

ERIE COUNTY LEGISLATURE
SPECIAL SESSION
MEETING NO. 3
February 1, 2005

The Legislature was called to order by Chairman Holt.

All Members Present.

A moment of silence was held.

The Pledge of Allegiance was led by Mr. Ranzenhofer.

Item 1 – CHAIRMAN HOLT directed that the Rules of Legislature for 2005 be tabled.

Item 2 – CHAIRMAN HOLT directed that the Appointment of Majority & Minority Counsels be tabled.

Item 3 – CHAIRMAN HOLT directed that the communications designating the Majority Newspaper for the year 2005 be tabled.

*** See meeting no. 2 for Minority designation of newspapers for 2005.

Item 4 – No tabled items.

Item 5 – MS. MARINELLI moved for reconsideration of Comm. 2E-3-2 from the previous meeting. MR. SWANICK seconded. LEGISLATORS CUSACK, MARSHALL, RANZENHOFER & WEINSTEIN in the negative.

CARRIED (11-4).

RESOLUTION NO. 12

Re: Additional County Sales Tax
 Authority Legislation - Home Rule
 Requests. (Comm. 2E-3-2)

WHEREAS, the Erie County budget for 2005 was adopted in anticipation of not only an extension of the additional 1% Erie County sales and compensating use tax but also in anticipation of the imposition of a further additional, or “Medicaid Penny”, 1% Erie County sales and compensating use tax, beginning March 1, 2005 and ending February 28, 2006, and

WHEREAS, failure to extend and impose the additional sales and compensating use taxes will result in an estimated shortfall of nearly \$205 million in the 2005 Erie County budget, and

WHEREAS, Assembly Bill No. A. 1501 and Senate Bill No. S. 215-A, now pending before the New York State Legislature, would authorize the imposition of a further additional 1% sales and compensating use tax, beginning March 1, 2005 and ending February 28, 2006;

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NOW, THEREFORE, BE IT RESOLVED, THAT A HOME RULE REQUEST IS MADE TO THE NEW YORK STATE LEGISLATURE AS FOLLOWS:

TO THE LEGISLATURE:

Pursuant to Article IX of the Constitution, the County of Erie requests the enactment of Assembly Bill No. A. 1501, entitled "AN ACT to amend the tax law, in relation to providing an additional rate of sales and compensating use tax within Erie County."

It is hereby declared that a necessity exists for the enactment of such legislation, and that the facts establishing such necessity are as follows:

The local government does not have power to enact such legislation by local law.

Other facts as set forth in the following explanation establish such necessity.

Failure to authorize the imposition of a further additional 1% sales and compensating use tax, beginning March 1, 2005 and ending February 28, 2006, will result in an estimated shortfall of nearly \$100 million in the 2005 Erie County budget, the cessation of services essential to the people of Erie County and the inability of Erie County to share \$12.5 million of the net collections from the further additional 1% sales and compensating use tax with its cities, towns and villages.

Such request is made by the chief executive officer of such municipality concurred in by a majority of the total membership of the local legislative body.

AND BE IT FURTHER

RESOLVED, that the Clerk of the Legislature be directed to forward copies of this Home Rule Request, certified by the Erie County Executive and the Clerk of the Erie County Legislature, as follows: two copies to the New York State Senate and two copies to the New York State Assembly.

IMPOSITION OF FURTHER ADDITIONAL 1% SALES TAX - SENATE

WHEREAS, the Erie County budget for 2005 was adopted in anticipation of not only an extension of the additional 1% Erie County sales and compensating use tax but also in anticipation of the imposition of a further additional, or "Medicaid Penny", 1% Erie County sales and compensating use tax, beginning March 1, 2005 and ending February 28, 2006, and

WHEREAS, failure to extend and impose the additional sales and compensating use taxes will result in an estimated shortfall of nearly \$205 million in the 2005 Erie County budget, and

WHEREAS, Senate Bill No. S. 215-A and Assembly Bill No. A. 1501, now pending before the New York State Legislature, would authorize the imposition of a further additional 1% sales and compensating use tax, beginning March 1, 2005 and ending February 28, 2006;

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NOW, THEREFORE, BE IT RESOLVED, THAT A HOME RULE REQUEST IS MADE TO THE NEW YORK STATE LEGISLATURE AS FOLLOWS:

TO THE LEGISLATURE:

Pursuant to Article IX of the Constitution, the County of Erie requests the enactment of Senate Bill No. S. 215-A, entitled "AN ACT to amend the tax law, in relation to the imposition of sales and compensating use taxes by the County of Erie."

