

**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 or property manager (as applicable) 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 of such requirement to file an amended return is given to such filer 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 or property manager (as applicable) of the lodging establishment or short-term rental room occupied or to the person entitled to be paid the rent or charge for the lodging establishment or short-term rental room occupied for and on account of the County, and such operator, property manager 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 lodging establishment or short-term rental room or the person entitled to be paid the rent or charge for the lodging establishment or short-term rental 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 or property manager (as applicable) 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 or property manager 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 or property manager (as applicable) 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 or property manager 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.

(g) The Treasurer may, in the Treasurer's discretion and in lieu of the payment of any refund determined to be due, allow credit therefore on and against payments due from the applicant.

**Section 15. Disposition of Revenues.**

(a) All revenues resulting from the imposition of the tax under this local law shall be paid into the treasury of the County and shall be credited and deposited into a special tourism development and promotion fund under the trust and care of the Treasurer, and thereafter to be allocated for the promotion and development of the tourism industry in Delaware County by a committee hereafter established (section 15, part b) as the Tourism Advisory Board; provided, however, that the County shall have the right to retain up to ten per cent (10%) of the gross revenues to cover the Treasurer's costs for administration and collection; and

(b) The Board of Supervisors shall establish a committee known as the Tourism Advisory Board which shall review and approve proposals for the use of the funds raised from this tax for the promotion and development of the tourism industry in Delaware County. The Tourism Advisory Board shall be comprised of seven (7) persons, to be appointed by the Delaware County Board of Supervisors, for staggered terms of three years. Appointments shall be made upon the recommendation of the Director of Economic Development with effort to ensure geographical representation of the County, per the following:

1. The Director of Economic Development of Delaware County.
2. Two members of the County Board of Supervisors.
3. Four representatives of businesses actively engaged in the tourism industry, at least two of which should be representative of lodging operators.

The Tourism Advisory Board shall report quarterly to the Delaware County Board of Supervisors' Committee on Economic Development with regards to all expenditures, as well as all plans and marketing. Revenues paid from the Treasurer's Office and all expenditures shall be accepted, paid and recorded with the Treasurer's Office of Delaware County.

**Section 16. Reserves.**

Whenever the occupant or operator has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to such occupant or operator on such application for refund, the Treasurer shall set up appropriate reserves to meet any decision adverse to the County.

**Section 17. Remedies exclusive.**

The remedies provided by sections thirteen and fourteen of this local law shall be exclusive remedies available to any person for the review of tax liability imposed by this local law; and no determination or proposed determination of tax or determination on any application for refund or credit shall be enjoined, contested or reviewed by any action or proceeding, except by a proceeding under article seventy-eight of the civil practice law and rules pursuant to section twenty-three of this local law.

**Section 18. Proceedings to recover tax.**

Whenever any operator or other person shall fail to collect and pay over any tax and/or to pay any tax, penalty or interest imposed by this local law as herein provided, or whenever any occupant shall fail to pay any such tax, penalty or interest, the County Treasurer may utilize any and all remedies as provided by law to collect such sum, including but not limited to the imposition of a tax lien upon the real property and personal property of the owners or operator. The lien of this tax shall have priority over all other real and personal property liens in the same manner as a real property tax levied pursuant to the New York State Real Property Tax Law.

**Section 19. General Powers of the Treasurer.**

In addition to the powers granted to the Treasurer by County Law and this local law, the Treasurer is hereby authorized and empowered:

- (a) To make, adopt and amend rules and regulations, and to issue orders, appropriate to the carrying out of this local law and the purposes thereof;
- (b) To extend for cause shown the time of filing any return for a period not exceeding thirty days; and for cause shown, to remit or waive penalties but not interest; and to compromise disputed claims in connection with the taxes hereby imposed;
- (c) To request information from the tax commission of the state of New York or the treasury department of the United States relative to any person; and to afford information to such tax commission or such treasury department relative to any person, any other provision of this local law to the contrary notwithstanding;
- (d) To delegate his or her functions hereunder to any employee or employees of the County Treasurer;
- (e) To prescribe methods for determining the rents for occupancy and to determine the taxable and non-taxable rents;
- (f) To require any operator or property manager (as applicable) within the county to keep detailed records of the nature and type of lodging establishment or short-term rental maintained, nature and type of service rendered, the rooms available and rooms occupied daily, lease's or occupancy contracts or arrangements, rents received, charged and accrued, the names and addresses of the occupants, whether or not any occupancy is claimed to be subject to the tax imposed by this local law, and to furnish such information upon request to the County Treasurer;
- (g) To assess, determine, revise and readjust the taxes imposed under this local law.

**Section 20. Administration of Oaths and Compelling Testimony.**

- (a) The Treasurer, or the Treasurer's duly designated and authorized employee(s) or agent(s), shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of the Treasurer's powers and duties under this local law.
- (b) The Treasurer shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of his duties hereunder and of the enforcement of this local law, and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the Treasurer or excused from attendance.
- (c) A justice of the Supreme Court, either in court or at chambers, shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the Treasurer under this local law.
- (d) Any person who shall refuse to testify or to produce books or records or who shall testify falsely in any material matter pending before the Treasurer under this local law shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand dollars or imprisonment for not more than one year, or both such fine and imprisonment.