

Administrative Code

Article 3. Entertainment Surcharge

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ARTICLE 3 ENTERTAINMENT SURCHARGE

§ 5-79.0 **Definitions.** When used in this article the following words shall have the meanings herein indicated:

1. "Comptroller." The Comptroller of the County.
2. "County." The County of Nassau.
3. "Entertainment." All forms of commercial and/or professional entertainment, including, but not limited to, concerts, professional athletic events, theatrical or operatic performances, and trade shows.
4. "Event." Any discrete event of entertainment for which a ticket is required for admission or attendance, including, but not limited to the following: a concert, professional athletic game, contest, meet or event, theatrical, dramatic musical, comedy or operatic performance, play, ballet, dance show, dance contest, musical competition, monologue, dialogue, debate, talk show, lecture, mime show, comedy show, vaudeville show, circus, carnival, demonstration, happening, performance event, light show, planetarium, star show, home improvement show, horse race, dog race, livestock show, air show, automobile show, boat show, computer show, garden show, horse show, dog show, cat show, pet show, gem show, trade show or other like or different entertainment event. Any event which requires a separate fee or charge for admission to or attendance at different or separate performances or times shall be taxed as a separate event for each separate fee or charge.
5. "Facility." Any area or facility or other place of entertainment with a permanent seating capacity in excess of two thousand, five hundred individuals, located in the County, excepting only (i) any such facility located at a college or university; and (ii) any such facility owned or operated by an off-track betting corporation or a non-profit racing association. The open space adjacent to a facility which is not within the physical structure of the facility itself shall not be deemed to be a facility for events which have occurred prior to the effective date of this legislation and occur thereafter.
6. "Operator." Any person having the right, as owner, tenant or otherwise, to operate a facility and sell tickets for events held at such facility or otherwise to collect the revenues derived therefrom. A facility may have more than one operator to the extent that more than one person has the right to derive revenues from ticket sales.
7. "Person." Any individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals.
8. "Ticket." The right of admission to or attendance at an event for an individual, whether or not such right is evidenced by a ticket. Tickets entitling more than one individual to be admitted or to attend an event shall be counted as one ticket for each individual. Season tickets or other tickets permitting admission to or attendance at more than one event shall be counted as one

ticket for each such event. Tickets permitting admission to or attendance at a single event lasting longer than twenty-four consecutive hours shall be counted as one ticket for each day or portion thereof during which attendance is permitted.

9. "Treasurer." The treasurer of the County.

§ 5-80.0 Imposition of tax.

- a. A tax, to be known as an entertainment surcharge, is hereby imposed on the operator of every facility at the rate of one dollar and fifty cents on every ticket.
- b. The tax imposed hereunder shall not apply to events sponsored by colleges or universities or to amateur athletic competitions.
- c. The tax imposed hereunder shall be in addition to any and all other taxes. It shall be imposed only once per ticket.
- c. It is intended that the liability for the tax shall be upon the operator. The operator shall have the right to add the amount of the entertainment surcharge to and collect the same as part of the sales price of any ticket, but failure to do so shall not excuse payment of the tax. It shall be presumed that all tickets are subject to tax until the contrary is established, and the burden of proof that a ticket is taxable hereunder shall be upon the operator

§ 5-81.0 Regulations.

- a. The Treasurer shall prepare regulations as he shall deem appropriate for the administration, collection and enforcement of the entertainment surcharge. The regulations and any amendments thereto prepared by the Treasurer shall be submitted to the County Legislature and shall take effect when approved by local law, resolution or ordinance.
- b. The regulations shall conform to the provisions of this article. The regulations may contain any provision for the administration, collection and enforcement of the entertainment surcharge, including, without limitation, the identification of or means of identifying facilities, events and operators, the methods of calculation of the tax, the payment of the tax, exemptions and exclusions from the tax, the forms of any tax returns and other required information, the due dates of returns and payments, the determination of who must file returns, refunds for overpayments, procedures for the collection and enforcement of and challenges to the tax, including judicial review, record keeping requirements for affected persons, interest and penalties for unpaid taxes and other violations, and powers of investigation, audit and enforcement.
- c. The Treasurer is hereby authorized and empowered (i) to delegate his functions hereunder to a deputy treasurer or other employee or employees of his department, and, with consent of the County Comptroller, to the County Comptroller or any of his employees; (ii) to retain consultants, agents and counsel to assist in his duties hereunder; and (iii) subject to the approval of the County Legislature, to promulgate regulations for the interpretation, administration and enforcement of this article as provided in this section.