It is hereby declared that a necessity exists for the enactment of such legislation, and that the facts establishing such necessity are as follows:

The local government does not have power to enact such legislation by local law.

Other facts as set forth in the following explanation establish such necessity.

Failure to authorize the imposition of a further additional 1% sales and compensating use tax, beginning March 1, 2005 and ending February 28, 2006, will result in an estimated shortfall of nearly \$100 million in the 2005 Erie County budget, the cessation of services essential to the people of Erie County and the inability of Erie County to share \$12.5 million of the net collections from the further additional 1% sales and compensating use tax with its cities, towns and villages.

Such request is made by the chief executive officer of such municipality concurred in by a majority of the total membership of the local legislative body.

AND BE IT FURTHER

RESOLVED, that the Clerk of the Legislature be directed to forward copies of this Home Rule Request, certified by the Erie County Executive and the Clerk of the Erie County Legislature, as follows: two copies to the New York State Senate and two copies to the New York State Assembly.

MS. MARINELLI moved to amend the resolution. MR. SWANICK seconded. LEGISLATORS CUSACK, MARSHALL, McCARVILLE, RANZENHOFER & WEINSTEIN in the negative.

CARRIED (10-5)

∄ **DELETE** the RESOLUTIONS in their entirety and **REPLACE** with the following attached RESOLUTIONS.

WHEREAS, the Erie County budget for 2005 was adopted in anticipation of not only an extension of the additional 1% Erie County sales and compensating use tax but also in anticipation of the imposition of a further additional, or "Medicaid Penny", 1% Erie County sales and compensating use tax, beginning March 1, 2005 and ending February 28, 2006, and

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WHEREAS, failure to extend and impose the additional sales and compensating use taxes will result in an estimated shortfall of nearly \$205 million in the 2005 Erie County budget, and

WHEREAS, Assembly Bill No. A. 2904 and Senate Bill No. S. 215-A, now pending before the New York State Legislature, would authorize the imposition of a further additional 1% sales and compensating use tax, beginning March 1, 2005 and ending February 28, 2006;

NOW, THEREFORE, BE IT RESOLVED, THAT A HOME RULE REQUEST IS MADE TO THE NEW YORK STATE LEGISLATURE AS FOLLOWS:

TO THE LEGISLATURE:

Pursuant to Article IX of the Constitution, the County of Erie requests the enactment of Assembly Bill No. A. 2904, entitled "AN ACT to amend the tax law, in relation to providing an additional rate of sales and compensating use tax within Erie County."

It is hereby declared that a necessity exists for the enactment of such legislation, and that the facts establishing such necessity are as follows:

The local government does not have power to enact such legislation by local law.

Other facts as set forth in the following explanation establish such necessity.

Failure to authorize the imposition of a further additional 1% sales and compensating use tax, beginning March 1, 2005 and ending February 28, 2006, will result in an estimated shortfall of nearly \$100 million in the 2005 Erie County budget, the cessation of services essential to the people of Erie County and the inability of Erie County to share \$12.5 million of the net collections from the further additional 1% sales and compensating use tax with its cities, towns and villages.

Such request is made by the chief executive officer of such municipality concurred in by a majority of the total membership of the local legislative body.

AND BE IT FURTHER

RESOLVED, that the Clerk of the Legislature be directed to forward copies of this Home Rule Request, certified by the Erie County Executive and the Clerk of the Erie County Legislature, as follows: two copies to the New York State Senate and two copies to the New York State Assembly.

