

LOCAL LAW NO. 1 FOR THE YEAR 2002

**IMPOSING A TAX ON THE OCCUPANCY OF HOTEL AND MOTEL ROOMS IN
CORTLAND COUNTY PURSUANT TO ARTICLE 29, SECTION 1202-g
OF THE TAX LAW OF THE STATE OF NEW YORK**

Be it enacted by the County Legislature of the County of Cortland as follows:

SECTION 1. TITLE

This local law shall be known as the "Cortland County Hotel and Motel Room Occupancy Tax Law".

SECTION 2. LEGISLATIVE INTENT

The County Legislature hereby finds that the intent of this local law shall be to enhance funding for tourism and cultural activities for the benefit of Cortland County and its residents, and to further support economic development.

SECTION 3. AUTHORITY

- a. Notwithstanding any other provision of law to the contrary, the County of Cortland is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax, in addition to any other tax authorized and imposed pursuant to Article 29 Section 1202-g of the New York State Tax Law (as amended by Chapter 118, part W, of the Laws of 2001), as the State Legislature has or would have the power and authority to impose upon persons occupying hotel or motel rooms within Cortland County. For the purposes of this local law, the term "hotel" or "motel" shall mean and include any facility providing lodging on an overnight basis and shall include those facilities designated and commonly known as "bed and breakfast" and "tourist" facilities.
- b. The rate of such tax shall not exceed five percent of the per diem rental rate for each room, provided however, that such tax shall not be applicable to a permanent resident of a hotel or motel. For the purposes of this local law, the term "permanent resident" shall mean a person occupying any room or rooms in a hotel or motel for at least thirty (30) consecutive days.

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1. **Definitions:**

- 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 Cortland 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 or motel.
- c. **"Hotel" or "Motel"**: A facility which is regularly used and kept open as such for the lodging of guests. The terms "hotel" and "motel" include an apartment hotel, a motel, guest house, or facilities designated and commonly known as "bed and breakfast" and "tourist" facilities, whether or not meals are served.
- 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 some 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.
- 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. "County Chairman": The Chairman of the Cortland County Legislature

2. **Imposition of Tax:**

On or after the 1st day of April, 2002, there is hereby imposed and there shall be paid a tax of five percent (5%) of the rent for every occupancy of a room or rooms in a hotel or motel within Cortland County; except that the tax shall not be imposed upon a permanent resident of the hotel or motel, nor where the rent is not more than at the rate of four dollars per day, nor where there are fewer than four rooms available to the public.

3. **Transitional Provisions:**

The tax imposed by this local law shall be paid upon any occupancy on and after the 1st day of April, 2002, although such occupancy is pursuant to a prior contract, lease or other arrangement. Where rent is paid or payable on a weekly, monthly, or other term, the rent shall be subject to the tax imposed by this local law to the extent that it covers any period on and after the 1st day of April, 2002.

4. **Exempt Organizations:**

- a. This local law shall not authorize the imposition of such tax upon any transaction by or with any of the following in accordance with Section 1230 of the New York State Tax Law:
 - i. The State of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or Canada), improvement district or other political subdivision of the state;
 - ii. The United States of America, insofar as it is immune from taxation;
 - iii. 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 paragraph 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 paragraph.
- b. Where any organization described in sub paragraph (iii) of part (a) of this subdivision carries on its activities in the furtherance of the purposes for which it was organized, in premises in which, as part of said activities, it operates a hotel

or motel, occupancy of rooms in the premises and rents therefrom received by such corporation or association shall not be subject to tax hereunder.

- c. The hotel or motel operator shall submit such written proof as may be required to show that the use or occupancy falls within the aforescribed exempt categories. In the absence of such documentation, the tax must be collected by the operator.

5. **Territorial Limitations:**

The tax imposed by this local law shall apply only to occupancies within the territorial limits of the County of Cortland.

