

County of Tioga

Local Law No. 4 of the Year 1971.

A Local Law Amending Local Law No. 1 of 1968, which established a Sales Tax and Compensating Use Tax for the County of Tioga.

Be It Enacted by the Board of Supervisors of the County of Tioga as follows:

Local Law No. 1 of 1968, as previously amended by Local Law No. 1 of 1969 is hereby amended as follows:

SECTION 1:

Section (b) (4) (i) is hereby amended to read as follows:

(i) Retail Sale. A sale of tangible personal property to any person for any purpose, other than (a) for resale as such or as a physical component part of tangible personal property, or (b) for use by that person in performing the services subject to tax under paragraphs (1), (2), (3), and (5) of subdivision (c) of section two where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchases of the service in conjunction with the performance of the service subject to tax. Notwithstanding the preceding provisions of this subparagraph, a sale of any tangible personal property to a contractor, subcontractor or repairman for use or consumption 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, is deemed to be a retail sale regardless of whether the tangible personal property is to be resold as such before it is so used or consumed.

SECTION 2:

Section 2 (d)(i) is hereby amended to read as follows:

(i) The receipts from every sale of beer, wine or other alcoholic beverages or any other drink of any nature, or from every sale of food and drink of any nature or of food alone, when sold in or by restaurants, taverns or

other establishments in this county, or by caterers, including in the amount of such receipts any cover, minimum, entertainment or other charge made to patrons or customers (except those receipts taxes pursuant to subdivision (f) of this section):

1. In all instances where the sale is for consumption on the premises where sold;

2. In those instances where the vendor or any person whose services are arranged for by the vendor, after the delivery of the food or drink by or on behalf of the vendor for consumption off the premises of the vendor, serves or assists in serving, cooks, heats or provides other services with respect to the food or drink; and

3. In those instances where the sale is for consumption off the premises of the vendor except where food (other than sandwiches) or drink or both are (A) sold in an unheated state and, (B) are of a type commonly sold for consumption off the premises and in the same form and condition, quantities and packaging, in establishments which are food stores other than those principally engaged in selling foods prepared and ready to be eaten.

SECTION 3:

Section 4 is hereby amended to read as follows:

Section 4. Imposition of compensating use tax. Except to the extent that property or services have already been or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this county on and after September first, nineteen hundred sixty-eight, except as otherwise exempted under this article, (A) of any tangible personal property purchased at retail, (B) of any tangible personal property manufactured, processed or assembled by the user if items of the same kind of tangible personal property are offered for sale by him in the regular course of business, (C) of any of the services described in paragraph (1) of subdivision (c) of section two, and (D) of any tangible personal property, however acquired, where not acquired for purposes of resale, upon which any of the services described under paragraphs (2) and (3) of subdivision (c) of section two have been performed. For purposes of clause (A) of this section, the tax shall be at the rate of two percent of the consideration given or contracted to be given for such property, or for the use of such property, but excluding any credit for tangible personal property accepted in part payment and intended for resale, plus the cost of transportation except where such cost is separately stated in the written contract, if any, and on the bill rendered to the purchaser. For purposes of clause (B) of this section, the tax shall be at the rate of two

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. Notwithstanding the foregoing, for purposes of clause (B) 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. For purposes of clauses (C) and (D) of this section, the tax shall be at the rate of two percent of the consideration given or contracted to be given for the service, including the consideration for any tangible personal property transferred in conjunction with the performance of the service, plus the cost of transportation of property so transferred and of the tangible personal property upon which the service was performed, except where such cost is separately stated in the written contract, if any, and on the bill rendered to the purchaser.

SECTION 4:

Subdivision (a) of Section 5 is hereby amended to read as follows:

(a) The retail sales tax imposed under subdivision (a) of Section 2 and the compensating use tax imposed under Section 4, when computed in respect to tangible personal property whenever manufactured, processed or assembled and used by such manufacturer, producer or assembler in the regular course of business within this county, shall be based on the price at which items of the same kind of tangible personal property are offered for sale by him, except to the extent otherwise provided in Section 4 hereof.

