

TITLE: ADOPTION OF LOCAL LAW INTRO. NO. 2-2003, PRINT NO. 1, IN RELATION TO IMPOSING A TAX ON THE OCCUPANCY OF HOTEL OR MOTEL ROOMS

Offered by: Ways and Means Committee

RESOLVED:

1. That proposed Local Law, Intro. No. 2-2003, Print No. 1, is adopted without any change in language, to wit:

COUNTY OF ALLEGANY

Intro. No. 2 of 2003

Print No. 1

A LOCAL LAW IMPOSING A TAX ON THE OCCUPANCY OF HOTEL OR MOTEL ROOMS

BE IT ENACTED by the Board of Legislators of the County of Allegany, State of New York, as follows:

Section 1. Short Title

This local law shall be known as the "Allegany County Hotel or Motel Room Occupancy Tax Local Law".

Section 2. Statement of Intent

The intent of this local law shall be to impose a tax on facilities providing lodging on an overnight basis and provide for the collection thereof in order to make funds available for deposit in the general fund of Allegany County to be allocated to enhance the general economy of Allegany County, its cities, towns and villages.

Section 3. Definitions

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

- (a) **County.** Allegany County, New York.
- (b) **County Treasurer.** The Allegany County Treasurer, or such other fiscal

officers of Allegany County.

- (c) **Board of Legislators.** The Allegany County Board of Legislators.
- (d) **Hotel or Motel.** Any facility providing lodging on an overnight basis, and shall include those facilities designated and commonly known as “bed and breakfast” and “tourist” facilities.
- (e) **Occupancy.** The use or possession, or the right to the use or possession of any room in a hotel or motel.
- (f) **Occupant.** A person who, for a charge or any consideration, uses, possesses, or has the right to use or possess, any room in a hotel or motel under any lease, concession, permit, right, license, agreement, or otherwise.
- (g) **Operator.** Any person operating a hotel or motel in Allegany County including but not limited to the owner, proprietor, lessee, sub-lessee, mortgagee in possession, licensee, or any other person otherwise operating such hotel or motel.
- (h) **Resident.** Any person occupying any room or rooms in a hotel or motel for at least 30 consecutive days.
- (i) **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.
- (j) **Rent.** The charge and/or consideration received for occupancy valued in money, whether received in money, or otherwise.
- (k) **Return.** Any return filed or required to be filed as herein

provided.

- (l) **Room.** Any room or rooms of any kind in any part or portion of a hotel or motel, which is available for, rented or otherwise let out for the lodging of guests.
- (m) **State.** The State of New York.

Section 4. Imposition of Tax

On and after October 1, 2003, there is hereby imposed and there shall be paid a tax of four percent (4%) of the per diem rental rate for each room or rooms in a hotel or motel located within the County upon the rental of each such room or rooms, except that such tax shall not be applicable to a permanent resident of a hotel or motel.

Section 5. Transitional Provisions

The tax imposed by this local law shall be paid upon any occupancy on or after October 1, 2003, although such occupancy is pursuant to a prior contract, lease or other arrangement. Where rent is paid on a weekly 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 or after October 1, 2003.

Section 6. Exempt Organizations

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 local law:

- (a) 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;
- (b) The United States of America, 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

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.

Section 7. Territorial Limitations

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

Section 8. Registration

Within ten (10) 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 Treasurer a registration application in a form prescribed by the Treasurer.

Section 9. Administration and Collection

- (a) The tax imposed by this local law shall be administered and collected by the Treasurer, or other fiscal officers of Allegany County, by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise may be provided by such 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 of charge made for said occupancy issued or delivered by the operator. The tax shall be paid by the occupant to the operator or to the person entitled to be paid the rent or charge for the hotel or motel occupied for and on account of the County, and the operator or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax.
- (c) The operator or any officer of any corporate operator shall be personally liable for the tax collected or required to be collected under this local law, and that such operator or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the occupant, or in respect to non-payment of the tax by the occupant, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the Treasurer or other fiscal officers, employees or agents specified in this local law, shall be joined as a party in any action or proceeding brought to collect the tax by the operator or by the person entitled to be paid the rent or charge.

