

LOCAL LAW PERM 3 OF 2014

Local Law Intro 1 of 2014

A LOCAL LAW AMENDING CHAPTER 330 OF THE BROOME COUNTY CHARTER AND CODE

Section 1. Section 330-9 of the Broome County Charter and Code is hereby amended to read as follows:

§ 330-9. Definitions.

When used in this article, the following terms shall mean:

COMPTROLLER — The Comptroller of Broome County.

DIRECTOR OF MANAGEMENT AND BUDGET — The Director of Management and Budget of Broome County.

HOTEL or MOTEL — A building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" or "motel" includes an apartment hotel, motor court or inn, boardinghouse or club or similar hotel or motel type of accommodations by whatever name designated, whether or not meals are served.

OCCUPANCY — The use or possession, or the right to use or possess, any room in a hotel or motel. "Right to use or possess" includes the rights of a room remarketer as described in this section.

OCCUPANT — A person who, for a consideration, uses, possesses or has the right to use or possess any room in a hotel or motel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise. "Right to use or possess" includes the rights of a room remarketer as described in this section.

OPERATOR — Any person operating a hotel or motel in the County of Broome, including but not limited to the owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such hotel or motel.

PERMANENT RESIDENT — Any occupant of any room or rooms in a hotel or motel who maintains occupancy for at least 30 consecutive days shall be considered a "permanent resident" with regard to the period of such occupancy.

PERSON — An individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of the foregoing.

RENT — The consideration received for occupancy valued in money, whether received in money or otherwise, including any service or other charge or amount required to be paid as a condition for occupancy, and also any amount for which credit is allowed by the operator or a room remarketer or another person on behalf of either of them.

RETURN — Any return filed or required to be filed as herein provided.

ROOM — Any room or rooms of any kind in any part or portion of a hotel or motel which is available for or let out for any purpose other than a place of assembly.

"Room Remarketer." A person who reserves, arranges for, conveys, or furnishes occupancy, whether directly or indirectly, to an occupant for rent in an amount determined by such room remarketer, directly or indirectly, whether pursuant to a written or other agreement. Such person's ability or authority to reserve arrange for, convey, or furnish occupancy, directly or indirectly, and to determine rent therefore, shall be the "rights of a room remarketer". A room remarketer is not a permanent resident with respect to a room for which such person has the rights of a room remarketer.

Section 2. Section 330-14 of the Broome County Charter and Code is amended to read as follows:

§ 330-14. Registration.

- A. Within 10 days after the effective date of this article or, in the case of operators or room remarketers commencing business after such effective date, within three days after such commencement or opening, every operator or room remarketer shall file with the Director of Management and Budget a certificate of registration in a form prescribed by the Director of Management and Budget. The Director of Management and Budget shall, within five days after such registration, issue without charge to each operator or room remarketer a certificate of authority empowering such operator or room remarketer to collect the tax from the occupant and duplicate thereof for each additional hotel or motel of such operator. Each certificate or duplicate shall state the hotel or motel to which it is applicable. Such certificates 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. Such certificate shall be nonassignable and nontransferable and shall be surrendered immediately to the Director of Management and Budget upon the cessation of business at the hotel or motel named or upon its sale or transfer.

Section 3. Section 330-15 of the Broome County Charter and Code is amended to read as follows:

§ 330-15. Administration and collection.

- A. The tax imposed by this article shall be administered and collected by the Director of Management and Budget of the County of Broome or other fiscal officers of the County as he may designate by such means and in such manner as are other taxes which are now collected and administered by such officers in accordance with the County Charter or as otherwise are provided by this article.
- B. 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 bill 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 or room remarketer as trustee for and on account of the County and the operator or room remarketer shall be liable for the collection thereof and for the tax. The operator or room remarketer and any officer of any corporate operator or room remarketer shall be personally liable for the tax collected or required to be collected under this article, and the operator or room remarketer 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 Director of Management and Budget 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 the tax.
- C. Where the occupant has failed to pay and the operator or room remarketer has failed to collect a tax as imposed by this article, then in addition to all other rights, obligations and remedies provided, such tax shall be payable by the occupant directly to the County Director of Management and Budget, and it shall be the duty of the occupant to file a return thereof with the County Comptroller and to pay the tax imposed thereon to the

