

LOCAL LAW NUMBER 2-2009  
SCHOHARIE COUNTY

A LOCAL LAW IMPOSING A TAX ON THE OCCUPANCY OF LODGING FACILITIES  
PURSUANT TO CHAPTER 405 OF THE LAWS OF 2009 OF THE STATE OF NEW YORK

BE IT ENACTED, by the County Board of Supervisors of the County of Schoharie,  
New York, as follows:

SECTION 1. SHORT TITLE

This local law shall be known as the Schoharie County Occupancy Tax Law.

SECTION 2. INTENT

The intent of this local law shall be to provide the financial resources in order to promote and enhance the general economy of Schoharie County, its towns and villages, through increased promotion of tourist related enterprises, recreational opportunities and increasing overnight stays in the County.

SECTION 3. TEXT

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1. Definitions.

When used in this local law, the following terms shall mean:

(a) 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.

(b) Operator. Any person operating a lodging facility in the County of Schoharie, including but not limited to, the owner or proprietor of such premises, lessee, sub lessee, mortgagee in possession, licensee, management company, or any other person otherwise operating such lodging facility.

(c) Lodging Facility. Any facility consisting of rental units and providing lodging on an overnight basis. Such facilities shall include those facilities designated and commonly known as “bed and breakfasts” and “tourist” facilities, and shall also include inns, boarding houses, condominiums, cabins, cottages, motor courts or clubs, bunk houses, lodges, trailers, campers, and tents offered for rent by the owner thereof for lodging and shelter on an overnight basis.

(d) Occupancy. The use or possession, or the right to use or possession of any room in a lodging facility.

(e) Occupant. A person who, for a consideration, uses, possesses, or has the right to use or possess, any room or site in a lodging facility under any lease, concession, permit, right of access, license to use or other agreement, or otherwise.

(f) Permanent Resident. Any occupant of any room or rooms in a lodging facility for at least fifteen (15) consecutive days shall be considered a permanent resident with regard to the period of such occupancy. Also, any occupant that has a permanent Schoharie County address, and can demonstrate such.

(g) Rent. The consideration received for occupancy valued in money, whether received in money or otherwise.

(h) Room or site. Any site, dedicated area or space of any kind in any part or portion of a lodging facility, which is available for or let out for any purpose other than a place of assembly.

(i) Return. Any return filed or required to be filed as herein provided.

(j) County Treasurer. The County Treasurer of Schoharie County.

2. Imposition of Tax.

On or after November 1, 2009, and in addition to any other tax presently authorized and imposed (pursuant to Article 29 of the Tax Law), there is hereby imposed and there shall be paid a tax of four [4%] percent upon the rent for every occupancy of a room in this county, except that the tax shall not be imposed upon a permanent resident or exempt organizations as hereinafter set forth.

3. Transitional Provisions.

The tax imposed by this local law shall be paid upon any occupancy on and after the first day of October, two thousand nine, although such occupancy is pursuant to a prior contract, lease or other arrangement. Where rent is paid on a weekly, monthly, or other term

basis, the rent shall be subject to the tax imposed by this local law to the extent that it covers any period on and after the first day of October two thousand nine.

4. Exempt Organizations.

(a) Section 1202-Y of the Tax Law does not authorize the imposition of this occupancy tax upon any transaction, by or with any of the following in accordance with Section 1230 of the Tax Law.

(1) 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;

(2) The United States of America, insofar as it is immune from taxation;

(3) 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.

(b) Where any organization described in paragraph (3) of subdivision (a) of this subsection carries on its activities in furtherance of the purposes for which it was organized, in premises in which, as part of said activities, it operates a lodging facility, occupancy of rooms in the premises and rents therefrom received by such corporation or association shall not be subject to tax hereunder.

5. Territorial Limitations.

The tax imposed by this local law shall apply only within the territorial limits of the County of Schoharie.

6. Registration.

Within thirty (30) days after the effective date of this local law, or in the case of operators commencing business after such effective date, within three (3) days after such commencement or opening, every operator shall file with the County Treasurer a certificate of registration in a form prescribed by the County Treasurer. The County Treasurer shall within five (5) days after such registration issue without charge to each operator a certificate of authority empowering such operator to collect the tax from the occupant and a duplicate thereof for each additional lodging facility of such operator. Each certificate or duplicate shall state the lodging facility 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 certificates shall be non-assignable and non-transferable and shall be surrendered immediately to the County Treasurer upon the cessation of business at the lodging facility named or upon its sale or transfer.

