

**LOCAL LAW NO. 4 OF 2007  
COUNTY OF OTSEGO, NEW YORK**

A LOCAL LAW AMENDING LOCAL LAW NO. 4 OF 2006 - IMPOSING A  
TAX ON THE OCCUPANCY OF CERTAIN HOTEL, MOTEL AND  
SIMILAR ROOMS IN OTSEGO COUNTY

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

**Section 1. Short Title**

This local law shall be known as the Otsego County Hotel/Motel and Similar Room Occupancy Tax Law.

**Section 2. Intent**

The intent of this local law shall be to promote and develop tourism within the County of Otsego.

**Section 3. Text**

1. Definitions.
2. Imposition of Tax.
3. Transitional Provisions.
4. Exempt Organizations.
5. Territorial Limitations.
6. Registration.
7. Administration and Collection.
8. Records to be Kept.
9. Returns.
10. Payment of Tax.
11. Determination of Tax.
12. Disposition of Revenues.

13. Refund, Revision or Credits.
14. Remedies Exclusive.
15. Proceedings to Recover Tax.
16. General Powers of the County Administrator.
17. Administration of Oaths and Compelling Testimony.
18. Reference to Tax.
19. Penalties and Interest.
20. Returns to be Secret.
21. Notices and Limitations of Time.
22. Separability.

1. Definitions.

(a) County Administrator. The Treasurer of Otsego County or other persons designated by the Board of Representatives.

(b) Hotel or Motel. For purposes of this section, the term “hotel” or “motel” shall mean and include any facility consisting of rentable units and providing lodging on an overnight basis. Such facilities shall also include those facilities designated and commonly known as “bed and breakfast” and “tourist” facilities, and shall also include inns, boarding houses, condominiums, cabins, cottages, motor courts or clubs, bunk houses, lodges, trailers, campers, tents and camp sites offered for rent by the owner thereof for lodging and shelter on an overnight basis. Such facilities shall also include shelter or lodging provided to campers or guests at youth camps, except for those youth camps owned and operated by persons or entities which are exempt from taxation under federal or state law. With respect to camp sites, this section shall apply only to those leases and rentals in which the owner thereof provides overnight shelter or lodging, and shall not apply to the provision of services by the owner thereof when the customer provides his or her own shelter or lodging.

(c) Occupancy. The use or possession, or the right to the use or possession of any room in a hotel or motel.

(d) Occupant. A person who, for a consideration, uses, possesses, or has the right

to use or possess any room in a hotel or motel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise.

(e) Operator. Any person operating a hotel or motel in Otsego County, including but not limited to the owner or proprietor of such premises, lessee, sublessee, mortgage in possession, licensee, or any other person otherwise operating such hotel or motel.

(f) Permanent Resident. Any occupant of any room or rooms in a hotel or motel for at least thirty (30) consecutive days shall be considered a permanent resident with regard to the period of 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.

(i) Return. Any return filed or required to be filed as herein provided.

(j) Room. Any room or rooms, being a partitioned part of the inside of a building, of any kind in any part or portion of a hotel or motel, which is available for or let out for any purpose other than a place of assembly.

## 2. Imposition of Tax.

On or after the 1st day of March, 1990, there is hereby imposed and there shall be paid a tax of four (4) percent of the rent for every occupancy of a room or rooms in a hotel or motel in this county except that the tax shall not be imposed upon a permanent resident of the hotel or motel.

## 3. Transitional Provisions.

The tax imposed by this local law shall be paid upon any occupancy on or after the 1st day of March, 1990, although such occupancy is pursuant to a prior contract, lease, or other arrangement. Where rent is paid or payable on a weekly, monthly, or other term, the rent shall be subject to the tax imposed by this local law to the extent that it covers any period on and after the 1st day of March, 1990.

## 4. Exempt Organizations.

a. This local law shall not authorize the imposition of such tax upon any transactions

by or with any of the following in accordance with Section 1230 of the Tax Law:

- (1) the State of New York or any of its agencies, 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, 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 subdivision 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 subdivision.

b. Where any organization described in paragraph (3) of subdivision a of this subsection carries on its activities in the furtherance of the purposes for which it was organized, in premises in which, as part of said activities, it operates a hotel or motel, occupancy of rooms in the premises and rents therefrom received by such corporation or association shall not be subject to tax hereunder.

c. The hotel or motel operator shall submit such written proof as may be required to show that the use or occupancy falls within the aforescribed exempt categories. In the absence of such documentation, the tax must be collected by the operator.

