

*Suffolk County, NY  
Thursday, August 6, 2015*

## Chapter 523. Hotels and Motels

[HISTORY: Adopted by the Suffolk County Legislature as indicated in article histories. Amendments noted where applicable. Uncodified sections of local laws amending these provisions after 1990 are included at the end of this chapter.]

### **GENERAL REFERENCES**

Taxation — See Ch. 775.

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## Article I. Registers

[Adopted 5-14-1985 by LL. No. 13-1985 (Ch. 327, Art. I, of the 1985 Code)]

### § 523-1. Legislative intent.

- A. This Legislature hereby finds that the unavailability or nonexistence of a roster of people occupying a hotel or motel poses a threat to the safety and well-being of the citizens of this County in such life-threatening circumstances as a fire, explosion or accident occurring at such facilities.
- B. The purpose of this article is to ensure that the rosters of people occupying hotels or motels will be available for the use of rescue workers, emergency personnel, law enforcement officials and firefighters during the course of an emergency by requiring such facilities to maintain registers under penalty of law.

### § 523-2. Definitions.

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

#### **HOTEL or MOTEL**

An establishment which is regularly used and kept open as such in a bona fide manner for the feeding and lodging of guests, where all who conduct themselves properly and who are able and ready to pay for such services are received if there are accommodations for them. The term shall include a tourist cabin, camp, resort, tavern, inn, boardinghouse, lodging house or any other establishment comparable or equivalent to any of those previously mentioned.

### § 523-3. Register requirements.

- A.

The owner, lessee, proprietor or manager of any hotel or motel located within the County of Suffolk shall keep for a period of three years a register which shall show the name, residence, date of arrival and date of departure of guests.

- B. Such records may be kept, for the purposes of this article, by reproduction on any photographic, photostatic, microfilm, Microcard or other process which actually reproduces the original record.
- C. Such records shall be made available for inspection on demand by any authorized rescue worker, law enforcement official, emergency personnel, firefighter or a municipal employee authorized to enforce a local ordinance or law.

### **§ 523-4. Enforcement.**

This article shall be enforced by the Suffolk County Department of Consumer Affairs.

### **§ 523-5. Rules and regulations.**

The Commissioner of the Department of Consumer Affairs is hereby authorized and empowered to promulgate and issue such rules and regulations as he shall deem necessary and sufficient to implement the provisions of this article.

### **§ 523-6. Penalties for offenses.**

Failure to comply with § 523-3 of this article shall constitute a violation, punishable by a fine of \$100 for a first offense and \$200 for each and every subsequent offense.

## **Article II. Hotel and Motel Tax**

[Adopted 9-9-1992 by L.L. No. 14-1992 (Ch. 327, Art. II, of the 1985 Code)]

### **§ 523-7. Legislative intent.**

- A. This Legislature hereby finds and determines that revenue collected through a hotel and motel tax would assist the County of Suffolk in promoting tourism and convention business and in supporting its cultural programs and activities relevant to the continuation and enhancement of the tourism industry.
- B. This Legislature also takes note of § 1202-o of the New York Tax Law, as contained in a chapter of the Laws of 1992 of New York State, which authorizes and empowers the County of Suffolk to impose a hotel and motel tax for this purpose.

### **§ 523-8. Purpose.**

The purpose of this article is to provide for the imposition of a hotel and motel tax in Suffolk County to fund, in whole or in part, a tourism promotion agency and cultural programs and activities relevant to the continuation and enhancement of the tourism industry.

## § 523-9. Definitions.

[Amended 9-27-2005 by L.L. No. 25-2005]

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

### **HOTEL or MOTEL**

Any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as a "bed-and-breakfast," inns, cabins, cottages, campgrounds, tourist homes and convention centers.

### **OPERATOR**

Any person operating a hotel or motel in the County of Suffolk, 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 or motel.

### **PERMANENT RESIDENT**

A person occupying any room or rooms in a hotel or motel for at least 30 consecutive days.

