

LOCAL LAW NO. "K" FOR 2012

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK AMENDING LOCAL LAW 3 FOR 1980, AS AMENDED, TO INCLUDE ROOM REMARKETERS WHEN IMPOSING A TAX ON THE OCCUPANCY OF HOTEL ROOMS IN ALBANY COUNTY

Introduced: 9/10/12

By Messrs. Nichols and Bullock:

BE IT ENACTED by the Albany County Legislature as follows:

Section 1. That Section 3, Subdivision1, Paragraphs (b), (d), (e), and (g) Local Law 3 for 1980, as previously amended, is amended to read as follows:

(b) Operator. Any Person operating a hotel in Albany County, 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. Such term shall include a room remarketer and such room remarketer shall be deemed to operate a hotel with respect to which such Person has the rights of a room remarketer.

(d) Occupancy. The use or possession, or the right to the use or possession of any room in a hotel. Right to the use or possession includes the right of a Room Remarketer as described in paragraph (l) of this subdivision.

(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, or other agreement or otherwise. The "right to use or possess" includes the rights of a Room Remarketer as described in paragraph (l) of this subdivision.

(g) Rent. The consideration received for occupancy, including any service or charge or amount or other consideration required to be paid as a condition of occupancy, valued in money whether received in money or otherwise and whether received by the Operator or a Room Remarketer or another Person on behalf of either of them.

Section 2. That Section 3, Subdivision1 of Local Law 3 for 1980, as previously amended, is amended to add a new paragraph (l) to read as follows:

(l) Room Remarketer. A Person who reserves, arranges for, conveys, or furnishes occupancy, whether directly or indirectly, to an occupant for rent in an amount determined by the Room Remarketer, directly or indirectly, whether pursuant to a written or other agreement. Such Person's ability or authority to reserve, arrange for, convey, or furnish occupancy, directly or indirectly, and to determine rent therefor, shall be the "Rights of a Room Remarketer." A Room

Remarketer is not a permanent resident with respect to a room for which such person has the rights of a Room Remarketer.

Section 3. That Section 3, Subdivision 2, of Local Law 3 for 1980 as previously amended, is amended to add the following language:

The tax herein imposed upon the rent received by a Room Remarketer shall hereby be imposed and paid on or after the first day of January, 2013.

Section 4. That Section 3, Subdivision 3, of Local Law 3 for 1980, as previously amended, is amended to add the following paragraph:

The tax imposed by this Local Law upon the rent received by a Room Remarketer shall be paid upon any occupancy on or after the first day of January, 2013, although such occupancy is pursuant to a prior contract lease or other arrangement. Where rent is paid to a Room Remarketer 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 or after the first day of January, 2013.

Section 5. That Section 3, Subdivision 6, of Local Law 3 for 1980, as previously amended, is amended to read as follows:

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, or in the case of a Room Remarketer commencing business on or as of the first day of January, 2013, within twenty days thereafter, or in the case of a Room Remarketer commencing business after the first day of January, 2013, within twenty days after such commencement, every such Operator or Room Remarketer 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 days after such registration issue without charge to each Operator or Room Remarketer a certificate of authority empowering such Operator or Room Remarketer to collect the tax from the Occupant and a duplicate thereof for each additional hotel of such Operator. Each certificate or duplicate of such Operator shall state the hotel to which it is applicable. Such certificates shall be prominently displayed by Operators who are not Room Remarketers in such manner that they may be seen and come to the notice of all Occupants and persons seeking occupancy. Such certificates 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 named or upon its sale or transfer.

Section 6. That the Section 3, Subdivision 6 heading "Administration and Collection" of Local Law 3 for 1980 as previously amended shall be numbered as Subdivision 7. Paragraphs (a) and (b) thereunder shall be renumbered as

Subdivision 7, Paragraphs (a) and (b). Paragraph (c) shall be relettered as Paragraph (d) of Subdivision 7 and Paragraph (d) shall be relettered as Paragraph (e) of Subdivision 7. A new Subdivision 7, Paragraph (c) is added to read as follows:

