STATE OF NEW YORK

7081

2019-2020 Regular Sessions

IN ASSEMBLY

April 5, 2019

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

AN ACT to amend the tax law, in relation to authorizing the county of Westchester to impose an additional rate of sales and compensating use tax; and to amend chapter 272 of the laws of 1991, amending the tax law relating to the method of disposition of sales and compensating use tax revenue in Westchester county and enacting the Westchester county spending limitation act, in relation to extending the expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subparagraph (i) of the opening paragraph of section 1210 of the tax law is amended by adding a new clause 42 to read as follows:

(42) the county of Westchester is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes at a rate that is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning June first, two thousand nineteen and ending November thirtieth, two thousand twenty-two;

§ 2. Subdivision (a) of section 1223 of the tax law, as separately amended by chapters 191 and 217 of the laws of 2013, is amended to read as follows:

(a) No transaction taxable under sections twelve hundred two through twelve hundred four of this article shall be taxed pursuant to this article by any county or by any city located therein, or by both, at an aggregate rate in excess of the highest rate set forth in the applicable subdivision of section twelve hundred one of this article or, in the case of any taxes imposed pursuant to the authority of section twelve hundred ten or twelve hundred eleven of this article (other than taxes imposed by the county of Nassau, Erie, Steuben, Cattaraugus, Suffolk, Oneida, Genesee, Greene, Franklin, Hamilton, Herkimer, Tioga, Orleans,

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

LBD09824-14-9

Allegany, Ulster, Albany, Rensselaer, Tompkins, Wyoming, Columbia, Schuyler, Rockland, Chenango, Monroe, Chemung, Seneca, Sullivan, Wayne, Livingston, Schenectady, Montgomery, Delaware, Clinton, Niagara, Yates, Lewis, Essex, Dutchess, Schoharie, Putnam, Chautauqua, Orange, Oswego, Ontario, Jefferson, St. Lawrence**, Westchester** or Onondaga and by the county of Cortland and the city of Cortland and by the county of Broome and the city of Binghamton and by the county of Cayuga and the city of Auburn and by the county of Otsego and the city of Oneonta and by the county of Madison and the city of Oneida and by the county of Fulton and the city of Gloversville or the city of Johnstown as provided in section twelve hundred ten of this article) at a rate in excess of three percent, except that, [~~in the city of Yonkers,~~] in the city of Mount Vernon, in the city of New Rochelle, in the city of Fulton [~~and~~]**,** in the city of Oswego, [~~the rate may not be in excess of four percent~~] and in the city of White Plains, the rate may not be in excess of four percent**, and in the city of Yonkers, the rate may not be in excess of four and one-half percent,** and except that in the city of Poughkeepsie in the county of Dutchess, if such county withdraws from the metropolitan commuter transportation district pursuant to section twelve hundred seventy-nine-b of the public authorities law and if the revenues from a three-eighths percent rate of such tax imposed by such county, pursuant to the authority of section twelve hundred ten of this article, are required by local laws, ordinances or resolutions to be set aside for mass transportation purposes, the rate may not be in excess of three and three-eighths percent.

§ 3. Subdivision (a) of section 1223 of the tax law, as amended by section two of this act, is amended to read as follows:

(a) No transaction taxable under sections twelve hundred two through twelve hundred four of this article shall be taxed pursuant to this article by any county or by any city located therein, or by both, at an aggregate rate in excess of the highest rate set forth in the applicable subdivision of section twelve hundred one of this article or, in the case of any taxes imposed pursuant to the authority of section twelve hundred ten or twelve hundred eleven of this article (other than taxes imposed by the county of Nassau, Erie, Steuben, Cattaraugus, Suffolk, Oneida, Genesee, Greene, Franklin, Hamilton, Herkimer, Tioga, Orleans, Allegany, Ulster, Albany, Rensselaer, Tompkins, Wyoming, Columbia, Schuyler, Rockland, Chenango, Monroe, Chemung, Seneca, Sullivan, Wayne, Livingston, Schenectady, Montgomery, Delaware, Clinton, Niagara, Yates, Lewis, Essex, Dutchess, Schoharie, Putnam, Chautauqua, Orange, Oswego, Ontario, Jefferson, St. Lawrence, Westchester or Onondaga and by the county of Cortland and the city of Cortland and by the county of Broome and the city of Binghamton and by the county of Cayuga and the city of Auburn and by the county of Otsego and the city of Oneonta and by the county of Madison and the city of Oneida and by the county of Fulton and the city of Gloversville or the city of Johnstown as provided in section twelve hundred ten of this article) at a rate in excess of three percent, except that, **in the city of Yonkers,** in the city of Mount Vernon, in the city of New Rochelle, in the city of Fulton, in the city of Oswego, and in the city of White Plains, the rate may not be in excess of four percent[~~, and in the city of Yonkers, the rate may not be in excess of four and one-half percent~~], and except that in the city of Poughkeepsie in the county of Dutchess, if such county withdraws from the metropolitan commuter transportation district pursuant to section twelve hundred seventy-nine-b of the public authorities law and if the revenues from a three-eighths percent rate of such tax imposed by such

county, pursuant to the authority of section twelve hundred ten of this article, are required by local laws, ordinances or resolutions to be set aside for mass transportation purposes, the rate may not be in excess of three and three-eighths percent.

