

# STATE OF NEW YORK

10320--A

## IN ASSEMBLY

April 10, 2018

Introduced by M. of A. GUNTHER -- 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 Wallkill to adopt a hotel or motel tax of up to 5%; 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-ff to  
2 read as follows:

3 § 1202-ff. Hotel or motel taxes in the town of Wallkill. (1) Notwith-  
4 standing any other provision of law to the contrary, the town of Wall-  
5 kill, 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 persons occupying hotel or motel rooms in such town. For the purposes of  
10 this section, the term "hotel" or "motel" shall mean and include any  
11 facility consisting of rentable units and providing lodging on an over-  
12 night basis and shall include those facilities designated and commonly  
13 known as "bed and breakfast" and "tourist" facilities. The rates of such  
14 tax shall not exceed five percent of the per diem rental rate for each  
15 room, provided however, that such tax shall not be applicable to a  
16 permanent resident of a hotel or motel. For the purposes of this section  
17 the term "permanent resident" shall mean a person occupying any room or  
18 rooms in a hotel or motel for at least ninety consecutive days.

19 (2) Such tax may be collected and administered by the chief fiscal  
20 officer of the town of Wallkill by such means and in such manner as  
21 other taxes which are now collected and administered by such officer or  
22 as otherwise may be provided by such local laws.

23 (3) Such local laws may provide that any tax imposed shall be paid by  
24 the person liable therefor to the owner of the hotel or motel room occu-  
25 pied or to the person entitled to be paid the rent or charge for the  
26 hotel or motel room occupied for and on account of the town of Wallkill

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

LBD14865-02-8

1 imposing the tax and that such owner or person entitled to be paid the  
2 rent or charge shall be liable for the collection and payment of the  
3 tax; and that such owner or person entitled to be paid the rent or  
4 charge shall have the same right in respect to collecting the tax from  
5 the person occupying the hotel or motel room, or in respect to nonpay-  
6 ment of the tax by the person occupying the hotel or motel room, as if  
7 the tax were a part of the rent or charge and payable at the same time  
8 as the rent or charge; provided, however, that the chief fiscal officer  
9 of the town, specified in such local laws, shall be joined as a party in  
10 any action or proceeding brought to collect the tax by the owner or by  
11 the person entitled to be paid the rent or charge.

12 (4) Such local laws may provide for the filing of returns and the  
13 payment of the tax on a monthly basis or on the basis of any longer or  
14 shorter period of time.

15 (5) This section shall not authorize the imposition of such tax upon  
16 any transaction, by or with any of the following in accordance with  
17 section twelve hundred thirty of this article:

18 a. The state of New York, or any public corporation (including a  
19 public corporation created pursuant to agreement or compact with another  
20 state or the Dominion of Canada), improvement district or other poli-  
21 tical subdivision of the state;

22 b. The United States of America, insofar as it is immune from taxa-  
23 tion;

24 c. Any corporation or association, or trust, or community chest, fund  
25 or foundation organized and operated exclusively for religious, charita-  
26 ble or educational purposes, or for the prevention of cruelty to chil-  
27 dren or animals, and no part of the net earnings of which inures to the  
28 benefit of any private shareholder or individual and no substantial part  
29 of the activities of which is carrying on propaganda, or otherwise  
30 attempting to influence legislation; provided, however, that nothing in  
31 this paragraph shall include an organization operated for the primary  
32 purpose of carrying on a trade or business for profit, whether or not  
33 all of its profits are payable to one or more organizations described in  
34 this paragraph.

35 (6) Any final determination of the amount of any tax payable under  
36 this section shall be reviewable for error, illegality or unconstitu-  
37 tionality or any other reason whatsoever by a proceeding under article  
38 seventy-eight of the civil practice law and rules if application there-  
39 for is made to the supreme court within thirty days after the giving of  
40 the notice of such final determination, provided, however, that any such  
41 proceeding under article seventy-eight of the civil practice law and  
42 rules shall not be instituted unless:

43 a. The amount of any tax sought to be reviewed, with such interest and  
44 penalties thereon as may be provided for by local law shall be first  
45 deposited and there is filed an undertaking, issued by a surety company  
46 authorized to transact business in this state and approved by the super-  
47 intendent of financial services of this state as to solvency and respon-  
48 sibility, in such amount as a justice of the supreme court shall approve  
49 to the effect that if such proceeding be dismissed or the tax confirmed  
50 the petitioner will pay all costs and charges which may accrue in the  
51 prosecution of such proceeding; or

52 b. At the option of the petitioner such undertaking may be in a sum  
53 sufficient to cover the taxes, interests and penalties stated in such  
54 determination plus the costs and charges which may accrue against it in  
55 the prosecution of the proceeding, in which event the petitioner shall

1 not be required to pay such taxes, interest or penalties as a condition  
2 precedent to the application.

3 (7) Where any tax imposed under this section shall have been erro-  
4 neously, illegally or unconstitutionally collected and application for  
5 the refund thereof duly made to the proper fiscal officer or officers,  
6 and such officer or officers shall have made a determination denying  
7 such refund, such determination shall be reviewable by a proceeding  
8 under article seventy-eight of the civil practice law and rules,  
9 provided, however, that such proceeding is instituted within thirty days  
10 after the giving of the notice of such denial, that a final determi-  
11 nation of tax due was not previously made, and that an undertaking is  
12 filed with the proper fiscal officer or officers in such amount and with  
13 such sureties as a justice of the supreme court shall approve to the  
14 effect that if such proceeding be dismissed or the tax confirmed, the  
15 petitioner will pay all costs and charges which may accrue in the prose-  
16 cution of such proceeding.

17 (8) Except in the case of a wilfully false or fraudulent return with  
18 intent to evade the tax, no assessment of additional tax shall be made  
19 after the expiration of more than three years from the date of the  
20 filing of a return, provided, however, that where no return has been  
21 filed as provided by law the tax may be assessed at any time.

22 (9) All revenues resulting from the imposition of the tax under the  
23 local laws shall be paid into the treasury of the town of Wallkill and  
24 shall be credited to and deposited in the general fund of the town. Such  
25 revenues may be used for any lawful purpose.

26 (10) Each enactment of such a local law may provide for the imposition  
27 of a hotel or motel tax for a period of time no longer than three years  
28 from the date of its enactment. Nothing in this section shall prohibit  
29 the adoption and enactment of local laws, pursuant to the provisions of  
30 this section, upon the expiration of any other local law adopted pursu-  
31 ant to this section.

32 (11) If any provision of this section or the application thereof to  
33 any person or circumstance shall be held invalid, the remainder of this  
34 section and the application of such provision to other persons or  
35 circumstances shall not be affected thereby.

36 § 2. This act shall take effect immediately and shall expire and be  
37 deemed repealed September 1, 2021.