

# STATE OF NEW YORK

9778--A

## IN ASSEMBLY

April 8, 2022

Introduced by M. of A. MANKTELOW -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to authorizing Wayne county to impose a hotel, motel or seasonal rental occupancy tax; 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-hh to  
2 read as follows:

3 § 1202-hh. Hotel, motel or seasonal rental occupancy taxes in Wayne  
4 county. (1) Notwithstanding any other provision of law to the contrary,  
5 the county of Wayne is hereby authorized and empowered to adopt and  
6 amend local laws imposing in such county 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 hotel or motel rooms or seasonal rental properties in such  
10 county. For the purposes of this section, the term "hotel" or "motel"  
11 shall mean and include any facility providing lodging on an overnight  
12 basis and shall include those facilities designated and commonly known  
13 as "bed and breakfast" and "tourist" facilities. The term "seasonal  
14 rental" shall mean any rental unit, including hotels, motels, cabins,  
15 condominiums, single-family homes, duplexes or multifamily dwellings  
16 which are rented or available to be rented only during the period March  
17 first to December first.

18 The rates of such tax shall not exceed five percent of the per diem  
19 rental rate for each room provided, however, that such tax shall not be  
20 applicable to a permanent resident of a hotel or motel. For the purposes  
21 of this section, the term "permanent resident" shall mean a person occu-  
22 pying any room or rooms in a hotel or motel for at least thirty consec-  
23 utive days.

24 (2) Such tax may be collected and administered by the Wayne county  
25 legislature, or other fiscal officers of Wayne county by such means and

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

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1 in such manner as other taxes which are now collected and administered  
2 by such officers or as otherwise may be provided by such local law.

3 (3) Such local laws may provide that any tax imposed shall be paid by  
4 the person liable therefor to the owner of the hotel or motel room or  
5 seasonal rental property occupied or to the person entitled to be paid  
6 the rent or charge for the hotel or motel room or seasonal rental prop-  
7 erty occupied for and on account of the county of Wayne imposing the tax  
8 and that such owner or person entitled to be paid the rent or charge  
9 shall be liable for the collection and payment of the tax; and that such  
10 owner or person entitled to be paid the rent or charge shall have the  
11 same right in respect to collecting the tax from the person occupying  
12 the hotel or motel room or seasonal rental property, or in respect to  
13 nonpayment of the tax by the person occupying the hotel or motel room or  
14 seasonal rental property, as if the tax were a part of the rent or  
15 charge and payable at the same time as the rent or charge; provided,  
16 however, that the Wayne county treasurer, specified in such local law,  
17 shall be joined as a party in any action or proceeding brought to  
18 collect the tax by the owner or by the person entitled to be paid the  
19 rent or charge.

20 (4) Such local laws may provide for the filing of returns and the  
21 payment of the tax on a monthly basis or on the basis of any longer or  
22 shorter period of time.

23 (5) This section shall not authorize the imposition of such tax upon  
24 any transaction, by or with any of the following in accordance with  
25 section twelve hundred thirty of this article:

26 a. The state of New York, or any public corporation; including a  
27 public corporation created pursuant to agreement or compact with another  
28 state or the Dominion of Canada, improvement district or other political  
29 subdivision of the state;

30 b. The United States of America, insofar as it is immune from taxa-  
31 tion;

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

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

51 a. The amount of any tax sought to be reviewed, with such interest and  
52 penalties thereon as may be provided for by local law or regulation  
53 shall be first deposited and there is filed an undertaking, issued by a  
54 surety company authorized to transact business in the state and approved  
55 by the superintendent of financial services of this state as to solvency  
56 and responsibility, in such amount as a justice of the supreme court

1 shall approve to the effect that if such proceeding be dismissed or the  
2 tax confirmed the petitioner will pay all costs and charges which may  
3 accrue in the prosecution of such proceeding; or

4 b. At the option of the petitioner such undertaking may be in a sum  
5 sufficient to cover the taxes, interests, and penalties stated in such  
6 determination plus the costs and charges which may accrue against it in  
7 the prosecution of the proceeding, in which event the petitioner shall  
8 not be required to pay such taxes, interest or penalties as a condition  
9 precedent to the application.

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

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

29 (9) All revenues resulting from the imposition of the tax under the  
30 local laws shall be paid into the treasury of the county of Wayne and  
31 shall be credited to and deposited in the general fund of the county,  
32 thereafter to be allocated for tourist and convention development in the  
33 county of Wayne and the surrounding tourist region; provided, however,  
34 that such local laws shall provide that the county shall be authorized  
35 to retain up to a maximum of five percent of such revenue to defer the  
36 necessary expenses of the county in administering such tax. The revenue  
37 derived from the tax, after deducting the amount provided for adminis-  
38 tering such tax, as so authorized by local law, shall be appropriated  
39 annually by the county legislature upon adoption of the budget for the  
40 county of Wayne to enhance the general economy of the county of Wayne,  
41 its city, towns and villages, and the general economy of the tourist  
42 region in which the county of Wayne is located, through the promotion of  
43 regional tourism, tourist activities, conventions, trade shows, special  
44 events, tourist attractions and other directly related and supporting  
45 activities.

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

50 § 2. This act shall take effect immediately and shall expire on Decem-  
51 ber 31, 2025, when upon such date the provisions of this act shall be  
52 deemed repealed.