

COUNTY OF SARATOGA
LOCAL LAW NO. 2 OF 2012

A LOCAL LAW AMENDING LOCAL LAW NO. 7 OF 1977, AS
LAST AMENDED BY LOCAL LAW NO. 5 OF 1978, TO REQUIRE
ROOM REMARKETERS TO COLLECT AND PAY TAX ON THEIR
SALES OF ROOM OCCUPANCY IN SARATOGA COUNTY

BE IT ENACTED by the Saratoga County Board of Supervisors as follows:

SECTION 1. That paragraphs (b), (d), (e), and (g) of subdivision 1 of Section 2. of Local Law No. 7 of 1977, as last amended by Local Law No. 5 of 1978, be amended to read as follows:

Section 2. Text

1. Definitions. When used in this local law, the following terms shall mean:
 - (b) Operator. Any person operating a tourist home, with a least four rentable units, hotel or motel in the county of Saratoga including but not limited to the owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, licensee or any person otherwise operating such tourist home, hotel or motel. Such term shall also include a room remarketer and such room remarketer shall be deemed to operate a hotel, motel or tourist home, or portion thereof, with respect to which such person has the rights of a room remarketer.
 - (d) Occupancy. The use or possession or the right to the use or possession of any room in a tourist home, hotel or motel. Right to the use or possession includes the right of a room remarketer as described in paragraph (k) of this subdivision.
 - (e) Occupant. A person who, for a consideration, uses, possesses, or has the right to use or possess, any room in a tourist home, 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 paragraph (k) of this subdivision.
 - (g) Rent. The consideration received for occupancy, including any service or charge or amount required to be paid as a condition for occupancy, valued in money, whether received in money or otherwise, and whether received by the operator or a room remarketer or another person on behalf of either of them.

SECTION 2. That subdivision 1 of Section 2. of Local Law No. 7 of 1977, as last amended by Local Law No. 5 of 1978, be amended to add a new paragraph (k) stating as follows:

- (k) 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 the 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 therefor, 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 3. That subdivision 2 of Section 2. of Local Law No. 7 of 1977, as last amended by Local law No. 5 of 1978, is amended to read as follows:

- 2. Imposition of tax.
 - (a) On and after the first day of January, nineteen hundred seventy-eight, there is hereby imposed and there shall be paid a tax of one percent paid upon the rent for every occupancy of a room or rooms in a tourist home, hotel or motel in this county except:
 - (1) that the tax shall not be imposed upon a permanent resident; and
 - (2) the tax herein imposed upon the rent received by a room remarketer shall hereby be imposed and paid on and after the first day of October, twenty twelve.
 - (b) When occupancy is provided, for a single consideration, with property, services, amusement charges, or any other items, the separate sale of which is not subject to tax under this local law, the entire consideration shall be treated as rent subject to tax under subdivision (a) of this paragraph; provided, however, that where the amount of the rent for occupancy is stated separately from the price of such property, services, amusement charges, or other items, on any sales slip, invoice, receipt, or other statement given the occupant, and such rent is reasonable in relation to the value of such property, services, amusement charges, or other items, only such separately stated rent will be subject to tax under paragraph (a) of this subdivision.

SECTION 4. That subdivision 3 of Section 2. of Local Law No. 7 of 1977, as last amended by Local Law No. 5 of 1978, is amended to read as follows.

- 3. Transitional provisions.
 - (a) Except as provided in paragraph (b) herein, the tax imposed by this local law shall be paid upon any occupancy on and after the first day of January,

nineteen hundred seventy-eight although such occupancy is pursuant to a prior contract, lease, or other arrangement. Except as provided in paragraph (b) herein, 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 January, nineteen hundred seventy-eight.

- (b) The tax imposed by this local law upon the rent received by a room remarketer shall be paid upon any occupancy on and after the first day of October, twenty two although such occupancy is pursuant to a prior contract, lease or other arrangement. Where rent is paid to a room remarketer 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, twenty two.

SECTION 5. That subdivision 6 of Section 2. of Local Law No. 7 of 1977, as last amended by Local Law No. 5 of 1978, is amended to read as follows:

- 6. Registration. Within ten days after the effective date of this local law, or in the case of operators commencing business after such effective date, within three days after such commencement as opening, or in the case of a room remarketer conducting business on or as of the first day of October, twenty two, within twenty days thereafter, or in the case of a room remarketer commencing business after the first day of October, twenty two, within twenty days after such commencement, every such 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 days after such registration issue without charge to each operator a certificate of authority empowering such operator to collect the tax from the occupant for each additional tourist home, hotel, or motel of such operators. Each certificate or duplicate shall state the tourist home, hotel, motel, or room remarketer to which it is applicable. Such certificates of authority shall be prominently displayed by operators who are not room remarketers 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 the operator's business or upon its sale or transfer.

