

Requesting Enactment Of A Senate Bill And Assembly Bill In The New York State Legislature For A Special Law In Relation To The Hotel And Motel Room Occupancy Tax Rates In Ulster County

Referred to: The Economic Development, Planning, Education, Employment, Arts and Agriculture Committee (Chairman Cahill and Legislators Corcoran, Criswell, Hewitt, Litts, Maloney and Sperry), and The Ways and Means Committee (Chairman Gavaris and Legislators Cahill, Roberts, Ronk, and Walter)

Legislator Joe Maloney offers the following:

WHEREAS, Article IX of the New York State Constitution and Section 40 of the Municipal Home Rule Law provide for the enactment of special laws by the New York State Legislature initiated by a Home Rule Request from a local municipality; and

WHEREAS, the Legislature of Ulster County wishes to submit a Home Rule Request seeking to enact special legislation affecting N.Y.S. Tax Law Section 1202-1; and

WHEREAS, on January 10, 2005, the Ulster County Legislature reinstated Local Law Number 5 of 1991, which imposed a two (2%) percent Hotel and Motel Room Occupancy Tax in accordance with legislative authority granted by the New York State Legislature through its enactment of Section 1202-1 of the Tax Law; and

WHEREAS, with changing times and the effects of the pandemic, occupancy tax collections from short-term rentals have skyrocketed, more than doubling over the last four-year period; and

WHEREAS, as adjustments have not been made in 17 years, the Ulster County Legislature finds that it is necessary and imperative to increase the Hotel & Motel Room Occupancy Tax rates to become more aligned with occupancy tax rates in most other counties, and to provide revenue to meet the ever-increasing costs associated with required and/or mandated and under-funded programs; and

WHEREAS, it is hereby determined that a necessity exists for such legislation in that the County of Ulster does not have the power to enact such legislation by Local Law; now, therefore be it

RESOLVED, the Ulster County Legislature, pursuant to Article IX of the New York State Constitution and Section 40 of the Municipal Home Rule Law, requests that the New York State Legislature enact legislation amending New York State Tax Law Section 1202-1, increasing the Hotel & Motel Occupancy Tax rate ~~for hotels and motels up to six percent (6)~~ **to four (4) percent** ~~and short-term rentals up to ten (10) percent,~~ as follows:

Resolution No. 11 of 2022 March 21, 2023

Requesting Enactment Of A Senate Bill And Assembly Bill In The New York State Legislature For A Special Law In Relation To The Hotel And Motel Room Occupancy Tax Rates In Ulster County

New York State Tax Law Section 1202-l:

“(1) Notwithstanding any other provision of law to the contrary, the county of Ulster is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms and short-term rentals in such county.

For the purposes of this section, the term “hotel” or “motel” shall mean and include any facility **consisting of rentable units and providing lodging on an overnight basis.** ~~providing lodging on an overnight basis and shall include those facilities designated and commonly known as “bed and breakfast” and “tourist” facilities.~~

~~For the purposes of this section, the term “short term rentals” shall mean and include those units rented or leased to occupants, other than permanent residents, that are furnished apartments or living units in or consisting of a dwelling place ordinarily occupied for residential purposes or location that is otherwise made available for sleeping accommodations, directly by the owner or through an owner’s agent or hosting company, and shall include those commonly referred to as “vacation rentals.”~~

The rates of such tax imposed upon persons occupying hotel or motel rooms shall not exceed ~~six~~ **four** per cent of the per diem rental rate for each room, provided, however, such tax shall not be applicable to a permanent resident of such hotel or motel. The rates of such tax imposed upon persons occupying short-term rentals shall not exceed ~~ten~~ **four** per cent of the per diem rental rate for each room, provided, however, such tax shall not be applicable to a permanent resident of such short-term rental. For the purposes of this section the term “permanent resident” shall mean a person occupying any room or rooms in a hotel or motel or short-term rental for at least ninety consecutive days;”

(2) Such tax may be collected and administered by the ~~county treasurer~~ Commissioner of Finance of the county of Ulster by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

Resolution No. 11 of 2022 March 21, 2023

Requesting Enactment Of A Senate Bill And Assembly Bill In The New York State Legislature For A Special Law In Relation To The Hotel And Motel Room Occupancy Tax Rates In Ulster County

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner 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 of Ulster imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of the tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the county treasurer of the county, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

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

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

a. The state of New York, or any public corporation (including a public corporation 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;

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.

