

**RESOLUTION NO. 374 LOCAL LAW INTRODUCTORY NUMBER THREE
OF THE YEAR 2011 – TO ESTABLISH A GENESEE
COUNTY MOTOR VEHICLE HIGHWAY
IMPROVEMENT AND USE TAX – APPROVAL OF**

Legislator Cianfrini offered the following resolution:

WHEREAS, The following Local Law was duly introduced to the Genesee County Legislature in accordance with the Law:

**A LOCAL LAW ESTABLISHING A
MOTOR VEHICLE HIGHWAY IMPROVEMENT AND USE TAX IN THE
COUNTY OF GENESEE**

BE IT ENACTED, By the Legislature of the County of Genesee as follows:

Section 1. Definitions.

When used in this local law, the following terms shall have the following meanings:

Buses. The term “buses” shall have the same meaning as defined in § 104 of the Vehicle and Traffic Law, as amended.

Civil Practice Laws and Rules. Civil Practice Laws and Rules of the State of New York.

Passenger motor vehicle. Any motor vehicle subject to the registration fee as provided for in 401, Subdivision 6 of the Vehicle and Traffic Law.

Sheriff. The Sheriff of Genesee County or his or her successor in office.

Tax Law. Tax Law of the State of New York.

Truck. The term “truck” shall have the same meaning as defined in § 158 of the Vehicle and Traffic Law, as amended.

Vehicle and Traffic Law. Vehicle and Traffic Law of the State of New York

Section 2. Imposition of Tax.

A motor vehicle use tax pursuant to §§ 1202 (a) and 1201 (e) of the Tax Law is hereby imposed in the following manner:

- (1) A tax of \$5.00 per annum for the use of passenger motor vehicles of a type commonly used for noncommercial purposes owned by residents of the County for each such vehicle weighing 3,500 pounds or less and a tax of \$10.00 per annum for such vehicles weighing in excess of 3,500 pounds;
- (2) A tax of \$10.00 per annum for the use of trucks, buses and other such commercial vehicles used principally in connection with a business carried on within the County, except when owned and used in connection with the operation of a farm by the owner or tenant thereof.

Section 3. Exemptions.

The tax imposed by this local law shall not be imposed upon any vehicle exempt from the registration fee pursuant to the Vehicle and Traffic Law.

Section 4. Payment of Tax and Evidence of Tax Payment.

- (a) Every owner of a motor vehicle subject to tax hereunder shall pay the tax thereon to the Commissioner of Motor Vehicles of the State of New York on or before the date upon which he or she registers or renews his or her registration thereof or is required to register or renew his or her registration thereof pursuant to § 401 of the Vehicle and Traffic Law.
- (b) Notwithstanding the provisions of § 400 of the Vehicle and Traffic Law to the contrary, the payment of such tax shall be a condition precedent to the registration

or renewal thereof of such motor vehicle and to the issuance of any certificate of registration and plates or removable tag specified in Subdivision 3 of § 401 and §§ 403 and 404 of the Vehicle and Traffic Law, and no such certificate of registration, plates or tags shall be issued unless such tax has been paid. The Commissioner of Motor Vehicles shall not issue a registration certificate for any motor vehicle for which the registrant's address is within the county except upon proof in a form approved by the Commissioner of Motor Vehicles that such tax has been paid or is not due, with respect to such motor vehicle. The Commissioner of Motor Vehicles, upon the application of any person exempt therefrom, shall furnish to each taxpayer paying the tax a receipt for such tax and to each such taxpayer or exempt person a statement, document or other form approved by the Commissioner of Motor Vehicles, pursuant to the last sentence, showing that such tax has been paid or is not due, with respect to such motor vehicle.

Section 5. Returns.

