

*Amended by
Local Law No. 8
1975*

*amended LL 5 1983
LL 1 1987*

COUNTY OF ERIE

LOCAL LAW NO. **12-1974**

LOCAL LAW INTRO. NO. 18 (Print No. 4)

1974

A LOCAL LAW imposing a Tax on the Occupancy of Hotel Rooms pursuant to Chapter 614 of the Laws of 1974 of the State of New York.

BE IT ENACTED BY THE LEGISLATURE OF THE COUNTY OF ERIE, AS FOLLOWS:

Section 1. Short Title. This local law shall be known as the Erie County Hotel Room Occupancy Tax Law.

Section 2. 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. Refunds.
14. Reserves.

15. Remedies Exclusive.
16. Proceedings to Recover Tax.
17. General Powers of the Commissioner of Finance.
18. Administration of Oaths.
19. Reference to Tax.
20. Penalties and Interest.
21. Returns to be Secret.
22. Notices and Limitations of Time.
23. Separability.

1. Definitions. When used in this local law, the following terms shall mean:

(a) 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.

(b) Operator. Any person operating a hotel in the county of Erie, including but not limited to the owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such hotel.

(c) Hotel. A building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes a motel, motor court or inn, or similar hotel or motel type of accommodations by whatever name designated.

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

(e) Occupant. A person who, for a consideration, uses, possesses, or has the right to use or possess, any room in a hotel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise.

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

(g) Rent. The consideration received for occupancy valued in money, whether received in money or otherwise.

(h) Room. Any room or rooms of any kind in any part or portion of a hotel, which is available for or let out for any purpose other than a place of assembly.

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

(j) Commissioner of Finance. The commissioner of finance of the county.

(k) Comptroller. The comptroller of the county.

2. Imposition of tax.

On and after the first day of December, nineteen hundred seventy-four, there is hereby imposed and there shall be paid a tax of two percent upon the rent for every occupancy of a room or rooms in a hotel in this county except that the tax shall not be imposed upon a permanent resident.

3. Transitional provisions.

The tax imposed by this local law shall be paid upon any occupancy on and after the first day of December, nineteen hundred seventy-four although such occupancy is pursuant to a prior contract, lease or other arrangement. Where rent is paid on a weekly, monthly, or other term basis, the rent shall be subject to the tax imposed by this local law to the extent that it covers any period on and after the first day of December, nineteen hundred seventy-four.

4. Exempt organizations.

(1) 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 local 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 or community chest, fund or foundation, organized and operated exclusively for religious, charitable or education 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) or subdivision (a) of the subdivision carries on its activities in furtherance of the purposes for which it was organized, in premises in which, as part of said activities, it operates a hotel, occupancy of rooms in the premises and rents therefrom received by such corporation or association shall not be subject to tax hereunder.

5. Territorial limitations. The tax imposed by this local law shall apply only within the territorial limits of the county of Erie.

6. Registration. Within ten days after the effective date of this local law, or in the case of operators commencing business after such effective date, within

three days after such commencement or opening, every operator shall file with the commissioner of finances a certification of registration in a form prescribed by the commissioner of finance. The commissioner of finance shall within five days after such registration issue without charge to each operator a certificate of authority empowering such operator to collect the tax from the occupant and duplicate thereof for each additional hotel of such operator. Each certificate or duplicate shall state the hotel to which is applicable. Such certificates of authority shall be prominently displayed by the operator in such manner that it may be seen and come to the notice of all occupants and persons seeking occupancy. Such certificates shall be non-assignable and non-transferrable and shall be surrendered immediately to the commissioner of finance upon the cessation of business at the hotel 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 Commissioner of Finance of the County of Erie 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 such officers in accordance with the county charter or as otherwise are provided by this local law.

(b) The tax to be collected shall be stated and charged separately from the rent and shown separately on any record thereof, at the time when the occupancy is arranged or contracted for and charged for, and upon every evidence of occupancy or any bill or statement 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 local law, and the operator shall have the same right in respect to collecting the tax from the occupant, or in respect to non-payment of the tax by the occupant 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 non-payment of rent by the occupant; provided, however, that the commissioner of finance or other fiscal officer or officers, employees or agents duly designated by him shall be joined as a party in any action or proceeding brought by the operator to collect or enforce collection of the tax.

(c) The commissioner of finance 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 commissioner of finance the tax herein imposed at such times as returns are required to be filed and payment over made by the operator.

(d) The tax imposed by this local law shall be paid upon any occupancy on and after December first, nineteen hundred seventy-four, although such occupancy is had pursuant to a contract, lease or other arrangement made prior to such 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

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due shall be subject to the tax herein imposed to the extent that it covers any portion of the period on and after December first, nineteen hundred seventy-four. Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the commissioner of finance may by regulation provide for credit/or refund of the amount of such tax upon application therefor as provided in section thirteen 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, and the burden of proving that a rent for occupancy is not taxable hereunder shall be upon the operator or the occupant. Where an occupant claims exemptions from the tax under the provisions of subdivision four of this section, the rent shall be deemed taxable hereunder unless the operator shall receive from the occupant claiming such exemption a copy of a certificate issued by the commissioner of finance certifying that the corporation or association therein named is exempt from the tax under subdivision four of this section, together with a certificate duly executed by the corporation or association named in the certificate of the commissioner of finance certifying that the occupant is its agent, representative or employee and that his occupancy is paid or to be paid by, and is necessary or required in the course of or in connection with the affairs of said corporation or association.

