

Chapter 182

Taxation

[HISTORY: Parts 1 through 6 adopted by the Board of Supervisors (now County Legislature) of the County of Sullivan as indicated in Part histories; subsequent Parts adopted by the County Legislature of the County of Sullivan as indicated in Part histories. Amendments noted where applicable.]

Part 3

Lodging Facility Room Occupancy Tax

Article III

General Provisions

§ 182-16 Short title.

This Part 3 shall be known as the "Sullivan County Hotel and Motel Room Occupancy Tax Law."

§ 182-17 Intent; priority.

- A. This Part 3 is adopted to implement the provisions of Chapter 353 of the Laws of 1989, effective July 12, 1989, enacting § 1202-j of the Tax Law of the State of New York, as amended by Chapter 32 of the Laws of 2007, effective May 21, 2007, amending § 1202-j of the Tax Law of the State of New York.
- B. The amount of all taxes levied by virtue of this Part 3 shall be and become a lien upon the real property and personal property, fixtures and equipment of the owner of or operator or any officer and/or corporate stockholder, including the lodging facility or any other real property owned by them, when levied. The lien of this tax shall have priority over all other real and personal property liens in the same manner as a real property tax levied pursuant to the New York State Real Property Tax Law.

§ 182-18 Definitions.

Unless the context requires a different meaning, when used in this Part 3, the following terms shall mean:

COUNTY

The County of Sullivan.

LODGING FACILITY

Any shelter not owned and provided by the occupant used for lodging on an overnight basis. The term "lodging facility" includes any form of shelter not owned by or provided by the occupant.

OCCUPANT

A person who, for a consideration, has the right to use or possess any lodging facility.

OPERATOR

Any person operating a lodging facility in the County of Sullivan.

PERMANENT RESIDENT

Any occupant of any lodging facility for at least 90 consecutive days shall be considered a permanent resident.

PERSON

Any individual, group, entity or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, or any combination of the foregoing.

RENT

The consideration received for occupancy. Rent received by operators of lodging facilities shall be deemed as taxable unless each is supported by a written agreement providing for the exclusive possession of such Lodging Facility for a period of 90 consecutive days or more. In the event that an occupancy is provided to an occupant free of charge or complimentary, than the standard rate applicable to that occupancy will be deemed the consideration received for the purpose of computing the tax due.

TAX

The tax imposed pursuant to this Part 3 and any increase, reduction or modification hereafter authorized.

TREASURER

The Treasurer of Sullivan County or the Treasurer's designee.

§ 182-19 Territorial limitations.

The tax imposed by this Part 3 shall apply only within the territorial limits of the County of Sullivan.

§ 182-20 Reference to tax.

Wherever reference is made in placards, advertisements or other publications to the tax imposed by this Part 3, such reference shall be substantially in the following form: "Tax on occupancy of lodging facility rooms," except that in any bill, receipt, statement or other agreement or memorandum of occupancy or rent charge issued or employed by an operator, the words "occupancy tax" shall suffice.

Article IV
Administration of Tax Law

§ 182-21 Administration.

The tax imposed by this Part 3 shall be administered and collected by the Treasurer 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 collected and administered by the Treasurer or as otherwise are provided by this Part 3.

§ 182-22 General powers of Treasurer.

In addition to the powers granted to the Treasurer in this Part 3, the Treasurer is hereby authorized and empowered to:

- A. Make, adopt and amend rules and regulations appropriate to the carrying out of this Part 3 and the purposes thereof; provided, however, that no rule or regulation shall become effective until 30 days after such rule or regulation shall have been filed with the Clerk of the County Legislature.
- B. 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 Commission or Treasury Department relative to any person, any other provision of this Part 3 to the contrary notwithstanding.
- C. Delegate his functions hereunder to a Deputy Treasurer or any employee or employees of the Treasurer.
- D. Prescribe methods for determining the rents for occupancy and to determine the taxable and nontaxable rents.
- E. Require any operator in Sullivan County to keep detailed records of the nature and type of lodging facility maintained, nature and type of service rendered, rooms available and rooms occupied daily, leases or occupancy contracts or arrangements, rents received, charged and accrued, the names and addresses of the occupants, whether or not any occupancy is claimed to be subject to the tax, and to furnish such information upon request to the Treasurer.
- F. Assess, determine, revise and readjust the taxes imposed under this Part 3, and require the filing of estimated tax returns and payment of estimated tax where necessary.
- G. Direct the County Attorney to take such action as may be required to enforce this Part 3, including but not limited to providing representation in any administrative proceeding conducted by the Treasurer or enforcement of this Part 3 any appropriate proceeding brought in the name of the County in any court of appropriate jurisdiction without any further authorization of the County Legislature.
- H. Where the Treasurer, in his discretion, deems it necessary to protect revenues to be obtained under this Part 3, the Treasurer may require an operator 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 Treasurer 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 Treasurer determines that an operator is to file such bond he shall give notice to such operator to that effect specifying the amount of the bond required. The operator shall file such bond within five days after the giving of such notice, unless within such five days the operator shall request, in writing, a hearing before the Treasurer at which the necessity, propriety and/or amount of the bond shall be determined by the Treasurer. Such determination shall be final and shall be complied with within 15 days after the giving notice thereof. In lieu of such bond, securities approved by the Treasurer or cash in such amount as he may prescribe may be deposited which shall be kept in the custody of the Treasurer who may at any time without notice of the depositor apply them to any tax and/or interest or penalties due, and for that purpose the securities may be sold by him at public or private sale without notice to the depositor thereof.

