

**STATE OF NEW YORK
YATES COUNTY LEGISLATURE
CLERK'S OFFICE**

Penn Yan, NY, August 8, 2016

I Hereby Certify, That I have compared the preceding with the original thereof, on file in the Office of the Clerk of the County Legislature at Penn Yan, New York, and that the same is a correct transcript therefrom and of the whole of said original; and that said original was duly adopted at a meeting of the County Legislature of Yates County held at Penn Yan, New York on the 8th day of August 2016.

RESOLUTION NO. 305-16

**ADOPT LOCAL LAW NO. 2-16 ENTITLED RENEWAL AND REVISION OF LOCAL
LAW 4-07 ENTITLED A LOCAL LAW ESTABLISHING AN OCCUPANCY TAX IN
YATES COUNTY**

WHEREAS, proposed Local Law 2-16 entitled “ Renewal And Revision Of Local Law 4-07 Entitled A Local Law Establishing An Occupancy Tax In Yates County was introduced at the July meeting,

NOW, THEREFORE, BE IT RESOLVED, that proposed Local Law 2-16 entitled “ Renewal And Revision Of Local Law 4-07 Entitled A Local Law Establishing An Occupancy Tax In Yates County is hereby adopted, and be it further

RESOLVED, that a copy of this resolution be given to the County Attorney, the Secretary of State.

NEW YORK STATE DEPARTMENT OF STATE
162 WASHINGTON AVENUE, ALBANY, NY

Local Law Filing

12231 (Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underling to indicate new matter.

County
~~City~~ of Yates
~~Town~~
~~Village~~

Local Law No. 2-16

**RENEWAL AND REVISION OF LOCAL LAW 4-07 ENTITLED “A LOCAL LAW
ESTABLISHING AN OCCUPANCY TAX IN YATES COUNTY”**

(Insert Title)

Be it enacted by the Legislature of the



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County

~~City~~ of Yates as follows:

~~Town~~

~~Village~~

BE IT ENACTED by the County Legislature of the County of Yates as follows:

SECTION 1 Intent - The Yates County Legislature declares that the intent and purpose 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 tourism and General Fund of Yates County. Pursuant thereto, the County of Yates has enacted on Occupancy Tax by way of Local Law No. 4-07 entitled "A Local Law Establishing an Occupancy Tax in Yates County", which was renewed by Local Law No. 1-10, and by Local Law No. 2-13. The intent of this Local Law is to further renew said Local Law 4-07, with revisions to the same as set forth herein.

SECTION 2 Definitions - When used in this local law, the following terms shall mean:

- (a) County - Yates County, New York
- (b) County Treasurer – The Yates County Treasurer, or such other fiscal officer(s) of Yates County.
- (c) County Legislature – The legislature of the County of Yates.
- (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", inns, cabins, condominiums, cottages, campgrounds, lodges, tourist homes, convention centers, and vacation rentals. The term condominium shall mean and include those units rented or leased directly by the owner or through a real estate agency or rental management agency. The provisions of this section relating to campgrounds, shall only apply to those leases and rentals in which the campground provides overnight shelter or lodging, and shall not apply to the provision of services by a campground when the customer provides his or her own shelter or lodging.
- (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, possess, 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, as those terms are defined in subdivision (d) above and elsewhere herein, including, but not limited to, the owner, proprietor,



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lessee, sub-lessee, mortgagee in possession, licensee, or any other person otherwise operating such hotel or motel.

(h) Permanent Resident – Any person occupying any room or rooms in a hotel or motel for at least 30 consecutive days.

(i) Person – An individual, partnership, limited liability company, 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 consideration received for occupancy valued in money, whether received in money or otherwise. The term rent includes separately stated charges for the use of furnishings and equipment, maid services, towel and linen services, telephone service and other accommodations. Any charges for food, drinks, entertainment, valet, laundry service, theater ticket service, transportation, and administration do not constitute rent.

(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 3 Imposition of Tax – Effective January 1, 2008, there is hereby imposed and there shall be paid a tax of four percent (4%) of the per diem rental rate upon the rent for each room or rooms in a hotel or motel located within the County, except that such tax shall not be applicable to a permanent resident of a hotel or motel.