- (a) At the time the payment of the tax imposed by this local law becomes due, every person subject to tax hereunder shall file a return with the Commissioner of Motor Vehicles in such form and containing such information as may be prescribed by such Commissioner of Motor Vehicles. The taxpayer's application for registration or renewal of registration shall constitute the return required under this local law, unless the Commissioner of Motor Vehicles, by regulation, shall otherwise provide.
- (b) Returns shall be preserved for three years and thereafter until the Commissioner of Motor Vehicles permits.
- (c) The Commissioner of Motor Vehicles may require amended returns or certificates of facts to be filed within 20 days after notice and to contain the information specified in the notice. Any such certificate shall be deemed to be part of the return required to be filed.
- (d) If a return required by this local law is not filed or if a return when filed is incorrect or insufficient on its face, the Commissioner of Motor Vehicles or the County Treasurer, if designated as his or her agent, shall take the necessary steps to enforce the filing of such a return or of a corrected return.

Section 6. Determination of Tax.

If a return required by this local law is not filed or if a return when filed is incorrect or insufficient or if tax or any part thereof due hereunder be not paid when required, the amount of tax due shall be determined by the Commissioner of Motor Vehicles or by the County Treasurer, if designated as his or her agent, from such information as may be obtainable, including motor vehicle registration with the Department of Motor Vehicle of the State of New York and/or other factors. Notice of such determination shall be given to the person liable for the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within 30 days after the giving of notice of such determination, shall apply to the Commissioner of Motor Vehicles or to the County Treasurer, if designated as his or her agent, for a hearing or unless such commissioner or agent, as the case may be, of his or her own motions shall redetermine the same. After such hearing, the Commissioner of Motor Vehicles, if he or she holds the hearing, or the County Treasurer, if the County Treasurer holds the hearing, shall give

notice of the determination of such application to the person against whom the tax is assessed. Such determination 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 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 Commissioner of Motor Vehicles and there shall be filed with the Commissioner of Motor Vehicles as undertaking, issued by a surety company authorized to transact business in the 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 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 Commissioner of Motor Vehicles may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such determination, plus the costs and charges which 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 7. Refund of Certain Unused Registration.

Whenever any fee or portion of a fee paid for the registration of a motor vehicle under the provisions of the Vehicle and Traffic Law is refunded pursuant to the provisions of Subdivision 1 of § 428 thereof, the amount of any tax paid pursuant to this local law upon such registration shall also be refunded by the Commissioner of Motor Vehicles.

Section 8. Refunds.

- (a) In the matter provided in this section, the Commissioner of Motor Vehicles shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application for such refund shall be made within one year from the payment thereof to the Commissioner of Motor Vehicles or to the County Treasurer, if designated as his or her agent. Whenever a refund is made, the reasons therefore shall be stated, in writing, by the Commissioner of Motor Vehicles or by the County Treasurer, as the case may be, who in lieu of any refund, may allow credit therefore 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 Commissioner of Motor Vehicles or the County Treasurer, if designated as his or her agent, shall hold a hearing and receive evidence with respect thereto. After such hearing, the Commissioner of Motor Vehicles, if he or she holds a hearing, or the County Treasurer, if the County Treasurer holds the hearing, shall give notice of the determination of such application 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 that such proceeding is instituted within four months after the giving of notice in such determination, and provided that a final determination of tax due was not previously made. Such proceeding shall not be instituted unless an undertaking is filed with the Commissioner of Motor Vehicles 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 not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which has been determined to be due pursuant to the provisions of Section 6 of the local law where he or she has had a 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 made pursuant to Section 6 of this local law, unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper after a hearing or, in his or her own motion, by the Commissioner of Motor Vehicles or by the county Treasurer, as the case may be, 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 9. Reserves.

In cases where a taxpayer 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 such taxpayer on his or her application for refund, the County Treasurer shall set up appropriate reserves to meet any decision adverse to the County.

Section 10. Remedies Exclusive.

The remedies provided by Section 6 and 8 of this local law shall be exclusive remedies available to any person for the review of 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 in the nature of a certiorari proceeding under Article 78 of the Civil Practice Law and Rules; provided, however, that a taxpayer may proceed by declaratory judgment if he or she institutes suit within 30 days after a deficiency assessment is made and pays the amount of the deficiency assessment to the Commissioner of Motor Vehicles prior to the institution of such suit and posts a bond for costs as provided in Section 6 of this local law.

