

LOCAL LAW 3-19
CHAUTAUQUA COUNTY

A LOCAL LAW AMENDING LOCAL LAW 6-13 OF THE COUNTY OF CHAUTAUQUA
IMPOSING A TAX ON THE OCCUPANCY OF HOTEL OR MOTEL ROOMS

BE IT ENACTED, by the County Legislature of the County of Chautauqua, New York, as follows:

1. Purpose. The purpose of this local law is to clarify and streamline provisions of the Occupancy Tax Local Law relating to rentals booked through third parties, including, but not limited to, Airbnb, Flipkey, Homeaway, VRBO, and realtors.

2. Amendments of Local Law 6-13 of the County of Chautauqua.

a. Section 3(1) of Local Law 6-13 is hereby amended to read as follows:

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 or motel in the County of Chautauqua, including but not limited to, the owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, licensee, management company, booking company, or any other person otherwise operating such hotel or motel.

(c) Hotel/Motel. A building or portion of it, which is used for the lodging of guests on an overnight basis for greater than fourteen (14) days per calendar year, and which is advertised in any manner for such use. The term "hotel" or "motel" shall include, but not be limited to, apartment hotels, motor courts or inns, boarding houses, cottages, apartments, condominiums and those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.

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

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

(f) Permanent Resident. Any Occupant of any room or rooms in a hotel or motel for at least thirty (30) consecutive days shall be considered a permanent resident with regard to the period of 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 or motel, 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) Director of Finance. The Director of Finance of Chautauqua County.
- (k) Booking Company. A person collecting rent for a room or rooms in a hotel/motel via an on-line platform or otherwise, including, but not limited to entities such as Airbnb, FlipKey, Homeaway, VRBO, and realtors.

b. Section 3(6) of Local Law 6-13 is hereby amended to read as follows:

6. Registration.

Within ten (10) days after the effective date of this local law, or in the case of Operators commencing business after such effective date, within three (3) days after such commencement or opening, every Operator shall file with the Director of Finance a certificate of registration in a form prescribed by the Director of Finance. The Director of Finance shall within five (5) days after such registration issue without charge to each Operator a certificate of authority empowering such Operator to collect the tax from the Occupant. For Operators other than booking companies, and a duplicate thereof certificate will be issued for each additional hotel or motel of such Operator. Except in the case of certificates issued to booking companies, each certificate or duplicate shall state the hotel or motel to which it is applicable. Such certificate 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 certificate shall be non-assignable and non-transferable and shall be surrendered immediately to the Director of Finance upon the cessation of business at the hotel(s) or motel(s) for which it is being issued named or upon its the sale or transfer of a named hotel or motel.

c. Section 3(7) of Local Law 6-13 is hereby amended to read as follows:

7. Administration and Collection.

(a) The tax imposed by this local law shall be administered and collected by the Director of Finance, or such other fiscal officers of the County as he or she may designate, by such means and in such manner as other taxes which are now collected and administered by such officers or as otherwise 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. 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 personally liable for the tax collected or required to be collected under this local law. The Operator shall have the same right in respect to collecting the tax from the Occupant, or in respect to nonpayment of the tax by the Occupant as if the tax were a part of the rent for the occupancy payable at the time such tax shall become due and owing, including all rights of eviction, dispossession, repossession, and enforcement of any innkeeper's lien that s/he may have in the event of non-payment of rent by the Occupant; provided, however, that the Director of Finance or other fiscal officer or officers, employees or agents duly designated by him or her shall be joined as a party in any action or proceeding brought by the Operator to collect or enforce collection of the tax.

(c) Where the Occupant has failed to pay and the Operator has failed to collect a tax as imposed by this local law, then in addition to all other rights, obligations and remedies provided, such tax shall be payable by the Occupant directly to the Director of Finance, and it shall be the duty of the Occupant to file a return thereof with the Director of Finance and to pay the tax imposed thereon to the County Director of Finance within fifteen (15) days after such tax was due.

(d) The Director of Finance may, whenever he or she 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 Director of Finance the tax herein imposed, at such times as returns are required to be filed and payment made over by the Operator.

(e) The tax imposed by this local law shall be paid upon any occupancy on and after January 1, 2008, 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 due shall be subject to the tax herein imposed to the extent that it covers any portion of the period on and after January 1, 2008. Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the Director of Finance may by regulation provide for credit and/or refund of the amount of such tax upon application therefor as provided in subsection thirteen of Section 3 this local law.

(f) 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, except that, where by regulation pursuant to subdivision seven (d) of this section, an Occupant is required to file returns and pay directly to the Director of Finance the tax herein imposed, the burden of proving that a rent for occupancy is not taxable shall be upon the Occupant. Where an Occupant claims exemption from the tax under the provisions of subdivision four of this section, the rent shall be deemed taxable hereunder unless the Operator shall receive from the Occupant claiming such exemption a certificate duly executed by an exempt corporation or association certifying that the Occupant is its agent, representative, or employee, together with a certificate executed by the Occupant that his occupancy is paid or to be paid by such exempt corporation or association, and is necessary or required in the course of or in connection with the Occupant's duties as a representative of such corporation or association. Where deemed necessary by the Operator, he may further require that any Occupant claiming exemption from the tax furnish a copy of a certificate issued by the Director of Finance of the Occupant, certifying that the corporation or association herein named is exempt from the tax under subdivision four of this section.

(g) When a person rents room(s) through a booking company, the person and the booking company are deemed to be co-Operators, but it shall be permissible for a booking company to file tax returns and make payment of tax on behalf of the person as to rental transactions handled by the booking company. With the approval of the County Executive, a booking company may make payment of tax on behalf of a person without filing a tax return, and without specifically identifying the person(s) upon whose behalf the tax was paid, but in such case, the person(s) for whom the booking company paid the tax shall remain responsible for filing a tax return indicating the amount of tax expected to be paid by the booking company.

3. Effective Date. This Local Law shall take effect upon filing with the Secretary of State.

Emailed: 5/9/19

Adopted by Legislature: 5/22/19

Public Hearing by County Executive: 6/6/19

Adopted as Local Law 3-19

R/C Vote: 16 Yes; 3 Absent

Date State Filed: 6/12/19