

10/1/2019

**LOCAL LAW (INTRODUCTORY NO. 5 - 2019)
COUNTY OF LEWIS**

Introduced by Legislator Bryan Moser, Chairman of the Finance and Rules Committee.

**A LOCAL LAW IMPOSING A TAX ON OCCUPANTS OF HOTEL OR MOTEL
ROOMS AND OTHER SHORT TERM ROOM RENTALS IN LEWIS COUNTY**

BE IT ENACTED by the Board of Legislators of the County of Lewis as follows:

GENERAL INDEX:

- | | |
|---------|--|
| Section | 1. Short Title |
| | 2. Purpose |
| | 3. Definitions |
| | 4. Impositions of Tax |
| | 5. Transitional Provisions |
| | 6. Exempt Organizations |
| | 7. Territorial Limitations |
| | 8. Registration |
| | 9. Administration and collections |
| | 10. Records to be kept |
| | 11. Returns |
| | 12. Payment of Taxes |
| | 13. Determination of Tax |
| | 14. Refunds |
| | 15. Reserves |
| | 16. Remedies |
| | 17. Proceedings to Recover Tax |
| | 18. General Powers to the County Treasurer |
| | 19. Administration of Oaths |
| | 20. Reference to Tax |
| | 21. Penalties and Interest |
| | 22. Returns to be Confidential |
| | 23. Notices and Limitations of Time |
| | 24. Separability |
| | 25. Effective Date |

SECTION 1. SHORT TITLE:

This Local Law shall be known as the **“LEWIS COUNTY ROOM OCCUPANCY TAX LAW”**.

SECTION 2. PURPOSE AND INTENT:

(a) The purpose of this Local Law is to enhance the general economy and quality of life in Lewis County, and to impose a tax on occupants of guest rooms in the County, pursuant to Section 1202-v of the Tax law. Since 2004 when the hotel and motel occupancy tax local law was established in Lewis County, numerous changes in the manner in which the guest room occupancy industry conducts business necessitates reconsideration and changes to the local law. This local law seeks to clarify previously enacted definitions of those establishments and entities providing lodging and who are therefore required to remit the Room Occupancy Tax in Lewis County.

(b) The adoption of this local law is intended to rescind and replace Lewis County Local Law No. 8 – 2004 and any and all laws and amendments thereafter adopted by the Board of Legislators relating to the Hotel and Motel Room Occupancy Tax in Lewis County.

SECTION 3. 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 the court or otherwise, and any combinations of the foregoing.

(b) **Operator:** Any person operating a facility providing lodging on an overnight basis, including but not limited to a hotel, motel, tourist home, inn, cottage(s), condominium, Bed & Breakfast, short term rental of residences and/or camps in the County of Lewis, including, but not limited to the owner or proprietor of such premises, its agent, a lessee, sub-lessee, mortgagee in possession, licensee or any other person or entity otherwise operating or booking rooms or rentals of such hotel or motel as hereinafter defined.

(c) **Hotel or Motel:** Any facility providing lodging on an overnight basis, including but not limited to a hotel, motel, tourist home, inn, cottage(s), condominium, Bed & Breakfast, short term rental of residences and/or camps in the County of Lewis. The term “hotel or motel” shall also include an apartment, guest house, hostel, boarding house, motor court or club which has available for overnight lodging occupancy for rent, whether or not meals are served, or linens provided.

(d) **“Short term rental”:** Shall mean and include those units, residences and/or camps rented or leased to occupants for overnight lodging – other than permanent residents – including furnished apartments or living units in or consisting of a dwelling place ordinarily occupied for residential purposes, directly by the owner or through an owner’s agent or hosting platform, to include cabins, camps, camper or motor home at private campgrounds or RV Parks, whether or not meals are served, or linens provided. The provisions of this section relating to campgrounds shall only apply to those leases and rentals in which the campground provides overnight shelter or lodging, and shall not apply to the provision of services by a campground when the customer provides his or her own shelter or lodging such as a motorhome, RV, camper or tent.

