

LOCAL LAW #10 OF 2019

AMENDING THE CHAPTER 195 OF THE IRVINGTON CODE
(TAXATION) TO IMPOSE A TAX ON HOTELS
(September 4, 2019)

Be it enacted by the Board of Trustees of the Village of Irvington as follows:

Section 1: Chapter 195 (Taxation) of the Irvington Code is hereby amended by adding the following new article:

ARTICLE XIII

Hotel/Motel Occupancy Tax

§ 195-67. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

CLERK-TREASURER - The Clerk-Treasurer of the Village of Irvington.

HOTEL – A building or portion of a building that is regularly used and kept open as such for the lodging of guests, whether or not meals are served.

OCCUPANCY – The use of possession or the right to the use or possession of any room in a hotel.

OPERATOR – Any person operating a hotel in the Village of Irvington, including, but not limited to, an owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such hotel.

PERSON – An individual, partnership, society, association, company, corporation, estate, receiver, trustee, assignee, referee or 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 of a room in a hotel for any period of time, valued in money, whether received in money or otherwise.

VILLAGE - Village of Irvington

§ 195-68. Tax imposed.

Beginning on December 1, 2019, there is hereby imposed and there shall be paid a tax of 3% upon the rent for every occupancy of a room or rooms in a hotel in the Village of Irvington, except the tax shall not be imposed upon an exempt organization or as otherwise provided in this law.

§ 195-69. Exempt organizations.

This article shall not authorize the imposition of such occupancy tax upon the following:

- 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, or any of its agencies and instrumentalities, insofar as they are immune from taxation.
- C. Any corporation or association or trust or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this 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.

§ 195-70. Authority to collect.

All hotels are required either to receive a special permit, pursuant to §§ 224-8 and 224-36 of the Village Zoning Code, or to be registered by the Village, pursuant to § 224-206 of the Village Zoning Code. Such special permit or registration authorizes and requires the operator to collect the tax imposed by this article.

§ 195-71. Administration and collection.

- A. The tax imposed by this article shall be administered and collected by the Clerk-Treasurer or such other Village employee as s/he may designate by such means and in such manner as are other taxes that are now collected and administered or as otherwise provided by this article.
- B. The tax to be collected shall be stated and charged separately from the rent and shown separately on any record thereof, at the time when the occupancy is arranged or contracted for and charged for, and upon every evidence of occupancy or any bill or statement of charges made for said occupancy issued or delivered by the operator. The tax shall be paid by the occupant to the operator as trustee for and on account of the Village, and the operator shall be liable for the collection thereof and for the tax. The operator and any officer of any corporate operator shall be personally liable for the tax collected or required to be collected under this article. The operator shall have the same right in respect to collecting the tax from the occupant, or in respect to nonpayment of the tax by the occupant, as if

the tax were part of the rent for the occupancy payable at the time such tax shall become due and owing, including all rights of eviction, dispossession, repossession and enforcement of any innkeeper's lien that s/he may have in the event of nonpayment of the rent by the occupant; provided, however that the Clerk-Treasurer or employees or agents duly designated by the Clerk-Treasurer 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 tax imposed by this article shall be paid upon any occupancy on and after December 1, 2019, although such occupancy is pursuant to a contract, lease or other arrangement made prior to that date. Where rent is paid or charged or billed or falls due on either a weekly, monthly or other term basis, the rent so paid, charged, billed or falling due shall be subject to the tax imposed by this article to the extent that it covers any portion of the period on and after December 1, 2019.
- D. For the purpose of the proper administration of this article and to prevent evasion of the tax imposed by it, 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 shall be upon the operator or occupant. Where an occupant claims exemption from the tax pursuant to the provisions of § 195-69 of this article, the rent shall be deemed taxable unless the operator shall receive from the occupant claiming such exemption a copy of a New York State sales tax exemption certificate.

§ 195-72. Records to be kept.

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

§ 195-73. Filing of returns.

- A. Every operator shall file with the Clerk-Treasurer a return of occupancy and of rents and of the taxes payable thereon for the three-month periods ending the last day of February, May, August and November on and after December 1, 2019. Such returns shall be filed within 20 days after the expiration of the period covered by the return. The Clerk-Treasurer may permit or require returns to be made for other periods upon such dates as s/he may specify. If the Clerk-Treasurer deems it necessary in order to ensure payment of the tax imposed by this article, s/he may require returns to be made for shorter periods than those prescribed by this section and upon such dates as the Clerk-Treasurer may specify.
- B. The forms of return shall be prescribed by the Clerk-Treasurer and shall contain

such information as s/he may deem necessary for the proper administration of this article. The Clerk-Treasurer may require amended returns to be filed within 20 days after notice and to contain the information specified in the notice.