§ 182-23 Administration of oaths and compelling testimony.

- A. The Treasurer or his employees or agents duly designated and authorized by him shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their

powers and duties under this Part 3. The Treasurer 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 and of the enforcement of this Part 3 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 him or excused from attendance.

- B. 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 Treasurer under this Part 3.
- C. 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 Treasurer under this Part 3 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 year, or both such fine and imprisonment.
- D. The officers who serve the summons or subpoena of the Treasurer and witnesses 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 otherwise provided. Such officers shall be the County Sheriff and his duly appointed deputies or any officers or employees of the Treasurer, designated to serve such process.

Article V

Tax Rate; Persons Liable; Taxable Rent; Exemptions

§ 182-24 Imposition of tax.

On and after the first day of June 2007, there is hereby imposed and there shall be paid a tax of 5% upon the rent for every occupancy of a room or rooms in a lodging facility in this County, except that the tax shall not be imposed upon:

- A. Permanent residents; or
- B. Exempt organizations as hereinafter set forth.

§ 182-25 Statement of tax to be collected; person liable for payment.

- A. 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 or charge made for said occupancy issued or delivered by the operator, and the tax shall be paid by the occupant to the operator as trustee for and on account of the 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 Part 3, 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 Treasurer

or other fiscal officer or officers, employees or agents duly designated by him shall be joined as a co-plaintiff in any action or proceeding brought by the operator to collect or enforce collection of the tax.

- B. This tax obligation shall be deemed levied at the time that the occupant is in legal possession of the room. The obligation shall continue to be deemed levied on each day that the occupant is in legal possession of the premises. Where an occupant has failed to pay and the operator has failed to collect a tax as imposed by this Part 3, said operator shall be obligated to pay the total amount of the tax directly to the Treasurer, and it shall be the duty of the operator to file a return thereof with the Treasurer and pay the tax levied thereon to the County Treasurer within 15 days after such tax was due. In the event that the occupant or the operator fail to pay any tax imposed by this Part 3, the owner of the lodging facility shall be obligated to pay said tax to the County.
- C. For the purpose of the proper administration of this Part 3 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 providing that a rent for occupancy is not taxable hereunder shall be upon the operator.
- D. All taxes collected pursuant to this Part 3 shall be deposited in a bank as defined by the Banking Law or a national banking association located and authorized to do business in Sullivan County. Such deposits shall be kept in a bank account, in trust for the County, separate and apart from all other accounts of the corporate operator. Proof of such deposits and bank account shall be provided to the County Treasurer or his designee on a monthly basis. The bank statements for such accounts shall be sent directly to the Treasurer.

§ 182-27 Exempt organizations.

- A. Except as otherwise provided in this section, any use or occupancy by any of the following shall not be subject to the tax imposed by this Part 3:
 - (1) The State of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or Canada), improvement district or political subdivision of the state.
 - (2) The United States of America, insofar as it is immune from taxation.
 - (3) Any corporation or association, 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 section 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 section.
- B. An organization exempt pursuant to § 182-27A above shall only be exempt from the tax if the occupancy is for a lawful and proper exempt purpose of the exempt organization and for no other purpose.

- C. The operator or owner of a lodging facility shall be required to collect a tax from all occupants who are not exempt from the tax as defined in this § 182-27, whether or not the operator or owner would qualify as an exempt organization pursuant to § 182-27A above.

Article VI
Registration; Records; Returns; Refunds

§ 182-28 Registration.