(e) **Occupancy:** The use or possession, or the right to the use or possession, of any room in a hotel, motel, tourist home, inn, cottages, condominium, Bed & Breakfast, and short term rentals in Lewis County.

(f) **Occupant:** A person who, for a consideration, uses, possesses, or has the right to use or possess, any room for overnight lodging in a hotel, motel, tourist home, inn, cottages, condominium, Bed & Breakfast, and short term rental in the County of Lewis under any lease,

concession, permit, right of access, on line application, license to use or other agreement, or otherwise.

(g) **Permanent Resident:** Any occupant of any room or rooms in a hotel, motel, tourist home, inn, cottages, condominium, Bed & Breakfast, and short term rental in the County of Lewis for at least thirty (30) consecutive days shall be considered a permanent resident with regard to the period of such occupancy.

(h) **Rent:** The consideration received for occupancy valued in money, whether received in money or otherwise.

(i) **Room:** Any room or rooms of any kind in any part or portion of a hotel or motel, tourist home, inn, cottages, condominium, Bed & Breakfast, and short term rental which is available for or let out for lodging or any purpose other than a place of assembly.

(j) **Return:** Any return filed or required to be filed as herein provided.

(k) **Online room platforms and service agencies/businesses:** Companies and businesses which provide connections between guests and hosts for room accommodations through the internet/online services.

(l) **County Treasurer:** The Treasurer of Lewis County.

SECTION 4. IMPOSITION OF TAX:

(a) In addition to any other tax presently authorized and imposed (pursuant to Article 29 of the Tax Law), there is hereby imposed and there shall be paid a tax of FIVE (5%) percent of the per diem rental rate for each room occupied by a person in a hotel, motel, tourist home, inn, cottages, condominium, Bed & Breakfast, and short term rental in this County, except that the tax shall not be imposed upon a permanent resident.

(b) The tax imposed by Section 4(a) shall be paid by the occupant who is liable for the payment of rent for any such room and shall be paid to the operator entitled to be paid, or the operator's collection agent(s) for the room for and on account of the County of Lewis.

(c) The operator entitled to be paid rent in accordance with Section 4(b) shall be liable for the collection and payment of the tax imposed pursuant to Section 4(a); and such operator shall have the same right in respect to collecting the tax from the occupant, or in respect to nonpayment of the tax by the occupant, as if the tax were a part of the rent and due and payable at the same time as the rent; provided however, that the County Treasurer shall be joined as a party in any action or proceeding brought to collect the tax by said operator.

SECTION 5. TRANSITIONAL PROVISIONS:

The tax imposed by this Local Law shall be paid upon any occupancy on and after the effective date of this Local Law, although such occupancy is pursuant to a prior contract, lease or other arrangement. Where rent is paid on a weekly, monthly or other term basis, the rent shall be subject to the tax imposed by this Local Law to the extent that it is not in violation of this law.

SECTION 6. EXEMPT ORGANIZATIONS:

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 Tax law:

(a) 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 political subdivision of the state;

(b) The United State of America, insofar as it is immune from taxation;

(c) Any corporation, association, 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 not substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this subdivision 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 subdivision;

(d) Where any organization described in paragraph (3) of this subdivision carries on its activities in furtherance of the purposes for which it was organized, in premises in which, as part of said activities, it operates a hotel, occupancy of rooms in the premises and rents therefrom received by such corporation or association shall not be subject to tax hereunder.

SECTION 7. TERRITORIAL LIMITATIONS:

The tax imposed by this Local Law shall apply only within the territorial limits of the County of Lewis.

SECTION 8. REGISTRATION:

(a) Every person required to collect any tax imposed by this Local Law presently operating, commencing business or opening a new place of business, and every person who takes possession of or pays for business assets under circumstances requiring notification by such person to the County Treasurer pursuant to subdivision (d) of Section 18 of this Local Law shall file with the County Treasurer a certificate of registration, in a form prescribed by it, at least twenty (20) days prior to commencing business or opening a new place of business or such purchasing or taking of possessing or payment, whichever comes first.

