

# STATE OF NEW YORK

8814

## IN SENATE

May 22, 2018

Introduced by Sen. DeFRANCISCO -- 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 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

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

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

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

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

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

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

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

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

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

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

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

1 the prosecution of the proceeding, in which event the petitioner shall  
2 not be required to pay such taxes, interest or penalties as a condition  
3 precedent to the application.

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

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

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

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

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

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