- A. Within three days after commencement or opening, every operator shall file with the Treasurer an application for a certificate of authority empowering such operator to collect the tax from the occupant. Upon receipt of such application, the Treasurer shall issue a certificate of authority to such operator which, when authenticated, shall constitute the authority for the purposes of this Part 3. Each application for a certificate of authority shall state the lodging facility to which it is applicable; the name of the operator of such lodging facility, the address of such operator, the taxpayer identification number assigned to such operator, the state of incorporation and the date upon which such corporation 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 Treasurer may require. 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 not be assignable and nontransferable and shall be surrendered immediately to the Treasurer upon the cessation of business at the lodging facility named or upon its sale or transfer.
- B. Failure of an operator to register with the Treasurer as required by § 182-28A shall be punishable by a One Thousand dollar (\$1,000) fine for each violation.

§ 182-29 Records to be maintained.

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

§ 182-30 Returns.

- A. Every operator shall file with the 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 and after March 1, 1990. Such returns shall be filed within 20 days from the expiration of the period covered thereby. The Treasurer may permit or require returns to be made by other periods and upon such dates as he may specify. If the Treasurer deems it necessary in order to ensure the payment of the tax imposed by this Part 3, 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 forms of returns shall be prescribed by the Treasurer and shall contain such information as he may deem necessary for the proper administration of this Part 3. The Treasurer 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 Part 3 is not filed, or a return filed is incorrect or insufficient on its face, the Treasurer shall take the necessary steps to enforce the filing of such a return or of a corrected return.

§ 182-31 Payment of tax.

At the time of filing a return of occupancy and of rents, each operator shall pay to the Treasurer the taxes imposed by this Part 3 upon the rents required to be included in such return, as well as all other moneys collected by the operator acting or purporting to act under the provisions of this Part 3 even though it may be judicially determined that the tax collected is invalid. The amounts required to be billed shall be due from the operator and payable to the Treasurer on the date limited for the filing of the return for such period, without regard for whether a return is filed or whether the return which is filed correctly shows the amount of rents and the taxes due thereon.

§ 182-32 Determination of tax.

If a return required by this Part 3 is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the 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. Notice of such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within 30 days after giving of notice of such determination, shall apply to the Treasurer for a hearing, or unless the Treasurer of their own motion shall redetermine the same. After such hearing, the Treasurer shall give notice of their determination to the person against whom the tax is assessed. The determination of the Treasurer shall be reviewable for error, illegality or 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 giving of the notice of such determination. A proceeding under Article 78 of the Civil Practice Law and Rules shall not be instituted unless:

- A. The amount of any tax sought to be reviewed, with penalties and interest thereof, if any, shall be first deposited with the Treasurer.
- B. At the option of the applicant he may file an undertaking approved by the Supreme Court with the Treasurer 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 which event the applicant shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

§ 182-33 Refunds.

- A. In the manner provided in this section the Treasurer shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the Treasurer for such refund shall be made within one year from the payment thereof. Whenever a refund

is made by the Treasurer, he shall state their 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 Treasurer, provided that the application is made within one year of the payment by the occupant to the operator, but no actual refund of moneys shall be made to such operator until he shall first establish to the satisfaction of the Treasurer, that he has repaid to the occupant the amount for which the application for refund is made. The Treasurer may, in lieu of any refund required to be made, 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 Treasurer may receive evidence with respect thereto. The petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.
- C. A person shall not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of § 182-32 of this Part 3 where he has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself of the remedies therein provided.

§ 182-34 Reserves.

In cases where the occupant or operator has applied for a refund and has instituted a proceeding under Article 78 of the Civil Practice Law and Rules to review a determination adverse to their application for refund, the Treasurer shall set up appropriate reserves to meet any decision adverse to the County.

§ 182-35 Remedies exclusive.

The remedies provided by §§ 182-32 and 182-33 of this Part 3 shall be exclusive remedies available to any person for the review of tax liability imposed by this Part 3; and no determination or proposed determination on any application for refund shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by an action or proceeding in a nature of a certiorari proceeding under Article 78 of the Civil Practice Law and Rules; provided, however, that a taxpayer may proceed by declaratory judgment if he institutes suit within 30 days after a deficiency assessment is made and pays the amount of the deficiency assessment to the Treasurer prior to the institution of such suit and posts a bond for costs as provided in § 182-32 of this Part 3.

Article VII

Enforcement of Collection of Tax, Penalties and Interest

§ 182-36 Proceedings to recover tax.