6. **Registration:**

Within ten (10) days after the effective date of this local law, or in the case of operators commencing hotel or motel business in Cortland County after such effective date, within three (3) days after such commencement, every operator shall file with the Office of the Chairman of the Cortland County Legislature a certificate of registration in a form prescribed by the County Chairman. Within five (5) days after such registration, the County Chairman shall issue, without charge 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 operator. Each certificate of 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 a manner that it may be seen and come to the notice of all occupants and persons seeking occupancy in the hotel to which it applies. Such certificates shall be non-assignable and non-transferrable, and shall be surrendered immediately to the County Chairman upon the cessation of business at the hotel or motel named or upon its sale or transfer.

7. **Administration and Collection:**

- a. The tax imposed by this local law shall be administered and collected by the Chairman of the Cortland County Legislature, or other designated fiscal officers of the County by such means and in such manner as are other taxes which are now administered and collected by such officers, or as otherwise provided by this local law.

- b. The tax imposed by this local law shall be paid by the person liable therefore to the owner of the hotel or motel room occupied or to the person entitled to be paid the rent or charge for the hotel or motel room occupied. The tax to be collected shall be stated and charged separately from the rent shown on any record thereof at the time when the occupancy is arranged, contracted, or charged for, and upon every evidence of occupancy or any bill, 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, Cortland County, and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the 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 local law. The operator shall have the same right in collecting the tax from the person occupying the hotel or motel room, in respect to non-payment of the tax by the occupant, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge. This includes all rights of eviction, dispossession, repossession, and enforcement of any innkeeper's lien that he or she may have in the event of nonpayment of rent by the occupant; provided, however, that the County Chairman or other fiscal officer(s), employees or agents duly designated by him or her shall be joined as a part in any action or proceeding brought by the operator to collect or enforce collection of the tax.

- c. The County Chairman 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 Cortland County Treasurer the tax herein imposed. at such times as returns are required to be filed and payment made by the operator.
- d. The tax imposed by this local law shall be paid upon any occupancy on and after April 1st, 2002, although such occupancy is had pursuant to a contract, lease, or other arrangement made prior to such date. Where rent is paid, charged, billed, or falls due on either a weekly, monthly, or other term basis, the rent so paid, charge, 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 April 1st, 2002. Where any tax has been paid hereunder upon any rent which has been ascertained to be worthless, the County Chairman may, by regulation, provide for the credit and or refund of the amount of such tax upon application therefor as provided in subdivision thirteen (13) of this local law.
- e. 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. 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 (7) (c) of Section 4 of this local law, an occupant is required to file returns and pay directly to the County Chairman 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 (4) of Section 4 of this local law, 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 or her 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 or she may further require that any occupant claiming exemption from the tax furnish a copy of a certificate issued by the County Chairman certifying that the corporation or association therein named is exempt from tax under subdivision four (4) of this Section 4 of this local law.

8. **Records to be Kept:**

Every operator shall keep records of every occupancy, of all rent paid, charged, or due, and of all tax payable thereon, in such form as the County Chairman may require by regulation. Such records shall be available for inspection and examination at any time upon demand by the County Chairman or his duly authorized employee or agent, and shall be preserved for a period of three (3) years, except that the County Chairman may consent to their destruction within that period or may require that they be kept longer.

9. **Returns:**

- a. Every operator shall file with the County Chairman a return of occupancy, of rents, and of taxes payable thereon for the periods ending April 30th, July 31st, October 31st, and January 31st of each year, on and after *April 1st, 2002*. Such returns shall be filed within twenty (20) days from the expiration of the period covered thereby. If the twentieth day falls on a Saturday, Sunday, or legal holiday, the return and tax will be due on the next Cortland County working day. The County Chairman may permit or require returns to be made by other periods and upon such dates as he may specify. If the County Chairman deems it necessary in order to ensure the payment of the tax imposed by this law, he or she may require returns to be made for shorter periods than those prescribed pursuant to the foregoing provisions of this section and upon such dates as he may specify.
- b. The form of returns shall be prescribed by the County Chairman and shall contain such information as he may deem necessary for the proper administration of this local law. The County Chairman may require amended returns to be filed within twenty (20) days after notice and to contain the information specified in the notice.
- c. If a return required by this local law is not filed, or a return when filed is incorrect or insufficient on its face, the County Chairman shall take the necessary steps to enforce the filing of such a return or of a corrected return.