§ 4. Section 1224 of the tax law is amended by adding a new subdivision (jj) to read as follows:

(jj) The county of Westchester shall have the sole right to impose the additional one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article in the area of the county outside the cities of Mount Vernon, New Rochelle, White Plains and Yonkers. Such additional rate of tax shall be in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional rate of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate of tax which the county of Westchester is authorized and empowered to adopt pursuant to section twelve hundred ten of this article.

§ 5. Section 1262-b of the tax law, as amended by section 1 of part A of chapter 8 of the laws of 2004, is amended to read as follows:

§ 1262-b. The Westchester county property tax stabilization and relief act. [~~(a)~~] Notwithstanding any other provision of law to the contrary[~~, if~~]**: (a) If** the county of Westchester imposes sales and compensating use taxes pursuant to subdivision (a) of section twelve hundred ten of this article at the rate of three percent:

(1) The county shall allocate **one-half of** net collections from such taxes imposed [~~at the rate of one and one-half percent~~] **pursuant to subdivision (a) of section twelve hundred ten of this article** countywide among the cities and towns of the county on the basis of the ratio which the full valuation of real property in each city or town bears to the aggregate full valuation of real property in all cities and towns of the county. Amounts so allocated shall be credited to each of said cities and towns against the county taxes levied upon real property in said cities and towns.

(2) The county shall allocate and credit or pay **one-third of** net collections [~~received by the county by reason of its additional one percent rate of~~] **from** such taxes [~~on~~] **imposed pursuant to subdivision (a) of section twelve hundred ten of this article to** the area of the county outside any city imposing sales and compensating use taxes at a rate of one and one-half percent or greater pursuant to the authority of subdivision (a) or at any rate pursuant to the authority of subdivision (b) of section twelve hundred ten of this article as follows:

(A) One-third of such net collections shall be allocated and credited in the manner set forth in paragraph one of this subdivision.

(B) One-sixth of such net collections shall be allocated and paid quarterly by the county commissioner of finance, in cash, to the several school districts in such area of the county outside any such city imposing sales and compensating use taxes. Such allocation and payment, to such several school districts, shall be made on the basis of the ratio which the population of each such school district bears to the aggregate population of all of the school districts in such area. In the case of school districts which are partially within and partially without the county, or partially within or partially without the area of the county outside a city imposing sales and compensating use taxes, the allocation and payment to each such school district shall be made on the basis of the population in such school district in the county, or in such area of

the county outside a city imposing sales and compensating use taxes, as the case may be. Such populations shall be determined in accordance with the latest federal census or special population census under section twenty of the general municipal law completed and published prior to the end of the quarter in which such allocation and payment are made, which special population census shall include the entire area of the county; provided that such special population census shall not be taken more than once in every two years. A school district split between Westchester county and another county shall apply such allocation and payment solely to the benefit of the residents of the county in which the sales and compensating use taxes are imposed.

(C) One-half of such net collections shall be allocated and paid quarterly by the county commissioner of finance, in cash, to the cities not imposing sales and compensating use taxes and to the towns and villages on which such [~~additional one percent~~] rate is imposed, on the basis of the ratio which the population of each such city, town or village on which such [~~additional one percent~~] rate is imposed bears to the entire population of all such cities, towns and villages in the area on which such [~~additional one percent~~] rate is imposed. Such populations shall be determined in accordance with the latest federal census or special population census under section twenty of the general municipal law completed and published prior to the end of the quarter in which such allocation is made, which special population census shall include the entire area of the county; provided that such special population census shall not be taken more than once in every two years.