IMPOSITION OF FURTHER ADDITIONAL 1% SALES TAX - SENATE

WHEREAS, the Erie County budget for 2005 was adopted in anticipation of not only an extension of the additional 1% Erie County sales and compensating use tax but also in anticipation of the imposition of a further additional, or "Medicaid Penny", 1% Erie County sales and compensating use tax, beginning March 1, 2005 and ending February 28, 2006, and

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WHEREAS, failure to extend and impose the additional sales and compensating use taxes will result in an estimated shortfall of nearly \$205 million in the 2005 Erie County budget, and

WHEREAS, Senate Bill No. S. 215-A and Assembly Bill No. A. 2904, now pending before the New York State Legislature, would authorize the imposition of a further additional 1% sales and compensating use tax, beginning March 1, 2005 and ending February 28, 2006;

NOW, THEREFORE, BE IT RESOLVED, THAT A HOME RULE REQUEST IS MADE TO THE NEW YORK STATE LEGISLATURE AS FOLLOWS:

TO THE LEGISLATURE:

Pursuant to Article IX of the Constitution, the County of Erie requests the enactment of Senate Bill No. S. 215-A, entitled "AN ACT to amend the tax law, in relation to the imposition of sales and compensating use taxes by the County of Erie."

It is hereby declared that a necessity exists for the enactment of such legislation, and that the facts establishing such necessity are as follows:

The local government does not have power to enact such legislation by local law.

Other facts as set forth in the following explanation establish such necessity.

Failure to authorize the imposition of a further additional 1% sales and compensating use tax, beginning March 1, 2005 and ending February 28, 2006, will result in an estimated shortfall of nearly \$100 million in the 2005 Erie County budget, the cessation of services essential to the people of Erie County and the inability of Erie County to share \$12.5 million of the net collections from the further additional 1% sales and compensating use tax with its cities, towns and villages.

Such request is made by the chief executive officer of such municipality concurred in by a majority of the total membership of the local legislative body.

AND BE IT FURTHER

RESOLVED, that the Clerk of the Legislature be directed to forward copies of this Home Rule Request, certified by the Erie County Executive and the Clerk of the Erie County Legislature, as follows: two copies to the New York State Senate and two copies to the New York State Assembly.

MS. MARINELLI moved the approval of the resolution as amended. MR. SWANICK seconded.

CHAIRMAN HOLT directed that a roll call vote be taken.

AYES: CHASE, SWANICK, DEBENEDETTI, DUSZA, HOLT, KENNEDY, KUWIK, MARINELLI, SMITH & WROBLEWSKI. NOES: CUSACK, MARSHALL, McCARVILLE, RANZENHOFER & WEINSTEIN. (AYES 10, NOES 5).

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CARRIED.

Item 6 – Minutes of previous meeting were tabled.

Item 7 – No Public Hearings.

COMMUNICATIONS FROM ELECTED OFFICIALS

FROM CHAIRMAN HOLT

Item 8 – (Comm. 3E-1) Calling Special Session.

RECEIVED, FILED & PRINTED.

January 28, 2005

Kevin M. Kelley, Clerk
 Erie County Legislature
 92 Franklin Street, 4th Floor
 Buffalo, New York 14202

Dear Mr. Kelley:

Pursuant to Rule 2.02 of the *RULES OF ORDER* of the Erie County Legislature, you are hereby directed to call a Special Meeting of the Erie County Legislature to be held on *TUESDAY, FEBRUARY 1, 2005 at 11 O'CLOCK* in the morning of that day in the Erie County Legislature Chambers on the 4th floor of old County Hall, 92 Franklin Street, in the City of Buffalo, New York.

The following actions will be considered at this meeting:

- ⊘ Reconsideration of Comm. 2E-3-2, the Home Rule Message to the New York State Legislature enabling Erie County to impose the further additional 1 % Erie County sales and compensating use tax starting March 1, 2005 and ending February 28, 2006; and/or
- ⊘ Ratification of the extension of the additional 1% Erie County sales and compensating use tax starting March 1, 2005 and ending February 28, 2006; and/or
- ⊘ Ratification of the imposition of the further additional 1% Erie County sales and compensating use tax starting March 1, 2005 and ending February 28, 2006.