7. Administration and Collection.

(a) The tax imposed by this local law shall be administered and collected by the County Treasurer or other fiscal officers of the County as he or she may designate by such means and

in such manner as other taxes which are now collected and administered by such officers or as otherwise provided by this local law.

(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 as trustee for and on account of the County, and the operator shall be personally liable for the tax collected or required to be collected under this local law, 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 non-payment of rent by the occupant; provided, however, that the County Treasurer or other fiscal officer or officers, employees or agents duly designated by him or her 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 has failed to collect a tax as imposed by this local law, then in addition to all other rights, obligations and remedies provided, such tax shall be payable by the occupant directly to the County Treasurer, and it shall be the duty of the occupant to file a return thereof with the County Treasurer and to pay the tax imposed thereon to the County County Treasurer within fifteen (15) days after such tax was due.

(d) The County Treasurer may, whenever he or she deems it necessary for the proper enforcement of this local law, provide by regulation that the occupant shall file returns and pay directly to the County Treasurer 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 local law shall be paid upon any occupancy on and after the imposition date, 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 imposition date. Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the County Treasurer may by regulation provide for credit and/or refund of the amount of such tax upon application therefore as provided in subsection thirteen of Section 3 this local law.

(f) For the purpose of the proper administration of this local law 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, except that, where by regulation pursuant to subdivision seven (d) of this section, an occupant is required to file returns and pay directly to the County Treasurer 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 subdivision four of this section, the rent shall be deemed taxable hereunder unless the operator 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 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, he may further require that any occupant claiming exemption from the tax furnish a copy of a certificate issued by the County Treasurer certifying that the corporation or association herein named is exempt from the tax under subdivision four of this section.

8. Records to be Kept.

Every operator 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 County Treasurer may by regulation require. Such records shall be available for inspection and examination at any time upon demand by the County Treasurer or his duly authorized agent or employee and shall be preserved for a period of seven (7) years, except that the County Treasurer may consent to their destruction within that period or may require that they be kept longer.

9. Returns.

(a) Every operator shall file with the County Treasurer a return of occupancy and of rents, and of the taxes payable thereon for the periods ending the last day of February, May, August and November of each year, on and after October first two thousand nine. Such returns shall be filed within twenty (20) days from the expiration of the period covered thereby. The County Treasurer may permit or require returns to be made by other periods and upon such dates as he or she may specify. If the County Treasurer deems it necessary in order to insure the payment of the tax imposed by this local law, he or she may require returns to be made for shorter periods than those prescribed pursuant to the foregoing provisions of this section and upon such dates as he or she may specify.

(b) The forms of returns shall be prescribed by the County Treasurer and shall contain such information as he or she may deem necessary for the proper administration of this local law. The County Treasurer may require amended returns to be filed within twenty (20) days after notice and to contain the information specified in the notice.

(c) If a return required by this local law is not filed, or a return when filed is incorrect or insufficient on its face, the County Treasurer shall take the necessary steps to enforce the filing of such a return or of a corrected return.

10. Payment of Tax.

At the time of filing a return of occupancy and of rents each operator shall pay to the County Treasurer the taxes imposed by this local law upon the rents required to be included in such return, as well as all other moneys collected by the operator acting or purporting to act under the provisions of this local law even though it be judicially determined that the tax collected is invalidly required to be billed. All taxes shall be due from the operator and payable to the County Treasurer by the date specified for the filing of the return for such period, without regard for whether a return is filed or whether the return which is filed correctly shows the amount of rents and the taxes due thereon. Where the County Treasurer in his or her discretion deems it necessary to protect revenues to be obtained under this local law he may require any operator required to collect the tax imposed by this local law to file with him a bond, issued by a 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

County Treasurer may fix to secure the payment of any tax and/or penalties and interest due or which may become due from such operator. In the event that the County Treasurer determines that an operator is to file such bond, he or she shall give notice to such operator to that effect specifying the amount of the bond required. The operator shall file such bond within five (5) days after the giving of such notice, unless within such five (5) days the operator shall request in writing a hearing before the County Treasurer at which the necessity, propriety and amount of the bond shall be determined by the County Treasurer. Such determination shall be final and shall be complied with within fifteen (15) days after the giving of such notice thereof. In lieu of such bond, securities approved by the County Treasurer or cash in such amount as he or she may prescribe, may be deposited which shall be kept in the custody of the County Treasurer who may at any time without notice of the depositor apply them to any tax and/or interest or penalties due, and for that purpose the securities may be sold by him or her at public or private sale without notice to the depositor thereof.