SECTION 5:

Subdivision (a) of Section 6 is hereby amended by adding thereto new paragraphs, to be paragraphs, thirteen, fourteen, fifteen and sixteen of such subdivision, to read as follows:

(13) Motor vehicles, as such term is defined in section one hundred twenty-five of the vehicle and traffic law, sold by a husband or wife to his or her spouse. Provided however, this exemption shall not apply if the vendor is

a dealer as defined in section four hundred fifteen of the vehicle and traffic law.

(14) Tangible personal property sold to a contractor, subcontractor or repairman for use in erecting a structure or building of an organization described in subdivision (a) of section seven, or adding to, altering or improving real property, property or land of such an organization, as the terms real property, property or land are defined in the real property tax law; provided, however, no exemption shall exist under this paragraph unless such tangible personal property (i) is to become an integral component part of such structure, building or real property and (ii) is to be resold to such organization as tangible personal property before it has become a part of structure, building or real property.

(15) Tangible personal property sold to a contractor, subcontractor or repairman for use in maintaining, servicing or repairing real property, property or land of an organization described in subdivision (a) of section seven, as the terms real property, property or land are defined in the real property tax law.

(16) Tangible personal property sold by a contractor, subcontractor or repairman to a person other than an organization described in subdivision (a) of section seven, for whom he is adding to, or improving real property, property or land by a capital improvement, or for whom he is about to do any of the foregoing, if such tangible personal property is to become an integral component part of such structure, building or real property, provided, however, that if such sale is made pursuant to a contract irrevocably entered into before September first, nineteen hundred sixty-nine, no exemption shall exist under this paragraph.

SECTION 6:

Section 6 is hereby amended by adding thereto a new subdivision, to be subdivision (g), to read as follows:

(g) Services otherwise taxable under paragraph (3) of subdivision (c) of section two shall be exempt from tax if performed upon prosthetic aids, hearing aids, or eye glasses and artificial devices designed for the use of a particular individual to correct or alleviate physical incapacity.

SECTION 7:

Subdivision (b) of Section 12 is hereby amended to read as follows:

(b) A refund or credit equal to the amount of sales or compensating tax imposed by article twenty-eight of the tax law and under this local law, and paid on the sale or use of tangible personal property, shall be allowed the purchaser where such property is later used by the purchaser in performing a service subject to tax under paragraphs (1),(2),(3) or (5) of subdivision (c) of section two or under section four and such property has become a physical component part of the property upon which the service is performed or has been transferred to the purchaser of the service in conjunction with the performance of the service subject to tax or if a contractor, subcontractor or repairman purchases tangible personal property and later makes a retail sale of such tangible personal property, the acquisition of which would not have been a sale at retail to him but for the last sentence of subparagraph (I) of paragraph (4) of subdivision (b) of section one. An application for the refund or credit provided for herein must be filed with the tax commission within the time provided by subdivision (a) of section eleven hundred thirty-nine of the tax law. Such application shall be in such form as the tax commission may prescribe. Where an application for credit has been filed, the applicant may immediately take such credit on the return which is due coincident with or immediately subsequent to the time that he files his application for credit. However, the taking of the credit on the return shall be deemed to be part of the application for credit. The procedure for granting or denying such applications for refund or credit and review of such determinations shall be as provided in subdivision (e) of section eleven hundred thirty-nine of the tax law.

SECTION 8:

Section 13 is hereby amended as follows:

The taxes imposed by this local law under the authority of Article 29 of the Tax Law shall be administered and collected by the State Tax Commission in the same manner as the taxes imposed under Article 28 of the Tax Law are administered and collected by such Commission. All of the provisions of said Article 28 relating to or applicable to the administration and collection of the taxes imposed by that article shall apply to the taxes imposed by this local law, including sections eleven hundred one, eleven hundred six(e), eleven hundred eleven, eleven hundred eighteen (b), eleven hundred nineteen and eleven hundred thirty-one through eleven hundred forty-seven, together with any amendment thereto, with the same force and effect as if those provisions had been incorporated in full into this local law except as otherwise provided in section twelve hundred fifty of the Tax Law.