Please notify legislators, the administration and the public of this meeting. Thank you for your assistance.

Sincerely,

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GEORGE A. HOLT, JR.
 Chairman
 Erie County Legislature

Item 9 – MS. MARINELLI presented the following resolution and moved for immediate consideration. MR. DUSZA seconded.

CARRIED UNANIMOUSLY.

RESOLUTION NO. 20

RE: Extension of Additional 1% Sales
 And Compensating Use Tax;
 Amendment of Erie County Sales and
 Use Tax Resolution. (Comm. 3E-2)

January 28, 2005

Honorable Erie County Legislature
 92 Franklin Street – 4th Floor
 Buffalo, New York 14202

Re: Extension of Additional 1 % Sales and Compensating Use Tax; Amendment
 of Erie County Sales and Use Tax Resolution

Honorable Body:

The attached resolution is respectfully submitted for immediate consideration and adoption at the February 1, 2005 special session of the Erie County Legislature [this assumes, of course, that the Governor has by then signed into law recently enacted Assembly Bill No. 1500 & Senate Bill No. 216-A].

The accompanying memorandum from my office explains that timely adoption of the proposed resolution is essential for the continued imposition by Erie County of its additional 1 % sales and compensating use tax for the period March 1, 2005 to February 28, 2006.

Thank you, in advance, for your timely consideration and action on this matter. If your Honorable Body requires any further information, kindly contact the Division of Budget, Management and Finance, the County Attorney or my office and we will be happy to accommodate your requests.

Respectfully submitted,

JOEL A. GIAMBRA
 County Executive

JAG/jda

*NOTE: There were no resolution attached

MS. MARINELLI moved to amend the resolution. MR. SWANICK seconded.

CARRIED UNANIMOUSLY.

RESOLUTION

of the

Legislature of Erie County, amending the Erie County Sales and Use Tax Resolution which imposes taxes on sales and uses of tangible personal property and on certain services, and on occupancy of hotel rooms, admission charges and club dues, pursuant to Article 29 of the Tax Law of the State of New York, to continue the imposition of the additional 1% rate of tax, pursuant to Chapter of the Laws of 2005.

Be it enacted by the Legislature of the County of Erie, as follows:

Section 1. The first sentence of section two of the Erie County Sales and Use Tax Resolution, being a resolution adopted by the Board of Supervisors of the County of Erie as Item 8 of Meeting Number 31, held July 27, 1965, Supervisors Proceedings, page 666, as amended, is hereby further amended to read as follows:

SECTION 2. Imposition of sales tax. On and after March first, nineteen hundred eighty-nine, there is hereby imposed and there shall be paid a tax of three percent upon, and for the period commencing March first, nineteen hundred eighty-nine and ending February twenty-eight, [two thousand five] two thousand six, there is hereby imposed and there shall be paid an additional tax of one percent upon:

Section 2. Subdivisions (h) and (i) of section three of the Erie County Sales and Use Tax Resolution, being a resolution adopted by the Board of Supervisors of the County of Erie as Item 8 of Meeting Number 31, held July 27, 1965, Supervisors Proceedings, page 666, as amended, are hereby further amended to read as follows:

(h) With respect to the additional tax of 1 percent imposed for the period commencing March 1, 1989, and ending February 28, [2005] 2006, the provisions of subdivisions (a), (b), (c), (d), (e), (f) and (g) of this section apply, except that for the purposes of this subdivision, all references in said subdivisions (a), (b), (d) and (e) to an effective date shall be read as referring to March 1, 1989, all references in said subdivision (a) to the date four months prior to the effective date shall be read as referring to November 1, 1988, and the reference in subdivision (b) to the date immediately preceding the effective date shall be read as referring to February 28, 1989.

