

LOCAL LAW FILING

COUNTY OF DELAWARE

Local Law No. 13 of the year 2015

LOCAL LAW IMPOSING A HOTEL/MOTEL OCCUPANCY TAX IN THE COUNTY OF DELAWARE

BE IT ENACTED by the Board of Supervisors of the County of Delaware, State of New York,
as follows:

Section 1. Title & Statement of Intent; Priority.

This local law shall be known as the Delaware County Hotel Occupancy Tax Law. The intent of this local law shall be to promote tourism in Delaware County.

Section 2. Definitions.

When used in this local law, the following terms shall mean:

- (a) County - Delaware County, New York.
- (b) Effective Date - the date set forth in Section 28 of this local law.
- (c) Hotel - Any facility or portion thereof which is regularly used and kept open for the lodging of guests. A building comes within the definition of a hotel or motel if, among other factors:
 - i. sleeping accommodations are provided for the lodging of paying occupants on a regular basis;
 - ii. the typical occupant is a transient or public traveler;
 - iii. the relationship between the operator of the establishment and the occupant of the accommodations is that of an innkeeper and guest and not of a landlord and tenant; and
 - iv. the occupant does not have an exclusive right or privilege with respect to any particular room or rooms, but instead merely has an agreement for the use or possession of a particular room or rooms.

The term hotel includes the following: hotels; motels; hostels; tourist cabins; bungalows; cottage colonies; inns; boarding houses or clubs; lodging houses; rooming houses; bed and breakfasts; guest houses; dude ranches; ski lodges; and similar establishments that are regularly used for the lodging of occupants. Campsites are not included within this definition.

- (d) Occupancy - The use of possession, or the right to the use or possession, of any room in a hotel or motel.
- (e) Occupant - A person who, for a charge or any consideration, uses, possesses, or has the right to use or possess, any room in a hotel or motel under any lease, concession, permit, right, license, agreement, or otherwise.
- (f) Operator - Any person operating a hotel or motel in Delaware County including but not limited to the owner, proprietor, lessee, sub-lessee, mortgagee in possession, licensee, or any other person otherwise operating such hotel or motel.

- (g) Permanent Resident - Any person occupying any room or rooms in a hotel or motel for at least thirty-two (32) consecutive days.
- (h) Person - An individual, partnership, society, association, joint stock company, corporation, limited liability company, general or limited or limited liability partnership, estate, receiver, trustee, assignee, referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and/or any combination of the foregoing.
- (i) Rent - The charge and/or consideration received for occupancy valued in money, whether received in money or otherwise.
- (j) Return - Any return filed or required to be filed as herein provided.
- (k) Room - Any room or rooms of any kind in any part or portion of a hotel or motel, which is available for, rented or otherwise, let out for the lodging of guests.
- (l) Tax Imposition Date - the date set forth in Section 3 of this local law.
- (m) Tourism Advisory Board – a committee, comprised of elected and/or public officials and appointed members, who are charged with the decision making process and reporting requirements regarding the manner in which Bed Tax revenues are utilized in the promotion and development of the tourism industry in Delaware County.
- (n) Treasurer - The Delaware County Treasurer or the Treasurer’s designee.

Section 3. Imposition of Tax.

On and after the first day of March in the year two thousand and sixteen, there is hereby imposed and there shall be paid a tax of two percent (2%) of the per diem rental rate for each room or rooms in a hotel or motel located within the County, except that such tax shall not be applicable to a permanent resident of a hotel or motel.

Section 4. Transitional Provisions.

The tax imposed by this local law shall be paid upon any occupancy on and after the date set forth in Section 3 hereof although such occupancy is pursuant to a prior contract, lease, or other arrangement. Where rent is paid on a weekly or other term basis, the rent shall be subject to the tax imposed by this local law to the extent that it covers any period on and after the date set forth in Section 3 hereof.

Section 5. Exempt organizations.

Except as otherwise provided in this section, any use or occupancy by any of the following shall not be subject to the tax imposed by this local law:

- (a) The State of New York, or any public corporation (including a created pursuant to agreement or compact with another state or the Dominion of Canada) improvement district or other political subdivision of the state;
- (b) The United States of America, insofar as it is immune from taxation; and
- (c) Any corporation or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or

individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

Section 6. Territorial limitations.

The tax imposed by this local law shall apply only within the territorial limits of Delaware County.

Section 7. Registration.

(a) Within twenty (20) days after the effective date of this local law, or in the case of an operator commencing business after such effective date within three (3) days after such commencement or opening, every operator shall file with the Treasurer a registration application in a form prescribed by the Treasurer.