(b) The certificate of registration shall contain information with respect to the notice requirements of purchaser transferee or assignee and his liability for the payment of taxes pursuant to subdivision (d) of Section 18 of this local law. The County Treasurer shall within five (5) days after such registration issue, without charge, to each registrant a certificate of authority empowering the Treasurer to collect the tax and a duplicate thereof for each additional place of business of such registrant.

(c) The County Treasurer shall issue within five (5) business days of its receipt the certificate of authority, general information about the tax imposed under this Local Law, including information on records to be kept, returns and payments, notification requirements and forms. Each certificate or duplicate shall state the place of business to which it is applicable. Such certificates of authority shall be prominently displayed in the places of business of the registrant. Such certificates shall be non-assignable and non-transferable and shall be surrendered to the County Treasurer immediately upon the registrant's ceasing to do business at the place named or in the event that such business never commenced.

SECTION 9. ADMINISTRATION AND COLLECTION:

(a) The tax imposed by this local law shall be administered and collected by the County Treasurer, or such other employees of the County as the County Treasurer may designate, by such means and in such manner as are other taxes which are now collected and administered or as otherwise are provided by this local law;

(b) Every person or entity required to collect the tax shall collect the tax from the occupant when collecting the rent to which it applies. If the occupant is given any receipt or other statement or memorandum of rent paid or payable, the tax shall be stated, charged and shown separately on the first of such documents given to him/her. The tax shall be paid to the person or entity required to collect it as trustee for and on account of the County;

(c) The County Treasurer shall by regulation prescribe a method or methods or a schedule or schedules of the amounts to be collected from occupants in respect to rent upon which a tax is imposed by this Local Law so that the aggregate collection of taxes by a person required to collect tax shall, as far as practicable, equal to five (5%) percent of the total rents of such person upon whom a tax is imposed by this Local Law;

(d) 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 for occupancy of hotel, motel, tourist home, inn, cottages, condominium, Bed & Breakfast, and short term rental in the County of Lewis are subject to tax until the contrary is established, and the burden of proving that any rent is not taxable shall be upon the person required to collect tax or the occupant. Unless an occupant, prior to taking possession, furnishes to the operator a statement which the County Treasurer may require demonstrating that the occupant is an exempt organization described in Section 6 of this Local Law, the sale shall be deemed a taxable transaction. Where such a statement has been furnished to the operator, the burden of proving that the rent is not taxable hereunder shall be solely upon the occupant. The operator shall not be required to collect tax from occupants who furnish an exempt organization statement in proper form;

(e) The County Treasurer may provide, by regulation, for the exclusion from taxable rents, rent which has been ascertained to be uncollectible or, in case the tax has been paid upon such rent, for refund of or credit for the tax so paid. Where the County Treasurer provides for a credit for the tax so paid, the Treasurer shall require an application for credit to be filed, but the Treasurer may also allow the applicant to immediately take the credit on the return which is due coincident with or immediately subsequent to the time the applicant files his/her application for credit. However, the taking of the credit on the return shall be deemed to be part of the application for credit and shall be subject to the provisions in respect to applications for credit in Section 14 of the Local Law.

SECTION 10. RECORDS TO BE KEPT:

Every operator shall keep records of every occupancy and of all rent paid, charged or due thereon and of the tax payable thereon, in such form as the County Treasurer may by regulation require. Such records shall include a true copy of each receipt or statement separately stating the tax charged. Such records shall be available for inspection, examination and audit at any time upon demand by the County or its duly authorized agent or employees, and shall be preserved for a period of three (3) years, except that period or may require that they be kept longer.

SECTION 11. RETURNS:

(a) Every operator required to register pursuant to Section 8 hereof shall file a return quarterly with the County Treasurer. The return shall show all rents received or charged and the amount of tax thereon. The returns to be filed quarterly shall be filed for the quarterly periods ending on the last day of February, May, August and November of each year, and shall be filed within twenty (20) days after the end of the quarterly period covered thereby. The County Treasurer may permit or require returns to be made by other periods and upon such dates they may specify. If the County Treasurer deems it necessary in order to insure the payment of the tax imposed by this Local Law, they 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 she/he may specify;

(b) The form of returns shall be prescribed by the County Treasurer and shall contain such information as he or she may deem necessary for the proper administration of this Local Law. The County Treasurer 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 Treasurer shall take the necessary steps to enforce the filing of such a return or of a corrected return.

