

STATE OF NEW YORK

6558

2023-2024 Regular Sessions

IN ASSEMBLY

April 18, 2023

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

AN ACT to amend the tax law, in relation to the imposition of an occupancy tax in the town of DeWitt; 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-zz-1 to
2 read as follows:

3 § 1202-zz-1. Hotel or motel taxes in the town of DeWitt. (1) Notwith-
4 standing any other provisions of law to the contrary, the town of
5 DeWitt, 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 such persons occupying hotel or motel rooms in such town. The rates of
10 such tax shall not exceed two (2) percent of the per diem rental rate
11 for each room provided whether the room is rented on a daily or longer
12 term basis.

13 (2) Such tax may be collected and administered by the comptroller or
14 other fiscal officer of the town of DeWitt by such means and in such
15 manner as other taxes are now collected and administered by such offi-
16 cers in accordance with the county charter or otherwise may be provided
17 by such local law.

18 (3) Such local laws may provide that any tax imposed shall be paid by
19 the person liable therefor to the owner of the hotel or motel room occu-
20 pied or to the person entitled to be paid the rent or charge for the
21 hotel or motel room occupied for and on account of the town of DeWitt
22 imposing the tax and that such owner or person entitled to be paid the
23 rent or charge shall be liable for the collection and payment of the
24 tax; and that such owner or person entitled to be paid the rent or

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

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1 charge shall have the same right in respect to collecting the tax from
2 the person occupying the hotel or motel room, or in respect to nonpay-
3 ment of the tax by the person occupying the hotel or motel room, as if
4 the tax were a part of the rent or charge and payable at the same time
5 as the rent or charge; provided, however, that the comptroller or other
6 fiscal officers of the town, specified in such local law, shall be
7 joined as a party in any action or proceeding brought to collect the tax
8 by the owner or by the person entitled to be paid the rent or charge.

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

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

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

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

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

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

39 a. The amount of any tax sought to be reviewed, with such interest and
40 penalties thereon as may be provided for by local law or regulation,
41 shall be first deposited and there is filed an undertaking, issued by a
42 surety company authorized to transmit business in this state and
43 approved by the superintendent of financial services of this state as to
44 solvency and responsibility, in such amount as a justice of the supreme
45 court shall approve to the effect that if such proceeding be dismissed
46 or the tax confirmed the petitioner will pay all costs and charges which
47 may accrue in the prosecution of such proceeding; or

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

54 (7) Where any tax imposed hereunder shall have been erroneously, ille-
55 gally or unconstitutionally collected and application for the refund
56 thereof duly made to the proper fiscal officer or officers, and such

1 officer or officers shall have made a determination denying such refund,
2 such determination shall be reviewable by a proceeding under article
3 seventy-eight of the civil practice law and rules, provided, however,
4 that such proceeding is instituted within thirty days after the giving
5 of the notice of such denial, that a final determination of tax due was
6 not previously made, and that an undertaking is filed with the proper
7 fiscal officer or officers in such amount and with such sureties as a
8 justice of the supreme court shall approve to the effect that if such
9 proceeding be dismissed or the tax confirmed, the petitioner will pay
10 all costs and charges which may accrue in the prosecution of such
11 proceeding.

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

17 (9) Revenues resulting from the imposition of tax authorized by this
18 section shall be paid into the treasury of the town of DeWitt, and shall
19 be credited to and deposited in the general fund of the town but will be
20 attributed to specific line items in the annual DeWitt town budget dedi-
21 cated to the town's Willis Carrier Park and tourism infrastructure
22 improvements promoting tourism and increases in hotel and motel industry
23 room occupancy, and that such funds may thereafter be allocated and
24 utilized for the aforesaid purposes of paying for the construction,
25 re-construction, maintenance, upkeep, and operations of the town of
26 DeWitt Willis Carrier Park, the construction, re-construction, mainte-
27 nance, upkeep, and operations of any appurtenant facilities or services
28 thereto, the payment or re-payment of any bond, loan, note, or other
29 financing instrument, the debt associated with which was incurred for
30 the construction, re-construction, maintenance, upkeep, and operation of
31 the such park, appurtenant facilities, and services, and the
32 construction, re-construction, maintenance or upkeep of town infrastruc-
33 ture utilized in connection with the tourism and the hotel and motel
34 industry within the town of DeWitt.

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

39 § 2. This act shall take effect immediately and shall expire and be
40 deemed repealed September 1, 2025.