8. Records to be kept. 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 commissioner of finance may by regulation require. Such records shall be available for inspection and examination at any time upon demand by the commissioner of finance or his duly authorized agent or employee and shall be preserved for a period of three years, except that the commissioner of finance 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 commissioner of finance a return of occupancy and of rents, and of the taxes payable thereon for the periods ending June thirtieth, November thirtieth, December thirty-first and March thirty-first of each year, on and after December first, nineteen hundred seventy-four. Such returns shall be filed within twenty days from the expiration of the period covered thereby. The commissioner of finance may permit or require returns to be made by other periods and upon such dates as he may specify. If the commissioner of finance deems it necessary in order to insure 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 commissioner of finance and shall contain such information as he may deem necessary for the proper administration of this local law. The commissioner of finance may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice.

(c) If a return required by this local law is not filed, if a return when filed is incorrect or insufficient on its face, the commissioner of finance 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 commissioner of finance the taxes imposed by this local law 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 local law. Where the commissioner of finance in his discretion 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 commissioner of finance 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 commissioner of finance 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 commissioner of finance at which the necessity, propriety and amount of the bond shall be determined by the commissioner of finance. Such determination shall be final and shall be complied with within fifteen days after the giving of notice thereof. In lieu of such bond, securities approved by the commissioner of finance or cash in such amount as he may prescribe, may be deposited which shall be kept in the custody of the commissioner of finance 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.

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 commissioner of finance 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 thirty days after giving of notice of such determination, shall apply to the commissioner of finance for a hearing, or unless the commissioner of finance of his own motion shall re-determine the same. After such hearing, the commissioner of finance shall give notice of his determination to the person against whom the tax is assessed. The determination of the commissioner of finance shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by the proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such determination. A proceeding under article seventy-eight 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, shall be first deposited with the commissioner of finance and there shall be filed with the commissioner of finance an undertaking, 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 a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of the proceeding or at the option of the applicant such undertaking filed with the commissioner of finance 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 which event the applicant shall 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 and shall be credited to and deposited in the convention center fund account of the county. The revenue derived from the tax shall be allocated as follows: \$50,000 shall be allocated annually toward the County-Wide Tourism Program and the balance shall be allocated for Convention Center purposes in accordance with the agreement jointly entered by the City of Buffalo and the County of Erie for the operation and maintenance of a Convention Center. Payment to the County for administration and collection cost shall be determined by said agreement and the cost of said payment shall be derived from this tax.

13. Refunds.

(a) In the matter provided in this section, the commissioner of finance shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the commissioner of finance for such refund shall be made within one year from the payment thereof. Whenever a refund is made by the commissioner of finance, 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 commissioner of finance 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 commissioner of finance, under such regulations as the commissioner of finance may prescribe, that he has repaid to the occupant the amount for which the application for refund is made. The commissioner of finance may in lieu of any refund 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 commissioner of finance may receive evidence with respect thereto. After making his determination the commissioner of finance shall give notice thereof to the applicant who shall be entitled to review such determination by a proceeding pursuant to article seventy-eight of the civil practice law and rules, provided such proceeding is instituted within thirty 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 commissioner of finance 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 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 has been determined to be due pursuant to the provisions of section thirteen of this local law 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. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the commissioner of finance made pursuant to section eleven of this local law unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper by the commissioner of finance after a hearing or of his own motion or in a proceeding under article seventy-eight of the civil practice law and rules, pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

14. Reserves. In cases where the occupant or operator has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to him on his application for refund, the comptroller shall set up appropriate reserves to meet any decision adverse to the county.

15. Remedies exclusive. The remedies provided by section eleven and thirteen of this local law shall be exclusive remedies available to any person for the review of tax liability imposed by this local law; 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 under article seventy-eight of the civil practice law and rules; provided, however, that a taxpayer may proceed by declaratory judgment if he institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner of finance prior to the institution of such suit and posts a bond for costs as provided in section eleven of this local law.

16. 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 local law as therein provided, the county attorney shall, upon the request of the commissioner of finance bring or cause to be brought an action to enforce the payment of the same on behalf of the county of Erie in any court of the state of New York or of any other state or of the United States. If, however, the commissioner of finance 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

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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 commissioner of finance may issue a warrant, directed to the sheriff commanding him to levy upon and sell the real and personal property of the operator or 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 commissioner of finance and to pay to him the money collected by virtue thereof within sixty days after the receipt of such warrant. The sheriff shall, within five days after the receipt of the warrant, file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and 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 and 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 commissioner of finance a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of finance and 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 satisfied in full, the commissioner of finance 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 had recovered judgment therefor and execution thereon had been returned unsatisfied.