#### 5. Territorial Limitations.

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

#### 6. Registration.

On or before March 1, 1990, the effective date of this local law, or in the case of operators commencing hotel or motel business in Otsego County after such effective date, within three days after such commencement, every operator shall file with the County Administrator's office a certificate of registration in a form prescribed by the County Administrator. Within five days after such registration, the County Administrator shall 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 or motel 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 a manner that it may be seen and come to the notice of all occupants and persons seeking occupancy in the hotel or motel to which it applies. Such certificates shall be nonassignable and nontransferable, and shall be surrendered immediately to the County Administrator upon the cessation of business at the hotel or motel named or upon its sale or transfer.

#### 7. Administration and Collection.

a. The tax imposed by this local law shall be administered and collected by the Otsego County Administrator, or other fiscal officers of the County as he may designate by such means and in such manner as are other taxes which are now administered and collected by such officers in accordance with the County Charter and Code, or as otherwise provided by this local law.

b. The tax to be collected shall be stated and charged separately from the rent and show separately on any record thereof at the time when the occupancy is arranged or contracted or contracted and charged for, and upon every evidence of occupancy or any bill, statement, or charge made for said occupancy issued or delivered by the operator. 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 tax and collection of the same. The operator and any officer of any corporate operator shall be personally liable for the tax collected or required to be collected under this local law. 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 County Administrator or other fiscal officer(s), employees or agent 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.

c. The County Administrator may, wherever he deems it necessary for the proper enforcement of this local law, provide by regulation that the occupant shall file returns and pay directly to the County Administrator the tax herein imposed, at such times as returns are required to be filed and payment made by the operator.

d. The tax imposed by this local law shall be paid upon any occupancy on and after the 1st day of March, 1990, although such occupancy is had pursuant to a contract, lease, or other arrangement made prior to such date. Where rent is paid, charged, 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 the 1st day of March, 1990. Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the County Administrator may, by regulation, provide for the credit and/or refund of the amount of such tax upon application therefor as provided in Section 13 of this local law.

e. For the purpose of the proper administration of this local law, and to prevent evasion of the tax hereby imposed, it shall be presumed that all rents are subject to tax until the contrary is established. The burden of proving that a rent for occupancy is not taxable hereunder shall be upon the operator, except that, whereby regulation pursuant to subdivision 7(c) of this section, an occupant is required to file returns and pay directly to the County Administrator the tax herein imposed, the burden of proving that a rent for occupancy is not taxable shall be upon the occupant. Where an occupant claims exemption from the tax under the provisions of subdivision 4 of this section, the rent shall be deemed taxable hereunder unless the operator shall receive from the occupant claiming such exemption a certificate duly executed by an exempt corporation or association certifying that the occupant is its agent, representative, or employee, together with a certificate executed by the occupant that his occupancy is paid or to be paid by such exempt corporation or association, and is necessary or required in the course of or in connection with the occupant's duties as a representative of such corporation or association. Where deemed necessary by the operator, he may further require that any occupant claiming exemption from the tax furnish a copy of a certificate issued by the County Administrator certifying that the corporation or association therein named is exempt from the tax under subdivision 4 of this section.

#### 8. Records to be Kept.

Every operator shall keep records of every occupancy, of all rent paid, charged, or due, and of the tax payable thereon, in such form as the County Administrator may require by regulation. Such records shall be available for inspection and examination at any time upon demand by the County Administrator or his duly authorized employee or agent, and shall be preserved for a period of three years, except that the County Administrator may consent to their destruction within that period or may require that they be kept longer.

#### 9. Returns.

a. Every operator shall file with the County Administrator a return of occupancy, of rents, and of taxes payable thereon for the periods ending February 28, May 31, August 31, and November 30 of each year, on and after March 1, 1990. Such returns shall be filed within 20 days from the expiration of the period covered thereby. The County Administrator may permit or require returns to be made by other periods and upon such dates as he may specify. If the County Administrator deems it necessary in order to ensure the payment of

the tax imposed by this local law, he 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 may specify.

b. The form of returns shall be prescribed by the County Administrator and shall contain such information as he may deem necessary for the proper administration of this local law. The County Administrator 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 local law is not filed, or a return when filed is incorrect or insufficient on its face, the County Administrator shall take the necessary steps to enforce the filing of such a return or of a corrected return.