SECTION 12. PAYMENT OF TAX:

(a) Every operator required to file a return under the preceding section shall, at the time of filing such return, pay to the County Treasurer five (5%) percent of the total of all rents subject to tax pursuant to this Local Law, as well as all other moneys collected by the operator acting or purporting to act under the provisions of this Local Law;

(b) The amount payable for the period for which a return is filed shall be due and payable to the County Treasurer on the date required for filing the return, whether or not the return is filed, or whether or not the return filed correctly shows the rents or the taxes due thereon;

(c) If deemed necessary to protect the revenues to be obtained under this Local Law, the County Treasurer may, in his or her discretion, require any operator required to collect the tax imposed by this Local Law to file with the County Treasurer's Office 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 amount as the County Treasurer may fix, to secure the payment of any tax or penalties or interest due or which may become due from such operator. In such event, the County Treasurer shall give written notice to such operator to that effect specifying the amount of the bond required. The operator shall file such bond within five (5) days after the giving of such notice unless within such five (5) days after the giving of such notice unless within such five days the operator shall request in writing a hearing before the County Treasurer. At such hearing, the operator may present such information and documentation as he/she deems necessary. The County Treasurer may rely upon any information in his or her possession and/or presented by the operator or occupant to determine the necessity, propriety and amount of the bond. The determination by the County Treasurer shall be final and the operator shall comply therewith within fifteen (15) days of the giving of notice of the determination. In lieu of any such bond, the operator may deposit with the County Treasurer's Office securities approved by the County Treasurer or cash in such amount as the Treasurer may prescribe, and

which shall be kept in the custody of the County Treasurer, who may at any time without notice of the depositor, apply them to any tax and/or interest or penalties as they are then or may become due and payable, and for that purpose the securities may be sold by him or her at public or private sale without notice to the depositor thereof.

SECTION 13. DETERMINATION OF TAX:

(a) 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 Treasurer from such information as may be obtainable and, if necessary, the tax may be estimated on the basis of external indices such as number of rooms, location, scale of rents, comparable rents, type 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 determinations shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety (90) days after giving of notice of such determination, shall apply to the County Treasurer for a hearing, or unless the County Treasurer, on his or her own motion, shall re-determine the same;

(b) Whenever such tax is estimated as provided for in this section, such notice shall contain a statement in bold face type conspicuously placed on such notice advising the person; that the amount of tax was estimated, that the tax may be challenged through a hearing process, and that the petition for such challenge must be filed with the County Treasurer within thirty (30) days;

(c) After such hearing, the County Treasurer shall give notice promptly, by registered or certified mail, of his or her determination to the applicant. The determination of the County Treasurer 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 four (4) months after the giving of the notice of such determination. A proceeding under Article 78 of the Civil Practice Law and Rules shall not be instituted unless the amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the County Treasurer, and there shall be filed with the County Treasurer and undertaking, 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 amount as a Justice of the Supreme Court shall approve to the effect that is such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of the proceeding or at the option of the applicant, such undertaking filed with the County Treasurer may be in a sum sufficient to cover taxes, penalties and interest thereon stated in such determination plus the costs and charges with may accrue against it in the prosecution of the proceeding, in which event the applicant shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

SECTION 14. REFUNDS:

(a) In the manner provided in this section, the County Treasurer shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the County Treasurer for such refund shall be made within one (1) year from the payment thereof. Whenever a refund is made by the County Treasurer, he or she shall state his or her reason therefore in writing. Such application may be made by the occupant,

operator or other person or entity who has actually paid the tax. No actual refund of moneys shall be made to any operator, of tax which has been collected from an occupant, until the alleged taxpayer shall first establish to the satisfaction of the County Treasurer under such regulations as the County Treasurer may prescribe, that he or she has repaid to the occupant the amount for which the application for refund is made. The County Treasurer may in lieu of any refund required to be made. The County Treasurer may in lieu of any refund required to be made, allow credit therefor 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 Treasurer may receive evidence with respect thereto. After making his or her determination, the County Treasurer shall give notice thereof to the applicant who shall be entitled to review such determination by a proceeding pursuant to Article 78 of the Civil Practice Law and Rules, provided such proceeding is instituted within four (4) months after the giving of the notice of such determination, and provided that 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 Treasurer in such amount and with such sureties as a Justice of the Supreme Court shall approve to the effect that if such proceedings be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding;

(c) A person shall be entitled to a revision, refund or credit under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of Section 13 of this Local Law where he or she has had hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the County Treasurer made pursuant to Section 13 of this Local Law unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper by the County Treasurer after a hearing, or of his or her own motion or in a proceeding under Article 78 of the Civil Practice Law and Rules, pursuant to the provisions of said section, in which event, refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

SECTION 15. RESERVES:

In cases where the occupant or operator has applied for a refund and has instituted a proceeding under Article 78 of the Civil Practice Law and Rules to review a determination adverse to him or her on his or her application for refund, the County Treasurer shall set up appropriate reserves to meet any decision adverse to the County.

SECTION 16. REMEDIES EXCLUSIVE:

The remedies provided by Sections 13 and 14 of this Local Law shall be exclusive remedies available to any person for the review of the tax liability imposed by this Local Law; and no determination or proposed determination of tax, or determination on any application for refund shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received, or by any action or proceeding other than a proceeding under Article 78 of the Civil Practice Law and Rules.

SECTION 17. PROCEEDING TO RECOVER TAX:

(a) Whenever any operator required to collect a tax shall fail to collect and pay over any tax, penalty or interest, or whenever any occupant shall fail to pay any tax, penalty or interest imposed by this Local Law as herein provided, the County Attorney shall, upon the request of the County Treasurer, bring or cause to be brought an action to enforce the payment of the same on behalf of the County of Lewis in any court of competent jurisdiction in the State of New York, or of any other state or of the United States;

(b) If, however, the County Treasurer in his/her 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 that any such tax or penalty will not be paid when due, he/she may declare such tax or penalty to be immediately due and payable and may issue a warrant immediately;

(c) As an additional or alternate remedy, the County 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 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 Treasurer and to pay to him or her the money collected by virtue thereof within sixty (60) days after the receipt of such warrant. The Sheriff shall within five (5) 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 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 he shall be entitled to the same fees, with he may collect in the same manner. In the discretion of the County Treasurer, a warrant of like terms, force and effect may be issued and directed to any office or employee of the County Treasurer and in the execution thereof such officer or employee shall have all the powers conferred by law upon Sheriffs, 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 County 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;

(d) Whenever an operator shall make a sale, transfer or assignment in bulk of any part or the whole of his/her hotel or motel assets, otherwise than in the ordinary course of business, the purchaser, transferee or assignee shall, at least ten days before taking possession of the subject of said sale, transfer or assignment, or paying therefor, notify the County Treasurer by registered mail 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 the owes any tax pursuant to this Local Law, 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;

(e) Whenever the purchaser, transferee or assignee shall fail to give notice to the County Treasurer as required by the preceding paragraph, or whenever the County 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 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 be personally liable for the payment of 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 Local Law.

SECTION 18. GENERAL POWERS OF THE COUNTY TREASURER:

In addition to the powers granted to the County Treasurer in this Local Law, he/she is hereby authorized and empowered:

- (1) To make, adopt and amend rules and regulations appropriate to the carrying out of this Local Law and purposes thereof;
- (2) To 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 computed at the rate of six (6) percent per annum;
- (3) To 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 such treasury department relative to any person, any other provision of this Local Law to the contrary notwithstanding;
- (4) To delegate his or her functions hereunder to a Deputy County Treasurer or any employee or employees of the office of the County Treasurer;
- (5) To prescribe methods for determining the amount of rents for determining which of them are taxable on non-taxable;
- (6) To require any operator to keep detailed records of all rents received, charged and accrued, including those claimed to be non-taxable, and also the nature, type, value and amount of all occupancies, names and addresses of occupants, and other facts relevant in determining the amount of tax due, and to furnish such information to the County Treasurer;
- (7) To assess, determine, revise and readjust the taxes imposed under this Local Law.