(c)(1) In regards to the collection of tax on occupancies by Room Remarketers, when occupancy is provided for a single consideration with property, services, amusement charges or any other items whether or not such items are taxable, the rent portion of the consideration for such transaction shall be computed as follows: either the total consideration received by the Room Remarketer multiplied by a fraction, the numerator of which shall be the consideration payable for the occupancy plus the consideration payable by the Remarketer for the other items being sold, or by any other method as may be authorized by the Commissioner of New York State Taxation and Finance for the tax imposed by subdivision (c) of §1105 of the Tax Law of the State of New York, or by any other method as may be authorized by the Director of Finance. If the Room Remarketer fails to separately state the tax on the rent so computed on a sales slip, invoice, receipt, or other statement given to the Occupant in the manner prescribed in Subparagraph (2) of this Paragraph (c), or fails to maintain records of all components of a transaction covered by this Subparagraph (2) of this Paragraph (c), or fails to maintain records of all prices of all components of a transaction covered by this Paragraph (c), the entire consideration shall be treated as rent subject to tax under Subdivision (2) of Section 3 of this Local Law. Nothing herein shall be construed to subject to tax or exempt from tax any service or property or amusement charge or other items otherwise subject to tax or exempt from tax under Articles Twenty-Eight and Twenty-Nine of the Tax Law of the State of New York. A Room Remarketer's records of the consideration payable for all components of a transaction by this Paragraph are records required to be maintained for purposes of Section 3, Subdivision 8 of this Local Law.

(2) In regard to the collection of tax on Room Remarketers, including a transaction described in Subparagraph (1) of the Paragraph (c), the requirements of Paragraph (b) of this Subdivision shall be deemed satisfied if the Room Remarketer gives the customer a sales slip, invoice, receipt, or other statement of the price prior to the customer's completion of his or her Occupancy, on which the amount of tax due under this Local Law is stated. The Room Remarketer must keep a copy of this sales slip, invoice, receipt, or other statement of price as required by Section 3 Subdivision 8 of this Local Law, or electronic records that accurately reflect the information that is on the invoice provided to the customer.

(3) In regards to the reporting and the payment to the Director of Finance by Room Remarketers of tax due on Occupancies, a Room Remarketer shall report such tax due, including in regard to a transaction described in Subparagraph (1) of this Paragraph (c), on the return due for the filing period in which such occupancy

ends and, at the time of filing such return, to pay the Director of Finance the total amount due.

Section 7. Section 3, Subdivision 9, Paragraph (a) of Local Law 3 for 1980, as previously amended, is amended to read as follows:

(a) Every Operator or Room Remarketer shall file with the Director of Finance a return of occupancy and of rents and of the taxes paid thereon quarterly. The returns required to be filed by this section shall be filed for the quarterly periods ending on the last day March, June, September, and December of each year except for the returns to be filed by Operators for the period commencing September 1, 1980 through December 31, 1980 only one report need be made and the report shall be filed for the period ending December 31, 1980. Such returns shall be filed within twenty days of the expiration of the period covered. The Director of Finance may permit or require returns to be made by other periods and upon such dates as he may specify. If the Director 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 Subdivision and upon such dates as he may specify.

Section 8. Section 3, Subdivision 13, Paragraph (a) of Local Law 3 for 1980 as previously amended is renumbered Section 3, Subdivision 13, Paragraph (a) Subparagraph (1). A new Section 3, Subdivision 13, Paragraph (a), Subparagraph (2) is added to read as follows:

(a)(2) Subject to the conditions and limitations provided in this subdivision, a Room Remarketer shall be allowed a refund or credit against the amount of tax collected and required to be remitted under Section 3, Subdivision 10 of this Local Law in the amount of the tax it paid to an Operator of a hotel under this Local Law. Provided, however, that, in order to qualify for a refund or credit under this Subdivision for any Occupancy tax quarterly period, the Room Remarketer must, for that quarter, (A) be registered for occupancy tax purposed under Section 3, Subdivision 6 of this Local Law; (B) collect the taxes imposed by Section 3, Subdivision 2 of this Local Law; (C) furnish the certificate of authority number of the Operator to whom the applicant paid the tax in its application for refund or credit if required on that form or upon request. Provided that if the Room Remarketer requests the Operator's certificate of authority number and is not provided with that number, the Room Remarketer may satisfy this requirement by providing the Operator's name, business address, telephone number and the address of the hotel where the Occupancy was to take place. An application for refund or credit under this Paragraph must be filed with the Director of Finance within the time provided by Subparagraph (1) of this Paragraph. The application must be in the form prescribed by the Director of Finance. Where an application for credit has been filed, the applicant may immediately take the credit on the return

that is due coincident with or immediately subsequent to the time that the applicant files the application for credit. The procedure for granting or denying the application for refund or credit and review of those determinations shall be as provided in this Subdivision 13. An Operator, including a Room Remarketer, who is paid tax by a Room Remarketer must, upon request, provide the Room Remarketer with its certificate of authority number, provided that the Operator's failure to do so does not change the requirement set forth in (C) herein.

Section 9. This local law shall take effect immediately upon filing with the Secretary of State.

Referred to Audit and Finance Committee. 9/10/12