SECTION 4 Transitional Provisions – The tax imposed by this local law shall be paid upon any occupancy on or after January 1, 2008, 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 January 1, 2008. Any reservation for 2008 which is made prior to December 1, 2007, with a deposit, shall be exempt from the occupancy tax.

SECTION 5 Exempt Organizations – Section 1202-Y of the Tax Law does not authorize the imposition of this occupancy tax upon any transaction, by or with any of the following in accordance with Section 1230 of the Tax 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;



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(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 6 Territorial Limitations – The tax imposed by this local law shall apply only within the territorial limits of Yates County.

SECTION 7 Registration –

(a) 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 County Treasurer a registration application in a form prescribed by the County Treasurer.

(b) The County Treasurer shall, within ten 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 duplicate thereof for each additional hotel of such operator. Each certificate or duplicate shall state the hotel or motel to which it is applicable. Such certificates 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 Certificates shall be non-assignable and non-transferable and shall be surrendered immediately to the County Treasurer upon the cessation of business at the hotel named or upon its sale or transfer.

SECTION 8 Administration and Collection –

(a) The tax imposed by this local law shall be administered and collected by the County Treasurer, or other fiscal officers of Yates 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 this 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 such 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 subsequent payment of the same to the County Treasurer.



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(c) The following persons shall be personally liable for the tax imposed, collected or required to be collected under this local law: i) the operator, ii) any member of a partnership operator, iii) any member of a limited liability company operator; and iv) any officer, director or employee of a corporation operator or dissolved corporation operator, any employee of a partnership operator, any employee or manager of a limited liability company operator, or any employee of an individual proprietorship operator who as such officer, director, employee or manager is under a duty to act for such corporation, partnership, limited liability company or individual proprietorship in complying with any requirement of this local law.

Any such person 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 County 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.

(d) Where any occupant has failed to pay a tax imposed by this local law, then in addition to all other rights, obligations and remedies provided in this local law, such tax shall be payable by the occupant directly to the County Treasurer and it shall be the duty of the occupant to file a return with the County Treasurer and to pay the tax to the County Treasurer within fifteen (15) days of the date the tax was required to be paid.

(e) The County Treasurer may, whenever he/she deems it necessary for the proper enforcement of this local law, provide by regulation that occupants shall file returns and pay directly to the County Treasurer any tax herein imposed, at such times as returns are required to be filed and payment made by an operator.

(f) 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.

(g) Where an occupant claims exemption from the tax under the provisions of section 5 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.

SECTION 9 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 County Treasurer may require. Such records shall be available for inspection and examination at any time upon demand by the County Treasurer or the County Treasurer's duly authorized agents or employees, and shall be preserved for a period of not less than three (3) years, except that the



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County 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 10 Returns –

(a) Every operator shall file with the County 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 January 1, 2008. Such returns shall be filed within twenty (20) days from the expiration of the period covered thereby. The County Treasurer may permit or require returns to be made by other periods and upon such dates as may be specified. If the County Treasurer deems it necessary in order to insure the payment of the tax imposed by this local law, then the County 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 County Treasurer and shall contain such information as he or she may deem necessary for the proper administration of this local law. The county 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, then the County Treasurer shall take the necessary steps to enforce the filing of such return, or of a corrected return.

SECTION 11 Payment of tax -

(a) Upon the time of filing a return of occupancy and of rents, each operator shall pay to the County 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 County Treasurer, in his or her discretion, deems it necessary to protect revenues to be obtained under this local law, the County Treasurer may require any operator obligated to collect the tax imposed by this local law to file with the County Treasurer's office a bond, issued by a surety company authorized to transact business in this state and approved by the New York State Superintendent of Insurance as to solvency and responsibility, in such amount as the County 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 County Treasurer determines that an operator is to file such bond, notice shall be given by the County Treasurer to such operator to that effect specifying the amount of the bond required.



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(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 County Treasurer a written request for a hearing before the Finance Committee at which time the necessity, propriety and amount of the bond shall be determined by the County Treasurer. Any determination by the County 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 County Treasurer or cash in such amount as may be prescribed, may be deposited which shall be kept in the custody of the County Treasurer, who may at any time without notice to the depositor apply them to any tax and interest and penalties due, and for that purpose, the securities may be sold by the County Treasurer at public or private sale, without notice to the depositor thereof.

