

**LOCAL LAW NO.: 12 - 2023**

**LOCAL LAW ESTABLISHING A NEW ARTICLE XI IN CHAPTER 170 OF THE TOWN CODE OF THE TOWN OF DEWITT TO IMPOSE A TAX UPON PERSONS OCCUPYING A HOTEL OR MOTEL ROOM IN THE TOWN OF DEWITT**

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**Be it enacted by the Town Board of the Town of DeWitt, Onondaga County, State of New York, that a new Chapter 170, Article XI of the Town Code of the Town of DeWitt entitled “Hotel Room Occupancy Tax” is adopted as follows:**

**CHAPTER 170, ARTICLE XI – HOTEL ROOM OCCUPANCY TAX**

**§170-32 Legislative findings and intent.**

The purpose of this Article is to authorize the Town of DeWitt to impose a two percent (2.00%) hotel room occupancy tax, pursuant to §1202-ZZ-1 of the New York State Tax Law, upon persons occupying any room or rooms in a hotel or motel for hire in the Town. The hotel room occupancy tax will provide the Town with another source of funds to pay costs associated with Willis Carrier Park and various tourism infrastructure improvements within the Town. §1202-ZZ-1 of the New York State Tax Law has been adopted by the New York State Legislature and signed into law by the Governor and requires that each municipality authorized to institute such a hotel room occupancy tax adopt a local law which establishes the level of tax and the rules and regulations governing the collection of the tax and other procedures relating to the tax. This Article shall implement the hotel room occupancy tax in the Town and establish all of the rules and procedures relating thereto.

**§170-33 Definitions.**

For the purposes of this Article, the following definitions shall apply:

**COMPTROLLER**

The Comptroller of the Town of DeWitt

**HOTEL**

Any building or portion of any building in the Town of DeWitt, Onondaga County, which is used and kept open as such for the overnight lodging of guests, including, but not limited to, an apartment hotel, conference/training center, motel or boardinghouse, whether or not meals are served.

**OCCUPANCY**

The use or possession or the right to the use or possession of any Room in a Hotel.

**OCCUPANT**

A natural person who, for a consideration, uses, possesses or has the right to use or possess any Room in a Hotel under any lease, concession, permit, right of access, license to use or other agreement or otherwise.

**OPERATOR**

Any Person operating a Hotel in the Town of DeWitt, Onondaga County, including, but not limited to, an owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such Hotel.

**PERSON**

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

**RENT**

The consideration received for Occupancy valued in money, whether received in money or otherwise, for the Occupancy of a Room in a Hotel for any period of time.

**RETURN**

A document designed by the Comptroller and filled out by the Operator on a regular basis detailing the Rents received for occupancies of Rooms in a prescribed time period and the applicable tax payable thereon.

**ROOM**

Any room or rooms or suit of rooms with sleeping accommodations, whether or not such accommodations are used, of any kind in any part or portion of a Hotel which is available for or let out for any purpose.

**§170-34 Tax imposed.**

Effective January 1, 2024, there is hereby imposed and there shall be paid a per diem tax of two percent (2.00%) upon the Rent for every Occupancy of a Room or Rooms in a Hotel in the Town of DeWitt, Onondaga County, except that the tax shall not be imposed upon an exempt Occupant, exempt organization or as otherwise provided herein.

**§170-35 Exemptions.**

Except as otherwise provided in this Section, any use or Occupancy by any of the following shall not be subject to the tax imposed by this Article:

- A. The State of New York, or any of its agencies or instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada), improvement districts or political subdivisions of the state.
- B. The United States of America, or any of its agencies and instrumentalities, insofar as it is immune from taxation.
- C. 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 subsection 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 subsection.

- D. Any permanent resident of a Hotel, which are Persons occupying any Room or Rooms in a Hotel for at least thirty (30) consecutive days.
- E. Any Occupant of any Room or Rooms in a Hotel whose Rent is paid from public assistance by the County of Onondaga.

