

# STATE OF NEW YORK

8331

## IN SENATE

May 13, 2020

Introduced by Sen. O'MARA -- 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 authorizing the city of Ithaca to establish hotel and motel taxes

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-gg to  
2 read as follows:

3 § 1202-gg. Hotel or motel taxes in the city of Ithaca. (1) Notwith-  
4 standing any other provisions of law to the contrary, the city of Itha-  
5 ca, Tompkins county, is hereby authorized and empowered to adopt and  
6 amend local laws imposing in such city a tax, in addition to any other  
7 tax authorized and imposed pursuant to this article such as the legisla-  
8 ture has or would have the power and authority to impose upon persons  
9 occupying hotel or motel rooms in such city. For the purposes of this  
10 section, the term "hotel" or "motel" shall mean and include any facility  
11 providing lodging on an overnight basis and shall include those facili-  
12 ties designated and commonly known as "bed and breakfast" and "tourist"  
13 facilities.

14 The rates of such tax shall not exceed five percent of the per diem  
15 rental rate for each room, provided however, that such tax shall not be  
16 applicable to a permanent resident of a hotel or motel. For the  
17 purposes of this section the term "permanent resident" shall mean a  
18 person occupying any room or rooms in a hotel or motel for at least  
19 thirty consecutive days.

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

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

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

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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 city, specified in such local law, 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 pursuant  
36 to 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 or regulation  
45 shall be first deposited and there is filed an undertaking, issued by a  
46 surety company authorized to transact business in this state and  
47 approved by the superintendent of financial services of this state as to  
48 solvency and responsibility, in such amount as a justice of the supreme  
49 court shall approve to the effect that if such proceeding be dismissed  
50 or the tax confirmed the petitioner will pay all costs and charges which  
51 may accrue in the 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 pursuant to this section shall have been  
4 erroneously, illegally or unconstitutionally collected and application  
5 for the refund thereof duly made to the proper fiscal officer or offi-  
6 cers, and such officer or officers shall have made a determination deny-  
7 ing 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 city of Ithaca and  
24 shall be credited to and deposited in the general fund of the city. The  
25 city shall be authorized to retain the necessary revenue, in an amount  
26 not to exceed four percent of the total revenue, to defer the expense of  
27 the city in administering such tax and the balance of such revenues  
28 shall be allocated to the construction, promotion, maintenance, capital  
29 improvements, and operations of a conference center in the city of Itha-  
30 ca and other directly related and supporting activities, including all  
31 financial costs and obligations incurred by the city related to the  
32 creation of such conference center.

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

37 (11) Each enactment of such local law may provide for the imposition  
38 of a hotel or motel tax for a period of time no longer than three years  
39 from the effective date of its enactment. Nothing in this section shall  
40 prohibit the adoption and enactment of local laws, pursuant to the  
41 provisions of this section, upon the expiration of any other local law  
42 adopted pursuant to this section.

43 § 2. This act shall take effect immediately.