- A. Whenever any operator or any officer of a corporate operator or any occupant or other person shall fail to collect and pay over any tax and/or to pay any tax, penalty or interest imposed by this Part 3 as herein provided, the County Attorney shall, upon the request of the Treasurer, bring or cause to be brought an action to enforce the payment of the same on behalf of the County of Sullivan in any court of the State of New York or of any other state or of the United States. Said action may be commenced against the operator and/or the owner of the lodging facility. If, however, the Treasurer, in their 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 and file the warrant against the owner of the lodging facility or other appropriate person, upon 10 days notice, with the County Clerk to be recorded in the judgment docket.

- B. As an additional or alternate remedy, the Treasurer may relevely the judgment amount in the warrant as a tax against the real property where the lodging facility is situate.
- C. As an additional or alternative remedy, where the occupant has failed to pay and the operator has failed to collect a tax as imposed by this Part 3, then in addition to all other rights, obligations and remedies provided, such tax shall be payable by the occupant directly to the Treasurer, and it shall be the duty of the occupant to file a return thereof with the Treasurer and to pay the tax imposed thereon to the Treasurer within 15 days after such tax was due.
- D. The Treasurer may, whenever he deems it necessary for the proper enforcement of this Part 3, provide that the occupant shall file returns and pay directly to the Treasurer the tax herein imposed, at such times as returns are required to be filed and payment made over by the operator.

§ 182-37 Penalties.

- A. Any person failing to file a return or to pay over any tax to the Treasurer within the time required by this Part 3 shall be subject to a penalty of 5% of the amount of tax due for each month or portion thereof.
- B. **§ 182-38 Returns to be confidential.**
 - A. Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the Treasurer or any officer or employee of the Treasurer to divulge or make known in any manner the rents or other information relating to the business of a taxpayer contained in any return required to be filed pursuant to this Part 3.
 - B. Any violation of Subsection A shall be punishable by a fine not exceeding \$1,000, or by imprisonment not exceeding one year, or both, in the discretion of the court, and if the offender be an officer or employee of the County he shall be dismissed from office and be incapable of holding any public office for a period of five years thereafter.
 - C. Nothing in this section shall preclude the Treasurer or their designee from disclosing information contained in a return to employees of the County Treasurer's Office, or the County Attorney, or the County Manager or their respective designee(s).

§ 182-39 Notices and limitations of time.

- A. Any notice required under the provisions of this Part 3 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, them pursuant to the provisions of this Part 3, or in any application made by the operator, 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 addressed. Any period of time which is determined according to the provisions of this Part 3 by giving the 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 proceeding or action taken by the County to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this Part 3. Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of 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 prescribed herein for the assessment of an additional tax, a taxpayer has consented, in writing, that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents, in writing, made before the expiration of the extended period.

Article VIII Disposition of Revenues

§ 182-40 **Disposition of revenues.**

All revenues resulting from the imposition of the tax authorized by this Part 3 shall be paid to the Treasurer of the County of Sullivan and shall be credited to and deposited in the general fund of the County; thereafter 85% of the base tax collected to be allocated and paid to a not-for-profit corporation(s) under contract with the County for the promotion of tourism in the County. Provided, however, that the County shall be authorized to retain up to 15% of such revenue to defer the necessary expenses of the County in administering the tax. The County of Sullivan shall also be authorized to retain all interest and penalties collected and derived from late payment of those taxes authorized by this part with those funds used to offset collection efforts and cost of administering the tax.

§ 182-41 **Severability.**

If any provision, paragraph, sentence or word contained in this Part 3 or the application thereof to any person or circumstance be held unconstitutional, invalid or unenforceable in whole or in part by any court of competent jurisdiction, such holding of unconstitutionality, invalidity or unenforceability shall in no way affect or impair any other provision, paragraph, sentence or word in this Part 3. Any court holding, rendering any provision, paragraph, sentence or word of this Part 3 unconstitutional, invalid or unenforceable, shall be interpreted or applied in such a manner so as to give maximum force and effect to those provisions, paragraphs, sentences or words in this Part 3 not addressed in the court holding.

Article IX
When Effective

§ 182-41.1 **Effective date.**

This Part 3 shall take effect on January 1, 1990, except that the provisions of this Part 3 relating to registration and the authority of the Treasurer to adopt regulations and take all necessary action to prepare for the implementation and enforcement of this Part 3 shall take effect immediately. Notwithstanding anything to the contrary contained in this Part 3, if this Part 3 shall be adopted less than 30 days prior to its effective date, the regulations adopted by the Treasurer after the date of such adoption and the effective date will become effective on the date of filing same with the Clerk of the County Legislature.