

Proposed Local Law No. 7 Of 2020

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 “21st Century Bed Tax.”

SECTION 2. LEGISLATIVE INTENT.

The Ulster County Legislature (“Legislature”) hereby finds that short-term and vacation rental properties (“STRs”) provide a significant opportunity for economic growth to our County through tourism dollars.

The Legislature finds that Ulster County (“County”) is currently a major host to STRs with a revenue reported from Airbnb alone of 32 million dollars in 2019, a thirty-three percent increase over 2018. These levels are expected to only grow county-wide.

The Legislature finds that currently 29 New York Counties have entered into a voluntary contract with Airbnb including our neighboring counties of Dutchess, Orange, and Sullivan¹; some of these agreements have existed for several years.

The Legislature also finds that the current process utilized by the County to extract this tax from STR hosts independently without contracting with on-line hosting companies: (1) has under-generated funds by at least \$250,000 in 2019; (2) is not a tax on the individual tourist/renter who likely lives outside of our county but instead is a charge to our county's hosts who have no means of collecting this tax from their renter. Through a voluntary contract with the hosting companies the full tax can be reclaimed from the renter.

This Local Law would perform the following functions: contract with the on-line hosting companies so that collection and remittance of the tax for short-term and vacation rentals is placed on the hosting company through a voluntary collection agreement and paid directly by the visiting tourist/renter.

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<https://webcache.googleusercontent.com/search?q=cache:q6TUzET1eRkJ:https://www.airbnb.com/help/article/2319/occupancy-tax-collection-and-remittance-by-airbnb-in-new-york+&cd=1&hl=en&ct=clnk&gl=us>

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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 Company”

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 company 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 company.

- 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”**

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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 company.

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 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. **The County will enter into a voluntary collection agreement with all hosting companies that provide such agreement, which designates the**

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hosting company as solely responsible and liable for collecting and remitting the applicable tax to the County for booking transactions completed through the respective hosting company for hotels and motels located within the County; and the host or operator of the hotel or motel who is not the hosting company 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 company 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 company and the County has been executed. For the sole purposes of tax registration, collection, and remittance under this Article, a hosting company 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 company and pursuant to the terms of an executed voluntary collection agreement, through which the hosting company shall collect and remit to the County its respective portion of the tax.

SECTION 5. 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.

SECTION 6. 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.