

RESOLUTION NO. ____ - 2018

RESOLVED, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law Intro. No. ____ - 2018, entitled "A LOCAL LAW amending Chapter 285 of the Laws of Westchester County relating to the Westchester County Room Occupancy Tax." The public hearing will be held at __.m. on the ____ day of _____, 2018 in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York. The Clerk of the Board shall cause notice of the time and date of such hearing to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law.

TO: HONORABLE BOARD OF LEGISLATORS COUNTY OF WESTCHESTER

Your Committee has reviewed “A LOCAL LAW amending Chapter 285 of the Laws of Westchester County relating to the Westchester County Room Occupancy Tax.”

Your Committee is aware that consumers have always enjoyed taking vacations in Westchester County and have utilized the hotels and other establishments to accommodate them during their stay. In recent years, the number of methods utilized for booking accommodations as well as the location of such accommodations have greatly increased. For example, some consumers book hotel rooms through room remarketers, like Expedia, Inc., and pay the remarketers instead of obtaining the hotel room directly from hotel operators. Other consumers utilize Internet-based platforms, such as Airbnb Inc., which connect those consumers to individuals offering accommodations directly.

Your Committee notes that while traditional accommodations and methods of booking are subject to various laws and regulations, these newer methods of booking accommodations have deemed themselves to be exempt from compliance with such laws. In an effort to clarify these issues, the proposed local law specifies the application of the Westchester County Room Occupancy Tax to room remarketers and Internet-based platforms. The proposed local law permits the County to enter into a contract for the collection of the room occupancy tax for, and on behalf of, the County. The proposed local law also specifies that registration of the accommodations as well as compliance with the provisions of the New York State Multiple Dwelling Law are required for all accommodations located in Westchester County.

As you know, this Honorable Board must comply with the requirements of the State Environmental Quality Review Act ("SEQRA"). Your Committee is advised that the Department of Planning has reviewed the applicable SEQRA regulations, and has concluded that the proposed law does not "change the use, appearance or condition of any natural resource or structure," or otherwise affect the environment, with respect to the State Environmental Quality Review (SEQR) Act. As such, it does not constitute an action as defined in section 617.2(b) of 6 NYCRR Part 617 and therefore, no environmental review is required. Your Committee concurs with that conclusion.

An affirmative vote of a majority of the voting strength of your Honorable Board is required for approval of this Local Law.

In light of the aforementioned, your Committee, after careful consideration, recommends the adoption of this local law.

Dated: 11/5, 2018

White Plains, New York

May Jane Walsh
Paul J. Russo
Benjamin Boykoff
Robert Williams
Calvin B.

Calvin B.
Margaret A. Cizio
Doreen J. Labriola
Benjamin Boykoff
Manuella
Robert Williams
Calvin B.

COMMITTEE ON *Legislation*

Budget + Appropriations

FISCAL IMPACT STATEMENT

SUBJECT: Airbnb/Remarketers

NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ -

Total Current Year Revenue \$ -

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: Revenue: 101-52-2135-5100; 101-11-0720-9289

Potential Related Operating Budget Expenses: Annual Amount \$0

Describe: _____

Potential Related Operating Budget Revenues: Annual Amount 211,091

Describe: Local Law amending Chapter 285 of the Laws of Westchester County relating to the Westchester County Room Occupancy Tax regarding Airbnb/remarketers and the removal of the 4 room minimum.

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: _____

Next Four Years: 2019 \$175,909; 2020 \$217,424; 2021 \$223,946; 2022 \$230,665

Prepared by: Debra Ogden 

Title: Sr. Budget Analyst

Department: Budget


Date: October 22, 2018

Reviewed By: 

Budget Director

Date: 10/22/18

TO: Stacey Dolgin-Kmetz
Chief Deputy County Attorney

FROM: David S. Kvinge, AICP, RLA, CFM 
Director of Environmental Planning

DATE: October 18, 2018

SUBJECT: **STATE ENVIRONMENTAL QUALITY REVIEW FOR AMENDMENTS
TO THE COUNTY'S ROOM OCCUPANCY TAX LAW**

Pursuant to your request for an environmental review of the above referenced action, the Planning Department has determined that no environmental review is necessary.

The action involves a local law that would amend Chapter 285 of the Laws of Westchester County, which pertains to the taxation of hotel room occupancies, to incorporate room remarketers and internet-based platforms that offer accommodations within Westchester County.