(D) The quarterly allocation and payment of cash to cities, towns, villages and school districts provided for under this paragraph and under paragraph three of this subdivision **and under subdivision (b) of this section** may be made after payment by the state comptroller to the county of the net collections subject to such allocation and receipt by the county commissioner of finance of the quarterly settlement report issued by the department, and may include adjustments for corrections applicable to such allocations. All ratios established by the county commissioner of finance with respect to allocations to cities, towns, villages and school districts under this subdivision **and under subdivision (b) of this section** shall be carried to four decimal places. The allocation of net collections and payment of cash provided for under this paragraph and under paragraph three of this subdivision **and under subdivision (b) of this section** shall be made to a town based upon the population of the town less the population of any village therein, provided that a town/village or village/town shall be deemed a village for the purpose of determining such allocation. The allocation of net collections and payment of cash provided for under this paragraph and under paragraph three of this subdivision **and under subdivision (b) of this section** shall be applied by the cities, towns, villages and school districts receiving such allocation and payment as a credit against the taxes upon real property imposed by such municipalities and school districts, respectively. The allocation and payment received by towns shall be credited against real property taxes in either the general fund town-wide or the town outside village fund or a combination thereof.

(3) The county shall allocate and credit or pay **one-sixth of** net collections [~~received by the county by reason of its additional one-half percent rate of~~] **from** such taxes imposed [~~on~~] **pursuant to subdivision (a) of section twelve hundred ten of this article to** the area of the county outside any city imposing sales and compensating use taxes at a rate of one and one-half percent or greater pursuant to the authority of

subdivision (a) or at any rate pursuant to the authority of subdivision (b) of section twelve hundred ten of this article as follows:

(A) Seventy percent of such net collections shall be retained by the county to be used for any county purpose.

(B) Ten percent of such net collections shall be allocated and paid in the manner set forth in subparagraph (B) of paragraph two of this subdivision.

(C) Twenty percent of such net collections shall be allocated and paid in the manner set forth in subparagraph (C) of paragraph two of this subdivision.

(b) **If the county of Westchester imposes the additional one percent rate of sales and compensating use tax authorized by clause forty-two of subparagraph (i) of the opening paragraph of section twelve hundred ten of this article, the county shall allocate and credit or pay net collections from such additional one percent rate in the manner set forth in paragraph three of subdivision (a) of this section with respect to the area of the county outside any city imposing sales and compensating use taxes at a rate of one and one-half percent or greater pursuant to the authority of subdivision (a) of section twelve hundred ten of this article or at any rate pursuant to the authority of subdivision (b) of section twelve hundred ten of this article.**

(c) Nothing in this section shall be construed to impair the powers of a city currently imposing sales and compensating use taxes pursuant to the authority of section twelve hundred ten of this article from continuing to do so in accordance with law. No school district in any city imposing such sales and compensating use taxes shall be entitled to receive a cash allocation and payment under paragraph two or three of subdivision (a) **or under subdivision (b)** of this section. No city, town or village authorized or entitled to receive an allocation under subparagraph (C) of paragraph two or subparagraph (C) of paragraph three of subdivision (a) **or under subdivision (b)** of this section shall be authorized or entitled to receive any cash allocation under section twelve hundred sixty-two of this article.

§ 6. Subdivision e of section 4 and sections 5, 7 and 16 of chapter 272 of the laws of 1991, amending the tax law relating to the method of disposition of sales and compensating use tax revenue in Westchester county and enacting the Westchester county spending limitation act, as amended by chapter 81 of the laws of 2017, are amended to read as follows:

e. "Spending limitation" means the maximum amount of county spending established in county fiscal years 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019 [~~and~~], 2020**, 2021 and 2022**.

§ 5. Establishment of annual spending limitation. a. For county fiscal years 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019 [~~and~~], 2020**, 2021 and 2022** there shall be in effect an annual spending limitation. The spending limitation shall be derived from a fixed percentage reflecting the ratio of base year spending to county personal income. County personal income for such calculation shall be for the period January 1, 1986 through December 31, 1986. Such percentage shall be applied to county personal income for the period January 1, 1989 through December 31, 1989, to determine the spending limitation for county fiscal year 1992; to determine the spending limitation for county fiscal year 1993, such percentage shall be

