

# STATE OF NEW YORK

7286

2023-2024 Regular Sessions

## IN ASSEMBLY

May 17, 2023

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

AN ACT to amend the tax law, in relation to authorizing an occupancy tax in the town of Skaneateles; 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-hhh to  
2 read as follows:

3 § 1202-hhh. Occupancy tax in the town of Skaneateles. (1) Notwith-  
4 standing any other provision of law to the contrary, the town of Skanea-  
5 teles, in the county of Onondaga, is hereby authorized and empowered to  
6 adopt and amend local laws imposing in such town a tax, in addition to  
7 any other tax authorized and imposed pursuant to this article, such as  
8 the legislature has or would have the power and authority to impose upon  
9 persons occupying any room for hire in any hotel; provided, however,  
10 that if the village of Skaneateles within the town of Skaneateles shall  
11 have otherwise imposed a tax under this article, such tax imposed by the  
12 town of Skaneateles pursuant to this section shall not apply within the  
13 village of Skaneateles. For the purposes of this section, the term  
14 "hotel" shall mean a building or portion of it which is regularly used  
15 and kept open as such for the lodging of guests. The term "hotel"  
16 includes an apartment hotel, a motel or a boarding house, whether or not  
17 meals are served. The rate of such tax shall not exceed five percent of  
18 the per diem rental rate for each room whether such room is rented on a  
19 daily or longer basis.

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

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

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1 (3) Such local laws may provide that any taxes imposed shall be paid  
2 by the person liable therefor to the owner of the room for hire in the  
3 tourist home, inn, club, hotel, motel or other similar place of public  
4 accommodation occupied or to the person entitled to be paid the rent or  
5 charge for the room for hire in the tourist home, inn, club, hotel,  
6 motel or other similar place of public accommodation occupied for and on  
7 account of the town of Skaneateles imposing the tax and that such owner  
8 or person entitled to be paid the rent or charge shall be liable for the  
9 collection and payment of the tax; and that such owner or person enti-  
10 tled to be paid the rent or charge shall have the same right in respect  
11 to collecting the tax from the person occupying the room for hire in the  
12 tourist home, inn, club, hotel, motel or other similar place of public  
13 accommodation, or in respect to nonpayment of the tax by the person  
14 occupying the room for hire in the tourist home, inn, club, hotel, motel  
15 or similar place of public accommodation, as if the taxes were a part of  
16 the rent or charge and payable at the same time as the rent or charge;  
17 provided, however, that the chief fiscal officer of the town, specified  
18 in such local laws, shall be joined as a party in any action or proceed-  
19 ing brought to collect the tax by the owner or by the person entitled to  
20 be paid the rent or charge.

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

24 (5) This section shall not authorize the imposition of such tax upon  
25 any of the following:

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 poli-  
29 tical subdivision of the state;

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

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 d. A permanent resident of a hotel or motel. For the purposes of this  
44 section, the term "permanent resident" shall mean a natural person occu-  
45 pying any room or rooms in a hotel or motel for at least thirty consec-  
46 utive days.

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

55 a. The amount of any tax sought to be reviewed, with such interest and  
56 penalties thereon as may be provided for by local laws or regulations

1 shall be first deposited and there shall be filed an undertaking, issued  
2 by a surety company authorized to transact business in this state and  
3 approved by the superintendent of financial services of this state as to  
4 solvency and responsibility, in such amount as a justice of the supreme  
5 court shall approve to the effect that if such proceeding be dismissed  
6 or the tax confirmed the petitioner will pay all costs and charges which  
7 may accrue in the prosecution of such proceeding; or

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

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

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

33 (9) All revenues resulting from the imposition of the tax under the  
34 local laws shall be paid into the treasury of the town of Skaneateles  
35 and shall be credited to and deposited in the general fund of the town.  
36 Such revenues may be used for any lawful purpose.

37 (10) Each enactment of such a 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 date of its enactment. Nothing in this section shall prohibit  
40 the adoption and enactment of local laws, pursuant to the provisions of  
41 this section, upon the expiration of any other local law adopted pursu-  
42 ant to this section.

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

47 § 2. This act shall take effect immediately and shall apply to  
48 contracts entered into on or after such date; provided, however, that  
49 the provisions of this act shall expire December 31, 2026, when upon  
50 such date the provisions of this act shall be deemed repealed.