10. **Payment of Tax:**

At the time of filing a return of occupancy and of rents, each operator shall pay to the County Chairman the taxes imposed by this local law upon rents required to be included in such return, as well as all other monies collected by the operator acting or purporting to act under the provisions of this local law. Where the County Chairman deems it necessary to protect revenues to be obtained under this local law, he may require any operator required to collect the tax imposed by this local law to file with him a bond, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such an amount as the County Chairman may fix to secure the payment of any tax and or penalties and interest due or which may become due from such operator. In the event that the County Chairman determines that an operator is to file such a bond, he shall give notice to the operator to that effect, specifying the amount of the bond required. The operator shall file the bond within five (5) days after the giving of notice unless within

those five (5) days the operator requests in writing a hearing before the County Chairman, at which the necessity, propriety and amount of the bond shall be determined by the County Chairman. This determination shall be final and shall be complied with within fifteen (15) days after the giving of notice thereof. In lieu of a bond, security approved by the County Chairman, or cash in the amount he or she may prescribe, may, at any time, without notice to the depositor, be applied to any tax and or interest or penalties due, and for that purpose the securities may be sold by him at public or private sale without notice to the depositor thereof.

11. **Determination of Tax:**

- a. 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 therefore is made to the Supreme Court within thirty (30) days after the giving of the notice of such final determination; provided, however, that any such proceeding under Article 78 of the Civil Practice Law and Rules shall not be instituted unless:
 - i. The amount of any tax sought to be reviewed, with interest and penalties thereon as may be provided for by local law or regulation shall be first deposited and there is an undertaking filed, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such an 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 charge which may accrue in the prosecution of such proceeding; or
 - ii. At the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interests 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.
- b. If a return required by this local law is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the County Chairman or his designate, the proper fiscal officer, from obtainable information. If necessary, the tax may be estimated on the basis of external indices, such as the number of rooms, location, scale of rents, comparable rents, types of accommodations and service, number of employees and or other factors. Notice of such determination shall be given to the person liable for the collection and or payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within thirty (30) days after notice of such determination, applies to the County Chairman for a hearing, or unless the County Chairman makes a new determination on his or her own motion. After such a hearing, the County Chairman shall give notice of his or her determination to the person against whom the tax is assessed. The determination of the County

Chairman shall be reviewable for error, illegality, unconstitutionality, or any other reason whatsoever by proceeding under Article 78 of the Civil Practice Law and Rules as outlined in part (a) of this subdivision.

12. **Disposition of Revenues:**

All revenues resulting from the imposition of the tax under this local law shall be paid into the treasury of Cortland County and shall be credited to and deposited into the general fund of the County, thereafter to be allocated for tourist and convention development. Provided, however, that the County shall be authorized to retain up to a maximum of ten percent (10%) of such revenue to defer the necessary expenses of the County in administering such tax. The revenue derived from the tax, after deducting the amount provided for administering such tax, shall be allocated to enhance the general economy of Cortland County, its cities, towns and villages, through promotion of tourist activities, conventions, trade shows, special events, and other directly related supporting activities.

13. **Refund, Revision or Credits:**

- a. In the manner provided in this section, the County Chairman shall refund or credit, without interest, any tax, penalty, or interest erroneously, illegally, or unconstitutionally collected or paid if application to the County Chairman for such refund is made within one year from the payment thereof. Whenever a refund is made by the County Chairman, he or she shall state the reasons therefore in writing. Such application may be made by the occupant, operator or other person who has actually paid the tax. Such application may also be made by an operator who has collected and paid over such tax to the County Chairman, provided that the application is made within one year of the payment by the occupant to the operator. However, no actual refund of monies shall be made to such operator until he first establishes to the satisfaction of the County Chairman under such regulations as the County Chairman by authority of the Cortland County Legislature may prescribe, that he or she has repaid to the occupant the amount for which the application for refund is made. In lieu of any refund required to be made, the County Chairman may allow credit thereof on payments due from the applicant.

