

# STATE OF NEW YORK

8391--A

2023-2024 Regular Sessions

## IN ASSEMBLY

December 13, 2023

Introduced by M. of A. ZEBROWSKI -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to authorizing the town of Clarkstown to impose a hotel and motel 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-jj to  
2 read as follows:

3 § 1202-jj. Hotel or motel taxes in the town of Clarkstown. (1)  
4 Notwithstanding any other provisions of law to the contrary, the town of  
5 Clarkstown, in the county of Rockland, is hereby authorized and  
6 empowered to adopt and amend local laws imposing in such town a tax, in  
7 addition to any other tax authorized and imposed pursuant to this arti-  
8 cle such as the legislature has or would have the power and authority to  
9 impose upon persons occupying hotel or motel rooms in such town. For the  
10 purposes of this section, the term "hotel" or "motel" shall mean and  
11 include any facility consisting of rentable units and providing lodging  
12 on an overnight basis and shall include those facilities designated and  
13 commonly known as "bed and breakfast" and "tourist" facilities. The  
14 rates of such tax shall not exceed five percent of the per diem rental  
15 rate for each room, provided however, that such tax shall not be appli-  
16 cable to a permanent resident of a hotel or motel. For the purposes of  
17 this section the term "permanent resident" shall mean a person occupying  
18 any room or rooms in a hotel or motel for at least ninety consecutive  
19 days.

20 (2) Such tax may be collected and administered by the chief fiscal  
21 officer of the town of Clarkstown by such means and in such manner as

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

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1 other taxes which are now collected and administered by such officer or  
2 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 occu-  
5 pied or to the person entitled to be paid the rent or charge for the  
6 hotel or motel room occupied for and on account of the town of Clarks-  
7 town imposing the tax and that such owner or person entitled to be paid  
8 the rent or charge shall be liable for the collection and payment of the  
9 tax; and that such owner or person entitled to be paid the rent or  
10 charge shall have the same right in respect to collecting the tax from  
11 the person occupying the hotel or motel room, or in respect to nonpay-  
12 ment of the tax by the person occupying the hotel or motel room, as if  
13 the tax were a part of the rent or charge and payable at the same time  
14 as the rent or charge; provided, however, that the chief fiscal officer  
15 of the town, specified in such local law, shall be joined as a party in  
16 any action or proceeding brought to collect the tax by the owner or by  
17 the person entitled to be paid the rent or charge.

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

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

24 a. The state of New York, or any public corporation (including a  
25 public corporation created pursuant to agreement or compact with another  
26 state or the Dominion of Canada), improvement district or other poli-  
27 tical subdivision of the state;

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

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

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

49 a. The amount of any tax sought to be reviewed, with such interest and  
50 penalties thereon as may be provided for by local law shall be first  
51 deposited and there is filed an undertaking, issued by a surety company  
52 authorized to transact business in this state and approved by the super-  
53 intendent of financial services of this state as to solvency and respon-  
54 sibility, in such amount as a justice of the supreme court shall approve  
55 to the effect that if such proceeding be dismissed or the tax confirmed

1 the petitioner will pay all costs and charges which may accrue in the  
2 prosecution of such proceeding; or

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

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

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

28 (9) All revenues resulting from the imposition of the tax under the  
29 local laws shall be paid into the treasury of the town of Clarkstown and  
30 shall be credited to and deposited in the general fund of the town. Such  
31 revenues may be used for any lawful purpose.

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

36 § 2. This act shall take effect immediately and shall expire and be  
37 deemed repealed 3 years after such date.