

# STATE OF NEW YORK

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6914

2019-2020 Regular Sessions

## IN ASSEMBLY

March 27, 2019

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

AN ACT to amend the tax law, in relation to authorizing a local supplemental tax on passenger car rentals in the city of Rochester

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-yy to  
2 read as follows:

3   **S 1202-yy. Local supplemental tax on passenger car rentals in the city**  
4 **of Rochester.** (1) Notwithstanding any other provision of law to the  
5 contrary, the city of Rochester, in the county of Monroe, is hereby  
6 authorized and empowered to adopt and amend local laws imposing in such  
7 city a tax, in addition to any other tax authorized and imposed pursuant  
8 to this article, such as the legislature has or would have the power and  
9 authority to impose upon any person a use tax for the use within the  
10 city of Rochester of any passenger car rented by the user, which is a  
11 purchase at retail of such passenger car, but not including any lease of  
12 a passenger car to which subdivision (i) of section eleven hundred elev-  
13 en of this chapter applies. The rate of such tax shall not exceed five  
14 percent of the consideration given or contracted to be given for such  
15 property, or for the use of such property, including any charges for  
16 shipping or delivery as described in paragraph three of subdivision (b)  
17 of section eleven hundred one of this chapter, but excluding any credit  
18 for tangible personal property accepted in part payment and intended for  
19 resale.

20   (2) For purposes of this section, the following definitions shall  
21 apply:

22   a. Motor vehicle. A motor vehicle as defined in section one hundred  
23 twenty-five of the vehicle and traffic law, but not including a motorcy-  
24 cle.

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

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1       b. Passenger car. A motor vehicle having a gross vehicle weight of  
2 nine thousand pounds or less with a seating capacity of nine persons or  
3 less designed for passenger transportation.

4       c. Rental. The transfer of possession of a motor vehicle, whether or  
5 not the motor vehicle is required to be or is registered by this state,  
6 for a consideration, without the transfer of the ownership of such motor  
7 vehicle, but not including a lease described in subdivision (i) of  
8 section eleven hundred eleven of this chapter.

9       (3) Such taxes may be collected and administered by the chief fiscal  
10 officer of the city of Rochester by such means and in such manner as  
11 other taxes which are now collected and administered by such officer or  
12 as otherwise may be provided by such local law.

13       (4) Such local laws may provide that any taxes imposed shall be paid  
14 by the person liable therefor to the owner of the passenger car or to  
15 the person entitled to be paid or charge for the purchase at retail of  
16 the passenger car for and on account of the city of Rochester imposing  
17 the tax and that such owner or person entitled to be paid or charge for  
18 the purchase at retail of the passenger car shall be liable for the  
19 collection and payment of the tax; and that such owner or person enti-  
20 tled to be paid or charge for the purchase at retail of the passenger  
21 car shall have the same right in respect to collecting the tax from the  
22 person purchasing the passenger car at retail, or in respect to nonpay-  
23 ment of the tax by the person purchasing the passenger car at retail, as  
24 if the taxes were a part of the purchase and payable at the same time as  
25 the purchase; provided however, that the chief fiscal officer of the  
26 city, specified in such local laws, shall be joined as a party in any  
27 action or proceeding brought to collect the tax by the owner or by the  
28 person entitled to be paid for the purchase at retail of the passenger  
29 car.

30       (5) Such local laws may provide for the filing of returns and the  
31 payment of the taxes on a monthly basis or on a basis of any longer or  
32 shorter period of time.

33       (6) This section shall not authorize the imposition of such tax upon  
34 any of the following:

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

39       b. The United States of America, insofar as it is immune for taxation;  
40 or

41       c. Any corporation or association, or trust, or community chest, fund  
42 or foundation organized and operated exclusively for religious, charita-  
43 ble or education purposes, or for the prevention of cruelty to children  
44 or animals, and no part of the net earnings of which inures to the bene-  
45 fit of any private shareholder or individual and no substantial part of  
46 the activities of which is carrying on propaganda, or otherwise attempt-  
47 ing to influence legislation; provided, however, that nothing in this  
48 paragraph shall include an organization operated for the primary purpose  
49 of carrying on a trade or business for profit, whether or not all of its  
50 profits are payable to one or more organizations described in this para-  
51 graph.

52       (7) Any final determination of the amount of any tax payable hereunder  
53 shall be reviewable for error, illegality or unconstitutionality or any  
54 other reason whatsoever by a proceeding under article seventy-eight of  
55 the civil practice law and rules if application therefor is made to the  
56 supreme court within thirty days after the giving of notice of such

1 final determination, provided, however, that any such proceeding under  
2 article seventy-eight of the civil practice law and rules shall not be  
3 instituted unless:

4   a. The amount of any tax sought to be reviewed, with such interest and  
5 penalties thereon as may be provided for by local laws or regulations  
6 shall be first deposited and there shall be filed an undertaking, issued  
7 by a surety company authorized to transact business in this state and  
8 approved by the superintendent of insurance of this state as to solvency  
9 and responsibility, in such amount as a justice of the supreme court  
10 shall approve to the effect that if such proceeding be dismissed or the  
11 tax confirmed the petitioner will pay all costs and charges which may  
12 accrue in the prosecution of such proceeding; or

13   b. At the option of the petitioner, such undertaking may be in a sum  
14 sufficient to cover the taxes, interests and penalties stated in such  
15 determination plus the costs and charges which may accrue against it in  
16 the prosecution of the proceeding, in which event the petitioner shall  
17 not be required to pay such taxes, interests or penalties as a condition  
18 precedent to the application.

19   (8) Where any taxes imposed hereunder shall have been erroneously,  
20 illegally or unconstitutionally collected and application for the refund  
21 therefor duly made to the proper fiscal officer or officers, and such  
22 officer or officers shall have made a determination denying such refund,  
23 such determination shall be reviewable by a proceeding under article  
24 seventy-eight of the civil practice law and rules, provided, however,  
25 that such proceeding is instituted within thirty days after the giving  
26 of the notice of such denial, that a final determination of tax due was  
27 not previously made, and that an undertaking is filed with the proper  
28 fiscal officer or officers in such amount and with such sureties as a  
29 justice of the supreme court shall approve to the effect that if such  
30 proceeding be dismissed or the taxes confirmed, the petitioner will pay  
31 all costs and charges which may accrue in the prosecution of such  
32 proceeding.

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

38   (10) All revenues resulting from the imposition of the tax under the  
39 local laws shall be paid into the treasury of the city of Rochester and  
40 shall be credited to and deposited in the general fund of the city. Such  
41 revenues may be used for any lawful purpose.

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

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

52   § 2. This act shall take effect immediately.