SECTION 19. ADMINISTRATION OF OATHS AND COMPELLING TESTIMONY:

(a) The County Treasurer, or his/her employees or agents duly designated and authorized by him/her, shall have 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 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/her duties hereunder and of the enforcement of this Local Law, and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before him/her or excused from attendance.

(b) A justice of the Supreme Court either in court or in 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 Local Law.

(c) Any person who shall refuse to testify or to produce books or records or who shall testify falsely in any material matter pending before the County Treasurer under the 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 Treasurer and the 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/her duly appointed deputies or any officers or employees of another county department designated to serve such process.

SECTION 20. REFERENCE TO TAX:

Wherever reference is made in placards or advertisements or in any other publications to this tax, such reference shall be substantially in the following form: "Tax on occupancy of Hotel, Motel, tourist home, inn, cottages, condominium, vacation rentals, Bed & Breakfast, and short term or lodging rental in the County of Lewis," except that in any bill, receipt, statement or other evidence or memorandum of occupancy or rent charge issued or employed by the operator, the words "occupancy tax" will suffice.

SECTION 21. PENALTIES AND INTEREST:

(a) Any operator failing to file a return or to pay or pay over any tax to the County Treasurer within the time required by this Local Law shall be subject to a penalty of five (5) percent of the amount of tax due if such failure is for not more than one (1) month, with an additional one (1) percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five (25) percent in the aggregate, plus interest at the rate of one (1) percent of such tax for each month of delay after such return was required to be filed or such tax became due.

(b) If the County Treasurer determines that such failure or delay was due to reasonable cause and not due to willful neglect, he or she shall remit all of such penalty. The County Treasurer shall promulgate rules and regulations as to what constitutes reasonable cause.

(c) If the failure to file a return or to pay over any tax to the County Treasurer within the time required by this Local Law is due to fraud, there shall be added to the tax a penalty of fifty (50) percent of the amount of the tax due [in lieu of the penalty provided for in paragraph (a)], plus interest at the rate of one (1) percent of such tax for each month of delay after such return was required to be filed or such tax became due. Such penalties and interest shall be paid and imposed of in the same manner as other revenues from this Local Law. Unpaid penalties and interest may be determined, assessed, collected and enforced in the same manner as the tax imposed by this Local Law.

(d) Any operator failing to file a return or report required by this Local Law or filing, or causing to be filed, or making or causing to be made, or giving or causing to be given any return, certificate, affidavit, representation, information, testimony or statement required or authorized by this Local Law, which is willfully false, or willfully failing to file a bond required by this Local Law or willfully failing to comply with the provisions of Section 12(c) of this Local Law, or failing

to file a registration certificate and such data in connection therewith as the County Treasurer by regulation or otherwise may require, or to display or surrender a certificate of authority as required by this Local Law, or assigning or transferring such certificate of authority, or willfully failing to charge separately the tax herein imposed or to state such tax separately on any bill, statement, memorandum or receipt issued or employed by him upon which the tax is required to be stated separately as provided in section 10, or willfully failing to collect the tax from a customer, or who shall refer or cause reference to be made to this tax in a form or manner other than that required by this Local Law, or failing to keep any records required by this Local Law, shall, in addition to any other 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 for not more than one (1) year, or both such fine and imprisonment. The penalties herein shall not apply to a failure to surrender a certificate of authority which is required to be surrendered where business never commenced.

(e) The certificate of the County Treasurer to the effect that a tax has not been paid, that a return, bond or registration has not been filed, or that information has not been supplied pursuant to the provisions of this Local Law, shall be presumptive evidence thereof.

(f) The penalties provided for in this section shall not preclude prosecution pursuant to the penal law with respect to the willful failure of any person to pay over to the county any tax imposed by this Local Law, whenever such person has been required to collect and has collected any such sales tax.