Nothing herein shall be deemed to exempt from tax at the rate in effect prior to March 1, 1989, any transaction which may not be subject to the additional tax imposed effective on that date.

(i) The taxes imposed under subdivisions (a), (c) and (d) of Section 2 shall be paid at the rate of 3 percent upon all sales made and services rendered on or after March first, [two thousand five] two thousand six. With respect to the tax rate of 3 percent effective March first, [two thousand five]

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two thousand six, the provisions of subdivisions (b), (c), (d), (e) and (f) of this section apply, except that for the purposes of this subdivision, all references in said subdivisions (b), (c), (d) and (e) to an effective date shall be read as referring to March first, [two thousand five] two thousand six, and the reference in subdivision (b) to the date immediately preceding the effective date shall be read as referring to February twenty-eight, [two thousand five] two thousand six. Nothing herein shall be deemed to exempt from tax at the rate in effect prior to March first, [two thousand five] two thousand six, any transaction which may not be subject to the lowered tax rate in effect on that date.

Section 3. Section four of the Erie County Sales and Use Tax Resolution, being a resolution adopted by the Board of Supervisors of the County of Erie as Item 8 of Meeting Number 31, held July 27, 1965, Supervisors Proceedings, page 666, as amended, is hereby further amended to read as follows:

SECTION 4. Imposition of compensating use tax.

(a) Except to the extent that property or services have already been or will be subject to the sales tax under this resolution, there is hereby imposed on every person a use tax for the use within this taxing jurisdiction on and after March first, nineteen hundred eighty-nine, except as otherwise exempted under this enactment, (A) of any tangible personal property purchased at retail, (B) of any tangible personal property (other than computer software used by the author or other creator) manufactured, processed or assembled by the user, (i) if items of the same kind of tangible personal property are offered for sale by him in the regular course of business, or (ii) if items are used as such or incorporated into a structure, building or real property, by a contractor, subcontractor or repairman in erecting structures or buildings, or building on, or otherwise adding to, altering, improving, maintaining, servicing or repairing real property, property or land, as the terms real property, property or land are defined in the real property tax law, if items of the same kind are not offered for sale as such by such contractor, subcontractor or repairman or other user in the regular course of business, (C) of any of the services described in paragraphs (1), (7), and (8) of subdivision (c) of section 2, (D) of any tangible personal property, however acquired, where not acquired for the purposes of resale, upon which any of the services described under paragraphs (2), (3) and (7) of subdivision (c) of section 2 have been performed, (E) of any telephone answering service described in subdivision (b) of section 2, and (F) of any computer software written or otherwise created by the user if the user offers software of a similar kind for sale as such or as a component part of other property in the regular course of business.

(b) For purposes of clause (A) of subdivision (a) of this section, the tax shall be at the rate of four percent, and, on and after March first, [two thousand five] two thousand six, the tax shall be at the rate of three percent, of the consideration given or contracted to be given for such property, or for the use of such property, including any charges for shipping or delivery as described in paragraph three of subdivision (b) of section one, but excluding any credit for tangible personal property accepted in part payment and intended for resale.

(c) For purposes of subclause (i) of clause (B) of subdivision (a) of this section, the tax shall be at the rate of four percent, and on and after March first, [two thousand five] two thousand six, the tax shall be at the rate of three percent, of the price at which items of the same kind of tangible personal property are offered for sale by the user, and the mere storage, keeping, retention or withdrawal from storage of tangible personal property by the person who manufactured, processed or assembled such property shall not be deemed a taxable use by him.

(d) For purposes of subclause (ii) of clause (B) of subdivision (a) of this section, the tax shall be at the rate of four percent, and on and after March first, [two thousand five] two thousand six, the tax shall be at the rate of three percent, of the consideration given or contracted to be given for the tangible personal property manufactured, processed or assembled into the tangible personal property the use of which is subject to tax, including any charges for shipping or delivery as described in paragraph three of subdivision (b) of section one.