(b) The Treasurer shall within ten (10) days after receipt of a registration application issue without charge to the operator a certificate of authority empowering such operator to collect the tax from the occupant and duplicate thereof, for each additional hotel or motel of such operators.

(c) Each certificate shall state the hotel or motel to which it is applicable.

(d) Each certificate of authority shall be prominently displayed by the operator in such manner that it may be seen and come to the notice of all occupants and person seeking occupancy.

(e) Certificates shall not be assignable or transferable, and shall be surrendered immediately to the Treasurer upon the cessation of business at, or upon the sale or conveyance of, the hotel or motel named in such certificate(s).

Section 8. Administration and collection.

(a) The tax imposed by this local law shall be administered and collected by the Treasurer, or such other employees of the County as the Treasurer may designate, by such means and in such manner as are other taxes which are now collected and administered or as is otherwise provided by this local law.

(b) The tax to be collected shall be stated and charged separately from the rent and shown separately on any record thereof, at the time when the occupancy is arranged or contracted for and charged for, and upon every evidence of occupancy or any bill or statement or charge made for said occupancy issued or delivered by the operator, and the tax shall be paid by the occupant to the operator as trustee for and on account of the County, and the operator shall be liable for the collection thereof and for the tax.

(c) The operator and any officer of any corporate operator shall be personally liable for the tax collected or required to be collected under this local law, and the operator shall have the same right in respect to collecting the tax from the occupant, or in respect to nonpayment of the tax by the occupant as if the tax were part of the rent for the occupancy payable at the time such tax shall become due and owing, including all rights of eviction, dispossession, repossession and enforcement of any innkeeper's lien that he may have in the event of non-payment of rent by the occupant; provided, however, that the Treasurer shall be joined as a party in any action or proceeding brought by the operator to collect or enforce collection of the tax.

(d) The Treasurer may, whenever he or she deems it necessary for the proper enforcement of this local law, provide by order that the occupant shall file returns and pay directly to the Treasurer the tax herein imposed, at such times as returns are required to be filed and payment made by the operator.

(e) The tax imposed by this local law shall be paid upon any occupancy on and after the tax imposition date, although such occupancy is had pursuant to a contract, lease or other arrangement made prior to such date; and where rent is paid, charged, billed or falls due on either a weekly, monthly or other term basis, the rent so paid, charged, billed or falling due shall be subject to the tax herein imposed to the extent that it covers any portion of the period on and after the tax imposition date.

(f) Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the Treasurer may by order provide for credit and/or refund of the amount of such tax upon application therefore as provided in section fourteen of this local law.

(g) For the purpose of the proper administration of this local law and to prevent evasion of the tax hereby imposed, it shall be presumed that all rents are subject to tax until the contrary is established, and the burden of proving that a rent for occupancy is not taxable hereunder shall be upon the operator or occupant.

(h) Where an occupant claims exemption(s) from the tax under the provisions of section five of this local law, the rent shall be deemed taxable hereunder unless the operator shall receive from the occupant claiming such exemption a properly completed, executed and certified Exemption Certificate from taxes imposed pursuant to Articles 28 and 29 of the New York Tax Law, such certificate to be in the form and to contain the content approved and required by the New York State Department of Taxation.

Section 9. Records to be kept.

(a) Every operator shall keep records of every occupancy and of all rent paid, charged or due thereon and of the tax payable thereon, in such form as the Treasurer may by regulation or order require.

(b) All records shall be available for inspection and examination at any time upon demand by the Treasurer, or the Treasurer's duly authorized agent or employee, and shall be preserved for a period of not less than three (3) years, except that the Treasurer may consent in writing to their destruction within that period or may in writing require that such records be kept and maintained for a specified period in excess of three (3) years.

Section 10. Returns.

(a) After the date set forth in Section 3 of this local law, and except as provided in subdivision (b) of this section, every operator shall file with the Treasurer a return of occupancy and of rents, and of the taxes payable thereon, for the same quarterly periods and on the same dates as returns for New York State sales and use taxes are filed or to be filed.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Treasurer may permit or require returns to be made by other periods and upon such other dates as the Treasurer may specify by rule or order so as to carry out the purposes of this local law.

(c) All returns shall be filed with the Treasurer within twenty (20) days from the expiration of the period covered thereby.

(d) The forms of returns shall be prescribed by the Treasurer and shall contain such information as the Treasurer may deem necessary for the proper administration of this local law.

(e) The Treasurer may require amended returns to be filed within twenty (20) days after notice and to contain the information specified in the notice.