11. Vendor Collection Credit.

A credit in the amount of five (5%) percent of all tax collected, up to \$200.00 per quarter will be allowed. To obtain the credit, returns must be filed and paid in full by the due date.

12. Determination of Tax.

If a return required by this local law is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the County Treasurer from such information as may be obtainable and, if necessary, the tax may be estimated on the basis of external indices, such as number of rooms, location, scale of rents, comparable rents, type of accommodations and service, number of employees and/or other factors. Notice of such determination shall be given to the person liable for the collection and/or payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within thirty (30) days after giving of notice of such determination, shall apply to the County Treasurer for a hearing, or unless the County Treasurer of his or her own motion shall re-determine the same. After such hearing, the County Treasurer shall give notice of his or her final determination to the person against whom the tax is assessed. The final determination of the County Treasurer shall be reviewable for errors, illegality or unconstitutionality or any other reason whatsoever by proceeding under article seventy-eight of the Civil Practice Law and Rules if application therefore is made to the Supreme Court within thirty (30) days after the giving of the notice of such final determination. A proceeding under article seventy-eight of the Civil Practice Law and Practice Law and Rules of the State of New York shall not be instituted unless (a) the amount of any tax sought to be reviewed, with penalties and interest thereof, if any, shall be first deposited with the County Treasurer and there shall be filed with the County Treasurer an undertaking, issued by a 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 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 the proceeding, or (b) at the option of the applicant such undertaking filed with the County Treasurer may be in a sum sufficient to cover the taxes, penalties and interest thereof stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the

applicant shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

13. Disposition of Revenues.

All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the County of Schoharie and shall be credited to and deposited in a special tourism and promotion fund. The County shall be authorized by local law to retain ten percent of such revenue to defer the necessary expenses of the County in administering such tax. The Schoharie County Occupancy Tax Board shall make recommendations to the Board of Supervisors regarding the allocation of funds. The funds will thereafter to be allocated by the Schoharie County Board of Supervisors through the budget process for tourism and promotion development the County. The Schoharie County Occupancy Tax Board shall make recommendations to the Board of Supervisors regarding the allocation of the funds. The revenue derived from such tax, after deducting the amount provided for administering such tax as so authorized by local law, shall be allocated only for the purposes of enhancing and promoting Schoharie county, its towns and villages through the promotion of tourism, conventions, trade shows, special events and other directly related and supporting activities including, but not limited to, programs to improve the aesthetic qualities of the county; to enhance the environment; to improve infrastructures related to tourism, conventions and trade shows; to develop, operate and maintain parks, recreational facilities and tourist attractions; and such other programs as authorized by local law.

The Schoharie County Board of Supervisors shall appoint a nine-member Schoharie County Occupancy Tax Board (SCOTB) that consists of:

- Two members who are owners or operators of lodging establishments subject to the occupancy tax within Schoharie County;
- Two members who are owners or operators of a Schoharie County Tourist Attraction;
- One member from a Schoharie County retail business;
- One member from a Schoharie County restaurant business;
- Two members from any industry;
- The Chair of the Historical, Planning, Promotional, Youth and OFA Committee of the Board of Supervisors
- One non- voting (ex-officio member) staff person from the Schoharie County designated Tourist Promotion Agency (TPA).

Members of the Schoharie County Occupancy Tax Board shall serve three year terms. The initial terms of the Board members shall be appointed as follows – three for a three (3) year term, three for a two (2) year term, and three for a one (1) year term. No one member is to serve more than two (2) full terms, or six (6) consecutive years. Said Board shall advise the

Schoharie County Board of Supervisors regarding the expenditure of funds authorized by this law for advertising, publicizing and promoting tourist attractions and facilities in Schoharie County. Decisions regarding the expenditure of occupancy tax funds shall give priority to, and be weighed toward, promotional activity that will increase the number of travelers staying overnight in all lodging establishments subject to the occupancy tax within Schoharie County.