**§170-36 Territorial limits.**

The tax imposed by this Article shall apply only within the territorial limits of the Town of DeWitt, Onondaga County.

**§170-37 Registration; certificate of authority to collect.**

- A. Within ten (10) days after the effective date of this Article 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 Comptroller a certificate of registration on a form prescribed by the Comptroller.
- B. The Comptroller shall, within five (5) days after receipt of such certificate of registration, issue without charge to each Operator a certificate of authority empowering such Operator to collect the tax from its Occupants and a duplicate thereof for each additional Hotel of such Operator. Each certificate of authority or duplicate shall state the Hotel to which it is applicable. Such certificate of authority shall be prominently displayed by the Operator in such a manner that it may be seen and come to the notice of all Occupants and Persons seeking Occupancy. Such certificate of authority shall be non-assignable and non-transferable and shall be surrendered immediately to the Comptroller upon the cessation of business at a Hotel named or upon its sale or transfer.

**§170-38 Administration and collection.**

- A. The tax imposed by this Article shall be administered and collected by the Comptroller or such other Town employee as he/she may designate by such means and in such manner as are other taxes which are now collected and administered or as otherwise 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 and contracted for and charged for, and upon every evidence of Occupancy or any bill or statement of charges 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 Town, 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 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/she may have in the event of nonpayment of the Rent by the Occupant; provided, however, that the Comptroller or employees or agents duly designated by him/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. The Comptroller may, whenever he/she deems it necessary for the proper enforcement of this Article, provide by regulation that the Occupant shall file Returns and pay directly to the Comptroller the tax imposed at such times as Returns are required to be filed and payment made over by the Operator.
- D. The tax imposed by this Article shall be paid upon any Occupancy on and after January 1, 2024, regardless of whether such Occupancy is 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 January 1, 2024. Where any tax has been paid hereunder upon any Rent which has been ascertained to be worthless, the Comptroller may, by regulation, provide for credit and/or refund of the amount of such tax upon application as provided in §170-43 of this Article.
- E. For the purpose 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 Occupant. Where an Occupant claims exemption from the tax under the provisions of §170-34 of this Article, the Rent shall be deemed taxable hereunder unless the Operator shall receive from the Occupant claiming such exemption a copy of a New York State sales tax exemption certificate.

**§170-39 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 Comptroller requires. Such records shall be available for inspection, audit and/or third-party audit and examination at any time upon demand by the Comptroller or his/her duly authorized agent or employee and shall be preserved for a period of three years, except that the Comptroller may consent to their destruction within that period or may require that they be kept together.

**§170-40 Filing of Returns.**

- A. Every Operator shall file with the Comptroller a Return of Occupancy and of Rents and of the taxes payable thereon quarterly with the Town (March 31, June 30, September 30, December 31). Returns shall be filed within five (5) days of the expiration of the period covered thereby. The Comptroller may permit or require Returns to be made for other periods upon such dates as he/she may specify. If the Comptroller deems it necessary in order to ensure the payment of the tax imposed by this Article, he/she may require Returns to be made for shorter or longer periods than those prescribed pursuant to the foregoing provisions of this Section and upon such dates as he/she may specify.
- B. The form of the Return shall be prescribed by the Comptroller and shall contain such information as he/she may deem necessary for the proper administration of this Article. The Comptroller may require amended Returns to be filed within five (5) days after request by the Comptroller.

- C. If a Return required by this Article is not filed, or if a Return is incorrectly filed or is insufficient on its face, the Comptroller shall take such steps as he/she deems necessary to enforce the filing of such Return or of a corrected Return.