- (d) The Treasurer may, whenever deemed necessary for the proper enforcement of this local law, provide that the occupant shall file returns and pay directly to the Treasurer, the tax herein imposed.
- (e) 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 (d) of this section, an occupant is required to file returns and pay directly to the Treasurer the tax herein imposed, the burden of proving that a rent for occupancy is not taxable shall be upon the occupant.
- (f) Where an occupant claims exemption from the tax under the provisions of section six of this local law, 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, the operator may further require that any occupant claiming exemption from the tax furnish a copy of a certificate issued by the Treasurer certifying that the corporation or association therein named is exempt from the tax under section six of this local law.

Section 10. Records to be Kept

Every operator shall keep records of every occupancy and of all rent paid, charged and due thereon and of the tax payable thereon, in such form as the Treasurer may require. Such records shall be available for inspection and examination at any time upon demand by the Treasurer or the Treasurer's duly authorized agents or employees, and shall be preserved for a period of not less than three (3) years, except that the Treasurer may consent in writing to their destruction within that period or may in writing require that such records be kept and maintained for a specified period in excess of three (3) years.

Section 11. Returns

- (a) Every operator shall file with the Treasurer a return of occupancy and of rents, and of the taxes payable thereon for the quarterly periods ending February 28, May 31, August 31 and November 30 of each year on or after September 1, 2003. Such returns shall be filed within twenty (20) days from the expiration of the period covered thereby. The Treasurer may permit or require returns to be made by other periods and upon such dates as may be specified. If the Treasurer deems it necessary in order to insure the payment of the tax imposed by this local law, the Treasurer 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 may be specified.
- (b) The forms of returns shall be prescribed by the Treasurer and shall contain such information as may be deemed for the proper administration of this local law. The 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 the return required by this local law is not filed, or a return filed is incorrect or insufficient on its face, the Treasurer shall take the necessary steps to enforce the filing of such return or of a corrected return.

Section 12. Payment of Tax

- (a) Upon the time of filing a return of occupancy and of rents, each operator shall pay to the Treasurer the taxes imposed by this local law upon the rents required to be included in such return, as well as other monies collected by the operator acting or purporting to act under the provisions of this local law.
- (b) Where the Treasurer, in his discretion, deems it necessary to protect revenues to be obtained under this local law, the Treasurer may require any operator obligated to collect the tax imposed by this local law to file with the Treasurer's office 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 solvency and responsibility, in such amount as the Treasurer may fix to secure the payment of any tax and/or penalties and interest due or which may become due from such operator.

- (c) In the event the Treasurer determines that an operator is to file such bond, notice shall be given by the Treasurer to such operator to that effect specifying the amount of the bond required.
- (d) The operator shall file such bond within five (5) days after the issuance of such notice, unless within five (5), days the operator shall serve upon and deliver to the Treasurer a written request for a hearing before the Treasurer at which the necessity, propriety and amount of the bond shall be determined by the Treasurer. Any determination by the Treasurer upon such hearing shall be final and shall be complied with by the operator within fifteen (15) days after the giving of notices thereof.
- (e) In lieu of such bond, securities approved by the Treasurer or cash in such amount as may be prescribed, may be deposited which shall be kept in the custody of the Treasurer who may at any time without notice of the depositor apply them to any tax and interest and 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 13. Determination of Tax

If a return required by this local law is not filed, or if a return is incorrect or insufficient, the amount of tax due shall be determined by the 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 finally and irrevocably fix the tax unless the person against whom it is assessed, within thirty (30) days after giving of such notice of such determination, shall apply to the Treasurer for a hearing, or unless the Treasurer of its own motion shall re-determine the same. After such hearing, the Treasurer shall give notice of the determination made to the person against whom the tax is assessed. 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 seventy-eight of the Civil Practice Law and Rules if application therefor is made to the Supreme Court within thirty (30) days after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the Civil Practice Law and Rules shall not be instituted unless:

- (a) The amount of tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is filed 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 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 such petitioner in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interests or penalties as a condition precedent to the application.

Section 14. Refunds

- (a) In the manner provided in this section, the Treasurer shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the Treasurer for such refund shall be made within one year of payment thereof. Whenever a refund is made by the Treasurer, the reason therefor shall be stated 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 Treasurer provided the application is made within one year of the payment by the occupant to the operator, but no actual refund of money shall be paid to such operator until it is first established to the satisfaction of the Treasurer, under such regulations as the Treasurer may prescribe, that the Treasurer has repaid to the occupant the amount for which the application for refund is made. The Treasurer may in lieu of any refund required to be made, allow credit therefor on payments due from the applicant.
- (b) Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under article seventy-eight of the Civil Practice Law and Rules, provided, however, that such proceeding is instituted within thirty (30) days after the giving of the notice of such denial, that final determination of the tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers 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.