- b. An application for a refund or credit made as herein provided shall be deemed an application for a revision of any tax, penalty or interest complained of and the County Chairman may receive evidence with respect thereto. After making his determination, the County Chairman shall give notice thereof to the applicant, who shall be entitled to review said determination by a proceeding pursuant to Article 78 of the Civil Practice Law and Rules; provided the proceeding is instituted within thirty (30) days after the giving of the notice of determination and provided a final determination of tax due was not previously made. Such a proceeding shall not be instituted unless an undertaking is filed with the County Chairman in an amount and with sureties approved by a Justice of the Supreme Court to the effect that if such proceedings are dismissed or the tax confirmed,

that petitioner will pay all costs and charges that may accrue in the prosecution of said proceeding.

- c. A person shall not be entitled under this section to a revision, refund or credit of a tax, interest or penalty that had been determined to be due pursuant to the provisions of subdivision thirteen (13) of this local law where said person had had a hearing or an opportunity for a hearing as provided in this section, or who has failed to avail himself or herself of the remedies provided therein. No refund or credit of a tax, interest or penalty paid after a determination by the County Chairman pursuant to subdivision eleven (11) of this local law shall be paid unless it is found that the determination was erroneous, illegal, unconstitutional or otherwise improper by the County Chairman after a hearing of his own motion, or in a proceeding under Article 78 of the Civil Practice Law and Rules pursuant to the provisions of said section. In that event, refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

14. Remedies Exclusive:

The remedies provided by subdivisions eleven (11) and thirteen (13) of this local law shall be exclusive remedies available to any person for the review of tax liability imposed by this local law. No determination, proposed determination of tax, nor determination on any application for refund shall be enjoined or reviewed except as hereinafter provided, by an action for declaratory judgment, an action for money had and received, or by any action or proceeding other than a proceeding in the nature of a certiorari proceeding under Article 78 of the Civil Practice Law and Rules. A taxpayer may, however, proceed by declaratory judgment if he or she institutes suit thirty (30) days after a deficiency assessment if made and pays the amount of the deficiency assessment to the County Chairman prior to the institution of such suit and posts a bond for costs as provided in subdivision eleven (11) of this local law.

15. Proceedings to Recover Tax:

- a. Whenever any operator, any officer of a corporate operator, any occupant, or other person fails to collect and pay over any tax and or penalty or interest as imposed by this local law, the County Attorney shall at the request of the County Chairman, bring or cause to be brought an action to enforce the payment of same on behalf of the County in any court of the State of New York or of any other state or of the United States. If however, the County Chairman in his discretion believes that any such operator, officer, occupant or other person is about to cease business, leave the state or remove or dissipate the assets out of which the tax or penalties might be satisfied, and than any such tax or penalty will not be paid when due, he or she may declare such tax or penalty to be immediately due and payable, and may issue a warrant immediately.
- b. As an additional or alternate remedy, the County Chairman may issue a warrant, directed to the Sheriff, commanding him to levy upon and sell the real and personal property of the operator, 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, and the cost of executing the warrant, and to return such warrant to the County Chairman and to pay to him the money collected by virtue thereof within sixty (60) days after the receipt of said warrant. Within five (5) days after the receipt of the warrant, the Sheriff shall file a copy of same with the County Clerk. Thereupon the Clerk shall enter in the judgment docket the name of the person stated in the warrant, 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 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. For services in executing the warrant he or she shall be entitled to the same fees, which he or she may collect in the same manner. In the discretion of the County Chairman, a warrant of like terms, force and effect may be issued and directed to any other officer or employee of the County Chairman. In the execution thereof, such officer or employee shall have all the powers conferred by law upon Sheriff's, 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 fully satisfied, the County Chairman 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 has recovered judgment thereof and execution thereon has been returned unsatisfied.

