

# STATE OF NEW YORK

9679

## IN ASSEMBLY

April 3, 2024

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

AN ACT to amend the tax law, in relation to authorizing the village of Newark to impose a hotel, motel or seasonal rental occupancy 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-iii to  
2 read as follows:

3 § 1202-iii. Hotel, motel or seasonal rental occupancy taxes in the  
4 village of Newark. (1) Notwithstanding any other provision of law to  
5 the contrary, the village of Newark, in the county of Wayne is hereby  
6 authorized and empowered to adopt and amend local laws imposing in such  
7 village a tax, in addition to any other tax authorized and imposed  
8 pursuant to this article, such as the legislature has or would have the  
9 power and authority to impose upon persons occupying hotel or motel  
10 rooms or seasonal rental properties in such village. For the purposes of  
11 this section, the term "hotel" or "motel" shall mean and include any  
12 facility providing lodging on an overnight basis and shall include those  
13 facilities designated and commonly known as "bed and breakfast" and  
14 "tourist" facilities. The term "seasonal rental" shall mean any rental  
15 unit, including hotels, motels, cabins, condominiums, single-family  
16 homes, duplexes or multifamily dwellings which are rented or available  
17 to be rented only during the period March first to December first.

18 The rates of such tax shall not exceed three percent of the per diem  
19 rental rate for each room provided, however, that such tax shall not be  
20 applicable to a permanent resident of a hotel or motel. For the purposes  
21 of this section, the term "permanent resident" shall mean a person occu-  
22 pying any room or rooms in a hotel or motel for at least thirty consec-  
23 utive days.

24 (2) Such tax may be collected and administered by the board of trus-  
25 tees of the village of Newark, or other fiscal officers of the village  
26 of Newark by such means and in such manner as other taxes which are now

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

LBD15015-01-4

1 collected and administered by such officers or as otherwise may be  
2 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 or  
5 seasonal rental property occupied or to the person entitled to be paid  
6 the rent or charge for the hotel or motel room or seasonal rental prop-  
7 erty occupied for and on account of the village of Newark imposing the  
8 tax and that such owner or person entitled to be paid the rent or charge  
9 shall be liable for the collection and payment of the tax; and that such  
10 owner or person entitled to be paid the rent or charge shall have the  
11 same right in respect to collecting the tax from the person occupying  
12 the hotel or motel room or seasonal rental property, or in respect to  
13 nonpayment of the tax by the person occupying the hotel or motel room or  
14 seasonal rental property, as if the tax were a part of the rent or  
15 charge and payable at the same time as the rent or charge; provided,  
16 however, that the village of Newark treasurer, specified in such local  
17 law, shall be joined as a party in any action or proceeding brought to  
18 collect the tax by the owner or by the person entitled to be paid the  
19 rent or charge.

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

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

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 political  
29 subdivision of the state;

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

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

51 a. The amount of any tax sought to be reviewed, with such interest and  
52 penalties thereon as may be provided for by local law or regulation  
53 shall be first deposited and there is filed an undertaking, issued by a  
54 surety company authorized to transact business in the state and approved  
55 by the superintendent of financial services of this state as to solvency  
56 and responsibility, in such amount as a justice of the supreme court

1 shall approve to the effect that if such proceeding be dismissed or the  
2 tax confirmed the petitioner will pay all costs and charges which may  
3 accrue in the prosecution of such proceeding; or

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

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

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

29 (9) All revenues resulting from the imposition of the tax under the  
30 local laws shall be paid into the treasury of the village of Newark and  
31 shall be credited to and deposited in the general fund of such village,  
32 thereafter to be allocated for tourist and convention development in the  
33 village of Newark and the surrounding tourist region; provided, however,  
34 that such local laws shall provide that the village shall be authorized  
35 to retain up to a maximum of five percent of such revenue to defer the  
36 necessary expenses of the village in administering such tax. The revenue  
37 derived from the tax, after deducting the amount provided for adminis-  
38 tering such tax, as so authorized by local law, shall be appropriated  
39 annually by the board of trustees upon adoption of the budget for the  
40 village of Newark to enhance the general economy of the village of  
41 Newark, and the general economy of such tourist region, through the  
42 promotion of regional tourism, tourist activities, conventions, trade  
43 shows, special events, tourist attractions and other directly related  
44 and supporting activities.

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

49 § 2. This act shall take effect immediately and shall expire December  
50 31, 2026 when upon such date the provisions of this act shall be deemed  
51 repealed.