

TOWN OF NORTH CASTLE

Local Law No. 1 for the Year 2017 Adopted February 15, 2017

A Local Law to amend Chapter 288 entitled Taxation to add Article IX entitled Room Occupancy Tax to the Code of the Town of North Castle.

Be It Enacted by the Town Board of the Town of North Castle as follows:

§ 288-31 Definitions.

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

EFFECTIVE DATE -- The date on which this article is filed with the Secretary of State.

EXEMPT OCCUPANT -- Any Occupant of any Room or Rooms in a Hotel whose Rent is paid from public assistance by the County of Westchester shall be deemed an "Exempt Occupant" with respect to the period of such Occupancy.

HOTEL -- A building or portion of building which is regularly used and kept open as such for the lodging of individuals, including an apartment hotel, a motel, professional and business conference and learning facilities when used by non-employees, or a 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 North Castle, 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.

PERMANENT RESIDENT -- Any natural person occupying any Room or Rooms in a Hotel for at least 90 consecutive days shall be considered a "Permanent Resident" with regard to the period of such Occupancy.

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

RECEIVER OF TAXES – Tax Receiver of the Town of North Castle.

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 -- Any Return filed or required to be filed as herein provided.

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.

§ 288-32 Tax imposed.

Beginning on March 1, 2017, there is hereby imposed and there shall be paid a tax of 3% upon the Rent for every Occupancy of a Room or Rooms in a Hotel in this Town, except that the tax shall not be imposed upon a Permanent Resident, or an Exempt Occupant, or as otherwise provided herein.

§ 288-33 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 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. A Permanent Resident of a Hotel.

§ 288-34 Territorial limits.

The tax imposed by this article shall apply only within the territorial limits of the Town of North Castle.

§ 288-35 Registration; certificate of authority to collect.

- A. Within 10 days after the Effective Date of this article 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 Receiver of Taxes a certificate of registration in a form prescribed by the Receiver of Taxes.
- B. The Receiver of Taxes 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 Receiver of Taxes upon the cessation of business at the Hotel named or upon its sale or transfer.

§ 288-36 Administration and collection.

- A. The tax imposed by this article shall be administered and collected by the Receiver of Taxes 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 or 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 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 Receiver of Taxes 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 Receiver of Taxes 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 Receiver of Taxes 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 March 1, 2017, 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 March 1, 2017. Where any tax has been paid hereunder upon any Rent which has been ascertained to be worthless, the Receiver of Taxes may, by regulation, provide for credit and/or refund of the amount of such tax upon application therefor as provided in § 288-42 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 § 288-33 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.

§ 288-37 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 Receiver of Taxes may by regulation require. Such records shall be available for inspection and examination at any time upon demand by the Receiver of Taxes or his/her duly authorized agent or employee and shall be preserved for a period of three years from the filing date for such returns,

except that the Receiver of Taxes may consent to their destruction within that period or may require that they be kept longer.

§ 288-38 Filing of Returns.

- A. Every Operator shall file with the Receiver of Taxes a Return of Occupancy and of Rents and of the taxes payable thereon for the three-month periods ending the last day of February, May, August and November on and after March 1, 2017, the first Return to be due for the period March 1, 2017, through May 31, 2017, shall be separately filed. Such Returns shall be filed within 20 days from the expiration of the period covered thereby. The Receiver of Taxes may permit or require Returns to be made for other periods upon such dates as he/she may specify. If the Receiver of Taxes 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 periods than those prescribed pursuant to the foregoing provisions of this section and upon such dates as he/she may specify.
- B. The forms of Return shall be prescribed by the Receiver of Taxes and shall contain such information as he/she may deem necessary for the proper administration of this article. The Receiver of Taxes may require amended Returns to be filed within 20 days after notice and to contain the information specified in the notice.
- 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 Receiver of Taxes shall take such steps as he/she deems necessary to enforce the filing of such Return or of a corrected Return.

§ 288-39 Determination of tax; reviewability.

If a return required by local law is not filed or if a return, when filed, is incorrect or insufficient, the amount of tax due shall be determined by the Receiver of Taxes 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, locations, scale of rents, comparable rents, type of accommodations and service, number of employees and/or other factors. Notice of such determination shall be given to the person liable for the collection and/or payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within 30 days after giving notice of such determination, shall apply to the Receiver of Taxes for a hearing or unless the Receiver of Taxes on his/her own motion shall redetermine the same. After such hearing, the Receiver of Taxes shall give notice of his/her determination 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 78 of the Civil Practice Law and Rules if application therefor is made to the Supreme Court within 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 laws 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 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 it 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.

§ 288-40 Payment of taxes.

At the time of filing a Return of Occupancy and of Rents, each Operator shall pay to the Receiver of Taxes 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; even though it be judicially determined that the tax collected is invalidly required to be filed, it shall be due from the Operator and payable to the Receiver of Taxes 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. Where the Receiver of Taxes in his/her discretion deems it necessary to protect revenues to be 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 Insurance of this state as to solvency and responsibility, in such amount as the Receiver of Taxes 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 Receiver of Taxes 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 days after the giving of such notice unless, within such five days, the Operator shall request in writing a hearing before the Receiver of Taxes at which the necessity, propriety and amount of the bond shall be determined by the

Receiver of Taxes. Such determination shall be final and shall be complied with within 15 days after the giving of notices thereof. In lieu of such bond, securities approved by the Receiver of Taxes 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 Receiver of Taxes, 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.

§ 288-41 Disposition of revenues.

All revenue resulting from the imposition of the tax under this article shall be credited to and deposited in the general fund of the Town.

§ 288-42 Refunds.

- A. In the manner provided in this section, the Receiver of Taxes shall refund or credit, without interest, any tax penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the Receiver of Taxes for such refund shall be made within one year from the payment thereof. Whenever a refund is made by the Receiver of Taxes, he/she shall state his/her reason therefor 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 Receiver of Taxes, provided that the application is made within one 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 Receiver of Taxes, under such regulations as the Receiver of Taxes 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 Receiver of Taxes may, in lieu of any refund required to be made, allow credit therefor 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 Receiver of Taxes may receive evidence with respect thereto. After making his/her determination, the Receiver of Taxes 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 30 days after the giving of the notice of such determination, and provided that a final determination of tax due was not previously made. Such a proceeding shall not be instituted unless an undertaking is filed with the Receiver of Taxes 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 costs and charges which may accrue in the prosecution 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 § 288-45 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 Receiver of Taxes made pursuant to § 288-45 of this article unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper by the Receiver of Taxes after a hearing or on his/her own motion or in a proceeding under Article 78 of the Civil Practice Law 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.

§ 288-43 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 Receiver of Taxes 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.

§ 288-44 Remedies exclusive.

The remedies provided by § 288-39 and § 288-42 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 a 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 30 days after a deficiency assessment is made and pays the amount of the deficiency assessment to the Receiver of Taxes prior to the institution of such suit and posts a bond for costs as provided in § 288-40 of this article.

§ 288-45 Penalties and interest.

- A. Any Person failing to file a Return or to pay or pay over any tax to the Receiver of Taxes within the time required by this article shall be subject to a penalty of 5% of the amount of tax due per month or any fraction of a month to a maximum of 25%

for each year; plus interest at the rate of 1% 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 Receiver of Taxes, 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.

- 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 pursuant to § 288-40 of this article, or failing to file a registration certificate and such data in connection therewith as the Receiver of Taxes 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 issue or employed by the Operator or willfully failing or refusing to collect such tax from the Occupant; any Operator or 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 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 \$1,000, 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 article and penalties and interest thereon and subject to the fines and imprisonment herein authorized.
- C. The certificate of the Receiver of Taxes 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 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.

§ 288-46 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 Receiver of Taxes or employee or designee of the Receiver of Taxes 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 Receiver of Taxes 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 proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or 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 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 years and thereafter until the Receiver of Taxes permits them to be destroyed.
- B. Any violation of Subsection A of this section shall be punishable by a fine not exceeding \$1,000 or by imprisonment not exceeding one 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 Board, dismissed from office and be incapable of holding any further Town office as may be determined according to law.

§ 288-47 Notices and 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 who addressed. Any period of time which is determined according to the provisions of this article by the giving of notice shall commence five 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 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 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.

§ 288-48 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 provision to other Persons or circumstances, shall not be affected thereby.

§ 288-49 Effective Date.

This Local Law shall be effective immediately upon filing of same with the Secretary of State of the State of New York.