## § 523-10. Imposition of tax; exemptions.

[Amended 8-27-1996 by L.L. No. 19-1996; 12-5-2000 by L.L. No. 28-2000; 9-27-2005 by L.L. No. 25-2005]

- A. A hotel and motel tax is hereby imposed through the period December 31, 2015, upon persons occupying hotel rooms in Suffolk County at the rate of 3% of the per-diem rental rate (exclusive of sales tax) actually imposed for each hotel or motel room.  
[Amended 9-17-2009 by L.L. No. 34-2009]
- B. The tax imposed pursuant to this article shall not be applicable to:
- (1) A permanent resident of such hotel or motel.
  - (2) Any transactions by or with any of the following, in accordance with § 1230 of the New York Tax Law:
    - (a) The State of New York or any municipal 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, insofar as it is 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 subsection 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 subsection. This exemption shall not apply to member of such organizations who rent rooms on a personal or individual basis not on behalf of the organization.

- C. Within 30 days after the effective date of this article, or, in the case of operators commencing business after such effective date, within 10 days after such commencement or opening, every operator shall file with the County Treasurer a certificate of registration in a form prescribed by the County Treasurer. The County Treasurer shall issue to each operator a certificate of authority empowering such operator to collect the tax from the occupant and duplicate thereof, for each additional hotel or motel of such operators. Each certificate or duplicate shall state the hotel or motel to which it is applicable as well as the sales tax number for the hotel or motel. Such certificates of authority shall be prominently displayed by the operator in such manner that they may be seen and come to the notice of all occupants and persons seeking occupancy. Such certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the County Treasurer upon the cessation of business at the hotel or motel named or upon its sale or transfer. Failure to register with the County Treasurer as required by this article shall result in the imposition of a fine of \$100 for each day of nonregistration for each hotel or motel not so registered.

### **§ 523-11. Collection of tax; administration; enforcement; proceedings to recover tax.**

[Amended 9-27-2005 by L.L. No. 25-2005]

- A. The tax imposed pursuant to this article shall be collected and administered by the County Treasurer or, in the event that the office of County Treasurer is ever abolished, by the fiscal officer who succeeds to the powers and duties of the County Treasurer. The collection and administration of this tax shall be by such means and in such manner as other taxes which are collected and administered by the County Treasurer or by any other fiscal officer of Suffolk County or as otherwise may be provided in this article or in any amendments thereto. The County Treasurer or the fiscal officer who may succeed in interest may, in his or her discretion, delegate to or contract with the New York State Department of Taxation and Finance for the collection and administration of this tax.
- B. The person paying the rent or charge for the hotel or motel room occupied shall be liable therefor to the operator of the hotel or motel room occupied for and on account of the County of Suffolk for the tax imposed pursuant to this article. Such operator shall be liable for the collection and payment of this 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. Such operator shall have the same right in collecting the tax from the person occupying the hotel or motel room, or in respect to nonpayment of this tax by the person occupying the hotel or motel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the County Treasurer, or the successor in interest to that office, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or person entitled to be paid the rent or charge.
- C. The operator of any hotel or motel, as defined herein, located in Suffolk County shall make payment to the County Treasurer and file quarterly returns on forms provided by the County Treasurer, or the successor in interest to that office, on the 20th day of every March, June, September and December for the applicable period of this article. The owner's books and records relating to said returns may be requested for auditing purposes in connection thereto.
- 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 the return; provided, however, that where no return has been filed as provided by law, the tax may be assessed at any time.

- E. Any person failing to file a return or to pay any tax to the County Treasurer within the time required by this article shall be subject to a penalty of 5% of the amount of tax due; plus interest at the rate of 1% of such tax for each month or fraction thereof of delay commencing the first month after such return was required to be filed or such tax became due. Such 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.
- F. Any operator of a hotel or motel and any officer of a corporate operator failing to file a return as required under this article; filing or causing to be filed or making or causing to be made or giving or causing to give any return, certificate of registration, affidavit, representation, information, testimony or statement required or authorized by this article which is willfully false; willfully failing or refusing to collect such tax from the occupant as required by this article; or who collects any tax required or authorized by this article and fails to remit said tax to the Suffolk County Treasurer as required by this article 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 \$1,000, imprisonment for not more than one year, or both such fine and imprisonment. 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 shall be subject to the penalties hereinabove imposed and to prosecution criminally and/or civilly.
- G. If, in the reasonable judgment of the Suffolk County Treasurer, there has been a violation of Subsection **F** or **O**, the County Treasurer shall request the District Attorney to prosecute the matter criminally. The County Treasurer shall provide to the District Attorney any and all records and other documentation necessary for such prosecution, at the request of the District Attorney.
- H. 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 article as therein provided, the County Attorney shall, upon the request of the Treasurer, bring or cause to be brought an action to enforce the payment of the same on behalf of the County of Suffolk. If, however, the Treasurer, in his or her discretion, believes that any such operator, officer or other person is about to cease business, leave the state or remove or dissipate the assets out of which the tax, penalties or interest might be satisfied and that any such tax, penalty or interest will not be paid when due, he or she may declare such tax, penalty or interest to be immediately due and payable and may issue a warrant immediately.
- I. As an additional or alternate remedy, the Treasurer may issue a warrant, directed to the Sheriff, commanding him or her 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, the cost of executing the warrant, and to return such warrant to the Treasurer and to pay to him or her the money collected by virtue thereof within 60 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 title to and 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 such Sheriff shall be entitled to the same fees, which he or she may collect in the same manner. In the discretion of the Treasurer, a warrant of like terms, force and effect may be issued and directed to any officer or employee of the Treasurer, and in the execution thereof such officer or employee shall have all the powers conferred by law upon the Sheriff 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 Treasurer 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.

