

STATE OF NEW YORK

9679--A

IN ASSEMBLY

April 3, 2024

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

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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, 2027 when upon such date the provisions of this act shall be deemed
51 repealed.