

# **Proposed Local Law No. 1 Of 2019**

## **County Of Ulster**

### **A Local Law Amending The Code Of The County Of Ulster In Relation To Local Law No. 5 Of 1991 (A Local Law Adopting A Hotel And Motel Room Occupancy Tax) To Clarify The Tax Law's Application To Short-term And Vacation Rentals**

**BE IT ENACTED**, by the Legislature of the County of Ulster, as follows:

#### **SECTION 1. TITLE.**

This Local Law shall be known and referred to as the "21<sup>st</sup> Century Bed Tax."

#### **SECTION 2. LEGISLATIVE INTENT.**

The Ulster County Legislature ("Legislature") hereby finds that the "sharing economy" – specifically surrounding short-term and vacation rental properties – has taken hold of Ulster County ("County"), as one such major hosting platform, Airbnb, reports that over 149,800 guests have stayed at more than 1,800 listings located within the County.

The Legislature also finds that with this new economic frontier come profound fiscal impacts and responsibilities on a local level, as the operators of these transient lodging facilities should be subject to the same 2% Hotel and Motel Room Occupancy Tax ("tax") as are their counterparts in the traditional lodging industry.

The Legislature further finds that the methodology – primarily based on meal and service offerings – historically used by operators of lodging facilities to determine taxable rent is no longer compatible with the business realities of the 21<sup>st</sup> Century and has led to miscalculations of taxes due to the County.

Therefore, arching purposes of enacting this Local Law include generating significant revenue for the County, streamlining the way operators account for and remit the tax, and instilling a sense of fairness across the business and tourism industries by equally applying the tax to both traditional operators of hotels (who already pay and register with the County), as well as non-traditional operators who offer short-term and vacation rental properties (who often do not pay and register) through the use of hosting platforms and other means.

Proposed Local Law No. 1 Of 2019

County Of Ulster

**A Local Law Amending The Code Of The County Of Ulster In Relation To Local Law No. 5 Of 1991 (A Local Law Adopting A Hotel And Motel Room Occupancy Tax) To Clarify The Tax Law's Application To Short-term And Vacation Rentals**

This Local Law would perform the following functions: (1) clarify the reach of the tax to include short-term and vacation rentals within Ulster County; (2) require operators of properties used for short-term and vacation rentals to register with the County for the collection of the tax; (3) allow operators to designate those corporate hosting platforms that have executed voluntary collection agreements with the County to collect and remit the tax on the operator's behalf; and (4) simplify the methodology used to determine taxable rent for all properties used for transient lodging. Accordingly, collection and remittance of the tax for short-term and vacation rentals is firstly placed on the corporate hosting platform through a voluntary collection agreement and secondarily placed on individual operators under no such agreement.

**SECTION 3. DEFINITIONS.**

Section 312-5 General Provisions. (C) Definitions. of the Code of the County of Ulster is hereby amended as follows:

- 1) A new definition shall be added as follows:

**“Hosting Platform”**

**An internet, application, technology, and/or similarly based service through which a third party desiring to offer an accommodation (a “host”) and a third party desiring to book an accommodation (a “guest”) have the opportunity to communicate, negotiate, and consummate a booking transaction for transient lodging accommodations pursuant to a direct agreement between a host and guest to which the hosting platform is not a party but still facilitates payments for rent on behalf of or for the host. Merely publishing an advertisement for transient accommodations does not make the publisher a hosting platform.**

**Proposed Local Law No. 1 Of 2019**

**County Of Ulster**

**A Local Law Amending The Code Of The County Of Ulster In Relation To Local Law No. 5 Of 1991 (A Local Law Adopting A Hotel And Motel Room Occupancy Tax) To Clarify The Tax Law's Application To Short-term And Vacation Rentals**

2) The following definition shall be amended as follows:

“Hotel or Motel”

A building or portion of it which is regularly used and kept open as such for lodging on an overnight basis. The term ‘hotel’ or ‘motel’ includes an apartment hotel, motor court or inn, boardinghouse or club, **short-term or vacation rental**, or similar hotel or motel type of accommodations by whatever name designated, whether or not meals are served, and shall include those facilities commonly known as ‘bed-and-breakfast’ and ‘tourist’ facilities. Rent received by operators of bungalow colonies shall not be deemed to be taxable, provided that each occupant shall occupy rooms pursuant to a written agreement providing for the exclusive possession of such room for a period of 90 days or more, and provided further that there are no maid, food or other common hotel services provided. **“Short-term” and “vacation 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 platform.**

**SECTION 4. COLLECTION OF TAX.**

Section 312-7 Tax imposed; exemptions. (B) Statement of tax to be collected; person liable for payment of tax. (1) of the Code of the County of Ulster is hereby amended as follows:

1) 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 Local Law or statement or charge made for said occupancy issued or delivered by the operator, and the tax shall be paid

Proposed Local Law No. 1 Of 2019

County Of Ulster

**A Local Law Amending The Code Of The County Of Ulster In Relation To Local Law No. 5 Of 1991 (A Local Law Adopting A Hotel And Motel Room Occupancy Tax) To Clarify The Tax Law's Application To Short-term And Vacation Rentals**