SECTION 22. RETURNS TO BE CONFIDENTIAL:

(a) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the County Treasurer, or any officer or employee of the department, or any person who in any manner may acquire knowledge of the contents of a return or report filed with the County Treasurer pursuant to this Local Law, to divulge or make known in any manner any particulars set forth or disclosed in any such return or report. The County Treasurer shall not be required to produce any returns or reports, or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the County Treasurer in an action or proceeding under the provisions of the tax law or in any other action or proceeding involving the collection of a tax due under this Local Law to which the County or the County Treasurer is a party or a claimant, or on behalf of any party to any action, proceeding or hearing under the provisions of this Local Law, when the returns, reports or facts shown thereby are directly involved in such action, proceeding or hearing, in any of which events the court, or in the case of a hearing, the County Treasurer may require the production of, and may admit into evidence, so much of said returns, reports or of the facts shown thereby, as are pertinent to the action, proceeding or hearing and no more. The County Treasurer may, nevertheless, publish a copy or a summary of any decision rendered after a hearing required by this Local Law. Nothing herein shall be construed to prohibit the delivery to a person who has filed a return or report, or to his duly authorized representative of a certified copy of any return or report filed in connection with his/her tax. Nor shall anything herein be construed to prohibit the delivery to a person required to collect the tax under this Local Law or a purchaser, transferee or assignee personally liable under the provisions of Section 18(d) of this Local Law for the tax due from the seller, transferor or assignor, or any return or report filed under this Local Law in connection with such tax, provided, however, that there may be delivered only so much of said return, report or of the facts shown thereby as are pertinent to a determination of the taxes due or liability owed by such person or purchaser, transferee or assignee

and no more, or to prohibit the publication of statistics so classified as to prevent the identification of particular returns or reports and the items thereof, or the inspection by the County Attorney or other legal representatives of the County of the return or report of any person required to collect or pay the tax who shall bring action to review the tax based thereon, or against whom an action or proceeding under this Local Law has been recommended by the County Treasurer or the County Attorney, or has been instituted.

(b) Returns filed under this Local Law shall be preserved for three (3) years and thereafter until the County Treasurer orders them to be destroyed.

(c) Any violation of subdivision (a) of this section shall be punishable by a fine not exceeding one thousand dollars (\$1,000.00), or by imprisonment not exceeding one (1) year, or both, in the discretion of the court, and if the offender be an officer or employee of the county he/she shall be appropriately disciplined, and may be dismissed from office and be prohibited from holding any public office for a period of five (5) years thereafter.

SECTION 23. NOTICES AND LIMITATIONS OF TIME:

(a) (1) 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/her pursuant to the provisions of this Local Law, or in any application made by him/her, or, if no return has been filed or application made, then to such address as may be obtainable. A notice of determination shall be mailed promptly by registered or certified mail. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom 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.

(2) If any return, claim, statement, notice, application, or other required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this Local Law is, after such period or such date, delivered by United States mail to the County Treasurer or his/her office, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid properly addressed to the County Treasurer or his/her office. If any document is sent by United States registered mail such registration shall be prima facie evidence that such document was delivered to the County Treasurer or his/her office. Certified mail may be used in lieu of registered mail under this section. This subdivision shall apply in the case of postmarks not made by the United States Post Office only if and to the extent provided by regulation of the County Treasurer.

(3) When the last day prescribed under the authority of this Local Law (including any extension of time) for performing any act falls on Saturday, Sunday or a legal holiday in the State of New York, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal holiday.

(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 proceeding or action 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 years from the date of filing of a return; provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(c) Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing before the expiration of the extended period.

SECTION 24. SEPARABILITY:

If any provision of this Local Law, or the application thereof to any person, entity or circumstance is held invalid, the remainder of this Local Law, and the application of such provisions to other persons, entities or circumstances shall not be affected thereby.

SECTION 25. EFFECTIVE DATE:

This local law shall take effect upon its adoption and filing with the Office of the Secretary of State.