STATE OF NEW YORK

3679

2023-2024 Regular Sessions

IN ASSEMBLY

February 3, 2023

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

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:

Section 1. The tax law is amended by adding a new section 1202-ii to read as follows:

§ 1202-ii. Hotel, motel or seasonal rental occupancy taxes in Wayne county. (1) Notwithstanding any other provision of law to the contrary, the county of Wayne is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms or seasonal rental properties in such county. For the purposes of this section, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities. The term "seasonal rental" shall mean any rental unit, including hotels, motels, cabins, condominiums, single-family homes, duplexes or multifamily dwellings which are rented or available to be rented only during the period March first to December first.

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

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

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(2) Such tax may be collected and administered by the Wayne county legislature, or other fiscal officers of Wayne county by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such local law.

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel or motel room or seasonal rental property occupied or to the person entitled to be paid the rent or charge for the hotel or motel room or seasonal rental property occupied for and on account of the county of Wayne imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room or seasonal rental property, or in respect to nonpayment of the tax by the person occupying the hotel or motel room or seasonal rental property, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the Wayne county treasurer, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

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

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

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

b. The United States of America, insofar as it is immune from taxation;

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

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

a. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in the state and approved

by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

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

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

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

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

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

§ 2. This act shall take effect immediately and shall expire December 31, 2026 when upon such date the provisions of this act shall be deemed repealed.