#### 10. Payment of Tax.

At the time of filing a return of occupancy and of rents, each operator shall pay to the County Administrator the taxes imposed by this local law upon rents required to be included in such return, as well as all other monies collected by the operator acting or purporting to act under the provisions of this local law. Where the County Administrator deems it necessary to protect revenues to be obtained under this local law, he may require any operator required to collect the tax imposed by this local law to file with him 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 County Administrator may fix 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 County Administrator determines that an operator is to file such a bond, he shall give notice to the operator to that effect, specifying the amount of the bond required. The operator shall file the bond within five days after the giving of notice unless within those five days the operator requests in writing a hearing before the County Administrator, at which the necessity, propriety, and amount of the bond shall be determined by the County Administrator. This determination shall be final and shall be complied with within 15 days after the giving of notice thereof. In lieu of a bond, securities approved by the County Administrator or cash in the amount he may prescribe may be deposited into the custody of the County Administrator, who may at any time, without notice to the depositor, apply them to any tax and/or interest or penalties due, and for that purpose the securities may be sold by him at public or private sale without notice to the depositor thereof.

#### 11. Determination of Tax.

If a return required by this 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 County Administrator from obtainable information. If necessary, the tax may be estimated on the basis of external indices, such as number of rooms, location, scale of rents, comparable rents, type of

accommodations and service, number of employees and/or other factors. Notice of such determination shall 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, applies to the County Administrator for a hearing, or unless the County Administrator redetermines the same on his own motion. After such a hearing, the County Administrator shall give notice of his determination to the person against whom the tax is assessed. The determination of the County Administrator shall be reviewable for error, illegality, unconstitutionality, or any other reason whatsoever by proceeding under Article 78 of the Civil Practice Law and Rules if application therefor is made to the Supreme Court within 30 days after the filing of the notice of such determination. A proceeding under Article 78 of the Civil Practice Law and Rules shall not be instituted unless the amount of any tax sought to be reviewed with penalties and interest thereon, if any, is first deposited with the County Administrator and an undertaking is filed with the County Administrator, issued by a surety company authorized to transact business in this state, approved by the superintendent of insurance of this state as to solvency and responsibility, in an amount approved by a Supreme Court Justice, to the effect that if the proceeding is dismissed or the tax confirmed, the petitioner will pay all charges and costs which may accrue in the prosecution of the proceeding, or, at the option of the applicant, such undertaking filed with the County Administrator may be in a sum sufficient to cover the taxes, penalties, and interest thereon stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding. In that event, the applicant will not be required to deposit such taxes, penalties, and interest as a condition precedent to the application.

## 12. Disposition of Revenues.

All revenues resulting from the imposition of the tax under this local law shall be paid into the treasury of the County, credited to and deposited into the General Fund of the County, and thereafter, the actual costs for collection and handling, shall be retained by the County as verified by the County Administrator. The net revenues received after deduction of costs of collection and administration, shall be allocated as follows:

1. The net collections therefrom shall thereafter be allocated by the board of representatives of Otsego County in an amount not less than two hundred thousand dollars for the promotion, planning and development of tourism in Otsego County and the remaining net collections therefrom may be allocated by the board of representatives of Otsego County for any county purpose.

The County Legislature shall be authorized to retain and remit to the general fund up to a maximum of ten percent (10%) of such revenue to defer the necessary expenses of the County in administering such tax.