- J. Whenever an operator shall make a sale, transfer, or assignment in bulk of any part or the whole of such operator's hotel or motel or of his or her lease, license or other agreement or right to possess or operate such hotel or motel, or of the equipment, furnishings, fixtures, supplies or stock of merchandise, or of the premises or lease, license or other agreement or right to possess or operate such hotel or motel and the equipment, furnishings, fixtures, supplies and stock of merchandise pertaining to the conduct or operation of said hotel or motel, otherwise than in the ordinary and regular prosecution of business, the purchaser, transferee or assignee shall, at least 10 days before taking possession of the subject of said sale, transfer or assignment, or paying therefor, notify the Treasurer by registered or certified mail, return receipt requested, 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 article, 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.
- K. Whenever the purchaser, transferee or assignee shall fail to give notice to the Treasurer as required by the preceding Subsection J, or whenever the Treasurer 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 subsection, the purchaser, transferee or assignee 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 tax under this article.
- L. The Treasurer, if he or she finds that the interests of the County will not thereby be jeopardized, and upon such conditions as the Treasurer may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to Subsection I, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The Clerk shall thereupon cancel and discharge, as of the original date of docketing, the vacated warrant.
- M. The County Treasurer, or his or her employees or agents duly designated and authorized by him or her, shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of his or her powers and duties under this article. The County Treasurer 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 or her duties hereunder and of the enforcement of this article and to examine them in relation thereto.

- N. 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 County Treasurer under this article.
- O. Any person who shall refuse to testify or to produce books or records or who shall testify falsely in any material manner pending before the County Treasurer under this article shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than \$1,000 or imprisonment for not more than one year, or both such fine and imprisonment.
- P. The officers who serve the summons or subpoena of the County Treasurer 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 or her duly appointed deputies or any officers or employees of the Department of Finance or any officers or employees of the County Treasurer designated to serve such process.
- Q. Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the Treasurer or any officer or employee of the 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 to be filed pursuant to this article. 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, or 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 an 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.

## § 523-12. Review of tax determinations.

Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever 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 the giving of the notice of such final determination; provided, however, that any such proceeding brought under Article 78 of the Civil Practice Law and Rules shall not be instituted unless:

- A. The amount of any tax sought to be reviewed, with such interest and penalties thereon, shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in the State of New York and approved by the Superintendent of Insurance of the State of New York 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 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 which 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.

### § 523-13. Review of tax collections.

Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be reviewable by a proceeding under Article 78 of the Civil Practice Law and Rules; provided, however, that such proceeding is instituted within 30 days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties 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 such proceeding.

### § 523-14. Tourism promotion agency.

A. The County of Suffolk shall enter into a contract, as mandated by Tax Law § 1202-o(5), with a tourism promotion agency to administer programs designed to develop, encourage, solicit and promote convention business and tourism within the County of Suffolk. The promotion of convention business and tourism shall include any service, function or activity, whether or not performed, sponsored or advertised by the tourism promotion agency, with the intent to attract transient guests to the County. The County Executive, or his designated representative, is hereby authorized to negotiate and enter into such a contract. No such contract shall be executed without the prior approval of the Legislature. [Amended 12-21-2004 by L.L. No. 2-2005; 2-15-2005 by L.L. No. 6-2005; 8-9-2005 by L.L. No. 19-2005]