§ 195-74. Determination of tax; reviewability.

Any final determination of the amount of any tax payable under this article shall be reviewable for error, illegality or unconstitutionality or any other reason by a proceeding under Article 78 of the Civil Practice Law and Rules if application therefor is made to the Supreme Court within 30 days after giving notice of such final determination, provided, however, that any such proceeding shall not be instituted unless:

- A. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations, shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in New York State and approved by the Superintendent of Insurance of New York State as to solvency and responsibility, in such amount as a Justice of the Supreme Court shall approve to the effect that if such proceeding is dismissed or the tax confirmed, the petitioner will pay all costs and charges that may accrue in the prosecution of such proceeding; or
- B. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination plus the costs and charges that may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

§ 195-75. Payment of taxes.

- A. At the time of filing a return of occupancy and of rents, each operator shall pay to the Clerk-Treasurer the taxes imposed by this article upon the rents required to be included in such return. The taxes shall be due from the operator on the date prescribed in this article without regard to whether a return is filed or whether the return that is filed correctly shows the amounts of rents and taxes thereon.
- B. Where the Clerk-Treasurer in his/her discretion deems it necessary to protect revenues to be obtained under this article, s/he may require any operator to collect the tax imposed by this article to file with him/her a bond, issued by a surety company authorized to transact business in this State and approved by the Superintendent of Insurance of this State as to solvency and responsibility, in such amount as the Clerk-Treasurer may find to secure the payment of any tax and/or penalties and interest due or which may become due from such operator. In the event that the Clerk-Treasurer determines that an operator is to file such bond, s/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 notice unless, within such five days, the operator shall request in writing a

hearing before the Clerk-Treasurer at which the necessity, propriety and amount of the bond shall be determined by the Clerk-Treasurer. Such determination shall be final and shall be complied with within 15 days after the giving of notices. In lieu of such bond, securities approved by the Clerk-Treasurer or cash in such amount as the Clerk-Treasurer may prescribe, may be deposited with him/her, which shall be kept in the custody of the Clerk-Treasurer, 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/her at public or private sale without notice to the depositor thereof.

§ 195-76. Disposition of revenues.

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

§ 195-77. Refunds.

- A. In the manner provided in this section, the Clerk-Treasurer shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the Clerk-Treasurer for such refund shall be made within one year from the payment thereof. Whenever a refund is made by the Clerk-Treasurer, s/he shall state the reason therefor in writing. Such application for a refund may be made by the occupant or other person who has actually paid the tax. Such application for a refund 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 to the operator, but no actual refund of moneys shall be made to such operator until it shall first establish to the satisfaction of the Clerk-Treasurer, under such regulations as the Clerk-Treasurer may prescribe, that it has repaid to the occupant, or other person who has actually paid the tax, the amount for which the application for refund is made. The Clerk-Treasurer may, in lieu of any refund required to be made, allow credit therefor on payments due or to become due from the applicant.
- B. An application for a refund or credit as herein provided shall be deemed an application for a revision of any tax, penalty or interest complained of, and the Clerk-Treasurer may receive evidence with respect thereto. After making his/her determination, the Clerk-Treasurer shall give notice thereof to the applicant, who shall be entitled to review such determination by a proceeding pursuant to Article 78 of the Civil Practice Law and Rules, provided that such proceeding is instituted within 30 days after the giving of the notice of such determination, and provided that a final determination of tax due was not previously made. Such a proceeding shall not be instituted unless an undertaking is filed with the Clerk-Treasurer in such amount and with such sureties as a Justice of the Supreme Court shall approve to the effect that, if such proceedings be dismissed or the tax confirmed,

the petitioner will pay costs and charges that may accrue in the prosecution of such proceeding.

- C. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the Treasurer unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper by the Clerk-Treasurer after a hearing or on his/her own motion or in a proceeding under Article 78 of the Civil Practice Law and Rules, in which event refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

§ 195-78. Reserves.

In cases where the occupant or operator has applied for a refund and has instituted a proceeding under Article 78 of the Civil Practice Law and Rules to review a determination adverse to him/her on his/her application for refund, the Clerk-Treasurer shall have the option of crediting future tax payments to meet the cost of any settlements or judgments or, at his/her option, may, in the first instance, set up appropriate reserves to meet any decision adverse to the Village.