Section 9. Subdivision(b) of Section 14 is hereby amended to read as follows:

(b) The remainder of such monies shall be allocated quarterly to the towns in proportion to their respective populations, determined in accordance with the latest decennial federal census or special population census taken pursuant to section twenty of the general municipal law, completed and published prior to the end of the quarter for which the allocation is made, which special census must include the entire area of the county. The amount so allocated to the towns shall be applied first to reduce county taxes levied upon real property in the several towns. Any balance remaining shall then be applied to reduce general town taxes levied upon real property. Any town, by local law, ordinance or resolution, however, may provide that the amounts which would be so applied to reduce the county taxes and general town taxes levied upon real property in such town shall be paid directly to such town to be used for any town purpose. If any village, by local law, ordinance or resolution shall so provide, the amounts which would be so applied to reduce the county and general town taxes levied upon real property in such village shall be paid directly to such village in lieu of such tax reduction. Where any village has elected to be paid directly as provided in this subdivision, the amount to be paid to such village shall be determined by the ratio that the full valuation of real property in the village or portion thereof within the town in which such village is located bears to the full valuation of real property in the entire town. If a village wholly or partially within a town has so elected to be paid directly, but the town in which such village is located has not so elected, the amount allocated to the town in which such village is wholly or partially situated shall be applied to reduce county taxes and general town taxes in the area of the town outside such village. If the amount allocated to a town exceeds the amount of the county taxes and general town taxes levied upon real property in the town, the excess shall be apportioned between the town and each village, if any, wholly or partially situated therein, in the ratios that the full valuation of real property in each such village or portion thereof within the town, and the full valuation of real property in the portion of the town outside of such village or villages, respectively, bear to the aggregate full valuation of the entire town. The share of each such village shall be paid directly to such village. The share of the town shall be applied, first, to reduce taxes levied for part-town activities, and any balance remaining shall be paid directly to the town, to be used for part-town activities. The amount to be applied in reduction of county taxes and general town taxes in each town shall be determined on the basis of the respective populations of the several towns in such county, determined in accordance with the latest federal census or special population census taken pursuant to section twenty of the general municipal law, completed and published prior to the end of the quarter for which the allocation is made, which special census must include the entire area of the county.

Any local law, ordinance or resolution enacted by a town or village pursuant to this subdivision shall only be effective for the calendar year or years subsequent to its enactment and, further, shall only be effective if it is mailed by registered or certified mail to the chief fiscal officer of the county before the first day of September preceding the calendar year for which the election is made by such local law, ordinance or resolution. Such local law, ordinance or resolution shall remain in effect for subsequent calendar years until rescinded by local law, ordinance or resolution, but the enactment shall rescind the election only if it is mailed, in the same manner already provided for in this subdivision, to the chief fiscal officer of the county before the first day of September preceding the calendar year for which the rescission is to apply.

SECTION 10:

Subdivisions (c) and (d) of Section 14 are hereby repealed. Subdivision (e) of Section 14 is hereby renumbered (c).

SECTION 11:

Effective Date. This local law shall take effect as of September 1, 1969 except that section two shall take effect July 1, 1971 and sections three and four shall take effect immediately and be retroactive to and deemed to be in full force and effect as of September 1, 1968, and except that section 9 shall take effect as of January 1, 1970.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 4 of 1971 of the (County) of Tioga was duly passed by the Board of Supervisors on August 9, 1971, in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19 of the (County) (City) (Town) (Village) of was duly passed by the on , 19 , and was (approved)(not disapproved)(repassed after disapproval) by the and was deemed duly adopted on , 19 , in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19 of the (County)(City)(Town)(Village) of was duly passed by the on , 19 , and was (approved)(not disapproved)(repassed after disapproval) by the on , 19 . Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on , 19 , in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19 of the (County)(City)(Town)(Village) of was duly passed by the on , 19 , and was (approved)(not disapproved)(repassed after disapproval) by the on , 19 . Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of , 19 , in accordance with the applicable provisions of law.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19 of the City of having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on , 19 , become operative.

*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19 of the County of , State of New York, having been submitted to the

electors at the General Election of November _____, 19____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1____, above.

Clerk of the County legislative body, City, Town
or Village Clerk or officer designated by local
legislative body

(Seal)

Date:

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)

State of New York

County of Tioga

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Signature

Title
County of Tioga
City
Town
Village

Date: