

Proposed Local Law No. 4 Of 2016

County Of Ulster

A Local Law Amending Local Law No. 5 Of 1991 (A Local Law Adopting A Hotel And Motel Room Occupancy Tax) To Clarify The Tax Law's Application To Short-term And Vacation Rentals

BE IT ENACTED, by the Legislature of the County of Ulster, as follows:

SECTION 1. TITLE.

This Local Law shall be known and referred to as the “21st Century Bed Tax.”

SECTION 2. LEGISLATIVE INTENT.

The Ulster County Legislature (“Legislature”) hereby finds that the “sharing economy” – specifically surrounding short-term and vacation rental properties – has taken hold of Ulster County (“County”), as one such major hosting platform, Airbnb, reported that over 58,000 guests stayed at more than 1300 active listings located within the County in 2015.¹

The Legislature also finds that with this new economic frontier come profound fiscal impacts and responsibilities on a local level, as the operators of these transient lodging facilities should be subject to the same 2% Hotel and Motel Room Occupancy Tax (“tax”) as are their counterparts in the traditional lodging industry.

The Legislature also finds that the methodology – primarily based on meal and service offerings – historically used by operators of lodging facilities to determine taxable rent is no longer compatible with the business realities of the 21st Century and has led to miscalculations of taxes due to the County.

~~The Legislature also finds that local municipalities could use economic assistance in monitoring and dealing with associated code, safety, fire, energy, planning, zoning, and related issues across an ever expanding number of rental properties within their borders.~~

Therefore, arching purposes of enacting this Local Law include generating significant revenue for the County, streamlining the way operators account for and

¹ Airbnb Host and Guest Data in Ulster County (received as of January 15, 2016): Active Hosts – 984; Active Listings – 1317, Guests in 2015 – 58,396; Average Listing Price – \$232; Average Length of Stay – 2.5 Nights; Median Host Income – \$7590

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remit the tax, ~~giving a portion of tax proceeds back to municipalities to better deal with growing safety and planning concerns,~~ and instilling a sense of fairness across the business and tourism industries by equally applying the tax to both traditional operators of hotels (who already pay and register with the County), as well as non-traditional operators who offer short-term and vacation rental properties (who often do not pay and register) through the use of hosting platforms and other means.

Therefore, this Local Law would perform the following functions: (1) clarify the reach of the tax to include short-term and vacation rentals within Ulster County; (2) require operators of properties used for short-term and vacation rentals to register with the County for the collection of the tax; (3) allow operators to designate those corporate hosting platforms that have executed voluntary collection agreements with the County to collect and remit the tax on the operator's behalf; *and* (4) simplify the methodology used to determine taxable rent for all properties used for transient lodging. ~~and (5) return to the Towns and City of Kingston a percentage of the revenues gained from the tax for purposes related to the development and enforcement of certain codes, planning, and zoning.~~ Accordingly, collection and remittance of the tax for short-term and vacation rentals is firstly placed on the corporate hosting platform through a voluntary collection agreement and secondarily placed on individual operators under no such agreement.

SECTION 3. DEFINITIONS.

Section 312-5(C) of Local Law No. 5 of 1991 is hereby amended as follows:

“Hosting Platform”

An internet, application, technology, and/or similarly based service through which a third party desiring to offer an accommodation (a “host”) and a third party desiring to book an accommodation (a “guest”) have the opportunity to communicate, negotiate, and

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consummate a booking transaction for transient lodging accommodations pursuant to a direct agreement between a host and guest to which the hosting platform is not a party but still facilitates payments for rent on behalf of or for the host. Merely publishing an advertisement for transient accommodations does not make the publisher a hosting platform.

“Hotel or Motel”

A building or portion of it which is regularly used and kept open as such for lodging on an overnight basis. The term ‘hotel’ or ‘motel’ includes an apartment hotel, motor court or inn, boardinghouse or club, **short-term or vacation rental**, or similar hotel or motel type of accommodations by whatever name designated, whether or not meals are served, and shall include those facilities commonly known as ‘bed-and-breakfast’ and ‘tourist’ facilities. Rent received by operators of bungalow colonies shall not be deemed to be taxable, provided that each occupant shall occupy rooms pursuant to a written agreement providing for the exclusive possession of such room for a period of 90 days or more, and provided further that there are no maid, food or other common hotel services provided. **“Short-term” and “vacation rentals” shall mean and include those units rented or leased to occupants – other than permanent residents – that are furnished apartments or living units in or consisting of a dwelling place ordinarily occupied for residential purposes or location that is otherwise made available for sleeping accommodations, directly by the owner or through an owner’s agent or hosting platform.**

SECTION 4. COLLECTION OF TAX.

Section 312-7 (B)(1) of Local Law No. 5 of 1991 is hereby amended as follows:

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 Local Law or statement or charge made for

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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 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 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 a 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 Commissioner of Finance or other fiscal officer or officers, 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 tax. **A hosting platform may enter into a voluntary collection agreement with the County, which designates the hosting platform as solely responsible and liable for collecting and remitting the applicable tax to the County for booking transactions completed through the respective hosting platform for hotels and motels located within the County; and the host or operator of the hotel or motel who is not the hosting platform shall not be responsible for collecting and remitting the tax to the County on any transaction for which it has received confirmation that the hosting platform has collected the aforementioned tax and remitted it back to the County pursuant to a voluntary collection agreement; otherwise, hosts or operators of hotels and motels shall be liable for the collection and remittance of the tax if no such voluntary collection agreement between a hosting platform and the County has been executed. For the sole purposes of tax registration, collection, and remittance under this Article, a hosting platform that enters into a voluntary collections agreement with the County pursuant to Section 312-7 (B)(1) of this Article shall assume and be limited to the duties of hotel/motel operator for only those booking transactions completed through the respective hosting platform and pursuant to the terms of an executed voluntary collection agreement, through which the hosting platform shall collect and remit to the County its respective portion of the tax.**

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SECTION 5. METHODOLOGY USED TO DETERMINE THE TAX.

Section 312-7 (C) of Local Law No. 5 of 1991 is hereby repealed and replaced to read as follows:

C. Determination of taxable rent.

(1) If the charge for occupancy of a room includes only the cost of the room and board and any cleaning fees, and other charges are separately stated and are incurred at the option of the occupant and/or charged by a hosting platform, then rent subject to the tax shall be limited to the charge made by the operator for the occupancy and cleaning of a room and the tax shall only be based upon that amount.

(2) If the operator does not separately state the charge for room and board from other charges, excluding cleaning fees but including those added by a hosting platform, then the entire charge to the occupant is taxable until the occupant becomes a permanent resident.

(3) When the occupant becomes a permanent resident, the operator shall discontinue collection of the tax.

SECTION 6. REGISTRATION REQUIREMENTS.

Section 312-8 (A) of Local Law No. 5 of 1991 is hereby amended as follows:

Registration. 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 Commissioner of Finance an application for a certificate of authority empowering such operator to collect the tax from the occupant. Upon receipt of such application, the Commissioner of Finance shall issue a certificate of authority to such operator which when authenticated shall constitute the authority for the purposes of this article. Each application for a certificate of authority shall state the hotel or motel to which it is applicable; the name of the operator of such hotel or motel, the address of such operator, the taxpayer identification number assigned to such operator, the state of incorporation and the date upon which such corporation

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obtained authority to do business in this state, if not organized in this state, the names of each partner, if a partnership, and such other information as the Commissioner of Finance may by rule require. 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. **In the case of hosting platforms that have executed voluntary collection agreements with the County, each application for a certificate of authority by a host or operator shall similarly state all information required but may otherwise designate such hosting platform(s) as primarily and solely liable for collection and remittance of the tax.** Such certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the Commissioner of Finance upon the cessation of business at the hotel or motel **or host or hosting platform service** named or upon its sale or transfer.

SECTION 7. APPROPRIATION OF ADDITIONAL REVENUE.

Section 312-10 of Local Law No. 5 of 1991 is hereby amended as follows:

All revenues resulting from the imposition of the tax under this article shall be paid into the treasury of the County and shall be credited to and deposited in the general fund of the County, and thereafter such amount as may be hereafter required to defer necessary expenses of the County in administering such tax shall be applied annually for such purpose. In the event that the cost of administering such tax shall be less than that budgeted in any fiscal year, the amount by which budgeted amount shall be less than the actual expenditures of the County shall be appropriated from the revenues derived from such tax. After deducting the amount necessary for administration of such tax, the **following appropriations shall be made from the revenues gained: (1) the** greater of 10% of the revenue derived from the tax or \$150,000 shall be credited to and deposited in a special tourism and convention fund, and the collections therefrom shall thereafter be allocated by the County Legislature only for tourism and convention promotion and development. The Chairperson may appoint an advisory committee of up to four persons, which may include members of the

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~~County Legislature and public officials, to advise the Legislature concerning such allocation.~~

SECTION 5. SECTION 7. SEVERABILITY.

In the event that any portion of this local law is found to be invalid, such finding will not have any effect on either the remaining portions or applications of this local law or any provisions of the Ulster County Charter, which shall remain in full force and effect.

SECTION 6. SECTION 8. EFFECTIVE DATE.

This local law shall take effect 90 days after filing with the Office of the Secretary of State and shall not apply retroactively to the collection and remittance of taxes prior to the law taking effect.