### 13. Refund, Revision or Credits.

a. In the manner provided in this section, the County Administrator shall refund or credit, without interest, any tax, penalty, or interest erroneously, illegally, or unconstitutionally collected or paid if application to the County Administrator for such refund is made within one year from the payment thereof. Whenever a refund is made by the County Administrator, he shall state his 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 County Administrator, provided that the application is made within one year of the payment by the occupant to the operator. However, no actual refund of monies shall be made to such operator until he first establishes to the satisfaction of the County Administrator under such regulations as the County Administrator by authority of the Board of Representatives may prescribe, that he has repaid to the occupant the amount for which the application for refund is made. In lieu of any refund required to be made, the County Administrator may allow credit therefor on payments 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 County Administrator may receive evidence with respect thereto. After making his determination, the County Administrator shall give notice thereof to the applicant, who shall be entitled to review said determination by a proceeding pursuant to Article 78 of the C.P.L.R., provided the proceeding is instituted within 30 days after the giving of the notice of determination and provided a final determination of tax due was not previously made. Such a proceeding shall not be instituted unless an undertaking is filed with the County Administrator in an amount and with sureties approved by a Justice of the Supreme Court to the effect that if such proceedings are dismissed or the tax confirmed, the petitioner will pay all costs and charges that may accrue in the prosecution of said proceeding.

c. A person shall not be entitled under this section to a revision, refund, or credit of a tax, interest, or penalty that had been determined to be due pursuant to the provisions of Section 13 of this local law where said person has had a hearing or an opportunity for a hearing as provided in this section, or who has failed to avail himself of the remedies provided therein. No refund or credit of a tax, interest, or penalty paid after a determination by the County Administrator pursuant to Section 11 of this local law shall be paid unless it is found that the determination was erroneous, illegal, unconstitutional, or otherwise improper by the County Administrator after a hearing or of his own motion, or in a proceeding under Article 78 of the C.P.L.R. pursuant to the provisions of said section. In that event, refund or credit without interest shall be made of the tax, interest, or penalty found to have been overpaid.

### 14. Remedies Exclusive.

The remedies provided by Sections 11 and 13 of this local law shall be exclusive remedies available to any person for the review of tax liability imposed by this local law. No determination, proposed determination of tax, nor determination on any application for refund shall be enjoined or reviewed except as hereinafter provided, by an action for declaratory judgment, an action for money had and received, or by any action or proceeding other than a proceeding in the nature of a certiorari proceeding under Article 78 of the C.P.L.R. A taxpayer may, however, 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 County Administrator prior to the institution of such suit and posts a bond for costs as provided in Section 11 of this local law.

#### 15. Proceedings to Recover Tax.

a. Whenever any operator, any officer of a corporate operator, any occupant, or other person fails to collect and pay over any tax and/or penalty or interest as imposed by this local law, the County Attorney shall, at the request of the County Administrator, bring or cause to be brought an action to enforce the payment of same on behalf of the County in any court of the State of New York or of any other state or of the United States. If, however, the County Administrator in his discretion believes that any such operator, officer, occupant, or other person is about to cease business, leave the state, or remove or dissipate the assets out of which the tax or penalties might be satisfied, and that any such tax or penalty will not be paid when due, he may declare such tax or penalty to be immediately due and payable, and may issue a warrant immediately.

b. As an additional or alternate remedy, the County Administrator may issue a warrant, directed to the Sheriff, commanding him to levy upon and sell the real and personal property of the operator, officer of a corporate operator, or other person liable for the tax, which may be found within the County for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return such warrant to the County Administrator and to pay to him the money collected by virtue thereof within 60 days after the receipt of said warrant. Within five days after the receipt of the warrant, the Sheriff shall file a copy of same with the County Clerk. Thereupon the Clerk shall enter in the judgment docket the name of the person stated in the warrant, the amount of the tax, penalties, and interest for which the warrant is issued, and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the interest in real and personal property of the person against whom the warrant is issued. The Sheriff shall then proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions issued against property upon judgments of a court of record. For services in executing the warrant he shall be entitled to the same fees, which he may collect in the same manner. In the discretion of the County Administrator, a warrant of like terms, force, and effect may be issued and directed to any officer or employee of the County Administrator. In the execution thereof, such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or

compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not fully satisfied, the County Administrator may, from time to time, issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the County has recovered judgment therefor and execution thereon has been returned unsatisfied.