14. Refunds.

(a) In the manner provided in this section the County Treasurer shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the County Treasurer for such refund shall be made within one (1) year from the payment thereof. Whenever a refund is made by the County Treasurer, he or she shall state his or her 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 County Treasurer provided the application is made within one (1) year of the payment by the occupant to the operator, but no actual refund of moneys shall be made to such operator until he or she shall first establish to the satisfaction of the County Treasurer, under such regulations as the County Treasurer may prescribe, that he or she has repaid to the occupant the amount for which the application for refund is made. The County Treasurer 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 County Treasurer may receive evidence with respect thereto. After making his or her determination, the County Treasurer shall give notice thereof to the applicant who shall be entitled to review of such determination by a proceeding pursuant to article seventy-eight of the Civil Practice Law and Rules, provided such proceeding is instituted within thirty (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 County Treasurer 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.

(c) A person shall not be entitled to a revision, refund or credit under this subsection of a tax, interest or penalty which had been determined to be due pursuant to the provisions of subsection thirteen of Section 3 of this local law where he or she has had a hearing or an opportunity for a hearing, as provided in said section or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the County Treasurer made pursuant to subsection eleven of Section 3 of this local law unless it be found that such determination by the County Treasurer was erroneous, illegal or unconstitutional or otherwise improper after a hearing or of his or her own motion or in a proceeding under article seventy-eight of the Civil Practice Law and Rules, pursuant to the provisions of said subsection, in which event refund or credit without interest shall be made of the tax, credit or penalty found to have been overpaid.

15. Reserves.

In cases where the occupant or operator has applied for a refund and has instituted a proceeding under article seventy-eight of the Civil Practice Law and Rules to review a determination adverse to him or on his or her application for refund, the County Treasurer shall set up appropriate reserves to meet any decision adverse to the County.

16. Remedies Exclusive.

The remedies provided by subsections eleven and fourteen of Section 3 of this local law shall be exclusive remedies available to any person for the review of tax liability imposed by this local law, and no determination or proposed determination of tax or determination on any application for refund shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than a proceeding in a nature of a certiorari proceeding under article seventy-eight of the Civil Practice Law and Rules, provided, however, that a taxpayer may proceed by declaratory judgment if he or she institutes suit within thirty (30) days after a deficiency assessment is made and pays the amount of the deficiency assessment to the County Treasurer prior to the institution of such suit and posts a bond for costs as provided in subsection eleven of Section 3 of this local law.

17. Proceedings to Recover Tax.

(a) Whenever any operator or any officer of a corporate operator or any occupant or other person shall fail to collect and pay over any tax and/or pay any tax, penalty or interest imposed by this local law as therein provided, the County Attorney shall, upon the request of the County Treasurer bring or cause to be brought an action to enforce the payment of the same on behalf of the County of Schoharie in any court of the State of New York, or of any other state or of the United States. If, however, the County Treasurer in his or her discretion believes that any such operator, 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 alternative remedy, the County Treasurer may issue a warrant, directed to the Sheriff commanding him to levy upon and sell the real and personal property of the operator or officer of a corporate operator 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 County Treasurer and to pay him or her the money collected by virtue thereof within sixty (60) days after the receipt of such warrant. The Sheriff shall within five (5) 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 County Treasurer, a warrant of like terms, force and effect may be issued and directed to any officer or employee of the County Treasurer and in the execution thereof

such officer or employee shall have all the powers conferred by law upon Sheriff, 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 County Treasurer 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.