- (1) Such contract shall provide that all sums paid to the tourism promotion agency shall be expended on Suffolk County tourism, and/or historic or cultural areas, programs or activities as required under Tax Law § 1202-o(5).
- (2) Such contract shall provide that the tourism promotion agency must adhere to a business, marketing and/or financial plan which clearly delineates how the moneys received under such contract shall be utilized. The business, marketing, and/or financial plan shall require that funds received from members of the tourism promotion agency shall be segregated from Suffolk County hotel/motel tax revenues and shall not be commingled. The business, marketing and/or financial plan shall also provide that all advertising activities or promotions paid for, in part or in whole, with Suffolk County hotel/motel tax revenues shall be used to promote tourism within the targeted region and shall not direct visitors to any particular business. Nothing contained in this subsection shall be construed to prohibit paid advertisement.
- (3) Such contract shall provide that the tourism promotion agency shall require the establishment of internal controls where the governing board of such tourism promotion agency reviews and approves all expenditures relating to travel, entertainment, marketing, and other expenses associated with promoting tourism in Suffolk County, and shall further require that all checks expending Suffolk County hotel/motel tax monies be executed with dual signatures, and that such policy that has been established by the existing tourism promotion agency of requiring dual signatures be enforced.

- (4) Such contract shall provide that the tourism promotion agency shall submit annually to the Suffolk County Executive and the Clerk of the Suffolk County Legislature an audited financial report and a copy of the agency's bylaws.
- (5) Such contract shall provide that the tourism promotion agency shall comply with any and all legal requirements imposed upon contract agencies that do business with the County of Suffolk.
- B. Schedules of availability of all historic and cultural activities and events funded from any part of these revenues shall be provided to the aforementioned tourism promotion agency which is contracted with by the County of Suffolk so as to enhance tourism promotion and tourist visitation.
- C. The tourism promotion agency shall be subject to an audit by the County Comptroller of its books and records relating to the aforementioned contract and moneys received thereto.

## § 523-15. Distribution of tax revenues.

[Amended 8-27-1996 by L.L. No. 19-1996; 9-17-2009 by L.L. No. 34-2009]

All revenues resulting from the imposition of the tax payable hereunder shall be paid into the treasury of the County of Suffolk and shall be distributed within 30 days after receipt by the County under the following formula:

- A. Twenty-four percent of all revenues collected, but not more than \$2,000,000 per fiscal year, shall be delivered to the tourism promotion agency which the County of Suffolk contracts with pursuant to the provisions of § 523-14A of this article.
- B. Ten percent of all revenues shall be utilized by the County of Suffolk in support of cultural programs and activities relevant to the continuation and enhancement of the tourism industry. Beginning in fiscal year 2011, this amount may be increased by the County Legislature by 1% each fiscal year, to an amount not to exceed 15% of all revenues collected, as the County Legislature reduces the allocation for the purposes set forth in Subsection C of this section.
- C. Ten percent of all revenues collected shall be utilized for the support of the Suffolk County Vanderbilt Museum. This amount may be decreased by the County Legislature by 1% in each fiscal year beginning in fiscal year 2011 to an amount not less than 5% of all revenues collected.
- D. Eight percent of all revenues collected shall be utilized by the County of Suffolk for the support of other museums and historical societies, historic residences and historic birthplaces, provided that of such 8% an amount equal to 1 1/2% of all revenues collected shall be utilized for program support of the Walt Whitman Birthplace State Historic Site and Interpretative Center.
- E. Twenty percent of all revenues collected shall be utilized by the County of Suffolk for the care, maintenance and interpretation for the general public of the historic structures, sites and unique natural areas that are managed by the Suffolk County Department of Parks, Recreation and Conservation for sites and activities that are open to tourists on a regular and predictable basis.<sup>[1]</sup>
  - [1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. IV).*
- F. Not more than 2% of all revenues collected shall be utilized for the promotion of Suffolk County as a film-friendly location through the Department of Economic Development and

Workforce Housing. Annually, the Department of Economic Development and Workforce Housing shall submit to the County Executive and the County Legislature a report on its progress in promoting Suffolk County as a film-friendly location and annual statistics of the revenue generated pursuant to this subsection.

- G. All remaining revenue collected shall be deposited into the general fund to be utilized for general park purposes.

## **§ 523-16. Rules and regulations.**

The County Treasurer, or the successor in interest to that office, is hereby authorized to promulgate any rules and regulations deemed necessary to effectuate the purposes and provisions of this article and consistent therewith.