

# STATE OF NEW YORK

9253

## IN SENATE

May 7, 2024

Introduced by Sen. HINCHEY -- 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 the county of Columbia to establish hotel and motel taxes

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 Columbia county. (1) a. Notwith-  
4 standing any other provisions of law to the contrary, the county of  
5 Columbia is hereby authorized and empowered to adopt and amend local  
6 laws imposing in such county a tax, in addition to any other tax author-  
7 ized and imposed pursuant to this article such as the legislature has or  
8 would have the power and authority to impose upon persons occupying  
9 hotel or motel rooms in such county. For the purposes of this section,  
10 the term "hotel" or "motel" shall mean and include any facility provid-  
11 ing lodging on an overnight basis and shall include those facilities  
12 designated and commonly known as "bed and breakfasts", inns and tourist  
13 homes.

14 b. (i) The rates of such tax shall not exceed four percent of the per  
15 diem rental rate for each room, provided however, that such tax shall  
16 not be applicable to a permanent resident of a hotel or motel. For the  
17 purposes of this section the term "permanent resident" shall mean a  
18 person occupying any room or rooms in a hotel or motel for at least  
19 thirty consecutive days. Notwithstanding any other provision of this  
20 section, any city in the county of Columbia imposing hotel or motel  
21 taxes pursuant to the authority of this subpart shall have the prior  
22 right to impose such taxes in such city, up to the maximum rate of tax  
23 authorized for such city in this subpart; and the rate of tax authorized  
24 to be imposed by the county pursuant to the authority of this section in  
25 any such city imposing such a tax shall be reduced by the rate of such  
26 city's tax.

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

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1 (ii) Provided further that, any such city tax, to the extent that it  
2 would require a reduction in the county's tax rate imposed pursuant to  
3 this section in such city, shall not become effective before the  
4 commencement of the county's next succeeding fiscal year and then only  
5 if the city shall have given notice to such county of its imposition of  
6 such tax at least six months prior to the commencement of such fiscal  
7 year, provided, however, that the local legislative body of such county  
8 may waive the requirement of such notice and postponement of the effec-  
9 tive date of such city tax.

10 (2) Such tax may be collected and administered by the county treasurer  
11 or other fiscal officers of Columbia county by such means and in such  
12 manner as other taxes which are now collected and administered by such  
13 officers or as otherwise may be provided by such local law.

14 (3) Such local laws may provide that any tax imposed shall be paid by  
15 the person liable therefor to the owner of the hotel or motel room occu-  
16 pied or to the person entitled to be paid the rent or charge for the  
17 hotel or motel room occupied for and on account of the county of Colum-  
18 bia imposing the tax and that such owner or person entitled to be paid  
19 the rent or charge shall be liable for the collection and payment of the  
20 tax; and that such owner or person entitled to be paid the rent or  
21 charge shall have the same right in respect to collecting the tax from  
22 the person occupying the hotel or motel room, or in respect to non-pay-  
23 ment of the tax by the person occupying the hotel or motel room, as if  
24 the tax were a part of the rent or charge and payable at the same time  
25 as the rent or charge; provided, however, that the county treasurer or  
26 other fiscal officers of the county, specified in such local law, shall  
27 be joined as a party in any action or proceeding brought to collect the  
28 tax by the owner or by the person entitled to be paid the rent or  
29 charge.

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

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

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

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

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

53 (6) Any final determination of the amount of any tax payable hereunder  
54 shall be reviewable for error, illegality or unconstitutionality or any  
55 other reason whatsoever by a proceeding under article seventy-eight of  
56 the civil practice law and rules if application therefor is made to the

1 supreme court within thirty days after the giving of the notice of such  
2 final determination, provided, however, that any such proceeding under  
3 article seventy-eight of the civil practice law and rules shall not be  
4 instituted unless:

5 a. The amount of any tax sought to be reviewed, with such interest and  
6 penalties thereon as may be provided for by local law or regulation  
7 shall be first deposited and there is filed an undertaking, issued by a  
8 surety company authorized to transact business in this state and  
9 approved by the superintendent of financial services of this state as to  
10 solvency and responsibility, in such amount as a justice of the supreme  
11 court shall approve to the effect that if such proceeding be dismissed  
12 or the tax confirmed the petitioner will pay all costs and charges which  
13 may accrue in the prosecution of such proceeding; or

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

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

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

39 (9) All revenues resulting from the imposition of the tax under the  
40 local laws shall be paid into the treasury of the county of Columbia and  
41 shall be credited to and deposited in the general fund of the county  
42 thereafter to be used for any lawful purpose.

43 (10) Each enactment of a local law may provide for the imposition of a  
44 hotel or motel tax for a period of time no longer than three years from  
45 the date of its enactment. Nothing in this section shall prohibit the  
46 adoption and enactment of local laws, pursuant to the provisions of this  
47 section, upon the expiration of any other local law adopted pursuant to  
48 this section.

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

53 § 2. This act shall take effect immediately.