(c) Whenever an operator shall make a sale, transfer or assignment in bulk of any part or the whole of his hotel or his lease, license or other agreement or right to possess or operate such hotel or of 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 and the equipment, furnishings, fixtures, supplies and stock of merchandise pertaining to the conduct or operation of said hotel, otherwise 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 paying therefor, notify the commissioner of finance by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferor or assignor, has represented to or informed the purchaser, transferee or assignee that it owes any tax pursuant to this local law, and whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give notice to the commissioner of finance as required by the preceding paragraph or whenever the commissioner of finance shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money,

property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferor or assignor shall be 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, and the purchaser, transferee or assignee is 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 section forty-four of the personal property law, shall 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, and such liability may be assessed and enforced in the same manner as the liability for the tax under this local law.

17. General powers of the commissioner of finance. In addition to the powers granted to the commissioner of finance in this local law, he is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this local law and the purposes thereof;
 2. To extend for cause shown, the time of filing any return for a period not exceeding thirty days; and for cause shown, to remit penalties but not interest computed at the rate of six per centum per annum; and to compromise disputed claims in connection with the taxes hereby imposed;
 3. To 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 such treasury department relative to any person, any other provision of this local law to the contrary notwithstanding;
 4. To delegate his functions hereunder to a deputy commissioner of finance or any employee or employees of the department of finance;
 5. To prescribe methods for determining the rents for occupancy and to determine the taxable and non-taxable rents;
 6. To require any operator within the county to keep detailed records of the nature and type of hotel maintained, nature and type of service rendered, the 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 imposed by this local law, and to furnish such information upon request to the commissioner of finance.
 7. To assess and determine the taxes imposed under this local law.
18. Administration of oaths and compelling testimony.

(a) The commissioner of finance 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 local law. The commissioner of finance 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 local law and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before 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 commissioner of finance under this local law.

(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 commissioner of finance under this local law shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand dollars 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 commissioner of finance 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 department of finance, designated to serve such process.

19. Reference to tax. Wherever reference is made in placards or advertisements or in any other publications to this tax, such reference shall be substantially in the following form: "Tax on occupancy of hotel rooms", 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.

20. Penalties and interest.

(a) Any person failing to file a return or to pay over any tax to the commissioner of finance within the time required by this local law shall be subject to a penalty of five percentum of the amount of tax due; plus interest at the rate of one percentum of such tax for each month of delay excepting the first month after such return was required to be filed or such tax became due; but the commissioner of finance if satisfied that the delay was excusable, may remit all or any part of such penalty, but not interest at the rate of six percent per year. Such penalties and interest shall be paid and disposed of in the same manner as other revenues from this local law. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this local law.

(b) Any operator or occupant and 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, or making or causing to be made or giving or causing to be given, any return, certificate, affidavit, representation, information, testimony or statement required or authorized by this local law, which is wilfully false, and any operator and any officer of a corporate operator wilfully failing to file a bond required to be filed pursuant to section eleven of this local law, or failing to file a registration certificate and such data in connection therewith as the commissioner of finance may by regulation or otherwise require or to display or surrender the certificate of authority as required by this local law or assigning or transferring such certificate of authority and any operator and any officer of a corporate operator wilfully failing to charge separately from the rent the tax herein imposed, or wilfully 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 wilfully failing or refusing to collect such tax from the occupant, and any operator and any officer of a corporate operator who shall refer or cause reference to be made to this tax in a form or manner other than that required by this local law, and any operator failing to keep the records required by subdivision eight of section two of this local law 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 one thousand dollars, or imprisonment for not more than one year, or both such fine and imprisonment. Officer 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 herein above imposed.

(c) The certificate of the commissioner of finance 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.

21. Returns to be secret.

(a) Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the commissioner of finance or any officer or employee of the department of finance 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 the 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 commissioner of finance 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 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 duly authorized representative of a certified copy of any return filed in connection with his tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the county attorney or other legal representatives of the county, of the return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or

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proceeding has been instituted for the collection of a tax or penalty. Returns shall be preserved for three years and thereafter until the commissioner of finance permits them to be destroyed.

(b) Any violation of subdivision a of this section shall be punishable by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both, in the discretion of the court, and if the offender by 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.

22. 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 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 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 proceeding or action taken by the county to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this local law. However, except in the case of a wilfully 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 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.

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

Section 3. This local law shall take effect upon filing in the office of the secretary of state as provided by the municipal home rule law.

SUSAN C. LUBICK

RAYMOND F. GALLAGHER

*October 29, 1974, acknowledgment
from Secretary of State*

Meeting 21, 9/24/74, Item 19, adopted
Meeting 25, 11/5/74, Item 54, signed by
County Executive on 10/22/74
as LL # 12.