SECTION 12 Determination of Tax –

(a) If a return required by this local law is not filed, or if a return is incorrect or insufficient, then the amount of tax due shall be determined by the County 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. Such notice of determination shall be mailed by certified or registered mail to the person or persons liable for the collection or payment of the tax at his/her last known address. If such person or persons is deceased or under a legal disability, a notice of determination may be mailed to his/her last known address, unless the County Treasurer has received notice of the existence of a fiduciary relationship with respect to such person. After thirty (30) days from the mailing of such notice of determination, such notice of determination shall be an assessment of the amount of tax specified in such notice of determination, together with the interest, additions to tax and penalties stated in such notice of determination. Such notice of determination shall finally and irrevocably fix the tax, unless the person against whom it is assessed, within the above stated thirty (30) day time period, applies to the County Treasurer for a hearing, or unless the County Treasurer of his or her own motion shall re-determine the same. After such hearing, the County Treasurer shall give a notice of determination made to the person(s) 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 therefore 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:



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(1) 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 New York State and approved by the New York State Superintendent of Insurance 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

(2) 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.

(b) Whenever such tax is estimated as provided for in this Section 12, such notice shall contain a statement conspicuously placed on such notice advising the applicable person(s): that the amount of the tax was estimated; that the tax may be challenged through a hearing process; and that the petition for such challenge must be filed with the County Treasurer within thirty (30) days.

(c) The liability of the a purchaser, transferee or assignee of assets sold, transferred or assigned in bulk for the payment to the County of taxes determined to be due from the seller, transferor or assignor arising under subdivision (c) of Section 17 of this local law shall be an assessment of the liability determined unless the purchaser, transferee or assignee, within thirty (30) days after the giving of notice by the County Treasurer to such purchaser, transferee or assignee of the total amount of any tax or taxes which the County claims to be due from the seller, transferor or assignor, shall apply to the County Treasurer for a hearing unless the County Treasurer, on its own motion, shall re-determine such liability. Where the County Treasurer determines that the amount of taxes claimed due from the seller, transferor or assignor is erroneous or excessive in whole or in part it shall, on behalf of the purchaser, transferee or assignee, determine the amount of tax or taxes properly due and if such amount is less than the amount of taxes for which the purchaser would have been liable in the absence of such determination it shall reduce such liability accordingly.

(d) The liability, pursuant to subdivision (c)(iv) of Section 8 of this local law, of any officer, director or employee of a corporation operator or dissolved corporation operator, any employee of a partnership operator, any employee or manager of a limited liability company operator, or any employee of an individual proprietorship operator who as such officer, director, employee or manager is under a duty to act for such corporation, partnership, limited liability company or individual proprietorship in complying with any requirement of this local law for the tax imposed, collected or required to be collected, or for the tax required to be paid or paid over



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to the County Treasurer under this local law, and the amount of such tax liability (whether or not a return is filed under this local law, whether or not such return when filed is incorrect or insufficient, or where the tax shown to be due on the return filed under this local law has not been paid or has not been paid in full) shall be determined by the County Treasurer in the manner provided for in subdivisions (a) and (b) of this Section 12. Such determination shall be an assessment of the tax and liability for the tax with respect to such person unless such person, within thirty (30) days after the giving of notice of such determination, shall apply to the County Treasurer for a hearing. If such determination is identical to or arises out of a previously issued determination of tax of the corporation, dissolved corporation, partnership, limited liability company or individual proprietorship for which such person is under a duty to act, an application filed with the County Treasurer on behalf of the corporation, dissolved corporation, partnership, limited liability company or individual proprietorship shall be deemed to include any and all subsequently issued personal determinations and a separate application to the County Treasurer for a hearing shall not be required. The County Treasurer may, nevertheless, of its own motion, re-determine such determination of tax or liability for tax. Where the County Treasurer determines or re-determines that the amount of tax claimed to be due from the operator is erroneous or excessive in whole or in part, it shall re-determine the amount of tax properly due from any such person, and if such amount is less than the amount of tax for which such person would have been liable in the absence of such determination or re-determination, it shall reduce such liability accordingly.

