

CHAPTER 114

AN ACT imposing a State hotel and motel occupancy fee and authorizing imposition of a municipal hotel and motel occupancy tax by certain municipalities, supplementing Titles 54 and 40 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.54:32D-1 State hotel and motel occupancy fee.

1. a. In addition to any other tax, assessment or use fee authorized by law, there is imposed and shall be paid a hotel and motel occupancy fee of 7% for occupancies on and after August 1, 2003 but before July 1, 2004, and of 5% for occupancies on and after July 1, 2004, upon the rent for every occupancy of a room or rooms in a hotel subject to taxation pursuant to subsection (d) of section 3 of P.L. 1966, c.30 (C.54:32B-3), which every person required to collect tax shall collect from the customer when collecting the rent to which it applies; provided however, that on and after the tenth day following a certification by the Director of the Division of Budget and Accounting in the Department of the Treasury pursuant to subsection d. of section 2 of P.L.2003, c.114 (C.54:32D-2), no such fee shall be paid or collected; and provided further that:

(1) the combined rates of the fee imposed under this section, plus the tax imposed under the "Sales and Use Tax Act", P.L.1966, c.30 (C.54:32B-1 et seq.), plus any tax imposed under P.L.1947, c.71 (C.40:48-8.15 et seq.), shall not exceed a total rate of 13%, and to the extent that the total combined rate of taxation for the listed fees and taxes would exceed 13%, the fee imposed under this section shall be reduced so that the total combined rate equals 13%;

(2) the combined rates of the fee imposed under this section, plus the tax imposed under the "Sales and Use Tax Act", P.L.1966, c.30 (C.54:32B-1 et seq.), plus any tax and assessment imposed under section 4 of P.L.1992, c.165 (C.40:54D-4), shall not exceed a total rate of 13%, and to the extent that the total combined rate of taxation for the listed fees and taxes would exceed 13%, the fee imposed under this section shall be reduced so that the total combined rate equals 13%; and

(3) the fee imposed under this section shall be at the rate of 1% in a city in which the tax authorized under P.L.1981, c. 77 (C.40:48E-1 et seq.) is imposed.

b. The hotel and motel occupancy fee imposed by subsection a. of this section shall not be imposed on the rent for an occupancy if the purchaser, user or consumer is an entity exempt from the tax imposed on an occupancy under the "Sales and Use Tax Act" pursuant to subsection (a) of section 9 of P.L.1966, c.30 (C.54:32B-9).

c. Terms used in this section shall have the meaning given those terms pursuant to section 2 of P.L.1966, c.30 (C.54:32B-2).

C.54:32D-2 Collection, administration of fee.

2. a. The Director of the Division of Taxation shall collect and administer the fee imposed pursuant to section 1 of P.L.2003, c.114 (C.54:32D-1). The fees collected shall be deposited to the General Fund, and shall be allocated as follows:

(1) of the fees collected for occupancies during State Fiscal Year 2004: \$16,000,000 shall be allocated for appropriation to the New Jersey State Council on the Arts for cultural projects; \$2,700,000 shall be allocated for appropriation to the New Jersey Historical Commission for the purposes of subsection a. of section 3 of P.L.1999, c.131 (C.18A:73-22.3); \$9,000,000 shall be allocated for appropriation to the New Jersey Commerce and Economic Growth Commission for tourism advertising and promotion; and \$500,000 shall be allocated for appropriation to the New Jersey Cultural Trust; and

(2) of the fees collected for occupancies during State Fiscal Year 2005 and thereafter: 22.68 percent shall be annually allocated for appropriation to the New Jersey State Council on the Arts for cultural projects, provided that the amount allocated shall not be less than \$22,680,000; 3.84 percent shall be allocated for appropriation to the New Jersey Historical Commission for the purposes of subsection a. of section 3 of P.L.1999, c.131 (C.18A:73-22.3), provided that the amount allocated shall not be less than \$3,840,000; 12.76 percent shall be allocated for appropriation to the New Jersey Commerce and Economic Growth Commission for tourism advertising and promotion, provided that the amount allocated shall not be less than \$12,760,000; and .72 percent shall be allocated for appropriation to the New Jersey Cultural

Trust, provided that the amount allocated shall not be less than \$720,000.

b. In carrying out the provisions of section 1 of P.L.2003, c.114 (C.54:32D-1) and this section, the director shall have all of the powers and authority granted in P.L.1966, c.30 (C.54:32B-1 et seq.). The tax shall be filed and paid in a manner prescribed by the Director of the Division of Taxation. The director shall promulgate such rules and regulations as the director determines are necessary to effectuate the provisions of section 1 of P.L.2003, c.114 (C.54:32D-1) and this section.

c. The annual appropriations act for each State Fiscal Year, commencing with fiscal year 2005, shall appropriate and distribute during that fiscal year amounts not less than the amounts otherwise specified for State Fiscal Year 2004 in paragraph (1) of subsection a. of this section for the purposes specified in paragraph (1) of subsection a. of this section.

d. If the provisions of subsection c. of this section are not met on the effective date of an annual appropriations act for the State fiscal year, or if an amendment or supplement to an annual appropriations act for the State fiscal year should violate the provisions of subsection c. of this section, the Director of the Division of Budget and Accounting in the Department of the Treasury shall, not later than five days after the enactment of the annual appropriations act, or an amendment or supplement thereto, that violates the provisions of subsection c. of this section, certify to the Director of the Division of Taxation that the requirements of subsection c. of this section have not been met.

e. The Director of the Division of Taxation shall, no later than five days after certification by the Director of the Division of Budget and Accounting in the Department of the Treasury pursuant to subsection d. of this section that the provisions of subsection c. of this section have not been met or have been violated by an amendment or supplement to the annual appropriations act, notify each person required to collect tax of the certification and that the fee imposed pursuant to section 1 of P.L.2003, c.114 (C.54:32D-1) shall no longer be paid or collected.