Since the proposed law does not "change the use, appearance or condition of any natural resource or structure," or otherwise affect the environment, with respect to the State Environmental Quality Review (SEQR) Act, this does not constitute an action as defined in section 617.2(b) of 6NYCRR Part 617. As such, no environmental review is required.

Please contact me if you need any additional information on this matter.

DSK/cnm

cc: Andrew Ferris, Chief of Staff
Paula Friedman, Assistant to the County Executive
Steven Bass, Assistant to the County Executive
Linda Trentacoste, Deputy County Attorney
Norma Drummond, Commissioner
Claudia Maxwell, Associate Environmental Planner

LOCAL LAW INTRO. NO. - 2018

A LOCAL LAW amending Chapter 285 of the Laws of Westchester County relating to the Westchester County Room Occupancy Tax.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. Section 285.01 of Chapter 285 of the Laws of Westchester County is hereby amended to read as follows:

Sec. 285.01. - Definitions.

1. When used in this chapter, the following terms shall mean:
 - a. *County official.* The Commissioner of Finance of the County of Westchester or such other person as may be designated by the Board of Legislators to administer and collect the tax provided for herein.
 - b. *Hotel.* A building or portion thereof [which is regularly used and kept open as such]for the lodging of guests. The term "hotel" includes hotels, motels, tourist homes, motel courts or similar facilities[with at least four rentable rooms for lodging], whether or not meals are served to guests or residents thereof.
 - c. *Occupancy.* The use or possession or the right to the use or possession of any room in a hotel. "Right to the use or possession" includes the rights of a room remarketer as described in paragraph k below.
 - d. *Occupant.* A 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. "Right to use or possess" includes the rights of a room remarketer as described in paragraph k below.
 - e. *Operator.* Any person operating a [tourist home, with at least four rentable units,] hotel [or motel]in the County of Westchester, 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 tourist home, hotel or motel. Such term shall include a room remarketer and such room remarketer shall be deemed to operate a hotel, or portion thereof, with respect to which such person has the rights of a room remarketer.
 - f. *Permanent resident.* Any occupant of any room or rooms in a [tourist home,]hotel [or motel]for at least 90 consecutive days shall be considered a "permanent resident" with regard to the period of such occupancy.
 - g. *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.

- h. *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.], including any service or other 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.
 - i. *Return.* Any return filed or required to be filed as herein provided.
 - j. *Room.* Any room or rooms or suite 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.
 - 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. "Arranging indirectly" shall include but not be limited to, the operators of internet platforms connecting individuals who offer accommodations to individuals who wish to book accommodations and, if the parties agree on the price and terms, they can complete the transaction, including payment, via such platform. Such platform must reference and include the method of payment for the Room Occupancy Tax.
- [k]. *Sheriff.* The Commissioner of Public Safety Services, Sheriff or his successor in office.
- [l]. *Exempt occupant.* Any occupant of any room or rooms in a tourist home, hotel or motel whose rent is paid from public assistance from the County of Westchester shall be deemed an "exempt occupant" with respect to the period of such occupancy, regardless of the length thereof.

Section 2. Section 285.04 of Chapter 285 of the Laws of Westchester County is hereby amended to read as follows:

Sec. 285.04. - 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 chapter:

1. 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;

2. The United States of America, or any of its agencies and instrumentalities, insofar as it is immune from taxation;
 3. Any corporation, association, trust or community chest, fund or foundation, organized and operated exclusively for religious, charitable or education 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. Where any organization described in 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 hotel, occupancy of rooms in the premises and rents therefrom received by such corporation or association shall not be subject to tax hereunder.
- [4. A hotel having less than four rentable rooms.]

Section 3. Section 285.05 of Chapter 285 of the Laws of Westchester County is hereby amended to read as follows:

The tax imposed by this chapter shall apply only within the territorial limits of the County of Westchester and to transactions, including internet transactions, relating to the occupancy of a room within the territorial limits of the County of Westchester.

Section 4. Section 285.06 of Chapter 285 of the Laws of Westchester County is hereby amended to read as follows:

1. Within ten days after the effective date of this chapter or, in the case of operators commencing business after such effective date, within three days after such commencement or opening, every operator shall file with the county official a certificate of registration in a form prescribed by the county official.
2. The county official 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 and a duplicate thereof for each additional hotel of such operator. Each certificate or duplicate shall state the hotel to which it is applicable. Such certificate of authority shall be prominently displayed by the operator in such manner that it may be seen and come to the notice of all occupants and persons seeking occupancy. Such certificate shall be nonassignable and nontransferable and shall be surrendered immediately to the county official upon the cessation of business at the hotel named or upon its sale or transfer.