(f) If a return required by this local law is not filed, or if a return when filed is incorrect or insufficient on its face or otherwise, the Treasurer shall take the necessary steps to enforce the filing of a properly completed and sufficient return or of a corrected return.

(g) Any operator required to file a return under this Law shall be allowed a credit against the taxes required to be reported on, and paid with, such return when such person files the return on or before the filing due date and pays or pays over with such return the full amount shown on such return. The amount of the credit authorized by this paragraph shall be five percent of the amount of taxes (but not including any penalty or interest thereon) required to be reported on, and paid or paid over with such return, but not more than fifty dollars.

Section 11. Payment of Tax.

(a) Any tax imposed by this local law shall be paid by the occupant to the operator of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied for and on account of the County, and such operator or person entitled to be paid the rent or charge shall be liable for the collection and payment of tax to the County.

(b) The owner of the hotel or motel room or the person entitled to be paid the rent or charge for the hotel or motel room shall have the same right in respect to collecting the tax from the occupant, or in respect to non-payment of the tax by the occupant, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge. In any action or proceeding brought by an owner or a person entitled to be paid the rent or charge for the purpose of collecting the rent or charge, or the tax imposed by this local law, the Treasurer shall be joined as a party.

(c) At the time of filing a return of occupancy and of rents, each operator shall pay to the Treasurer the taxes imposed by this local law upon the rents required to be included in such return, as well as all other moneys collected by the operator acting or purporting to act under the provisions of this local law.

(d) All taxes and other moneys required to be paid under and pursuant to this local law shall be due from the operator and paid to the Treasurer on the date limited for the filing of the return for such period, without regard to whether a return is filed, or whether the return which is filed correctly shows the amount of rents and taxes due thereon.

Section 12. Bonds & Security for Payment of Tax.

Where the Treasurer, in the exercise of the Treasurer's discretion, deems it necessary to protect revenues to be obtained under this local law, the Treasurer may by rule or order require any operator required to collect the tax imposed by this local law to file with the Treasurer a bond to secure the payment of any tax and/or penalties and interest due or which may become due from such operator.

Section 13. Determination of tax.

(a) Upon the filing of a return, the Treasurer shall determine and verify the amount of tax due under and pursuant to this local law.

(b) If a return required by this local law is not filed, or if a return when filed is incorrect or insufficient as to the amount of tax due, the amount of tax due under and pursuant to this local law shall be determined by the Treasurer from such information as may be obtainable and, if necessary, the tax may be estimated on the basis of external indices, such as number of rooms, location, scale of rents, comparable rents, type of accommodations and service, number of employees and/or other factors.

(c) Notice of a determination under subdivision (b) of this section shall be furnished in writing to the person liable for the collection and/or payment of the tax.

(d) Any determination by the Treasurer under subdivision (b) of this section shall finally and irrevocably fix the tax, unless

- (1) within thirty (30) days after the issuance of the notice of such determination the person against whom it is assessed shall apply in writing to the Treasurer for a hearing, or
- (2) the Treasurer shall, in the Treasurer's sole discretion, reconsider and re-determine the amount of tax due.

(e) Within fifteen (15) days after the conclusion of a hearing conducted pursuant to subdivision (d) (1) of this section, the Treasurer shall give written notice of the Treasurer's determination to the person against whom the tax is assessed.

(f) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return; provided, however, that

- (1) where no return has been filed as provided by this local law the tax may be assessed at any time; and/or
- (2) where, before expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period or any extension(s) thereof.

Section 14. Refunds.

(a) In the manner provided in this section the Treasurer shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid provided that written application for such refund shall be made to the Treasurer within one year from the payment thereof.

(b) An application for refund or credit may be made only by the occupant, operator, or other person who has actually paid the tax.

(c) An application for a refund or credit made as herein provided shall not be complete unless the same includes copies of all documentation and evidence upon which the applicant relies in support thereof, but nothing shall prohibit or prevent the Treasurer from receiving any other evidence with respect thereto.

(d) No application for a refund or credit shall be accepted or considered unless such application has been actually received by the Treasurer within one year of the payment by the tax.

(e) The determination to deny or allow a refund or credit shall be made by the Treasurer in writing, stating the reason(s) therefore, and the Treasurer shall give notice of such determination to the applicant.

(f) No refund shall be made to an operator who has collected and paid over such tax to the Treasurer unless and until such operator shall first establish, to the satisfaction of the Treasurer under such regulations as the Treasurer may prescribe, that such operator has repaid to the occupant(s) the amount of tax for which refund is sought.