C.40:48F-1 Hotel, motel tax authorized, certain.

3. The governing body of a municipality, other than a city of the first class or a city of the second class in which the tax authorized under P.L.1981, c.77 (C.40:48E-1 et seq.) is imposed, a city of the fourth class in which the tax authorized under P.L.1947, c.71 (C.40:48-8.15 et seq.) is imposed, or a municipality in which the tax and assessment authorized under section 4 of P.L.1992, c.165 (C.40:54D-4) is imposed, may adopt an ordinance imposing a tax, at a uniform percentage rate not to exceed 1% on charges of rent for every occupancy on or after July 1, 2003 but before July 1, 2004, and not to exceed 3% on charges of rent for every occupancy on or after July 1, 2004, of a room or rooms in a hotel subject to taxation pursuant to subsection (d) of section 3 of P.L.1966, c.30 (C.54:32B-3).

A tax imposed under this section shall be in addition to any other tax or fee imposed pursuant to statute or local ordinance or resolution by any governmental entity upon the occupancy of a hotel room.

A copy of an ordinance adopted pursuant to this section shall be transmitted upon adoption or amendment to the State Treasurer. An ordinance so adopted or any amendment thereto shall provide that the tax provisions of the ordinance or any amendment to the tax provisions shall take effect on the first day of the first full month occurring 30 days after the date of transmittal to the State Treasurer for ordinances adopted in calendar year 2003 and on the first day of the first full month occurring 90 days after the date of transmittal to the State Treasurer for ordinances adopted in calendar year 2004 and thereafter.

C.40:48F-2 Provisions contained in ordinance.

4. An ordinance imposing a tax adopted pursuant to the provisions of section 3 of P.L.2003, c.114 (C.40:48F-1) shall contain the following provisions:

- a. All taxes imposed by the ordinance shall be paid by the purchaser;
- b. A vendor shall not assume or absorb any tax imposed by the ordinance;
- c. A vendor shall not in any manner advertise or hold out to any person or to the public in general, in any manner, directly or indirectly, that the tax will be assumed or absorbed by the vendor, that the tax will not be separately charged and stated to the customer, or that the tax will be refunded to the customer.

d. Each assumption or absorption by a vendor of the tax shall be deemed a separate offense and each representation or advertisement by a vendor for each day the representation or advertisement continues shall be deemed a separate offense; and

e. Penalties as fixed in the ordinance, for violation of the foregoing provisions.

C.40:48F-3 Collection of tax.

5. a. A tax imposed pursuant to a municipal ordinance adopted under the provisions of section 3 of P.L.2003, c.114 (C.40:48F-1) shall be collected on behalf of the municipality by the person collecting the rent from the hotel customer.

b. Each person required to collect a tax imposed by the ordinance shall be personally liable for the tax imposed, collected or required to be collected hereunder. Any such person shall have the same right in respect to collecting the tax from a customer as if the tax were a part of the rent and payable at the same time; provided, however, that the chief fiscal officer of the municipality shall be joined as a party in any action or proceeding brought to collect the tax.

C.40:48F-4 Forwarding of tax collected.

6. a. A person required to collect a tax imposed pursuant to the provisions of section 3 of P.L.2003, c.114 (C.40:48F-1) shall, on or before the dates required pursuant to section 17 of P.L.1966, c.30 (C.54:32B-17), forward to the Director of the Division of Taxation in the Department of the Treasury the tax collected in the preceding month and make and file a return for the preceding month with the director on any form and containing any information as the director shall prescribe as necessary to determine liability for the tax in the preceding month during which the person was required to collect the tax.

b. The director may permit or require returns to be made covering other periods and upon any dates as the director may specify. In addition, the director may require payments of tax liability at any intervals and based upon any classifications as the director may designate. In prescribing any other periods to be covered by the return or intervals or classifications for payment of tax liability, the director may take into account the dollar volume of tax involved as well as the need for ensuring the prompt and orderly collection of the tax imposed.

c. The director may require amended returns to be filed within 20 days after notice and to contain the information specified in the notice.

C.40:48F-5 Collection, administration, distribution of tax collected.

7. a. The Director of the Division of Taxation shall collect and administer any tax imposed pursuant to the provisions of section 3 of P.L.2003, c.114 (C.40:48F-1). In carrying out the provisions of this section, the director shall have all the powers granted in P.L.1966, c.30 (C.54:32B-1 et seq.).

b. The director shall determine and certify to the State Treasurer on a quarterly or more frequent basis, as prescribed by the State Treasurer, the amount of revenues collected in each municipality pursuant to section 3 of P.L.2003, c.114 (C.40:48F-1).

c. The State Treasurer, upon the certification of the director and upon the warrant of the State Comptroller, shall pay and distribute on a quarterly or more frequent basis, as prescribed by the State Treasurer, to each municipality the amount of revenues determined and certified under subsection b. of this section.

d. A tax imposed pursuant to the provisions of section 3 of P.L.2003, c.114 (C.40:48F-1) shall be governed by the provisions of the "State Uniform Tax Procedure Law," R.S.54:48-1 et seq.

8. This act shall take effect immediately.

Approved July 1, 2003.