

**Resolution No. 338      August 15, 2017**

**Amending Resolution No. 286 Of 1968, Adopted February 13, 1969, Imposing Taxes On Sales And Uses Of Tangible Personal Property And Of Certain Services And On Occupancy Of Hotel Rooms And On Amusement Charges, Pursuant To Article 29 Of The Tax Law Of The State Of New York, As Amended On Various Occasions To Increase The Rate Of Sales And Compensating Use Taxes**

Referred to: The Ways and Means Committee (Chairman Gerentine and Legislators Allen, Bartels, Belfiglio, Briggs, Maio, and Maloney)

Chairman of the Ways and Means Committee, Richard A. Gerentine, and Deputy Chairman Thomas J. Briggs offer the following:

WHEREAS, Resolution No. 286 of 1968 imposes taxes on sales and uses of tangible personal property, and on various charges and services as set forth therein; and

WHEREAS, said Resolution No. 286 of 1968 has been amended on various occasions, including by Resolution No. 164 adopted July 8, 1971, Resolution No. 18 adopted February 8, 1973, Resolution No. 211 adopted June 10, 1976, Resolution No. 445 adopted December 14, 1976, Resolution No. 183 adopted August 12, 1993, Resolution No. 211 adopted August 10, 1995, Resolution No. 240 adopted August 14, 1997, Resolution No. 245 adopted August 12, 1999, Resolution No. 260 adopted August 22, 2001, Resolution No. 218 adopted July 30, 2003, Resolution No. 246 adopted August 31, 2005, Resolution No. 272 adopted July 31, 2007, Resolution No. 247 adopted August 12, 2009, Resolution No. 177 adopted August 16, 2011, Resolution No. 9 adopted January 23, 2014 and Resolution No. 397 adopted November 18, 2014 and Resolution No. 321 adopted August 18, 2015; and

WHEREAS, Chapter 61 of the Laws of 2017 authorizes the County to impose an additional 1% rate of such taxes for the period December 1, 2017 through November 30, 2020; now, therefore, be it

RESOLVED, by the Ulster County Legislature, that Resolution No. 286 of 1968, as amended, be amended as follows:

Section 1. The first sentence of Section 2 thereof is amended to read as follows:

On and after March 1, 1977, there is hereby imposed, and there shall be paid a tax of three percent upon, and for the period commencing December 1, 2015 and ending November 30, 2020, there is hereby imposed and there shall be paid an additional tax of one percent upon:

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Section 2. Subdivision (h) of Section 3 thereof is amended to read as follows:

(h) With respect to the additional tax of one percent imposed for the period commencing December 1, 2015, and ending November 30, 2020, the provisions of subdivisions (a), (b), (c), (d) and (e) of this Section apply, except that for the purposes of this subdivision, all references in said subdivisions (a), (b), (c), and (d), to an effective date shall be read as referring to December 1, 2015, all references in said subdivision (a) to the date four months prior to the effective date shall be read as referring to August 1, 2015, and the reference in subdivision (b) to the date immediately preceding the effective date shall be read as referring to November 30, 2015. Nothing herein shall be deemed to exempt from tax at the rate in effect prior to December 1, 2015, any transaction which may not be subject to the additional tax imposed effective on that date.

Section 3. Section 4 thereof is amended to read as follows:

Section 4. Imposition of compensating use tax.

(a) Except to the extent that the property or services have already been or will be subject to the sales tax under this enactment, there is hereby imposed on every person a use tax for the use within this taxing jurisdiction on and after December 1, 2015, except as otherwise exempted under this enactment, (A) of any tangible personal property purchased at retail, (B) of any tangible personal property (other than computer software used by the author or other creator) manufactured, processed or assembled by the user, (i) if items of the same kind of tangible personal property are offered by sale by him in the regular course of business or (ii) if items are used as such or incorporated into a structure, building or real property by a contractor, subcontractor or repairman in erecting structures or buildings, or building on, or otherwise adding to, altering, improving, maintaining, servicing or repairing real property, property or land, as the terms real property, property or land are defined in the real property tax law, if items of the same kind are not offered for sale as such by such contractor, subcontractor or repairman or other user in the regular course of business, (C) of any of the services described in paragraphs (1), (7) and (8)

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of subdivision (c) of Section Two, (D) of any tangible personal property, however acquired, where not acquired for purposes of resale, upon which any of the services described under paragraphs (2), (3) and (7) of subdivision (c) of Section Two have been performed, (E) of any telephone answering service described in subdivision (b) of Section Two and (F) of any computer software written or otherwise created by the user if the user offers software of a similar kind for sale as such or as a component part of other property in the regular course of business.

(b) For purposes of clause (A) of subdivision (a) of this Section, for the period commencing December 1, 2015, and ending November 30, 2020, the tax shall be at the rate of four percent and on and after December 1, 2020, the tax shall be at the rate of three percent, of the consideration given or contracted to be given for such property, or for the use of such property, including any charges for shipping or delivery, as described in paragraph three of subdivision (b) of Section One, but excluding any credit for tangible personal property accepted in part payment and intended for resale.