(c) Whenever an operator shall make a sale, transfer, or assignment in bulk of any part or the whole of his lodging facility or his lease, license or other agreement or right to possess or operate such lodging facility or of the equipment, furnishings, fixtures, supplies or stock of merchandise, or the said premises or lease, license or other agreement or right to possess or operate such lodging facility and the equipment, furnishings, fixtures, supplies and stock of merchandise pertaining to the conduct or operation of said lodging facility, otherwise than in the ordinary and regular prosecution of business, the purchaser, transferee or assignee shall at least ten (10) days before taking possession of the subject of the sale, transfer or assignment, or paying therefore, notify the County Treasurer by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferor or assignor, has represented to or informed the purchaser, transferee or assignee that it owes any tax pursuant to this local law, and whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give notice to the County Treasurer as required by the preceding paragraph or whenever the County Treasurer shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or chooses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferor or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferor or assignor to the County, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferor or assignor any such sums of money, property or chooses in action to the extent of the amount of the County's claim. For failure to comply with the provisions of this subdivision, the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of article six of the Uniform Commercial Code, shall be personally liable for the payment to the County of any such taxes theretofore or thereafter determined to be due to the County from the seller, transferor, or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this local law.

18. General Powers of the County Treasurer.

(a) In addition to the powers granted to the County Treasurer in this local law, he or she is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this local law and the purposes thereof;
2. To extend for good cause shown, the time of filing any return for a period not exceeding thirty (30) days; and for good cause shown, to remit penalties but not interest computed at the rate of six percent (6%) per annum; and to compromise disputed claims in connection with the taxes hereby imposed;
3. To request information from the Tax Commissioner of the State of New York or the Treasury Department of the United States relative to any person; and to afford

information to such tax commission or such treasury department relative to any person, any other provision of this local law to the contrary notwithstanding;

4. To delegate his or her functions hereunder to a deputy County Treasurer or any employee or employees of the Department of the County Treasurer;

5. To prescribe methods for determining the rents for occupancy and to determine the taxable and non-taxable rents;

6. To require any operator within the County to keep detailed records of the nature and type of hotel maintained, nature and type of service rendered, the rooms available and rooms occupied daily, leases or occupancy contracts or arrangements, rents received, charged and accrued, the names and addresses of the occupants, whether or not any occupancy is claimed to be subject to the tax imposed by this local law, and to furnish such information upon request to the County Treasurer;

7. To assess, determine, revise, audit and subject and readjust the taxes imposed under this local law.

19. Administration of Oaths and Compelling Testimony.

(a) The County Treasurer or his or her employees or agents duly designated and authorized by him or her shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this local law. The County Treasurer shall have power to subpoena and require the attendance of witnesses and the production of books, papers, and documents to secure information pertinent to the performance of his or her duties hereunder and of the enforcement of this local law and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before him or her, or excused from attendance.

(b) A justice of the Supreme Court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the County Treasurer under this local law.

(c) Any person who shall refuse to testify or to produce books or records or who shall testify falsely in any material matter pending before the County Treasurer under this local law shall be guilty of a misdemeanor, punishment for which shall be a fine of one thousand dollars (\$1,000.00) or imprisonment for not more than one (1) year, or both such fine and imprisonment.

(d) The officers who serve the summons or subpoena of the County Treasurer and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the County Sheriff and his or her duly appointed deputies or any officers or employees of the Department of Finance, designated to serve such process.

20. Reference to Tax.

Whenever reference is made in placards or advertisements or in any other publications to this tax, such reference shall be substantially in the following form: "Tax on occupancy of lodging facility rooms", except that in any bill, receipt, statement or other evidence or memorandum of occupancy or rent charge issued or employed by the operator, the words "occupancy tax" will suffice.

21. Penalties and Interest.

(a) Any person failing to file a return or to pay over any tax to the County Treasurer within the time required by this local law shall be subject to a penalty of ten percent (10%) of the amount of tax due; plus interest at the rate of one and one half percent (1.5%) of such tax for each month of delay excepting the first month after such return was required to be filed or such tax became due; but the County Treasurer if satisfied that the delay was excusable, may remit all or any part of such penalty, but not interest. Such penalties and interest shall be paid and disposed of in the same manner as other revenues from this local law. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this local law.

(b) If the County Treasurer determines that such failure or delay was due to reasonable cause and not due to willful neglect, he shall remit all of such penalty. The County Treasurer shall promulgate rules and regulations as to what constitutes reasonable cause.

