

STATE OF NEW YORK

7924

IN SENATE

January 3, 2024

Introduced by Sen. MAY -- 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 an occupancy tax in the city of Auburn; 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-z-5 to
2 read as follows:

3 § 1202-z-5. Occupancy tax in the city of Auburn. (1) Notwithstanding
4 any other provision of law to the contrary, the city of Auburn, in the
5 county of Cayuga, is hereby authorized and empowered to adopt and amend
6 local laws imposing in such city a tax, in addition to any other tax
7 authorized and imposed pursuant to this article, such as the legislature
8 has or would have the power and authority to impose upon persons occupy-
9 ing any room for hire in any hotel. For the purposes of this section,
10 the term "hotel" shall mean a building or portion of it which is regu-
11 larly used and kept open as such for the lodging of guests. The term
12 "hotel" includes an apartment hotel, a motel, a boarding house, and
13 facilities designated and commonly known as a "bed and breakfast" and
14 similar "tourist" facilities, whether or not meals are served. The rate
15 of such tax shall not exceed five percent of the per diem rental rate
16 for each room whether such room is rented on a daily or longer basis.

17 (2) Such taxes may be collected and administered by the chief fiscal
18 officer of the city of Auburn by such means and in such manner as other
19 taxes which are now collected and administered by such officer or as
20 otherwise may be provided by such local law.

21 (3) Such local laws may provide that any taxes imposed shall be paid
22 by the person liable therefor to the owner of the room for hire in the
23 tourist home, inn, club, hotel, motel or other similar place of public
24 accommodation occupied or to the person entitled to be paid the rent or
25 charge the room for hire in the tourist home, inn, club, hotel, motel or
26 other similar place of public accommodation occupied for and on account

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

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

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

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

20 a. The state of New York, or any public corporation (including a
21 public corporation created pursuant to agreement or compact with another
22 state or the dominion of Canada), improvement district or other poli-
23 tical subdivision of the state;

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

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

37 d. A permanent resident of a hotel or motel. For the purposes of this
38 section, the term "permanent resident" shall mean a natural person occu-
39 pying any room or rooms in a hotel or motel for at least ninety consec-
40 utive days.

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 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 laws or regulations
51 shall be first deposited and there shall be filed an undertaking, issued
52 by a surety company authorized to transact business in this state and
53 approved by the superintendent of financial services of this state as to
54 solvency and responsibility, in such amount as a justice of the supreme
55 court shall approve to the effect that if such proceeding be dismissed

1 or the tax confirmed the petitioner will pay all costs and charges which
2 may accrue in the 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 taxes imposed hereunder shall have been erroneously,
10 illegally or unconstitutionally collected and application for the refund
11 therefor 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 taxes 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 willfully 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 city of Auburn and
30 shall be credited to and deposited in the general fund of the city. Such
31 revenues may be used for any lawful purpose.

32 (10) Each enactment of such a local law may provide for the imposition
33 of a hotel or motel tax for a period of time no longer than three years
34 from the date of its enactment. Nothing in this section shall prohibit
35 the adoption and enactment of local laws, pursuant to the provisions of
36 this section, upon the expiration of any other local law adopted pursu-
37 ant to this section.

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

42 § 2. This act shall take effect immediately and shall expire and be
43 deemed repealed December 31, 2027.