§ 5-82.0 Disposition of revenues. All revenues resulting from the imposition of the tax under this article shall be paid to the Treasurer and shall be credit to and deposited in the general fund of the County. Notwithstanding the foregoing, the Treasurer may apply the revenues derived from the entertainment surcharge tax to costs and expenses incurred in connection with the administration collection and enforcement of the entertainment surcharge to the extent funds have not been appropriated for such purposes.

§ 5-83.0 Construction and enforcement. This article shall be construed and enforced in conformity with section two of chapter one hundred seventy-nine of the laws of two thousand, pursuant

to which it is enacted, and shall expire and be deemed repealed upon the expiration of such section.

(Amended by Local Law 2-2006, signed on March 7, 2006, with effective date as follows: "This local law shall become effective immediately and shall be deemed to have been in full force and effect on and after January 1, 2006.")

§ 5-84.0 Effective dates of entertainment surcharge. The entertainment surcharge shall be applicable to sales occurring on or after September 15, 2000 or tickets for events scheduled to occur or occurring on or after October 1, 2000.

(Title 3 added by Local Law 28-2000, effective July 31, 2000; amended by Local Law 33-2000, effective September 12, 2000, and by Local Law 3-2001, effective September 6, 2000 for sales and effective on October 1, 2000 for all events.)

ARTICLE 3a ENTERTAINMENT SURCHARGE REGULATIONS

§ 5-90.0 Authorization. These regulations are promulgated pursuant to Chapter 179 of the Laws of 2000, effective July 19, 2000, codified at New York State Tax Law Section 1202(d), and Local Law 28-2000, effective July 31, 2000 authorizing Nassau County to impose an entertainment surcharge (the "Local Law"). These regulations are not all inclusive, but are an adjunct to and must be read in conjunction with Article 29 of the New York State Tax Law, including Section 1202(d), and Local Law 28-2000.

§ 5-91.0 Definitions. When used in these regulations the following words shall have the meanings herein indicated:

1. "Comptroller." The Comptroller of the County.
2. "County." The County of Nassau.
3. "Entertainment." All forms of commercial or professional entertainment, including, but not limited to, concerts, professional athletic events, theatrical or operatic performances, and trade shows.
4. "Event." Any discrete event of entertainment for which a ticket is required for admission or attendance, including, but not limited to the following: a concert, professional athletic game, contest, meet or event, theatrical, dramatic, musical, comedy or operatic performance, play, ballet, dance show, dance contest, musical competition, monologue, dialogue, debate, talk show, lecture, mime show, comedy show, vaudeville show, circus, carnival, demonstration, happening, performance event, light show, planetarium, star show, home improvement show, horse race, dog race, livestock show, air show, automobile show, boat show, computer show, garden show, horse show, dog show, cat show, pet show, gem show, trade show or other like or different entertainment event. Any event which requires a separate fee or charge for admission to or attendance at different or separate performances or times shall be taxed as a separate event for each separate fee or charge.
5. "Facility." Any arena or facility, or other place of entertainment with a permanent seating capacity in excess of two thousand five hundred individuals, located in the County, excepting only (i) any such facility located at a college or university and (ii) any such facility owned or operated by an off-track betting corporation or a non-profit racing association. Facilities must have a permanent seating capacity in excess of two thousand five hundred individuals in one room or open space and shall not include facilities where the seating capacity exceeds two thousand five hundred in the aggregate for two or more rooms or open space areas.
6. "Operator." Any person having the right, as owner, tenant or otherwise, to operate a facility and sell tickets for events held at such facility or otherwise to collect the revenues derived