**§170-41 Determination of tax; reviewability.**

Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under Article 78 of the Civil Practice Law and Rules if application is made to the Supreme Court of the State of New York, County of Onondaga, within thirty (30) days after giving of the notice of such final determination; provided, however, that any such proceeding under Article 78 of the Civil Practice Law and Rules shall not be instituted unless:

- A. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulations, shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the Superintendent of Financial Services 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 such proceeding; or
- B. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

**§170-42 Payment of taxes.**

- A. At the time of filing a Return of Occupancy and of Rents, each Operator shall pay to the Comptroller 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 acting or purporting to act under the provisions of this Article; it shall be due from the Operator and payable to the Comptroller on the date prescribed herein for the filing of the Return for such period, without regard to whether a Return is filed or whether the Return which is filed correctly shows the amount of Rents and taxes due thereon.
- B. Where the Comptroller in his/her discretion deems it necessary to protect revenues obtained under this Article, he/she may require any Operator required to collect the tax imposed by this Article to file with him/her a bond, issued by a surety company authorized to transact business in this state and approved by the Superintendent of Financial Services of this state as to solvency and responsibility, in such amount as the Comptroller may find 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 Comptroller determines that an Operator is to file such bonds, he/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 Comptroller at which the necessity, propriety and amount of the bond shall be determined by the Comptroller. Such determination shall be final and shall be complied with

within fifteen (15) days after the giving of notices thereof. In lieu of such bond, securities approved by the Comptroller or cash in such amount as he/she may prescribe may be deposited with him/her, which shall be kept in the custody of the Comptroller, 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/her at public or private sale without notice to the depositor thereof.

#### **§170-43 Disposition of revenues.**

All revenue resulting from the imposition of the tax authorized under this Article shall be paid into the treasury of the Town of DeWitt and shall be credited to and deposited in the general fund of the Town of DeWitt and may thereafter be allocated at the discretion of the Town Board.

#### **§170-44 Refunds.**

- A. In the manner provided in this Section, the Comptroller shall refund or credit, without interest, any tax penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the Comptroller for such refund shall be made within one (1) year from the payment thereof. Whenever a refund is made by the Comptroller, he/she shall state his/her reasoning for such decision in writing. Such application for a refund may be made by the Occupant, Operator or other Person who has actually paid the tax. Such application may be made by an Operator who has collected and paid over such tax to the Comptroller, provided that the application is made within one (1) year of the payment to the Operator, but no actual refund of moneys shall be made to such Operator until it shall first establish to the satisfaction of the Comptroller, under such regulations as the Comptroller may prescribe, that it has repaid to the Occupant, or other Person who has actually paid the tax, the amount for which the application for refund is made. The Comptroller may, in lieu of any refund required to be made, allow credit on payments due or to become 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 Comptroller may receive evidence with respect thereto. After making his/her determination, the Comptroller 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 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 in such amount and with such sureties as a Justice of the Supreme Court shall approve to the effect that, if such proceedings be dismissed or the tax confirmed, the petitioner will pay the Town's costs and charges which may accrue in the handling of such proceeding.
- C. Under this Section, a Person shall not be entitled to a revision, refund or credit of a tax, interest or penalty which had been determined to be due pursuant to the provisions of §170-34 of this Article where it has had a hearing or an opportunity for a hearing, as provided in said Section, or has failed to avail itself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the Comptroller made pursuant to §170-34 and §170-47 of this Article unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper by the Comptroller after a hearing or on his/her motion or in a proceeding under Article 78 of the Civil Practice Laws 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.

**§170-45 Reserves.**

In cases where the Occupant or Operator has applied for a refund and has instituted a proceeding under Article 78 of the Civil Practice Law and Rules to review a determination adverse to him/her on his/her application for refund, the Comptroller shall have the option of crediting future tax payments to meet the cost of any settlements or judgments or, at his/her option, may, in the first instance, set up appropriate reserves to meet any decision adverse to the Town.