- c. Whenever an operator makes a sale, transfer or assignment of any part of or the whole of his or her hotel or motel; or his or her lease, license or other agreement or right to possess or operate such hotel or motel; or the equipment, furnishings, fixtures, supplies or stock of merchandise pertaining to the conduct or operation of said hotel or motel; other than in the ordinary and regular prosecution of business, the purchaser, transferee or assignee shall, at least ten (10) days before taking possession of the subject of said sale, transfer or assignment, or before receiving payment, notify the County Chairman by registered mail of the proposed sale and 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 local law, whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.
- d. Whenever the seller, transferor or assignor fails to give notice to the County Chairman as required above, or whenever the County Chairman or other fiscal officer informs the purchaser, transferee or assignee that a possible claim for such taxes exists, any sums of money, property, 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. The purchaser, transferee or assignee is then 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 subdivision, the purchaser,

transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of Article 6 of the Uniform Commercial Code, shall, as well as the seller, transferor or assignor 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. Such liability may be assessed and enforced in the same manner as the liability for tax under this local law.

16. General Powers of the County Chairman:

In addition to the powers granted to him or her in this local law, the County Chairman is, subject to the approval of the Cortland County Legislature, hereby authorized and empowered to:

- a. Make, adopt, and amend rules and regulations appropriate to the carrying out of this local law and the purposes thereof.
- b. Extend, for cause shown, the time of filing any return for a period not exceeding thirty (30) days; and for cause shown, to remit penalties but not interest; and to compromise disputed claims in connection with the taxes hereby imposed.
- c. Request information from the Tax Commission of the State of New York or the Treasury Department of the United States relative to any person; and to afford information to such Tax Commission or Treasury Department relative to any person, not withstanding any other provision of this local law to the contrary.
- d. Delegate functions hereunder to any employee(s) of County Administration.
- e. Prescribe methods for confirming the rents for occupancy and to confirm the accuracy of information on the taxable and nontaxable rents.
- f. Require any operator within Cortland County, if it is determined that adequate records are not being maintained, to keep detailed records of the nature and type of hotel or motel maintained; nature and type of service rendered; number of rooms available and occupied; daily leases; occupancy contracts or arrangements; rents received, charged and accrued; the names and addresses of the occupants; whether or not any occupancy is claimed to be subject to the tax imposed by this local law; and to furnish such information at the request of the County Chairman.

17. Administration of Oaths and Compelling Testimony:

- a. The Cortland County Chairman or employee(s) or agent(s) duly designated and authorized by him or her shall have the power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this local law. The County Chairman shall have the 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, in the enforcement of this local law, and to examine them in

relation thereto. The County Chairman shall also have the power to issue commissions for the examination of witnesses who are out of the state, unable to attend before him, or who are excused from attendance.

- b. A Supreme Court Justice, either in court or in chambers, shall have the power to summarily 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 Chairman under this local law.
- c. Any subpoenaed person who refuses to testify or produce books or records, or who testifies falsely in any material matter pending before the County Chairman under this local law shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand dollars (\$1,000.00), or imprisonment for not more than one (1) year, or both such fine and imprisonment.
- d. The officers who serve the summons or subpoena of the County Chairman and witness 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 provided otherwise. Such officers shall be the County Sheriff and his or her duly appointed deputies, or any officers or employees of the County Chairman's office designated by him to serve such process.

18. **Reference to Tax:**

Whenever reference is made to this tax in placards or advertisements, or in any other publications, such reference shall be substantially in the following form: "Tax on occupancy of hotel or motel rooms" or "occupancy tax", except that in any bill, receipt, statement or other evidence or memorandum of occupancy or rent charge issued or employed by the operator, the word "tax" shall suffice.