§ 195-79. Remedies exclusive.

The remedies provided by §§ 195-74 and 195-77 of this article shall be the exclusive remedies to any person for the review of tax liability imposed by this article, and no determination or proposed determination of tax or determination on any application for refund shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than a proceeding in the 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 s/he institutes suit within 30 days after a deficiency assessment is made and pays the amount of the deficiency assessment to the Clerk-Treasurer prior to the institution of such suit and posts a bond for costs as provided in § 195-75 of this article.

§ 195-80. Penalties and interest.

- A. Any person failing to file a return or to pay or pay over any tax to the Clerk-Treasurer within the time required by this article shall be subject to a penalty of 5% of the amount of tax due per month or any fraction of a month to a maximum of 25% for each year, plus interest at the rate of 1% of such tax for each month of delay or fraction of a month after such return was required to be filed or such tax became due; but the Clerk-Treasurer, if satisfied that the delay was excusable, may remit all or any part of such penalty, but not interest. Such net penalties and interest shall be paid and disposed of in the same manner as other revenues from this article. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this article.

- B. Any operator or any officer of a corporate operator failing to file a return required by this article, or any operator or occupant or officer of a corporate operator 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, or statement required or authorized by this article that is willfully false, or any operator or officer of a corporate operator willfully failing to file a bond required to be filed pursuant to § 195-75 of this article, or any operator or any officer of a corporate operator willfully failing to charge separately from the rent the tax herein imposed or willfully failing to state such tax separately on any evidence of occupancy and on any bill or statement or receipt of rent issued or employed by the operator or willfully failing or refusing to collect such tax from the occupant, and any operator or corporate operator failing to keep records required by this article shall, in addition to the penalties herein or elsewhere prescribed, be guilty of a misdemeanor, punishable by a fine of up to \$1,000. Officers of a corporate operator shall be personally liable for the tax collected or required to be collected by such corporation under this article and penalties and interest thereon and subject to the fines and imprisonment herein authorized.
- C. The certificate of the Clerk-Treasurer to the effect that a tax has not been paid, or that a return or bond has not been filed, or that information has not been filed pursuant to the provisions of this article shall be presumptive evidence thereof.
- D. Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return; provided, however, that where no return has been filed as provided by law, the tax, along with penalties and interest, may be assessed at any time.

§ 195-81. Returns to be secret.

- A. It shall be unlawful, except in accordance with proper judicial order or as otherwise provided to the fullest extent permitted by law, for the Clerk-Treasurer or employee or designee of the Clerk-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 under this article. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Clerk-Treasurer in an action or proceeding under the provisions of this article or on behalf of any party to any action or proceeding under the provisions of this article when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence so much of said returns or of the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his/her duly authorized representative of a certified copy of any return filed in connection with his/her tax nor to prohibit the publication of statistics so classified to prevent

the identification of particular returns and items thereof or the inspection by the Village Attorney or other legal representatives of the Village or by the District Attorney of any county of the return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted for the collection of a tax or penalty. Returns shall be preserved for three years and thereafter until the Clerk-Treasurer permits them to be destroyed.

- B. Any violation of subsection A of this section shall be punishable by a fine not exceeding \$1000, and if the offender is an officer or employee of the Village s/he may be, at the discretion of the Village Administrator, dismissed from office and be incapable of holding any further Village office as may be determined according to law.

§ 195-82. Notices and limitations of time.

- A. Any notice required or authorized under the provisions of this article may be given to the person to whom it is intended in a postpaid envelope addressed to such person, or by e-mail, to the address given in the last return filed by him/her pursuant to the provisions of this article or in any application made by him/her or, if no return has been filed or application made, then to such address as may be obtainable. The mailing or e-mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom it is addressed. If notice is by U.S. mail, any period of time that is determined by the giving of notice shall commence five days after the date of mailing of such notice. If notice is given by e-mail, the date of notice shall be the date the e-mail was sent.
- 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 Village to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this article. However, except in the case of a willfully false, fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of filing of a return; provided, however, that in the case of a return that should have been filed and has not been filed as provided by law, the tax may be assessed at any time.
- C. Where, before expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

§ 195-83. Severability.

If any provision of this article, or the application thereof to any person or circumstance, is

held invalid, the remainder of this article and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 2: All ordinances, local laws, and parts thereof inconsistent with this local law are hereby repealed.

Section 3: This local law shall take effect immediately upon filing in the office of the New York Secretary of State.