Section 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 such occupant or operator on such application for a refund, the Treasurer shall set aside sufficient monies to meet any decision adverse to the County.

Section 16. Disposition of Revenues

All revenues resulting from the imposition of the tax under this local law shall be paid into the Treasury of Allegany County and shall be credited to and deposited in the general fund of the County; provided, however, that the County is authorized to retain up to a maximum of ten (10) percent of such revenue to defer necessary expenses in administering such tax. The revenue derived from such tax, after deducting the amount provided for administering such tax, shall be allocated to enhance the general economy of Allegany County, its cities, towns and villages, as determined by the Allegany County Board of Legislators.

Section 17. Remedies Exclusive

The remedies provided by sections thirteen (13) and fourteen (14) of this local law shall be the exclusive remedies available to any person for the review of the tax liability imposed by this local law; and no determination or proposed determination of tax or determination on any application for refund or credit shall be enjoined, contested or reviewed by any action or proceeding, except by a proceeding under article seventy-eight of the Civil Practice Law and Rules provided, however, that a taxpayer may proceed by declaratory judgment if suit is instituted within thirty (30) days after a deficiency assessment to the Treasurer prior to the institution of such suit and posts a bond for costs pursuant to section thirteen (13) of this local law.

Section 18. Proceedings to Recover Tax

- (a) Whenever any operator or other person shall fail to collect and pay over any tax and/or to pay any tax, penalty or interest imposed by this local law as herein provided, or whenever any occupant shall fail to pay any such tax, penalty or interest, 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 Allegany County in any court of the State of New York or of any other state or of the United States.

- (b) Notwithstanding any other provision of this section, if the Treasurer, in his discretion, believes that any such operator, 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, the Treasurer may declare such tax or penalty to be immediately due and payable and may issue a warrant, as provided in this section, immediately.
- (c) As an additional alternate remedy, the Treasurer may issue a warrant, directed to the Allegany County Sheriff or to the Sheriff of any other county commanding said Sheriff to levy upon and sell the real and personal property of the operator, occupant, 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 Treasurer and to pay to the Treasurer 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 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 in respect to executions issued against property judgments of a court of record and for services in executing the warrant the Sheriff shall be entitled to the same fees, which may be collected in the same manner. In the discretion of the Treasurer, a warrant of like terms, force and effect may be issued and directed to any officer or employee of the Treasurer and in the execution thereof such officer or employee shall have all the powers conferred upon by the 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 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 therefor and execution thereon has been returned unsatisfied.
- (d) Whenever an operator shall make a sale, transfer, or assignment in bulk of any party of the whole of his hotel or motel or his lease, or of such operator's business assets, otherwise than in the ordinary course of business, the purchaser, transferee or assignee shall at least ten (10) days before taking possession of the subject of the said sale, transfer or assignment, or paying therefor, notify the

Treasurer by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferrer or assignor, has represented to or informed the purchaser, transferee or assignee that any tax is owed 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.

- (e) Whenever the purchaser, transferee or assignee shall fail to give notice to the Treasurer as required by sub-section eighteen (18) (d), of this section or whenever the Treasurer shall inform the purchaser, transferee, or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses 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 of any such taxes theretofore or thereafter determined to be due 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 choses in action to the extent of the amount of the County's claim. For failure to comply with the provisions of this sub-section, 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 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.

Section 19. General Powers of the Treasurer

In addition to the powers granted to the Treasurer by County Law and this local law, the Treasurer is hereby authorized and empowered:

- (a) To make, adopt and amend rules and regulations, and to issue orders, appropriate to the carrying out of this local law and the purposes thereof;
- (b) To extend for cause shown the time of filing any return for a period not exceeding thirty (30) days; and for cause shown, to remit or waive penalties but not interest; and to compromise disputed claims in connection with the taxes hereby imposed.
- (c) 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 commissioner or such treasury department relative to any person, any other provision of this local law to the contrary notwithstanding

- (d) To delegate said functions hereunder to any employee or employees of the County Treasurer
- (e) To prescribe methods for determining the rents for occupancy and to determine the taxable and non-taxable rents
- (f) To require any operator within the County to keep detailed records of the nature and type of hotel or motel 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
- (g) To assess, determine, revise and readjust the taxes imposed under this local law

