

# STATE OF NEW YORK

10904

## IN ASSEMBLY

May 29, 2018

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

AN ACT to amend the tax law, in relation to the imposition of an occupancy tax in the town of DeWitt; 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. Occupancy tax in the town of DeWitt. (1) Notwithstanding  
4 any other provision of law to the contrary, the town of DeWitt, in the  
5 county of Onondaga, is hereby authorized and empowered to adopt and  
6 amend local laws imposing in such town a tax, in addition to any other  
7 tax authorized and imposed pursuant to this article, such as the legis-  
8 lature has or would have the power and authority to impose upon persons  
9 occupying any room for hire in any hotel. For the purposes of this  
10 section, the term "hotel" shall mean a building or portion of it which  
11 is regularly used and kept open as such for the lodging of guests. The  
12 term "hotel" includes an apartment hotel, a motel or a boarding house,  
13 whether or not meals are served. The rate of such tax shall not exceed  
14 two and three quarters (2.75) percent of the per diem rental rate for  
15 each room whether 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 DeWitt by such means and in such manner as other  
18 taxes which are now collected and administered by such officer or as  
19 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  
24 charge for the room for hire in the tourist home, inn, club, hotel,  
25 motel or other similar place of public accommodation occupied for and on  
26 account of the town of DeWitt imposing the tax and that such owner or  
27 person entitled to be paid the rent or charge shall be liable for the  
28 collection and payment of the tax; and that such owner or person enti-  
29 tled to be paid the rent or charge shall have the same right in respect  
30 to collecting the tax from the person occupying the room for hire in the

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

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1 tourist home, inn, club, hotel, motel or other similar place of public  
2 accommodation, or in respect to nonpayment of the tax by the person  
3 occupying the room for hire in the tourist home, inn, club, hotel, motel  
4 or similar place of public accommodation, as if the taxes were a part of  
5 the rent or charge and payable at the same time as the rent or charge;  
6 provided, however, that the chief fiscal officer of the town, specified  
7 in such local laws, shall be joined as a party in any action or proceed-  
8 ing brought to collect the tax by the owner or by the person entitled to  
9 be paid the rent or charge.

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

13 (5) This section shall not authorize the imposition of such tax upon  
14 any of the following:

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

19 b. The United States of America, insofar as it is immune from taxa-  
20 tion; or

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

32 d. A permanent resident of a hotel or motel. For the purposes of this  
33 section, the term "permanent resident" shall mean a natural person occu-  
34 pying any room or rooms in a hotel or motel for at least thirty consec-  
35 utive days.

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

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

53 b. At the option of the petitioner, such undertaking may be in a sum  
54 sufficient to cover the taxes, interests and penalties stated in such  
55 determination plus the costs and charges which may accrue against it in  
56 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 taxes imposed hereunder shall have been erroneously,  
4 illegally or unconstitutionally collected and application for the refund  
5 therefor duly made to the proper fiscal officer or officers, and such  
6 officer or officers shall have made a determination denying such refund,  
7 such determination shall be reviewable by a proceeding under article  
8 seventy-eight of the civil practice law and rules, provided, however,  
9 that such proceeding is instituted within thirty days after the giving  
10 of the notice of such denial, that a final determination of tax due was  
11 not previously made, and that an undertaking is filed with the proper  
12 fiscal officer or officers in such amount and with such sureties as a  
13 justice of the supreme court shall approve to the effect that if such  
14 proceeding be dismissed or the taxes confirmed, the petitioner will pay  
15 all costs and charges which may accrue in the prosecution of such  
16 proceeding.

17 (8) Except in the case of a willfully 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 DeWitt, and  
24 shall be credited to and deposited in the general fund of the town but  
25 will be attributed to specific line items in the annual DeWitt town  
26 budget dedicated to the town's Willis Carrier Park and tourism infras-  
27 tructure improvements promoting tourism and increases in hotel/motel  
28 industry room occupancy, and that such funds may thereafter be allocated  
29 and utilized for the aforesaid purposes of paying for the construction,  
30 re-construction, maintenance, upkeep, and operations of the town of  
31 DeWitt Willis Carrier Park, the construction, re-construction, mainte-  
32 nance, upkeep, and operations of any appurtenant facilities or services  
33 thereto, the payment or re-payment of any bond, loan, note, or other  
34 financing instrument, the debt associated with which was incurred for  
35 the construction, re-construction, maintenance, upkeep, and operation of  
36 the said Park, appurtenant facilities, and services, and the  
37 construction, re-construction, maintenance or upkeep of town infrastruc-  
38 ture and services utilized in connection with the tourism and the  
39 hotel/motel industry within the town of DeWitt ("tourism infrastruc-  
40 ture"). Not less than thirty percent of the revenues from the imposition  
41 of the tax shall be allocated and utilized for tourism infrastructure  
42 and services within the town of Dewitt.

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

49 (11) If any provision of this section or the application thereof to  
50 any person or circumstance shall be held invalid, the remainder of this  
51 section and the application of such provision to other persons or  
52 circumstances shall not be affected thereby.

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