

STATE OF NEW YORK

9314

IN SENATE

February 27, 2026

Introduced by Sen. GALLIVAN -- 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 village of Orchard Park, in Erie county; 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-6 to
2 read as follows:

3 § 1202-z-6. Occupancy tax in the village of Orchard Park. (1) Notwith-
4 standing any other provision of law to the contrary, the village of
5 Orchard Park, in the county of Erie, is hereby authorized and empowered
6 to adopt and amend local laws imposing in such village a tax, in addi-
7 tion to any other tax authorized and imposed pursuant to this article,
8 such as the legislature has or would have the power and authority to
9 impose upon persons occupying hotel or motel rooms in such village. For
10 the purposes of this section, the term "hotel" or "motel" shall mean and
11 include any consisting of rentable units and provides lodging on an
12 overnight basis and shall include those facilities designated and
13 commonly known as a "bed and breakfast" and "tourist" facilities. The
14 rates of such tax shall not exceed four percent of the per diem rental
15 rate for each room, provided, however, that such tax shall not be appli-
16 cable to a permanent resident of a hotel or motel. For the purposes of
17 this section, the term "permanent resident" shall mean a person occupy-
18 ing any room or rooms in a hotel or motel for at least ninety consec-
19 utive days.

20 (2) Such tax may be collected and administered by the chief fiscal
21 officer of the village of Orchard Park by such means and in such manner
22 as other taxes which are now collected and administered by such officer
23 or as otherwise may be provided by such local law.

24 (3) Such local laws may provide that any taxes imposed shall be paid
25 by the person liable therefor to the owner of the hotel or motel room
26 occupied or to the person entitled to be paid the rent or charge for the

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

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1 hotel or motel room occupied for and on account of the village of
2 Orchard Park imposing the tax and that such owner or person entitled to
3 be paid the rent or charge shall be liable for the collection and
4 payment of the tax; and that such owner or person entitled to be paid
5 the rent or charge shall have the same right in respect to collecting
6 the tax from the person occupying the hotel or motel room, or in respect
7 to nonpayment of the tax by the person occupying the hotel or motel
8 room, as if the taxes were a part of the rent or charge and payable at
9 the same time as the rent or charge; provided, however, that the chief
10 fiscal officer of the village, specified in such local laws, shall be
11 joined as a party in any action or proceeding brought to collect the tax
12 by the owner or by the person entitled to be paid the rent or charge.

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

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

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

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

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

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

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

53 b. At the option of the petitioner, such undertaking may be in a sum
54 sufficient to cover the taxes, interest and penalties stated in such
55 determination plus the costs and charges which may accrue against it in
56 the prosecution of the proceeding, in which event the petitioner shall

1 not be required to pay such taxes, interest or penalties as a condition
2 precedent to the application.

3 (7) Where any taxes imposed hereunder shall have been erroneously,
4 illegally or unconstitutionally collected and application for the refund
5 therefor duly made to the proper fiscal officer or officers, and such
6 officer or officers shall have made a determination denying such refund,
7 such determination shall be reviewable by a proceeding under article
8 seventy-eight of the civil practice law and rules, provided, however,
9 that such proceeding is instituted within thirty days after the giving
10 of the notice of such denial, that a final determination of tax due was
11 not previously made, and that an undertaking is filed with the proper
12 fiscal officer or officers in such amount and with such sureties as a
13 justice of the supreme court shall approve to the effect that if such
14 proceeding be dismissed or the taxes confirmed, the petitioner will pay
15 all costs and charges which may accrue in the prosecution of such
16 proceeding.

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

22 (9) All revenues resulting from the imposition of the tax under the
23 local laws shall be paid into the treasury of the village of Orchard
24 Park and shall be credited to and deposited in the general fund of such
25 village. Such revenues may be used for any lawful purpose.

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

32 (11) If any provision of this section or the application thereof to
33 any person or circumstance shall be held invalid, the remainder of this
34 section and the application of such provision to other persons or
35 circumstances shall not be affected thereby.

36 § 2. This act shall take effect immediately and shall expire December
37 31, 2028, when upon such date the provisions of this act shall be deemed
38 repealed.