(c) For purposes of subclause (i) of Clause (B) of subdivision (a) of this Section, for the period commencing December 1, 2015, and ending November 30, 2020, the tax shall be at the rate of four percent, and on and after December 1, 2020, the tax shall be at the rate of three percent, of the price at which items of the same kind of tangible personal property are offered for sale by the user, and the mere storage, keeping, retention or withdrawal from storage of tangible personal property by the person who manufactured, processed or assembled such property shall not be deemed a taxable use by him.

(d) For purposes of subclause (ii) of clause (B) of subdivision (a) of this Section, for the period commencing December 1, 2015, and ending November 30, 2020, the tax shall be at the rate of four percent, and on and after December 1, 2020, the tax shall be at the rate of three percent, of the consideration given or contracted to be given for the tangible personal property manufactured, processed or assembled into the tangible personal

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property the use of which is subject to tax, including any charges for shipping or delivery as described in paragraph three of subdivision (b) of Section One.

(e) Notwithstanding the foregoing provisions of this section, for purposes of clause (B) of subdivision (a) of this section, there shall be no tax on any portion of such price which represents the value added by the user to tangible personal property which he fabricates and installs to the specifications of an addition or capital improvement to real property, property or land, as the terms of real property, property or land are defined in the real property tax law over and above the prevailing normal purchase price prior to such fabrication of such tangible personal property which a manufacturer, producer or assembler would charge an unrelated contractor who similarly fabricated and installed such tangible personal property to the specifications of an addition or capital improvement to such real property, property or land.

(f) For purposes of clauses (C), (D) and (E) of subdivision (a) of this section, for the period commencing December 1, 2015, and ending November 30, 2020, the tax shall be at the rate of four percent, and on and after December 1, 2020, the tax shall be at the rate of three percent, of the consideration given or contracted to be given for the service, including the consideration for any tangible personal property transferred in conjunction with the performance of the service and also including any charges for shipping and delivery of the property so transferred and of the tangible personal property upon which the service was performed as such charges are described in paragraph three of subdivision (b) of Section one.

(g) For purposes of clause (F) of subdivision (a) of this section, for the period commencing December 1, 2015, and ending November 30, 2020, the tax shall be at the rate of four percent, and on and after December 1, 2020, the tax shall be at the rate of three percent, of the consideration given or contracted to be given for the tangible personal property which constitutes the blank medium, such as disks or tapes, used in conjunction with the software, or for the use of such property, and the mere storage, keeping retention or withdrawal from storage of computer software described in such clause (F) by its author or other creator shall not be deemed a taxable use by such person.

**Resolution No. 338      August 15, 2017**

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Section 4. Paragraph (C) of subdivision (1) of Section 11 thereof is amended to read as follows:

(C) With respect to the additional one percent tax imposed for the period beginning February 1, 2014, and ending November 30, 2020, in respect to the use of property used by the purchaser in this County prior to February 1, 2014.

Section 5. Section 14 thereof is amended to read as follows:

Section 14. Disposition of Revenue

(a) Net collections distributed to the County by the State Comptroller pursuant to subdivision (c) of Section 1261 of the Tax Law of the State of New York, including net collections from the additional one percent rate of sales and compensating use taxes imposed for the periods beginning September 1, 2002, and ending, November 30, 2013 and commencing February 1, 2014, and ending November 30, 2020, shall be set aside for County purposes and shall be available for any County purpose, except that such net collections shall be set aside or disposed of in accordance with the Sales Tax allocation agreement entered into by Ulster County and the City of Kingston (the "City") on June 13, 2016 and approved by the State Comptroller pursuant to section 1262 ( c ) of the Tax Law, for the period March 1, 2016, through February 28, 2021, during the period that such agreement is in effect. Such agreement provides as follows:

A. For the sales tax period March 1, 2016 through February 28, 2017, the City shall receive eleven and one-half percent (11.5%) of the total net collections and the Towns shall receive three percent (3%) of the total net collections. Of these total net collections, forty percent (40%) of the total net collections will be allocated and disbursed to the City and the Towns from the additional one percent (1%) of the total net collections and the remaining sixty percent (60%) shall be allocated from the three percent (3%) total net collections with the County retaining the balance for County purposes.

**Resolution No. 338      August 15, 2017**

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- B. For the sales tax period March 1, 2017 through February 28, 2018, the City shall receive eleven and one-half percent (11.5%) of the total net collections and the Towns shall receive three percent (3%) of the total net collections. Of these total net collections, forty percent (40%) of the total net collections will be allocated and disbursed to the City and the Towns from the additional one percent (1%) of the total net collections and the remaining sixty percent (60%) shall be allocated from the three percent (3%) total net collections with the County retaining the balance for County purposes.
  
