON LIABLE THEREFOR TO THE OWNER OF THE HOTEL OR MOTEL ROOM OCCU-  
5 PIED OR TO THE PERSON ENTITLED TO BE PAID THE RENT OR CHARGE FOR THE  
6 HOTEL OR MOTEL ROOM OCCUPIED FOR AND ON ACCOUNT OF THE TOWN OF WOODBURY  
7 IMPOSING THE TAX AND THAT SUCH OWNER OR PERSON ENTITLED TO BE PAID THE  
8 RENT OR CHARGE SHALL BE LIABLE FOR THE COLLECTION AND PAYMENT OF THE  
9 TAX; AND THAT SUCH OWNER OR PERSON ENTITLED TO BE PAID THE RENT OR  
10 CHARGE SHALL HAVE THE SAME RIGHT IN RESPECT TO COLLECTING THE TAX FROM  
11 THE PERSON OCCUPYING THE HOTEL OR MOTEL ROOM, OR IN RESPECT TO NONPAY-  
12 MENT OF THE TAX BY THE PERSON OCCUPYING THE HOTEL OR MOTEL ROOM, AS IF  
13 THE TAX WERE A PART OF THE RENT OR CHARGE AND PAYABLE AT THE SAME TIME  
14 AS THE RENT OR CHARGE; PROVIDED, HOWEVER, THAT THE CHIEF FISCAL OFFICER  
15 OF THE TOWN, SPECIFIED IN SUCH LOCAL LAW, SHALL BE JOINED AS A PARTY IN  
16 ANY ACTION OR PROCEEDING BROUGHT TO COLLECT THE TAX BY THE OWNER OR BY  
17 THE 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 TAX 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 TRANSACTION, BY OR WITH ANY OF THE FOLLOWING IN ACCORDANCE WITH  
23 SECTION TWELVE HUNDRED THIRTY OF THIS CHAPTER:

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

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

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

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

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

B. AT THE OPTION OF THE PETITIONER SUCH UNDERTAKING MAY BE IN A SUM SUFFICIENT TO COVER THE TAXES, INTERESTS 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.

(7) 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 MAY ACCRUE IN THE PROSECUTION OF SUCH PROCEEDING.

(8) EXCEPT IN THE CASE OF A WILFULLY 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.

(9) ALL REVENUES RESULTING FROM THE IMPOSITION OF THE TAX UNDER THE LOCAL LAWS SHALL BE PAID INTO THE TREASURY OF THE TOWN OF WOODBURY AND SHALL BE CREDITED TO AND DEPOSITED IN THE GENERAL FUND OF THE TOWN. SUCH REVENUES MAY BE USED FOR ANY LAWFUL PURPOSE.

(10) 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.

S 2. This act shall take effect immediately and shall expire and be deemed repealed 3 years after such date.