SECTION 6. That subdivision 7 of Section 2 of Local Law No. 7 of 1977, as last amended by Local Law No. 5 of 1978, is amended to add a new paragraph (c), to reletter the former paragraph (c) as paragraph (d), to reletter the former paragraph (d) as paragraph (e), and to amend said paragraph (e), to read as follows:

- (c) (1) In regards to the collection of tax on occupancies by room remarketers, when occupancy is provided for a single consideration with property, services, amusement charges or any other items, whether or not such other items are taxable, the rent portion of the consideration for such transaction shall be computed as follows: either the total consideration received by the room remarketer multiplied by a fraction, the numerator of which shall be the consideration payable for the occupancy by the room remarketer and the denominator of which shall be such consideration payable for the occupancy plus the consideration payable by the remarketer for the other items being sold, or by any other method as may be authorized by the Commissioner of the New York State Department of Taxation and Finance for the tax imposed by subdivision (e) of section eleven hundred five of the Tax Law of the State of New York, or by any other method as may be authorized by the County Treasurer. If the room remarketer fails to separately state the tax on the rent so computed on a sales slip, invoice, receipt, or other statement given to the occupant in the manner prescribed in subparagraph (2) of this paragraph or fails to maintain records of all prices of all components of a transaction covered by this paragraph, the entire consideration shall be treated as rent subject to tax under subdivision 2 of Section 2 of this local law. Nothing herein shall be construed to subject to tax or exempt from tax any service or property or amusement charge or other items otherwise subject to tax or exempt from tax under Articles Twenty-Eight or Article Twenty-Nine of the Tax Law of the State of New York. A room remarketer's records of the consideration payable for all components of a transaction covered by this paragraph are records required to be maintained for purposes of subdivision 8 of this local law.
- (2) In regard to the collection of tax on occupancies by room remarketers, including a transaction described in subparagraph (1) of this paragraph, the requirements of paragraph (b) of this subdivision shall be deemed satisfied if the remarketer gives the customer a sales slip, invoice receipt, or other statement of the price prior to the customer's completion of his or her occupancy, on which the amount of tax due under this local law is stated. The room remarketer must keep a copy of this invoice as required by subdivision 8 of Section 2 of this local law, or electronic records that accurately reflect the information that is on the invoice provided to the customer.
- (3) In regards to the reporting and the payment to the County Treasurer by room remarketers of tax due on occupancies, a room remarketer shall report such tax due, including in regard to a transaction described in subparagraph (1) of this paragraph, on the return due for the filing period in which the occupancy ends and, at the time of filing such return, to pay to the County Treasurer the total amount due.

SECTION 7. That paragraph (a) of subdivision 9 of Section 2. of Local Law No. 7 of 1977, as last amended by Local Law No. 5 of 1978, is amended to read as follows:

- (a) Every operator shall file with the County Treasurer a return of occupancy and of rents, and of the taxes payable thereon quarterly. The returns required to be filed by this section shall be filed for the quarterly periods ending on the last day of February, May, August and November of each year except:
 - (1) for the period of April and May, 1978, the returns shall be for the said months of April and May, 1978, and shall be filed for said two-month period ending on the last day of May, 1978; and
 - (2) for the period of October and November, 2012, the return filed by room remarketers shall be for the said months of October and November, 2012, and shall be filed for said two-month period ending on the last day of November, 2012.

The County Treasurer may permit or require returns to be made by other periods and upon such dates as he may specify. If the County Treasurer deems it necessary in order to insure the payment of the tax imposed by this local law he 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 may specify.

SECTION 8. That subdivision 13 of Section 2. of Local Law No. 7 of 1977, as last amended by Local Law No. 5 of 1978, be amended to reletter and renumber paragraph (a) as paragraph (a)(1), and to add a new second sentence to said paragraph (a)(1) so that the first two sentences of paragraph (a)(1) shall read as follows:

- (a)(1) In the manner provided in this section, the County Treasurer shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconditionally collected or paid if application to the County Treasurer for such refund shall be made within one year from the payment thereof. Such application shall be in such form as the County Treasurer shall prescribe.

SECTION 9. That subdivision 13 of Section 2. of Local Law No. 7 of 1977, as last amended by Local Law No. 5 of 1978, be amended to add a new paragraph (a)(2) to read as follows:

- (a)(2) Subject to the conditions and limitations provided in this subdivision, a room remarketer shall be allowed a refund or credit against the amount of tax collected and required to be remitted under subdivision 10 of Section 2 of this local law in the amount of the tax it paid to an operator of a hotel under subdivision 2 of Section 2 of this local law. Provided, however, that, in order to qualify for a refund or credit under this subdivision for any occupancy tax quarterly period, the room remarketer must, for that quarter, (A) be registered for occupancy tax purposes under subdivision 6 of Section 2 of this local law; (B) collect the taxes imposed by subdivision 2 of Section 2 of this local law; and (C) furnish the

certificate of authority number of the operator to whom the applicant paid the tax in its application for refund or credit if required on that form or upon request. Provided, that if the room remarketer requests the operator's certificate of authority number and is not provided with that number, the room remarketer may satisfy this requirement by providing the operator's name, business address, telephone number, and the address of the hotel where the occupancy place. An application for refund or credit under this paragraph must be filed with the County Treasurer within the time provided by paragraph (a)(1) of this subdivision. The application must be in the form prescribed by the County Treasurer. Where an application for credit has been filed, the applicant may immediately take the credit on the return that is due coincident with or immediately subsequent to the time that the applicant files the application for credit. However, the taking of the credit on the return is deemed to be part of the application for credit. The procedure for granting or denying the application for refund or credit and review of these determinations shall be as provided in this subdivision. An operator, including a room remarketer, who is paid tax by a room remarketer must upon request provide the remarketer with its certificate of authority number, provided that the operator's failure to do so does not change the requirement set forth in (C) herein.

SECTION 10. This Local Law shall take effect on October 1, 2012, subject to its filing in the Office of the Secretary of State of the State of New York.

SECTION 11. Upon its effective date as provided in Section 10 herein, this Local Law shall become incorporated into the Code of Saratoga County and made a part thereof.