- C. For the sales tax period March 1, 2018 through February 28, 2019, the City shall receive eleven and one-half percent (11.5%) of the total net collections collected by the County during this tax period or eleven and one-half percent (11.5%) of the total net collections collected in the previous sales tax period, whichever is less. In the event the total net collections in the sales tax period for March 1, 2018 through February 28, 2019 shall increase by greater than one and one-half percent (1.5%) over the total net collections received for the immediately preceding sales tax period, the City shall also receive an additional amount equal to eleven and one half percent (11.5%) of the amount of such year to year increase in total net collections in excess of one and one-half percent (1.5%) of the amount of such year to year increase. The Towns shall receive three percent (3%) of the total net collections for this sales tax period. Of these total net collections, forty percent (40%) of the total net collections will be allocated and disbursed to the City and the Towns from the additional one percent (1%) of the total net collections and the remaining sixty percent (60%) shall be allocated to the City and the Towns from the three percent (3%) total net collections with the County retaining the balance for County purposes.
  
- D. For the sales tax period March 1, 2019 through February 29, 2020, the City shall receive 11.5% of the total net collections collected by the County during this tax period or the total net collections distributed to the City for the tax period March 1, 2018 through February 28, 2019, whichever is less. The Towns shall receive three percent (3%) of the

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total net collections for this sales tax period. Of these total net collections, forty percent (40%) of the total net collections will be allocated and disbursed to the City and the Towns from the additional one percent (1%) of the total net collections and the remaining sixty percent (60%) shall be allocated to the City and the Towns from the three percent (3%) total net collections with the County retaining the balance for County purposes.

- E. For the sales tax period March 1, 2020 through February 28, 2021, the City shall receive eleven and one-half percent (11.5%) of the total net collections collected by the County during this tax period or eleven and one-half percent (11.5%) of the total net collections collected in the previous sales tax period, whichever is less. In the event the total net collections in the sales tax period March 1, 2020 through February 28, 2021 shall increase by greater than one and one-half percent (1.5%) over the total net collections received for the immediately preceding sales tax period, the City shall also receive an additional amount equal to eleven and one-half percent (11.5%) of the amount of such year to year increase in total net collections in excess of one and one-half percent (1.5%) of the amount of such year to year increase. The Towns shall receive three percent (3%) of the total net collections for this sales tax period. Of these total net collections, forty percent (40%) of the total net collections will be allocated and disbursed to the City and the Towns from the additional one percent (1%) of the total net collections and the remaining sixty percent (60%) shall be allocated to the City and the Towns from the three percent (3%) total net collections with the County retaining the balance for County purposes.

(b) As used in this Section the following terms shall mean or include:

- (1) Net collections. The moneys collected from a tax or taxes imposed pursuant to this enactment, after deducting therefrom expenses of administration and collection and amounts refunded or to be refunded.

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(2) General town taxes. Taxes levied for any town purpose, including highways, upon the entire area of a town.

(3) Full valuation of real property. The assessed valuation of real property divided by the equalization rate as determined in accordance with Article Eight of the Real Property Tax Law.

(4) Part-town activities. Activities of town government, including highway programs, which are chargeable to the area of the town outside of villages, exclusive of special district purposes, unless such special district is a fire protection district coterminous with the area of a town outside of villages.

Section 6. This enactment shall take effect December 1, 2017,

and moves its adoption.

ADOPTED BY THE FOLLOWING VOTE:

AYES:    23                      NOES:    0

Passed Committee: Ways and Means on August 8, 2017

**FINANCIAL IMPACT:**

\$21,362,628.00 – COUNTY-ANNUALIZED REVENUES FOR 12 MONTHS

\$ 5,136,927.00 – CITY OF KINGSTON-ANNUALIZED REVENUES FOR 12 MONTHS

\$ 1,340,068.00 – TOWNS-ANNUALIZED REVENUES FOR 12 MONTHS



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STATE OF NEW YORK

ss:

COUNTY OF ULSTER

I, the undersigned Clerk of the Legislature of the County of Ulster, hereby certify that the foregoing resolution is the original resolution adopted by the Ulster County Legislature on the 15<sup>th</sup> Day of August in the year Two Thousand and Seventeen, and said resolution shall remain on file in the office of said clerk.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the County of Ulster this 17<sup>th</sup> Day of August in the year Two Thousand and Seventeen.

[s] Victoria A. Fabella  
Victoria A. Fabella, Clerk  
Ulster County Legislature

Submitted to the County Executive this  
17<sup>th</sup> Day of August, 2017.

Approved by the County Executive this  
21<sup>st</sup> Day of August, 2017.

[s] Victoria A. Fabella  
Victoria A. Fabella, Clerk  
Ulster County Legislature

[s] Michael P. Hein  
Michael P. Hein, County Executive