therefrom. A facility may have more than one operator to the extent that more than one person has the right to derive revenues from ticket sales. The owner of the facility will be presumed to be the operator of the facility and therefore responsible for filing the necessary returns and paying the taxes due unless such owner registers a statement with the Treasurer on a form to be prescribed by the Treasurer indicating the identity of the party or parties who will be treated as an operator of the facility for purposes of this tax and providing a signed agreement by such other party or parties to be treated as such. Operators of a facility so designated by the owner thereof will be permitted to also register a statement with the Treasurer indicating the identity of any other party or parties who will also be treated as an operator of the facility and providing a signed agreement by such other party or parties to be treated as such.

7. "Person." Any individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals.

8. "Ticket." The right of admission to or attendance at an event for an individual, whether or not such right is evidenced by a ticket. Tickets entitling more than one individual to be admitted or to attend an event shall be counted as one ticket for each individual. Season tickets or other tickets permitting admission to or attendance at more than one event shall be counted as one ticket for each such event. Tickets permitting admission to or attendance at a single event lasting longer than twenty-four consecutive hours shall be counted as one ticket for each day or portion thereof during which attendance is permitted. To be considered a ticket, the right of admission to or attendance at an event must be obtained by a person in exchange for consideration, which includes monetary consideration, exchange, barter, the rendering of any service or any agreement therefore.

9. "Treasurer." The treasurer of the County or any duly authorized representative of the treasurer.

§ 5-92.0 Imposition or tax.

- a. A tax, to be known as an entertainment surcharge, is hereby imposed on every facility at the rate of one dollar and fifty cents on every ticket.
- b. The tax imposed hereunder shall not apply to events sponsored by colleges or universities or to amateur athletic competitions, provided that no event otherwise taxable shall be exempted from the entertainment surcharge solely because of the inclusion in such event of an amateur athletic contest and/or the participation with others by a college or university in the sponsorship of such event.
- c. The tax imposed hereunder shall be in addition to any and all other taxes. It shall be imposed only once on each ticket.
- d. It is intended that the liability for the tax shall be upon the operator. The operator shall have the right to add the amount of the entertainment surcharge to and collect the same as part of the sales price of any ticket, but failure to do so shall not excuse payment of the tax. It shall be presumed that all tickets are subject to tax until the contrary is established, and the burden of proof that a ticket is not taxable hereunder shall be upon the operator.

§ 5-93.0 Exemptions. The following organizations are exempt from the entertainment surcharge:

- a. The State of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer;
- b. The United States of America, and any of its agencies and instrumentalities insofar as it is immune from taxation where it is the purchaser, user or consumer;
- c. The United Nations or other international organizations of which the United States of America is

a member; and

d. 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 this subdivision shall not apply to 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.

§ 5-94.0 Returns and payments; overpayments and underpayments.

a. Every operator of an event whose receipts from the sale of tickets total \$300,000 or more in any quarter of the preceding four quarters must file with the Treasurer, on or before the 20th day of each month, a return showing the amount of all sales of tickets during the preceding month.

b. Every other operator shall file with the Treasurer, on a quarterly basis, a return showing the amount of sales of tickets during the preceding calendar quarter. A quarterly return shall be filed on or before the 20th day of the month following the end of the calendar quarter.

c. For the period through September 30, 2001, operators will determine their reporting cycle (monthly or quarterly) based on receipts from the sale of tickets for periods prior to the effective date of the entertainment surcharge as if the entertainment surcharge had been in effect.

d. Each return must be accompanied by the amount of tax, payable to the Treasurer, which is due with respect to sales of tickets occurring during the month or calendar quarter covered by the return.

e. The Treasurer will prescribe the form of the return and accompanying instructions. The return must show:

1. the name, address, federal employer identification number, and type of business of the operator;
2. for each event: the date, the number of tickets sold, the turnstile attendance, the name and location of the facility, the gross receipts from the sale of tickets, and the amount of tax due;
3. any credits claimed for tickets that are refunded;
4. for any event or sale of tickets that are exempt from tax: the date of the event, the number of tickets sold that are exempt, and the basis for the exemption;
5. penalties and interest, if any, and total amount due;
6. the signature of the operator or officer or employee of the operator signing the return and the individual's title;
7. the signature and address of the preparer, if other than the operator; and
8. the date prepared.

f. If the amount of tax required to be reported and paid is later determined to be greater or less than the amount actually reported and paid, the Treasurer shall:

1. Charge and collect from the operator the additional tax determined to be due, with interest and penalties, if any, thereon until paid; or
2. Refund any overpayment to the person entitled thereto pursuant to the regulations, without interest.

§ 5-95.0 Records to be kept; examination.

a. All operators and all other vendors of tickets and sponsors of events held within the County shall maintain and keep for a period of three years such records of tickets received, sold, collected, canceled or delivered as may be required by the Treasurer.

b. The Treasurer and the Comptroller are hereby authorized to examine the books, papers, invoices and other records of any operator or other vendor of tickets or sponsor of events held within the County. To verify the accuracy of the tax imposed and assessed by Local Law, each such person is hereby directed and required to give to the Treasurer and the Comptroller, the means, facilities and opportunity for such examinations as are herein provided for and required.

c. The Treasurer shall investigate any failure to pay the tax required by Local Law or any other failure to comply with Local Law or the rules or regulations promulgated hereunder, and shall take the necessary steps to enforce compliance therewith.

§ 5-96.0 General powers of the Treasurer. In addition to the powers granted to the Treasurer in Article 29 of the New York State Tax Law, he is authorized and empowered pursuant to Local Law:

1. To delegate his functions hereunder to a deputy treasurer or other employee or employees of his department, and, with the consent of the Comptroller, to the Comptroller or any of his employees;
2. To promulgate rules and regulations for the interpretation, administration and enforcement of this article;
3. To extend, for cause shown, the time of filing any return for a period not exceeding thirty days; and
4. To retain consultants, agents and counsel to assist in his duties hereunder;

§ 5-97.0 Administration of oaths and compelling testimony.

a. The Treasurer and the employees or agents duly designated and authorized by the Treasurer 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 Local Law and these regulations. The 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 the duties of the Treasurer hereunder and of the enforcement of Local Law and these regulations, 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 the Treasurer, 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 Treasurer.

c. Any person who shall refuse to testify or to produce books or records or who shall testify falsely in any matter pending before the Treasurer hereunder shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand dollars or imprisonment for not more than one year, or both such fine and imprisonment.

d. The officers who serve the summons or subpoena of the Treasurer and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the County sheriff and the County sheriff's duly appointed deputies.

§ 5-98.0 Determination of tax. If any person fails to pay the tax, or to file a return required by Local Law and these regulations, or if a return, when filed, is insufficient and the maker fails to file a

corrected or sufficient return within ten days after, the same may be required by notice from the Treasurer. The Treasurer shall determine the amount of tax due from such information as may be obtainable or on the basis of external indices, such as the number of tickets purchased, sold, collected, canceled or on hand, the volume of attendance at similar events and/or other factors. Notice of such determination shall be given to the person liable for the payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed shall, within thirty days of the giving or such notice, apply to the Treasurer for a hearing on such determination, or unless the Treasurer shall of his own motion redetermine such tax. After such hearing the Treasurer shall give notice of his decision to the person liable for the tax.