c. Whenever an operator makes a sale, transfer, or assignment of any part of the whole of his hotel or motel, or his lease, license, or other agreement or right to possess or operate such hotel or motel, or the equipment, furnishings, fixtures, supplies, or stock of merchandise, or the said premises or lease, license or other agreement or right to possess or operate such hotel or motel and equipment, furnishings, fixtures, supplies and stock of merchandise pertaining to the conduct or operation of said hotel or motel, other than in the ordinary and regular prosecution of business, the purchaser, transferee or assignee shall, at least ten days before taking possession of the subject of said sale, transfer, or assignment, or before receiving payment, notify the County Administrator by registered mail of the proposed sale and the price, terms, and conditions thereof whether or not the seller, transferrer or assignor has represented to or informed the purchaser, transferee, or assignee that it owes any tax pursuant to this local law, whether or not the purchaser, transferee, or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

d. Whenever the seller, transferor, or assignor fails to give notice to the County Administrator as required above, or whenever the County Administrator informs the purchaser, transferee, or assignee that a possible claim for such tax(es) exists, any sums of money, property, choses in action, or other consideration which the purchaser, transferee or assignee is required to transfer over to the seller, transferor, or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferor, or assignor to the County. The purchaser, transferee, or assignee is then forbidden to transfer to the seller, transferor, or assignor any such sums of money, property, or choses in action to the extent of the amount of the County's claim. For failure to comply with the provisions of this subdivision, the purchaser, transferee, or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of Article 6 of the Uniform Commercial Code, shall, as well as the seller, transferor, or assignor, be personally liable for the payment to the County of any such taxes theretofore or thereafter determined to be due to the County from the seller, transferor, or assignor. Such liability may be assessed and enforced in the same manner as the liability for tax under this local law.

#### 16. General Powers of the County Administrator.

a. In addition to the powers granted to him in this local law, the County Administrator is, subject to the approval of the Otsego County Board of Representatives, hereby authorized and empowered to:

- (1) make, adopt, and amend rules and regulations appropriate to the carrying out of this local law and the purposes thereof;
- (2) extend for cause shown, the time of filing any return for a period not exceeding thirty (30) days; and for cause shown, to remit penalties but not interest; and to compromise disputed claims in connection with the taxes hereby imposed;
- (3) request information from the Tax Commission 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 Commission or Treasury Department relative to any person, notwithstanding any other provision of this local law to the contrary;
- (4) delegate his functions hereunder to a Deputy County Administrator or any employee(s) of County Administration;
- (5) prescribe methods for confirming the rents for occupancy and to confirm the accuracy of information on the taxable and nontaxable rents;
- (6) require any operator within the County, if it is determined that adequate records are not being maintained, to keep detailed records of the nature and type of hotel maintained; nature and type of service rendered; number of rooms available and occupied; daily leases, occupancy contracts or arrangements; rents received, charged, and accrued; the names and addresses of the occupants; whether or not any occupancy is claimed to be subject to the tax imposed by this local law; and to furnish such information at the request of the County Administrator;
- (7) assess, determine, revise and readjust the taxes imposed under this local law.

#### 17. Administration of Oaths and Compelling Testimony.

a. The County Administrator or his employee(s) or agent(s) duly designated and authorized by him shall have the power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this local law. The County Administrator shall have power to subpoena and require the attendance of witnesses and the production of books, papers, and documents to secure information pertinent to the performance of his duties hereunder, in the enforcement of this local law, and to examine them in relation thereto. The County Administrator shall also have the power to issue commissions for the examination of

witnesses who are out of the state, unable to attend before him, or who are excused from attendance.

b. A Supreme Court Justice, either in court or in chambers, shall have the power to summarily 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 Administrator under this local law.

c. Any subpoenaed person who refuses to testify or produce books or records, or who testifies falsely in any material matter pending before the County Administrator under this local law shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than \$1,000 or imprisonment for not more than one (1) year, or both such fine and imprisonment.

d. The officers who serve the summons or subpoena of the County Administrator and witness attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein provided otherwise. Such officers shall be the County Sheriff and his duly appointed deputies, or any officers or employees of the County Administrator's office designated by him to serve such process.

#### 18. Reference to Tax.

Whenever reference is made to this tax in placards or advertisements or in any other publications, such reference shall be substantially in the following form: "Tax on occupancy of hotel or motel rooms" or "occ. tax," except that in any bill, receipt, statement, or other evidence or memorandum of occupancy or rent charge issued or employed by the operator, the word "tax" will suffice.