applied to county personal income for the period January 1, 1990 through December 31, 1990; to determine the spending limitation for county fiscal year 1994, such percentage shall be applied to county personal income for the period January 1, 1991 through December 31, 1991; to determine the spending limitation for county fiscal year 1995, such percentage shall be applied to county personal income for the period January 1, 1992 through December 31, 1992; to determine the spending limitation for county fiscal year 1996, such percentage shall be applied to county personal income for the period January 1, 1993 through December 31, 1993; to determine the spending limitation for county fiscal year 1997, such percentage shall be applied to county personal income for the period January 1, 1994 through December 31, 1994; to determine the spending limitation for county fiscal year 1998, such percentage shall be applied to county personal income for the period January 1, 1995 through December 31, 1995; to determine the spending limitation for county fiscal year 1999, such percentage shall be applied to county personal income for the period January 1, 1996 through December 31, 1996; to determine the spending limitation for county fiscal year 2000, such percentage shall be applied to county personal income for the period January 1, 1997 through December 31, 1997; to determine the spending limitation for county fiscal year 2001, such percentage shall be applied to county personal income for the period January 1, 1998 through December 31, 1998; to determine the spending limitation for county fiscal year 2002, such percentage shall be applied to county personal income for the period January 1, 1999 through December 31, 1999; to determine the spending limitation for county fiscal year 2003, such percentage shall be applied to county personal income for the period January 1, 2000 through December 31, 2000; to determine the spending limitation for county fiscal year 2004, such percentage shall be applied to county personal income for the period January 1, 2001 through December 31, 2001; to determine the spending limitation for county fiscal year 2005, such percentage shall be applied to county personal income for the period January 1, 2002 through December 31, 2002; to determine the spending limitation for county fiscal year 2006, such percentage shall be applied to county personal income for the period January 1, 2003 through December 31, 2003; to determine the spending limitation for the county fiscal year 2007, such percentage shall be applied to county personal income for the period January 1, 2004 through December 31, 2004; to determine the spending limitation for the county fiscal year 2008, such percentage shall be applied to county personal income for the period January 1, 2005 through December 31, 2005; to determine the spending limitation for the county fiscal year 2009, such percentage shall be applied to county personal income for the period January 1, 2006 through December 31, 2006; to determine the spending limitation for the county fiscal year 2010, such percentage shall be applied to county personal income for the period January 1, 2007 through December 31, 2007; to determine the spending limitation for the county fiscal year 2011, such percentage shall be applied to county personal income for the period January 1, 2008 through December 31, 2008; to determine the spending limitation for the county fiscal year 2012, such percentage shall be applied to county personal income for the period January 1, 2009 through December 31, 2009; to determine the spending limitation for the county fiscal year 2013, such percentage shall be applied to county personal income for the period January 1, 2010 through December 31, 2010; to determine the spending limitation for the county fiscal year 2014, such percentage shall be applied to county personal income for the period January 1,

2011 through December 31, 2011; to determine the spending limitation for the county fiscal year 2015, such percentage shall be applied to county personal income for the period January 1, 2012 through December 31, 2012; to determine the spending limitation for county fiscal year 2016, such percentage shall be applied to the county personal income for the period January 1, 2013 through December 31, 2013; to determine the spending limitation for the county fiscal year 2017, such percentage shall be applied to county personal income for the period January 1, 2014 through December 31, 2014; and to determine the spending limitation for county fiscal year 2018, such percentage shall be applied to the county personal income for the period January 1, 2015 through December 31, 2015; to determine the spending limitation for the county fiscal year 2019, such percentage shall be applied to county personal income for the period January 1, 2016 through December 31, 2016; and to determine the spending limitation for county fiscal year 2020, such percentage shall be applied to the county personal income for the period January 1, 2017 through December 31, 2017**; and to determine the spending limitation for the county fiscal year 2021, such percentage shall be applied to county personal income for the period January 1, 2018 through December 31, 2018; and to determine the spending limitation for the county fiscal year 2022, such percentage shall be applied to county personal income for the period January 1, 2019 through December 31, 2019**.

b. The spending limitation shall serve as a statutory cap on county spending to be reflected in the tentative budget as well as the enacted budget for county fiscal years beginning in 1992.

§ 7. Mandatory tax reduction. In the event that the county spending subject to the spending limitation exceeds such limitation in the adoptive county budget for county fiscal year 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019 [~~or~~], 2020**, 2021 or 2022** then section 1262-b of the tax law shall be repealed.

§ 16. This act shall take effect immediately, provided, however, that sections one through seven of this act shall be in full force and effect until [~~May 31, 2020, provided, however, that if the county of Westchester imposes the tax authorized by section 1210 of the tax law in excess of three percent, then sections one through seven of this act shall be deemed repealed; provided that the commissioner of taxation and finance shall notify the legislative bill drafting commission upon the repeal of section 1262-b of the tax law pursuant to section seven of the Westchester county spending limitation act in order that the commission may maintain an accurate and timely effective data base of the official text of laws of the state of New York in furtherance of effecting the provisions of section 44 of the legislative law and section 70-b of the public officers law~~] **November 30, 2022**.

§ 7. This act shall take effect immediately; provided, however, that section three of this act shall take effect December 1, 2020, provided, further, that the amendments to section 1262-b of the tax law made by section five of this act shall not affect the expiration of such section and shall expire therewith; provided, further, that the amendments to sections 4, 5, and 7 of chapter 272 of the laws of 1991 shall not affect the expiration of such sections and shall expire therewith.