(e) If the County Treasurer believes that the collection of any tax will be jeopardized by delay, for reasons including but not limited to, a person liable for the tax is about to cease business, leave the state or remove or dissipate assets out of which the tax or penalties and interest might be satisfied, the County Treasurer may determine the amount of such tax and assess the same, together with all interest and penalties provided by this local law, against any person liable therefor prior to the filing of a return and prior to the date when such return is required to be filed. The amount so determined shall become due and payable to the County Treasurer by the person(s) against whom such a jeopardy assessment is made, as soon as notice thereof is given to such person personally or by registered or certified mail. The provisions of subdivisions (a) and (b) of this Section 12 shall apply to any such determination except to the extent that they may be inconsistent with this subdivision. The County Treasurer may abate any jeopardy assessment if it finds that jeopardy does not exist.

SECTION 13 Refunds –

(a) In the manner provided in this section, the County Treasurer shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected



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or paid, if application to the County Treasurer for such refund shall be made within one year of payment thereof. Whenever a refund is made by the County Treasurer, the reason therefore shall be stated in writing. Such application may be made by the 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 County 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 County Treasurer, under such regulations as the County Treasurer may prescribe, that the County Treasurer has repaid to the occupant the amount for which the application for refund is made. The County Treasurer may in lieu of any refund required to be made, allow credit therefore 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 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 14 Reserves In cases where the operator or other person who has paid the tax 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 operator or other person who has paid the tax on such application for a refund, the County Treasurer shall set aside sufficient monies to meet any decision adverse to the County.

SECTION 15 Disposition Of Revenues – All revenues resulting from the imposition of the tax under this local law shall be paid into the treasury of Yates County and shall be credited to, and deposited in, the General Fund of the County. Thereafter the revenues from the tax after the cost of administration is deducted (said cost of administration being a percentage of such revenues, said percentage being established by County resolution, but not to exceed 10% of such revenues, to defer the necessary expenses of the County in administering such tax), shall be equally divided for the purpose of i) promoting tourism in the County (Yates County Tourism) and ii) the enhancement of the general economy in the County, its towns and villages (Yates County General Fund).



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SECTION 16 Remedies Exclusive - The remedies provided by sections twelve (12) and thirteen (13) 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 of 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 County Treasurer prior to the institution of such suit and posts a bond for costs pursuant to section twelve (12) of this local law.

SECTION 17 Proceedings to Recover Tax

(a) Whenever any operator or other person liable for the tax shall fail to collect or pay over 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 Yates County in any court of the State of New York or any other state or of the United States.

(b) As an additional or alternate remedy, the County Treasurer may issue a warrant, directed to the Yates County Sheriff or to the sheriff of any other county, commanding him to levy upon and sell the real and personal property of any person liable for the tax, which may be found within that sheriff's 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 County Treasurer and to pay to the County 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(s) mentioned in the warrant and the amount of the tax, with any 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 title to and interest in real and personal property of the person(s) against whom the warrant is issued. Such lien shall not apply to personal property unless another copy of such warrant is filed in the New York State Department of State. The sheriff shall then proceed upon the warrant, in the same manner and with like effect as that provided by law in respect to executions issued against property upon 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 County Treasurer, a warrant of like terms and effect may be issued and directed to any officer or employee of the County Treasurer and in the execution thereof such officer or



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employee shall have all the powers conferred upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. Upon such filing of a copy of a warrant, the County Treasurer shall have the same remedies to enforce the amount due thereunder as if the County had recovered judgment therefore. If a warrant is returned not satisfied in full, the County Treasurer may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as provided in this section.

(c) Whenever an operator or other person liable for the tax shall make a sale, transfer or assignment in bulk of any part of the whole of a hotel, motel, or lease, or of such operator's business assets, otherwise than in the ordinary course of business, the following provisions shall apply:

(1) the purchaser, transferee or assignee shall, at least twenty (20) days before taking possession of the subject of such sale, transfer or assignment, or paying therefor, notify the County Treasurer by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferor 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;