(e) Notwithstanding the foregoing provisions of this section, for purposes of clause (B) of subdivision (a) of this section, there shall be no tax on any portion of such price which represents the value added by the user to tangible personal property which he fabricates and installs to the specifications of an addition or capital improvement to real property, property or land, as the terms real property, property or land are defined in the real property tax law, over and above the prevailing normal purchase price prior to such fabrication of such tangible personal property which a manufacturer, producer or assembler would charge an unrelated contractor who similarly fabricated and installed such tangible personal property to the specifications of an addition or capital improvement to such real property, property or land.

MS. MARINELLI moved the approval of the resolution as amended. MR. SWANICK seconded.

CHAIRMAN HOLT directed that a roll call vote be taken.

AYES: CHASE, CUSACK, MARSHALL, McCARVILLE, RANZENHOFER, SWANICK, WEINSTEIN, DEBENEDETTI, DUSZA, HOLT, KUWIK, MARINELLI, SCHROEDER, SMITH & WROBLEWSKI. . (AYES 15, NOES 0).

CARRIED UNANIMOUSLY.

Item 10 – (Comm. 3E-3) Imposition of Further Additional 1% Sales And Compensating Use Tax; Amendment of Erie County Sales and Use Tax Resolution.

Received and filed.

COMMUNICATIONS FROM THE DEPARTMENTS

FROM THE CLERK OF THE LEGISLATURE

Item 11 – (Comm. 3D-1) Special Meeting Notice.

RECEIVED, FILED & PRINTED.

January 28, 2005

To: All Erie County Legislators
 From: Kevin M. Kelley, Clerk of the Legislature

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Subject: SPECIAL MEETING NOTICE

PLEASE TAKE NOTICE that pursuant to Rule 2.02 of the *RULES OF ORDER* of the Erie County Legislature and under the direction of Chairman George A. Holt, Jr., there will be a SPECIAL MEETING of the Erie County Legislature on *TUESDAY, FEBRUARY 1, 2005, at 11 O'CLOCK* in the morning of that day in the Erie County Legislature Chambers on the 4th floor of old County Hall, 92 Franklin Street, in the City of Buffalo, New York.

The following actions will be considered at this meeting:

- € Reconsideration of Comm. 2E-3-2, the Home Rule Message to the New York State Legislature enabling Erie County to impose the further additional 1% Erie County sales and compensating use tax starting March 1, 2005 and ending February 28, 2006; and/or
- € Ratification of the extension of the additional 1% Erie County sales and compensating use tax starting March 1, 2005 and ending February 28, 2006; and/or
- € Ratification of the imposition of the further additional 1% Erie County sales and compensating use tax starting March 1, 2005 and ending February 28, 2006.

Thank you.

ATTACHMENT -Chairman Holt's Letter

MEMORIAL RESOLUTIONS

Item 12 – Mr. Weinstein requested that when the Legislature adjourns, it do so in memory of Gordon Yeager.

Item 13 – Ms. Chase requested that when the Legislature adjourns, it do so in memory of Arthur Benson.

Item 14 – Mr. Holt requested that when the Legislature adjourns, it do so in memory of the four girls from The Winston Women Hockey Team who died in a bus crash.

Item 15 – Mr. Kennedy requested that when the Legislature adjourns, it do so in memory of Cheryl Higgins.

Item 16 – Mr. Dusza requested that when the Legislature adjourns, it do so in memory of Art Benson.

Item 17 – Mr. Dusza requested that when the Legislature adjourns, it do so in memory of Mary Host.

ADJOURNMENT

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Item 18 – At this time, there being no further business to transact, the Chairman announced that the Chair would entertain a Motion to Adjourn.

MS. MARINELLI moved that the Legislature adjourn until 2 p.m. Thursday, February 3, 2005. MR. RANZENHOFER seconded.

CARRIED UNANIMOUSLY.

The Chairman declared the Legislature adjourned until Thursday, February 3, 2005 at 2 p.m. Eastern Standard Time.

KEVIN M. KELLEY
CLERK