§ 5-99.0 Judicial review. Any final determination of the amount of any tax payable pursuant to Local Law shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the Civil Practice Law and Rules if application therefore is made to the supreme court within four months after the giving of the notice of such final determination, provided however, that any such proceeding under article seventy-eight of the Civil Practice Law and Rules shall not be instituted by a taxpayer unless (I) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law, ordinance, resolution or regulation, shall be first deposited and there is filed an 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 if such proceeding be dismissed or the tax confirmed the taxpayer will pay all costs and charges which may accrue in the prosecution of such proceeding or (II) at the option of the taxpayer, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against such taxpayer shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

§ 5-100.0 Refunds. The Treasurer shall refund any tax, interest or penalty erroneously, illegally or unconstitutionally collected or paid. No refund shall be granted unless application to the Treasurer therefore is made within one hundred eighty days from the payment thereof. Whenever a refund is authorized by the Treasurer and made by the Treasurer, on the Treasurer's own initiative or after a hearing by the Treasurer, the Treasurer shall state his reasons for the refund in writing. A person shall not be entitled to a hearing in connection with such application for a refund if he has already had a hearing or had been given the opportunity of a hearing as provided in these regulations. No refund shall be made of a tax, interest or penalty paid pursuant to a determination of the Treasurer, unless the Treasurer, after a hearing as in the above section provided on forms on motion, shall have reduced the tax or penalty, or it shall have been established in a proceeding, pursuant to article seventy-eight of the Civil Practice Law and Rules, that such determination was erroneous, illegal, unconstitutional or otherwise improper, in which event a refund without interest shall be made as provided upon the determination of such proceeding. An application to the Treasurer for a refund made as herein provided shall be deemed an application for a revision of any tax, interest or penalty complained of and the Treasurer shall receive evidence with respect thereto. After making his determination the Treasurer shall give notice thereof to the person interested who shall be entitled to maintain a proceeding under article seventy-eight of the Civil Practice Law and Rules in accordance with section 5-99.0, Judicial Review.

§ 5-101.0 Remedies; exclusive. The remedies provided by these regulations shall be the exclusive remedies available to any person for the review of tax liability imposed by Local Law and no determination or proposed determination of tax or determination on an application for refund shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received, or by any legal or equitable action or proceeding other than a proceeding under article seventy-eight of the Civil Practice Law and Rules.

§ 5-102.0 Proceeding to recover tax. Whenever any operator shall fail to pay any tax penalty or interest imposed by Local Law as herein provided the County Attorney shall, upon the request of the Treasurer, bring or cause to be brought an action to enforce the payment of the same on behalf of the

County in any court of the State of New York or of any other state or of the United States.

§ 5-103.0 Notices and limitations of timing.

a. Any notice authorized or required under the provisions of these regulations 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 these regulations or in any application made by him or, if no return has been filed or application made, then to such address as may be obtainable. 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 the regulation 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 proceeding or action taken by the County to levy, appraise, assess, determine or enforce the collection of any tax, interest or penalty provided by this article. 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 the filing of a return, provided, 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 any additional tax, a person 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 extended may be further extended by subsequent consents in writing made before the expiration the extended period.

§ 5-104.0 Penalties and interest.

a. Any person failing to pay a tax payable under this article when due shall be subject to a penalty of fifty per centum of the amount of tax due. Such penalty shall be paid and disposed of in the same manner as other revenues under Local Law. Unpaid penalties may be enforced in the same manner as the tax imposed by Local law.

b. If any amount of tax is not paid on or before the last date prescribed for payment, without regard to any extension of time granted for payment, interest on such amount and on the penalty at the rate of nine percent per annum, shall be paid for the period from such last date to the date of payment. In computing the amount of interest to be paid, such interest shall be compounded daily. The interest imposed by this subdivision shall be paid and disposed of in the same manner as otherwise required from this article. Unpaid interest may be enforced in the same manner as proposed by Local law.

§ 5-105.0 Disposition of revenues. All revenues resulting from the imposition of the tax under Local Law shall be paid to the Treasurer and shall be credited to and deposited in the general fund of the County.

§ 5-106.0 Construction and enforcement. These regulations shall be construed and enforced in conformity with chapter five, article 3, of the administrative code of the County of Nassau, pursuant to which they are promulgated.

§ 5-107.0 Effective date of entertainment surcharge. The entertainment surcharge shall be applicable to sales occurring on or after September 15, 2000, of tickets for events scheduled to occur or occurring on or after October 1, 2000.

(Amended by Local Law 31-2000, effective September 12, 2000.)

Ruth Markovitz