(c) If the failure to file a return or to pay over any tax to the County Treasurer within the time required by this Local Law is due to fraud, there shall be added to the tax a penalty of fifty percent (50%) of the amount of the tax due (in lieu of the penalty provided for in paragraph (a), plus interest at the rate of one percent (1%) of such tax for each month of delay after such return was required to be filed or such tax became due. Such penalties and interest shall be paid and disposed of in the same manner as other revenues from this Local Law. Unpaid penalties and interest may be determined, assessed, collected and enforced in the same manner as the tax imposed by this Local Law.

(d) Any operator or occupant and any officer of a corporate operator or occupant failing to file a return required by this local law, 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 local law, which is willfully false, and any operator and any officer of a corporate operator willfully failing to file a bond required to be filed pursuant to subsection eleven of Section 3 of this local law, or failing to file a registration certificate and such data in connection therewith as the County Treasurer may by regulation or otherwise require or to display or surrender the certificate of authority as required by this local law or assigning or transferring such certificate of authority and any operator and any officer of a corporate operator willfully failing to charge separately from the rent the tax herein imposed, or willfully failing to state such tax separately on any evidence or occupancy and on any bill or statement or receipt or rent issued or employed by the operator, or willfully failing or refusing to collect such tax from the occupant, and any operator and any officer of a corporate operator who shall refer or cause reference to be made to this tax in a form or manner other than that required by this local law, and any operator failing to keep the records required by subsection eight of Section 3 of this local law, 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 one thousand dollars (\$1,000.00) or imprisonment for not more than one (1) year, or both such fine and imprisonment. Officers of a corporate operator shall be personally liable for the tax collected or required to be collected by such corporation under this local law, and subject to the penalties herein above imposed.

(e) The certificate of the County Treasurer to the effect that a tax has not been paid, that a return, bond or registration certificate has not been filed, or that information has not been supplied pursuant to the provisions of this local law, shall be presumptive evidence thereof.

(f) The penalties provided for in this section shall not preclude prosecution pursuant to the penal law with respect to the willful failure of any person to pay over to the County any tax imposed by this Local Law, whenever such person has been required to collect and has collected any such sales tax.

22. Returns to be Secret.

(a) Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the County Treasurer or any officer or employee of the Department of Finance to divulge or make known in any manner the rents or other information relating to the business of a taxpayer contained in any return required under this local law. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the County Treasurer in an action or proceeding under the provisions of this local law, or on behalf of any party to any action or proceeding under the provisions of this local law when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his or her duly authorized representative of a certified copy of any return filed in connection with his tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the County Attorney or other legal representatives of the County or the District Attorney of the return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted for the collection of a tax or penalty, or whom is the subject of a pending criminal investigation. Returns shall be preserved for seven (7) years and thereafter until the County Treasurer permits them to be destroyed.

(b) Any violation of subdivision (a) of this subsection shall be punishable by a fine not exceeding one thousand dollars (\$1,000.00) or by imprisonment not exceeding one (1) year or both, in the discretion of the court.

23. Notices and Limitations of Time.

(a)(1) Any notice authorized or required under the provisions of this Local Law may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him pursuant to the provisions of this Local Law, or in any application made by him, or, if no return has been filed or application made, then to such address as may be obtainable. A notice of determination shall be mailed promptly by registered or certified mail. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of which is determined according to the provisions of this Local Law by the giving of notice shall commence to run from the date of mailing of such notice.

(a)(2) If any return, claim, statement, notice, application, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this Local Law is, after such period of such date delivered by United States mail to the County Treasurer or his office, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the County Treasurer or his office. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the County Treasurer or his office. Certified mail may be used in lieu of registered mail under this section. This subdivision shall apply in the case of postmarks not made by the United States Post Office only if and to the extent provided by regulation of the County Treasurer.

(a)(3) When the last day prescribed under the authority of this Local Law (including any extension of time) for performing any act falls on Saturday, Sunday or a legal holiday in the State of New York, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal holiday.

(b) The provisions of the Civil Practice Law and Rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the County to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this local law. However, except in the case of a 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 (3) 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.

(c) Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

24. Separability.

If any provisions of this local law, or the application thereof to any person or circumstances, is held invalid, the remainder of this local law, and the application of such provisions to other persons or circumstances shall not be affected thereby.

SECTION 4.

This local law shall take effect upon filing in the office of the Secretary of State.