19. **Penalties and Interest:**

- a. Any person failing to file a return or to pay over any tax to the County Chairman within the time required by this local law shall be subject to a penalty of ten percent (10%) of the amount of tax due, plus interest at the rate of one and one-half percent (1½ %) of such tax for each 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 local law.
- b. The following persons 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 one thousand dollars (\$1,000.00), or imprisonment not exceeding one year, or both such fine and imprisonment:
 - i. any operator, occupant or any officer of a corporate operator or occupant failing to file a return required by this local law, or filing or causing to be filed, making or causing to be made, giving or causing to be given any

return, certificate, affidavit, representation, information, testimony or statement authorized or required by this local law, which is willfully false;

- ii. any operator or officer of a corporate operator willfully failing to file a bond as required to be filed pursuant to subdivision eleven (11) of this local law, failing to file a registration certificate and such data in connection therewith as the County Chairman may require, failing to display or surrender the certificate of authority as required by this local law, or assigning or transferring such certificate of authority;
 - iii. any operator or officer of a corporate operator willfully failing to charge separately from the rent the tax herein imposed, willfully failing to state such tax separately on any evidence of occupancy and on any bill, statement or receipt of rent issued or employed by the operator, or willfully failing or refusing to collect such tax from the occupant;
 - iv. any operator or officer of a corporate operator who refers or causes reference to be made to this tax in a form or manner other than that required by this local law; and
 - v. any operator failing to keep records required by subdivision eight (8) of Section 4 of this local law.
- c. Any operator or officer of a corporate operator who fails to file a certificate of registration as provided under this local law shall be subject to a penalty of \$_____ for each month of delinquency in filing such certificate. Officers of a corporate operator shall be personally liable for the tax collected or required to be collected by such corporation under this local law, and subject to the penalties herein above imposed.
- d. The certificate of the County Chairman to the effect that a tax has not been paid, that a return, bond or registration certificate has not been filed, or that information has not been supplied pursuant to the provisions of this local law, shall be presumptive evidence thereof.

20. **Returns to be Secret:**

- a. Except in accordance with the proper judicial order, or as otherwise provided by law, it shall be unlawful for the County Chairman or any officer or employee of the County Chairman's office to disclose in any manner the rents or other information relating to the business of a taxpayer contained in any return required under this local law, except to such persons and at such times as necessary to carry out this local law. The officers charged with custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the County Chairmen in an action or proceeding under the provisions of this local law, or on behalf of any party to any action or proceeding under the provisions of this local law when the returns or facts shown thereby are directly involved in such action

or proceeding. In any of these events the court may require the production of and may admit into evidence as much of said returns or the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to the taxpayer or his or her duly authorized representative of a certified copy of any return filed in connection with her or her tax, nor to prohibit the publication of statistics classified so as to prevent the identification of particular returns and the items thereof. In addition, nothing herein shall be construed to prohibit the inspection, by the County Attorney or other legal representative(s) of the Cortland County, of the return of the taxpayer who shall bring 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. Returns shall be preserved for three years and thereafter until the County Chairman permits them to be destroyed.

- b. Any violation of part (a) of this subdivision shall be punishable by a fine not exceeding one thousand dollars (\$1,000.00), or by imprisonment for a term not exceeding one (1) year, or by both such fine and imprisonment in the discretion of the Court. If the offender is an officer or employee of Cortland County, he or she shall be dismissed from office and be incapable of holding any public office for a period of five years thereafter.

21. Notices and Limitations of Time:

- a. Any notice authorized or required under the provisions of this local law may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him pursuant to the provisions of this local law, or in any application made by him or her. If no return has been filed nor application made, then notice may be given by mailing same to such address as may be obtainable. Mailing of such notice shall be presumptive evidence of the receipt of same by the person to whom it is addressed. Any period of time which is determined according to the provisions of this local law by the giving of notice shall commence to run from the date of mailing of such notice.
- b. The provisions of the Civil Practice Law and Rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any action or proceeding taken by the County to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this local law. However, 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 (3) years from the date of the filing of a return; provided, however, that where no return has been filed as provided by law the tax may be assessed and collected at any time.
- c. Where a taxpayer has consented in writing, before the expiration of the period prescribed herein for the assessment of an additional tax that such period be extended, the amount of such additional tax due may be determined at any time

within the extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

22. **Separability:**

If any provision of this local law or the application thereof to any person or circumstances is held to be invalid, the remainder of this local law and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 5. EFFECTIVE DATE:

This local law shall take effect upon filing in the Office of the Secretary of State as provided by Section 27 of the Municipal Home Rule Law.