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. The operator and any officer of any corporate operator shall be personally liable for the tax collected or required to be collected under this article, 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 a 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 nonpayment of rent by the occupant; provided, however, that the Commissioner of Finance or other fiscal officer or officers, employees or agents duly designated by him shall be joined as a party in any action or proceeding brought by the operator to collect or enforce collection of tax. **A hosting platform may enter into a voluntary collection agreement with the County, which designates the hosting platform as solely responsible and liable for collecting and remitting the applicable tax to the County for booking transactions completed through the respective hosting platform for hotels and motels located within the County; and the host or operator of the hotel or motel who is not the hosting platform shall not be responsible for collecting and remitting the tax to the County on any transaction for which it has received confirmation that the hosting platform has collected the aforementioned tax and remitted it back to the County pursuant to a voluntary collection agreement; otherwise, hosts or operators of hotels and motels shall be liable for the collection and remittance of the tax if no such voluntary collection agreement between a hosting platform and the County has been executed. For the sole purposes of tax registration, collection, and remittance under this Article, a hosting platform that enters into a voluntary collections agreement with the County pursuant to Section 312-7 (B)(1) of this Article shall assume and be limited to the duties of hotel/motel operator for only those booking transactions completed through the respective hosting platform and pursuant to the terms of an executed voluntary collection agreement, through which the hosting platform shall collect and remit to the County its respective portion of the tax.**

Proposed Local Law No. 1 Of 2019

County Of Ulster

**A Local Law Amending The Code Of The County Of Ulster In Relation To Local Law No. 5 Of 1991 (A Local Law Adopting A Hotel And Motel Room Occupancy Tax) To Clarify The Tax Law's Application To Short-term And Vacation Rentals**

**SECTION 5. METHODOLOGY USED TO DETERMINE THE TAX.**

Section 312-7 Tax imposed; exemptions. (C) Determination of taxable rent. of the Code of the County of Ulster is hereby repealed and replaced to read as follows:

C. Determination of taxable rent.

- (1) **If the charge for occupancy of a room includes only the cost of the room and board and any cleaning fees, and other charges are separately stated and are incurred at the option of the occupant and/or charged by a hosting platform, then rent subject to the tax shall be limited to the charge made by the operator for the occupancy and cleaning of a room and the tax shall only be based upon that amount.**
- (2) **If the operator does not separately state the charge for room and board from other charges, excluding cleaning fees but including those added by a hosting platform, then the entire charge to the occupant is taxable until the occupant becomes a permanent resident.**
- (3) **When the occupant becomes a permanent resident, the operator shall discontinue collection of the tax.**

**SECTION 6. REGISTRATION REQUIREMENTS.**

Section 312-8 Registration; records; returns; payment; refunds. (A) Registration. of the Code of the County of Ulster is hereby amended as follows:

- A. Registration. Within 10 days after the effective date of this article or, in the case of operators commencing business after such effective date, within three days after such commencement or opening, every operator shall file with the Commissioner of Finance an application for a certificate of authority empowering such operator to collect the tax from

**Proposed Local Law No. 1 Of 2019**

**County Of Ulster**

**A Local Law Amending The Code Of The County Of Ulster In Relation To Local Law No. 5 Of 1991 (A Local Law Adopting A Hotel And Motel Room Occupancy Tax) To Clarify The Tax Law's Application To Short-term And Vacation Rentals**

the occupant. Upon receipt of such application, the Commissioner of Finance shall issue a certificate of authority to such operator which when authenticated shall constitute the authority for the purposes of this article. Each application for a certificate of authority shall state the hotel or motel to which it is applicable; the name of the operator of such hotel or motel, the address of such operator, the taxpayer identification number assigned to such operator, the state of incorporation and the date upon which such corporation obtained authority to do business in this state, if not organized in this state, the names of each partner, if a partnership, and such other information as the Commissioner of Finance may by rule require. Such 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 persons seeking occupancy. **In the case of hosting platforms that have executed voluntary collection agreements with the County, each application for a certificate of authority by a host or operator shall similarly state all information required but may otherwise designate such hosting platform(s) as primarily and solely liable for collection and remittance of the tax.** Such certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the Commissioner of Finance upon the cessation of business at the hotel or motel **or host or hosting platform service** named or upon its sale or transfer.

**SECTION 7. SEVERABILITY.**

In the event that any portion of this local law is found to be invalid, such finding will not have any effect on either the remaining portions or applications of this local law or any provisions of the Ulster County Charter, which shall remain in full force and effect.

**Proposed Local Law No. 1 Of 2019**

**County Of Ulster**

**A Local Law Amending The Code Of The County Of Ulster In Relation To Local Law No. 5 Of 1991 (A Local Law Adopting A Hotel And Motel Room Occupancy Tax) To Clarify The Tax Law's Application To Short-term And Vacation Rentals**

**SECTION 8. EFFECTIVE DATE.**

This local law shall take effect 90 days after filing with the Office of the Secretary of State and shall not apply retroactively to the collection and remittance of taxes prior to the law taking effect.