- County Director of Management and Budget within 15 days after such tax was due.
- D. The Director of Management and Budget may, wherever he deems it necessary for the proper enforcement of this article, provide by regulation that the occupant shall file returns and pay directly to the Director of Management and Budget the tax herein imposed, at such times as returns are required to be filed and payment made over by the operator.
 - E. The tax imposed by this article shall be paid upon any occupancy on and after October 1, 2007, although such occupancy is had pursuant to a contract, lease or other arrangement made prior to such date. Where rent is paid or charged or billed, or falls due on either a weekly, monthly or other term basis, the rent so paid, charged, billed or falling due shall be subject to the tax herein imposed to the extent that it covers any portion of the period on and after October 1, 2007. Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the Director of Management and Budget may by regulation provide for credit and/or refund of the amount of such tax upon application therefore as provided in § 330-21 of this article.
 - F. For the purposes of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all rents are subject to tax until the contrary is established, and the burden of proving that a rent for occupancy is not taxable hereunder shall be upon the operator or room remarketer, except that, where by regulation pursuant to Subsection D of this section an occupant is required to file returns and pay directly to the Director of Management and Budget the tax herein imposed, the burden of proving that a rent for occupancy is not taxable shall be upon the occupant. Where an occupant claims exemption from the tax under the provisions of § 330-12 of this article, the rent shall be deemed taxable hereunder unless the operator or room remarketer shall receive from the occupant claiming such exemption a certificate duly executed by an exempt corporation or association certifying that the occupant is its agent, representative or employee, together with a certificate executed by the occupant certifying that his occupancy is paid or to be paid by such exempt corporation or association, and is necessary or required in the course of or in connection with the occupant's duties as a representative of such corporation or association. Where deemed necessary by the operator or room remarketer, he may further require that any occupant claiming exemption from the tax furnish a copy of a certificate issued by the Director of Management and Budget certifying that the corporation or association therein named is exempt from the tax under § 330-12.

Section 4. Section 330-16 of the Broome County Charter and Code is amended to read as follows:

§ 330-16. Recordkeeping.

Every operator or room remarketer shall keep records of every occupancy and of all rent paid, charged or due thereon and of the tax payable thereon, in such form as the Director of Management and Budget may by regulation require. Such records shall be available for inspection, examination and audit at any time upon demand by the Director of Management and Budget or his duly authorized agent or employee and shall be preserved for a period of three years, except that the Director of Management and Budget may consent to their destruction within that period or may require that they be kept longer.

Section 5. Section 330-17A of the Broome County Charter and Code is amended to read as follows:

§ 330-17. Returns.

- A. Every operator or room remarketer (except exempt operators as provided in §§ 330-10

and 330-14 above) shall file with the Director of Management and Budget a return of occupancy and of rents and of the taxes payable thereon for the periods ending on the last day of February, May, August and November of each year, on and after January 1, 1978. Such returns shall be filed within 20 days from the expiration of the period covered thereby. The Director of Management and Budget may permit or require returns to be made by other periods and upon such dates as he may specify. If the Director of Management and Budget deems it necessary in order to ensure the payment of the tax imposed by this article, he may require returns to be made for shorter periods than those prescribed pursuant to the foregoing provisions of this subsection and upon such dates as he may specify.

Section 6. Section 330-18 of the Broome County Charter and Code is amended to read as follows:

§ 330-18. Payment of taxes.

- A. At the time of filing a return of occupancy and of rents, each operator (except exempt operators) or room remarketer shall pay to the Director of Management and Budget the taxes imposed by this article upon the rents required to be included in such return, as well as all other moneys collected by the operator or room remarketer acting or purporting to act under the provisions of this article. Where the Director of Management and Budget in his discretion deems it necessary to protect revenues to be obtained under this article, he may require any operator or room remarketer required to collect the tax imposed by this article to file with him a bond, issued by surety company authorized to transact business in this state and approved by the Superintendent of Insurance of this state as to solvency and responsibility, in such amount as the Director of Management and Budget may fix to secure the payment of any tax and/or penalties and interest due or which may become due from such operator.
- B. In the event that the Director of Management and Budget determines that an operator or room remarketer is to file such bond, he shall give notice to such operator or room remarketer to that effect, specifying the amount of the bond required. The operator or room remarketer shall file such bond within five days after the giving of such notice, unless within such five days the operator or room remarketer shall request, in writing, a hearing before the Director of Management and Budget at which the necessity, propriety and amount of the bond shall be determined by the Director of Management and Budget. Such determination shall be final and shall be complied with within 15 days after the giving of notices thereof. In lieu of such bond, securities approved by the Director of Management and Budget, or cash in such amount as he may prescribe, may be deposited which shall be kept in the custody of the Director of Management and Budget, who may at any time without notice to the depositor apply them to any tax and/or interest or penalties due, and for that purpose the securities may be sold by him at public or private sale without notice to the depositor thereof.

Section 7. Section 330-21 of the Broome County Charter and Code is amended to read as follows:

§ 330-21. Refunds.

- A. In the manner provided in this section, the Director of Management and Budget shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the Director of Management and Budget for such refund shall be made within one year from the payment thereof. Whenever a refund is made by the Director of Management and Budget, he shall state his reason therefore in writing. Such application may be made by the occupant, operator

or other person who has actually paid the tax. Such application may also be made by an operator who has collected and paid over such tax to the Director of Management and Budget, provided that the application is made within one year of the payment of the occupant to the operator, but no actual refund of moneys shall be made to such operator until he shall first establish to the satisfaction of the Director of Management and Budget, under such regulations as the Director of Management and Budget may prescribe, that he has repaid to the occupant the amount for which the application for refund is made. The Director of Management and Budget may, in lieu of any refund required to be made, allow credit therefore on payments due from the applicant.