(2) whenever the purchaser, transferee or assignee shall fail to give notice to the County Treasurer as required by the preceding paragraph (1), or whenever the County 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 the subject of a first priority right and lien of any such taxes theretofore or thereafter determined to be due from the operator, seller, transferor or assignor to the County, and the purchaser, transferee or assignee is forbidden to transfer to the operator, seller, transferor or assignor and shall withhold, any such sums of money, property or choses in action, or other consideration to the extent of the amount of the County's claim. Within fifteen (15) days of receipt of the notice of the sale, transfer or assignment from the purchaser, transferee or assignee, the County Treasurer shall give notice to the purchaser, transferee or assignee and to the operator, seller, transferor or assignor of the total amount of any tax or taxes, as well as of any penalties or interest due thereon, which the County Treasurer claims to be due from the operator, seller, transferor or assignor to the County, and whenever the County Treasurer shall fail to give such notice within fifteen (15) days from receipt of the notice of the sale, transfer or assignment required by subdivision (1) of this paragraph, such failure shall release the purchaser, transferee or assignee from any further obligation to withhold any sums of money, property or choses in action or other consideration which the purchaser, transferee or assignee is required to transfer



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over to the operator, seller, transferor or assignor. For failure to comply with the provisions of this paragraph, 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. Upon receipt of the County Treasurer's notice issued pursuant this paragraph stating the total amount of the County's claim, the purchaser, seller, transferee or assignee may make payment of such claim to the County Treasurer from any sums of money, property, or choses in action or other consideration withheld in accord with the provisions of this paragraph, except that such payment shall be limited to an amount not in excess of the purchase price or fair market value of the assets sold, transferred, or assigned to such purchaser, transferee, or assignee, whichever is higher, and upon making such payment the purchaser, transferee or assignee shall be relieved of all liability for such amounts to the operator, seller, transferor or assignor and such amounts paid to the County Treasurer shall be deemed satisfaction of the tax liability of the operator, seller, transferor or assignor to the extent of the amount of such payment.

SECTION 18 General Powers of the County Treasurer – In addition to the powers granted to the County Treasurer by County Law and this local law, the County 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, and any other provision of this local law to the contrary notwithstanding;
- (d) To delegate such 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



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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 19 Administration of Oaths and Compelling Testimony

(a) The County Treasurer, or the County 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 County Treasurer's powers and duties under this local law.

(b) The County 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 or her 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 County Treasurer or excuse 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 County 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 County 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 County Treasurer and witnesses attending in response there to 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 County 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 20 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: "Occupancy Tax"; 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.



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SECTION 21 Penalties, Interest, and Violation

(a) Any person failing to file a return or to pay or pay over any tax to the Treasurer within the time required by this local law shall be subject to:

(1) a penalty consisting of the higher of i) five percent (5%) of the amount of tax due or ii) the sum of \$5.00; plus

(2) interest at the rate of one percent (1%) of the amount of tax due for each month of delay, except that no interest shall be charged for the first thirty (30) days immediately after the date such return was required to be filed or such tax became due.

(b) The County 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.

Any person that is personally liable for the tax imposed, collected or required to be collected under this local law shall also be personally liable for the penalties and interest herein imposed.

(c) In addition to the penalties herein or elsewhere prescribed, any person found to have committed any of the following acts shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand (\$1,000) dollars or imprisonment for not more than one (1) year, or both such fine and imprisonment:

(1) failing to file a return required by this local law;

(2) 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;

(3) willfully failing to file a bond required to be filed pursuant to this local law;

(4) failing to file a registration certificate and such data in connection therewith as the Treasurer may by order, regulation or otherwise require;

(5) failing to display, or to surrender upon demand of the Treasurer the certificate of authority as required by this local law;

(6) assigning or transferring such a certificate of authority;

(7) 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 issued or employed by the operator;

(8) willfully failing or refusing to collect any tax imposed by this local law from the occupant;

(9) referring or causing reference to be made to this tax in a form or manner other than that required by this local law; or

(10) failing to keep or maintain the records required by this local law.

(d) The certificate of the County Treasurer to the effect that a tax has not been paid, that



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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 22 Returns to be Confidential

(a) Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the County 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 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 County 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 into evidence, so much of such 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 or her duly authorized representative, of a certified copy of any return filed in connection with his or her 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 County 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).

SECTION 23 Notice 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 or her pursuant to the provisions of this local law, or in any application made by him or 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 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.



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(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 County to levy, appraise, assess, determine or enforce the collection of any tax or 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 24 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 25 Limitation of Effect of Local Law – This local law shall remain in full force and effect for a period of three (3) years from the date of enactment by the Yates County Legislature; except nothing shall prohibit or prevent the adoption and enactment of subsequent local laws continuing or imposing the tax authorized hereby after the expiration of this local law.

SECTION 26 Effective Date – This local law shall take effect January 1, 2017.



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