3. To the extent that an operator collects the room occupancy tax from the occupant from an internet platform, an electronic version of the certificate of authority provided for after registration must be displayed on the internet platform prior to any transaction and/or the online payment.

Section 5. Section 285.07 of Chapter 285 of the Laws of Westchester County is hereby amended to read as follows:

1. The tax imposed by this chapter shall be administered and collected by the county official or such other county employee as he may designate by such means and in such manner as are other taxes which are now collected and administered or as otherwise are provided by this chapter. The tax may also be collected, for and on behalf of the County, by an entity authorized by contract to do so.
2. 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, including but not limited to, arrangements made utilizing an internet platform, and upon every evidence of occupancy or any bill or statement of charges made for said occupancy issued or delivered by the operator directly, indirectly or through the use of an internet platform, 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 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 chapter, 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 may have in the event of nonpayment of rent by the occupant; provided, however, that the county official or employees or agents duly designated by him shall be joined as a party in any action or proceeding brought by the operator to collect or enforce collection of the tax.
3. The county official may, wherever he deems it necessary for the proper enforcement of this chapter, provide by regulation that the occupant shall file returns and pay directly to the county official the tax imposed at such times as returns are required to be filed and payment over made by the operator.
4. The tax imposed by this chapter shall be paid upon any occupancy on and after January 1, 1988, 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 January 1, 1988. Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the county official may by regulation provide for credit and/or refund of the amount of such tax upon application therefor as provided in section 285.13 of this chapter.

5. For the purpose of the proper administration of this chapter 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 subsection 3. of section 285.04 of this chapter, 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.

Section 6. Section 285.08 of Chapter 285 of the Laws of Westchester County is hereby amended to read as follows:

1. 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 official may by regulation require. Such records shall be available for inspection and examination at any time upon demand by the county official or his duly authorized agent or employee and shall be preserved for a period of three years, except that the county official may consent to their destruction within that period or may require that they be kept longer.
2. In addition to complying with the requirements of subdivision 1 herein, every operator utilizing an internet platform shall ensure that the internet platform preserves an electronic record of the online transaction memorializing the payment of the room occupancy tax for a period of three years.

Section 7. Subdivision 6 of section 285.17 of Chapter 285 of the Laws of Westchester County is hereby amended to read as follows

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 chapter, and to furnish such information upon request, audit and/or subpoena, if necessary, to the county official;

Section 8. Section 285.19 of Chapter 285 of the Laws of Westchester County is hereby amended to read as follows:

Wherever reference is made in placards or advertisements, [or] in any other publications or on any internet platforms to this tax, such reference shall be substantially in the following form: "Room Occupancy Tax[on occupancy of hotel 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 term "county tax" will suffice.

Section 9. A new section 285.24 of Chapter 285 of the Laws of Westchester County is hereby added to read as follows:

Section 285.24. - Tax fraud.

1. As used in this chapter, "tax fraud" means willfully engaging in an act or acts or willfully causing another to engage in an act or acts pursuant to which a person:

a. fails to make, render, sign, certify, or file any return or report required under this Chapter within the time required by or under the provisions of this chapter;

b. knowing that a return, report, statement or other document required by this Chapter contains any materially false or fraudulent information, or omits any material information, files or submits that return, report, statement or document with the County or with any public office or public officer of the County;

c. knowingly supplies or submits materially false or fraudulent information in connection with any return, audit, investigation, or proceeding or fails to supply information within the time required by or under the provisions of this Chapter;

d. engages in any scheme to defraud the County by false or fraudulent pretenses, representations or promises as to any material matter, in connection with any tax imposed under this Chapter;

e. fails to remit any tax collected in the name of the County when such collection is required under this Chapter;

f. with intent to evade any tax imposed under this Chapter, fails to pay that tax; or

g. issues any document capable of evidencing a claim that taxes imposed under this Chapter do not apply to a transaction, which he or she does not believe to be true and correct as to any material matter, which omits any material information, or which is false, fraudulent, or counterfeit.

2. Any person who commits tax fraud as set forth in subdivision 1 above, shall be guilty of a class A misdemeanor.

Section 10. Chapter 285 of the Laws of Westchester County is hereby amended to include a new Section 285.25 to read as follows:

Section 285.25. – Applicability of laws.

Nothing in this Chapter shall be construed to dispense with the need to comply with the requirements set forth in New York State Multiple Dwelling Law.

Section 11. This Local Law shall take effect January 1, 2019.

11/5/2018