- B. An application for a refund or credit made as herein provided shall be deemed an application for a revision of any tax, penalty or interest complained of, and the Director of Management and Budget may receive evidence with respect thereto. After making his determination, the Director of Management and Budget shall give notice thereof to the applicant, who shall be entitled to review such determination by a proceeding pursuant to Article 78 of the Civil Practice Law and Rules, provided that such proceeding is instituted within 30 days after the giving of notice of such determination, and provided that a final determination of tax due was not previously made. Such a proceeding shall not be instituted unless an undertaking is filed with the Director of Management and Budget in such amount and with such sureties as a Justice of the Supreme Court shall approve to the effect that, if such proceedings are dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.
- C. A person shall not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of § 330-19 of this article where he has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the Director of Management and Budget after a hearing of his own motion or in a proceeding under Article 78 of the Civil Practice Law and Rules, pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.
- D. A room remarketer shall be allowed a refund or credit against the taxes collected and required to be remitted pursuant to this chapter in the amount of the tax it paid to the operator of the hotel or another room remarketer under this chapter. Provided, however, that in order to qualify for a refund or credit under this paragraph with respect to any quarterly period, as described in this chapter, the room remarketer must, with respect to such quarter, (i) be registered for hotel room occupancy tax purposes under this chapter, and (ii) collect the taxes imposed by this chapter. Subject to the conditions and limitations of this paragraph, the provisions of this chapter shall apply to refunds of credits under this paragraph.

Section 8. Section 330-24 of the Broome County Charter and Code is amended to read as follows:

§ 330-24. Proceedings to recover tax.

- A. Whenever any operator or room remarketer or any officer of a corporate operator or any occupant or other person shall fail to collect and pay over any tax and/or to pay any tax, penalty or interest imposed by this article as herein provided, the County Attorney shall, upon the request of the Director of Management and Budget, bring or cause to be brought an action to enforce the payment of the same on behalf of the County of Broome in any court of the State of New York or of any other state of the United States.

If, however, the Director of Management and Budget in his discretion believes that any such operator or room remarketer, officer, occupant or other person is about to cease business, leave the state or remove or dissipate the assets out of which the tax or penalties might be satisfied, and that any such tax or penalty will not be paid when due, he may declare such tax or penalty to be immediately due and payable and may issue a warrant immediately.

- B. As an additional or alternate remedy, the Director of Management and Budget may issue a warrant, directed to the Sheriff, commanding him to levy upon and sell the real and personal property of the operator or room remarketer or officer of a corporate operator or room remarketer or other person liable for the tax, which may be found within the County, for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return such warrant to the Director of Management and Budget and to pay to him the money collected by virtue thereof within 60 days after the receipt of such warrant. The Sheriff shall, within five days after the receipt of the warrant, file with the County Clerk a copy thereof, and thereupon such Clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the interest in real and personal property of the person against whom the warrant is issued. The Sheriff shall then proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions issued against property judgments of a court of record, and for services in executing the warrant he shall be entitled to the same fees, which he may collect in the same manner. In the discretion of the Director of Management and Budget, a warrant of like terms, force and effect may be issued and directed to any officer or employee of the Director of Management and Budget, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the Director of Management and Budget may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the County has recovered judgment therefore and execution thereon has been returned unsatisfied.

Section 9. Section 330-27B of the Broome County Charter and Code is amended to read as follows:

- B. Any operator or room remarketer or occupant and any officer of a corporate operator or room remarketer or occupant failing to file a return required by this article, or filing or causing to be filed or making or causing to be made or giving or causing to be given any return, certificate, affidavit, representation, information, testimony or statement required or authorized by this article which is willfully false, and any operator or room remarketer and any officer of a corporate operator or room remarketer willfully failing to file a bond required to be filed pursuant to § 330-19 of this article, or failing to file a registration certificate and such data in connection therewith as the Director of Management and Budget may by regulation or otherwise require, or display or surrender the certificate of authority or exemption as required by this article, or assigning or transferring such certificate of authority or exemption, and any operator or room remarketer and any officer or a corporate operator or room remarketer willfully failing to charge separately from the rent the tax herein imposed, or willfully failing to state such tax separately on any evidence of occupancy and on any bill or statement or receipt of rent issued or employed by the operator or room remarketer, or willfully failing or refusing to collect

such tax from the occupant, and any operator or room remarketer and any officer of a corporate operator or room remarketer who shall refer or cause reference to be made to this tax in a form or manner other than that required by this article, and any operator or room remarketer failing to keep the records required by § 330-16 of this article shall, in addition to the penalties herein or elsewhere prescribed, be guilty of a misdemeanor, punishment for which shall be a fine of not more than \$1,000 or imprisonment for not more than one year, or both such fine and imprisonment. Officers of a corporate operator or room remarketer shall be personally liable for the tax collected or required to be collected by such corporation under this article and subject to the penalties hereinabove imposed.

Section 10. This Local Law shall take effect upon filing with the Secretary of State.