**§170-46 Remedies exclusive.**

The remedies provided by §170-41 and §170-44 of this Article shall be the exclusive remedies available to any Person for the review of tax liability imposed by this Article, 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 the nature of a certiorari proceeding under Article 78 of the Civil Practice law and Rules; provided, however, that a taxpayer may proceed by declaratory judgment if he/she institutes suit within thirty (30) days after a deficiency assessment is made and pays the amount of the deficiency assessment to the Comptroller prior to the institution of such suit and posts a bond for costs as provided in §170-41 of this Article.

**§170-47 Penalties for offenses; interest.**

- A. Any Person failing to file a Return or to pay over any tax to the Comptroller within the time required by this Article shall be subject to a penalty of five percent (5.00%) of the amount of tax due per month or any fraction of a month to a maximum of twenty five percent (25.00%) for each year, plus interest at a rate of one percent (1.00%) of such tax for each month of delay or fraction of a month after such Return was required to be filed or such tax became due, but the Comptroller, if satisfied that the delay was excusable, may remit all or any part of such penalty, but not interest. Such net penalties and interest shall be paid and disposed of in the same manner as other revenues from this Article. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this Article, including filing of a lien by the Town for said unpaid amount, penalties and interest against the Hotel property and the foreclosure of same under New York law.
  
- B. Any Operator or Occupant and any officer of an Operator 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 and any officer of a corporate operator willfully failing to file a bond required to be filed under this Article, or failing to file a registration certificate and such data in connection therewith as the Comptroller may by regulation or otherwise require, or failing to display or surrender the certificate of authority as required by this Article or assigning or transferring such certificate of authority; and any Operator or 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 of Occupancy and on any bill or statement or receipt of Rent issued or employed by the Operator 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 such Person or Operator failing to keep records required by this Article, shall, in addition to the penalties herein or elsewhere prescribed, be guilty of a misdemeanor, punishable by a fine of up to one thousand dollars (\$1,000.00), 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 Article and penalties and interest thereon and subject to the fines and imprisonment herein authorized.

- C. The certificate of the Comptroller 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 Article shall be presumptive evidence thereof.
- D. 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.

**§170-48 Returns to be confidential.**

- A. It shall be unlawful, except in accordance with proper judicial order or as otherwise provided to the fullest extent permitted by law, for the Comptroller or employee or designee of the Comptroller 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 Article. 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 Comptroller in an action or proceeding under the provisions of this Article or on behalf of any party to any action or proceeding under the provisions of this Article 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 proceedings and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer to his/her duly authorized representative of a certified copy of any Return filed in connection with his/her tax nor to prohibit the publication of statistics so classified to prevent the identification of particular Returns and items thereof or the inspection by the Town Attorney or other legal representatives, including auditors and third-party auditors, of the Town or by the district attorney of any county 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. Returns shall be preserved for three (3) years and thereafter until the Comptroller permits them to be destroyed.
- B. Any violation of Subsection A of this Section 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, and if the offender is an officer or employee of the Town, he/she may be, at the discretion of the Town Supervisor, dismissed from office and be incapable of holding any further Town office as may be determined according or law.

**§170-49 Notices; limitations of time.**

- A. Any notice authorized or required under the provisions of this Article may be given to the Person to whom it is intended in a postpaid envelope addressed to such Person at the address given in the last Return filed by him/her pursuant to the provisions of this Article or in any application made by him/her or, if no Return has been filed or application made, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the Person to whom addressed. Any period of time which is determined according to the provisions of this Article by the giving of notice shall commence five (5) days after the date of mailing of such notice.
- 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 Town to



levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this Article; however, except in the case of a willfully false, 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 filing of a Return; provided, however, that in the case of a Return which should have been filed and has not been filed as provided by law, the tax may be assessed at any time.

- C. Where, before expiration of the time 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.

**§170-50 Severability.**

If any provision of this Article, or the application thereof to any Person or circumstance, is held invalid, the remainder of this Article, and the application of such provisions to other Persons or circumstances, shall not be affected thereby.

**§170-51 When effective.**

This Article shall take effect immediately upon its filing in the office of the Secretary of State in accordance with §27 of the New York State Municipal Law.