Resolution No. 11 of 2022 March 21, 2023

Requesting Enactment Of A Senate Bill And Assembly Bill In The New York State Legislature For A Special Law In Relation To The Hotel And Motel Room Occupancy Tax Rates In Ulster County

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

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

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

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

(8) Except in the case of 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 where no return has been filed as provided by law the tax may be assessed at any time.

Resolution No. 11 of 2022 March 21, 2023

Requesting Enactment Of A Senate Bill And Assembly Bill In The New York State Legislature For A Special Law In Relation To The Hotel And Motel Room Occupancy Tax Rates In Ulster County

~~(9) All revenues resulting from the imposition of the tax authorized by this section shall be paid into the treasury of the county of Ulster and shall be credited to and deposited in the general fund of the county. and the local law shall provide that ten percent, or no less than one hundred fifty thousand dollars, whichever is greater, of the revenues generated annually shall be credited to and deposited in a special tourism and convention fund and the collections therefrom shall thereafter be allocated by the county legislature of Ulster county only for tourism and convention promotion and development. The funds so allocated shall be used solely for the purpose of promoting Ulster county, its cities, towns, villages and the region in order to increase convention/trade show and tourist business. The county may contract with a not for profit corporation for promotional services to assist the county in its tourism and conventions promotion and development efforts. Tourism and conventions promotion and development being specifically defined as the placing and purchasing of advertising promoting the county, and engaging in such other efforts as are designed to induce tourist and convention attraction to Ulster county.~~

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

RESOLVED, that these intentions be transmitted to the New York State Senate and New York State Assembly,

and move its adoption.

ADOPTED AS AMENDED BY THE FOLLOWING VOTE:

AYES: 15 NOES: 5

(Noes: Legislators Corcoran, Fabiano, Lopez, Nolan, and Roberts)

(Absent: Legislators Hansut, Litts and Ronk)

Postponed in Committee: Economic Development, Planning, Education, Employment, Arts and Agriculture on February 1, 2022

Resolution No. 11 of 2022 March 21, 2023

**Requesting Enactment Of A Senate Bill And Assembly Bill In The
New York State Legislature For A Special Law In Relation To The
Hotel And Motel Room Occupancy Tax Rates In Ulster County**

Passed Committee: Economic Development, Planning, Education, Employment, Arts and Agriculture as amended on March 1, 2022

Postponed in Committee: Ways and Means for one week on March 8, 2022

Postponed in Committee: Ways and Means on March 16, 2022 with consent

Postponed in Committee: Ways and Means for one week on April 12, 2022

Postponed in Committee: Ways and Means on April 19, 2022 with consent

Postponed in Committee: Ways and Means for one month on May 10, 2022

Postponed in Committee: Ways and Means for one week on June 14, 2022

Postponed in Committee: Ways and Means on June 21, 2022 with consent

Postponed in Committee: Ways and Means for one month on July 12, 2022

Postponed in Committee: Ways and Means for one month on August 9, 2022

Postponed in Committee: Ways and Means for one month on September 13, 2022

Postponed in Committee: Ways and Means for one week on October 11, 2022

Postponed in Committee: Ways and Means on October 18, 2022 without consent

Postponed in Committee: Ways and Means for one month on November 9, 2022 without consent

Postponed in Committee: Ways and Means for one month on December 13, 2022

Postponed in Committee: Ways and Means for one month on February 7, 2023

Postponed in Committee: Ways and Means for one week on March 7, 2023

Passed Committee: Ways and Means as amended on March 21, 2023