Section 20. Administration of Oaths and Compelling Testimony

- (a) The Treasurer, or the Treasurer's duly designated and authorized employees or agents, shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of the Treasurer's powers and duties under this local law.
- (b) The Treasurer shall have the 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 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 the Treasurer or excused from attendance.
- (c) 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 Treasurer under this local law.
- (d) 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 Treasurer under this local law shall be guilty of a misdemeanor, punishment for which shall be a fine of not

more than one thousand dollars (\$1,000) or imprisonment for not more than one year, or both such fine and imprisonment.

- (e) The officers who serve the summons or subpoena of the 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.
- (f) The County Sheriff, the Sheriff's duly appointed deputies, and any officer or employee of the Treasurer designated to serve process under this local law, are hereby authorized and empowered to serve any summons, subpoena, order, notice, document, instrument, or other process to enforce or carry out this local law.

Section 21. Reference to Tax

Wherever 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 hotel or motel rooms"; except that in any bill, receipt, statement or other evidence of memorandum of occupancy or rent charge issued or employed by the operator, the word "tax" will suffice.

Section 22. Penalties and Interest

- (a) Any person failing to file a return or to pay over any tax to the Treasurer within the time required by this local law shall be subject to a penalty of five percent (5%) of the amount of the tax due. In addition to the aforementioned penalty, interest at the rate of one percent (1%) 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, shall accrue. The Treasurer, if satisfied the delay was excusable, may remit or waive all or any part of the penalty, but not the interest owed. 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) 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 pursuant to section

thirteen (13) of this local law, failing to file a registration certificate and such data in connection therewith as the 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 or any evidence of 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 section ten (10) 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) or imprisonment for not more than one 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 penalty herein above imposed.

- (c) The certificate of the 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.

Section 23. Returns to be Secret

- (a) Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the Treasurer or any officer or employee of the Treasurer to divulge or make known in any manner the rents or other information relating to the business of the 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 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 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 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 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 Treasurer permits them to be destroyed.

- (b) Any violation of this section shall be punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment not exceeding one year, or both, in the discretion of the court, and if the offender be an officer or employee of the County such officer or employee shall be dismissed from office and be incapable of holding any public office for a period of five (5) years thereafter.

Section 24. Notices and Limitations of Time

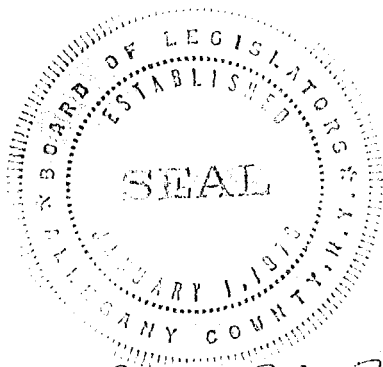
- (a) Any notice authorized or required under the provisions of this local law may be given by mailing the same to the person for whom it is intended in a post-paid envelope addressed to such person at the address given in the last return filed by him pursuant to the provisions of this local law, or in any application made by him, or if no return has been filed or application made, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom it is addressed. Any period of time which is determined according to the provisions of the local law giving of notice shall commence to run from the date of such notice.
- (b) The Provisions of the Civil Practice Law and Rules or any other law relative 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 penalty provided by this local law. However, except in the case of a willfully false or fraudulent return with the 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 described 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.

Section 25. Separability

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

Section 26. Effective Date

This local law shall take effect immediately upon filing in the Office of the Secretary of State of New York State.



Local Law No. 3 of 2003
Adopted by Resolution No. 185-03
Effective Date: August 28, 2003

Brenda Rigby Riehle

I, Brenda A. Rigby, Clerk of the Board of Legislators of the County of Allegany, State of New York do hereby certify that the foregoing constitutes a correct copy of the original on file in my office and the whole thereof of a resolution passed by said Board on the 25th day of August, 2003.

Brenda Rigby Riehle Dated at Belmont, New York, this 2nd day of March, 2020
Clerk, Board of Legislators, Allegany County

Moved by Dibble Seconded by Nielsen VOTE: Ayes 9 Noes 4 Absent 2 Voice _____

*Voting No; Heineman, Reynolds, Russo, Sobch
Absent: Bennett, Graftnath*