#### 19. Penalties and Interest.

a. Any person failing to file a return or to pay over any tax to the County Administrator within the time required by this local law shall be subject to a penalty of ten (10) percent of the amount of tax due, plus interest at the rate of one (1) percent of such tax for each month of delay, except the first month after such return was required to be filed or such tax become due. Such penalties and interest shall be paid and disposed of in the same manner as other revenues from this local law.

b. The following persons shall, in addition to the penalties herein or elsewhere prescribed, be guilty of a misdemeanor, punishment for which shall be a fine of not more than \$1,000 or imprisonment not exceeding one (1) year, or both:

(1) any operator, occupant, or any officer of a corporate operator or occupant failing to

file a return required by this local law, or filing or causing to be filed, making or causing to be made, giving or causing to be given any return, certificate, affidavit, representation, information, testimony or statement authorized or required by this local law, which is willfully false;

(2) any operator or officer of a corporate operator willfully failing to file a bond required to be filed pursuant to Section 11 of this local law, failing to file a registration certificate and such data in connection therewith as the County Administrator may require, failing to display or surrender the certificate of authority as required by this local law, or assigning or transferring such certificate of authority;

(3) any operator or officer of a corporate operator willfully failing to charge separately from the rent the tax herein imposed, willfully failing to state such tax separately on any evidence of occupancy and on any bill, statement or receipt of rent issued or employed by the operator, or willfully failing or refusing to collect such tax from the occupant;

(4) any operator or officer of a corporate operator who refers or causes reference to be made to this tax in a form or manner other than that required by this local law; and

(5) any operator failing to keep records required by subdivision 8 of Section 2 of this local law.

c. Any operator or officer of a corporate operator who fails to file a certificate of registration as provided under this local law shall be subject to a penalty of \$1,000 for each month of delinquency in filing such certificate. Officers of a corporate operator shall be personally liable for the tax collected or required to be collected by such corporation under this local law, and subject to the penalties hereinabove imposed.

d. The certificate of the County Administrator to the effect that a tax has not been paid, that a return, bond, or registration certificate has not been filed, or that information has not been supplied pursuant to the provisions of this local law, shall be presumptive evidence thereof.

## 20. Returns to be Secret.

a. Except in accordance with the proper judicial order, or as otherwise provided by law, it shall be unlawful for the County Administrator or any officer or employee of the County Administrator's Office to disclose in any manner the rents or other information relating to the business of a taxpayer contained in any return required under this local law, except to such persons and at such times as necessary to carry out this local law. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the County Administrator in an action or proceeding under the

provisions of this local law, or on behalf of any party to any action or proceeding under the provisions of this local law when the returns or facts shown thereby are directly involved in such action or proceeding. In any of these events, the Court may require the production of and may admit into evidence as much of said returns or 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 the taxpayer or his duly authorized representative of a certified copy of any return filed in connection with his/her tax nor to prohibit the publication of statistics classified so as to prevent the identification of particular returns and the items thereof. In addition, nothing herein shall be construed to prohibit the inspection by the County Attorney or other legal representatives of the County of the return of the 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 County Administrator permits them to be destroyed.

b. Any violation of subdivision a of this section shall be punishable by a fine not exceeding \$1,000 or by imprisonment not exceeding twelve (12) years, or both, in the discretion of the Court. If the offender is an officer or employee of the County, (s)he shall be dismissed from office and be incapable of holding any public office for a period of five years thereafter.

## 21. Notices and Limitations of Time

a. Any notice authorized or required under the provisions of this local law may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him pursuant to the provisions of this local law, or in any application made by him. If no return has been filed nor application made, then notice may be given by mailing same to such address as may be obtainable. Mailing of such notice shall be presumptive evidence of the receipt of same by the person to whom it is addressed. Any period of time which is determined according to the provisions of this local law by the giving of notice shall commence to run from 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 action or proceeding 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 years from the date of filing of a return; provided, however, that where no return has been filed as provided by law, the tax may be assessed and collected at any time.

c. Where a taxpayer has consented in writing, before the expiration of the period

prescribed herein for the assessment of an additional tax, that such period be extended, the amount of such additional tax due may be determined at any time within the extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

22. Separability.

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

**Section 4. Effective Date.**

This local law shall take effect January 1, 2008. A copy of this local law shall be filed in the Office of the Secretary of State as provided by the Municipal Home Rule Law. Any changes which would affect the rate of tax or the use of revenues during that time shall render the total tax null and void.