Section 11. Proceeding to Recover Tax.

- (a) Whenever any person shall fail to pay any tax, penalty or interest imposed by this local law herein provided, the County Attorney, upon the request of the Commissioner of Motor Vehicles or of the County Treasurer, if designated as his or her agent, shall bring or cause to be brought an action in accordance with the Laws of Genesee County to enforce the payment of the same on behalf of the County of Genesee in a court of the State of New York or of any other State of the United States. However, if in his or her discretion the Commissioner of Motor Vehicles or the County Treasurer, if designated as his or her agent, believes that any such person subject to the provisions of this local law is about to cease business, leave the state or remove or dissipate the assets out of which the tax or penalty might be satisfied and that 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 Commissioner of Motor Vehicles or the County Treasurer, if designated as his or her agent, may issue a warrant, directed to the Sheriff commanding him or her to levy upon and sell the real and personal property of the person liable for the tax which may be found within the County for the payment of the amount thereof, with any penalty and interest, and the cost of executing the warrant, and to return such warrant to the person who issued it and to pay to him or her the money collected by virtue thereof within 60 days after the receipt of such warrant. The Sheriff shall within five 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, penalty 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 title to and 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, such Sheriff 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 Commissioner of Motor Vehicles or the County Treasurer, as the case may be, may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as of he or she had recovered judgment therefore and an execution thereon had been returned unsatisfied.

Section 12. General Powers of the Commissioner of Motor Vehicles.

In addition to the powers granted to the Commissioner of Motor Vehicles in this local law, he or she is hereby authorized and empowered:

- (1) To make, adopt and amend rules and regulations appropriate to the carrying out of this local law;
- (2) For cause shown, to remit penalties, and to compromise disputed claims in connection with the taxes hereby imposed;
- (3) To request information concerning motor vehicles and persons subject to the provisions of this local law from the Department of Motor Vehicles of any other state or the Treasury Department of the United States or any city or county of the State of New York, and to afford such information to such other state, Treasury Department, city or county, any provision of this local law to the contrary notwithstanding;
- (4) To delegate his or her functions hereunder to a Deputy Commissioner of the Department of Motor Vehicles or any employee or employees of his or her department;
- (5) To prescribe methods for determining the tax, to keep such records as he or she may prescribe and to furnish such information upon his or her request;

- (6) To require all persons owning motor vehicles subject to tax to keep such records as he or she may prescribe and to furnish such information upon his or her request;
- (7) To request the Sheriff to assist in the enforcement of the provisions of this local law.

Section 13. Administration of Oaths and Compelling Testimony.

- (a) The Commissioner of Motor Vehicles, or his or her employees or agents duly designated and authorized by such commissioner, shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of powers and duties under this local law. The Commissioner of Motor Vehicles or the County Treasurer, if designated as his or her agent, 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 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 or her or excused from attendance.
- (b) A Justice of the Supreme Court, either in court or at chambers, shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and production and examination of books, papers and documents called for by the subpoena of the Commissioner of Motor Vehicles or the County Treasurer, if designated as his or her agent under this local law.
- (c) The officers who serve the summons or subpoena of the Commissioner of Motor Vehicles or the County Treasurer, if designated as his or her agent, 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 Treasurer and his or her duly appointed deputies or any officers or employees of the Department of Motor Vehicle designated by the Commissioner of Motor Vehicles to serve such process or any officers or employees of the Treasurer's Office of the County designated by the County Treasurer to serve such process.

Section 14. Penalties and Interest.

- (a) Any person failing to file a return or to pay any tax or any portion thereof within the time required by this local law shall be subject to a penalty of five times the amount of the tax due, plus interest of five percent of such tax for each month of delay or fraction thereof, but the Commissioner of Motor Vehicles or the County Treasurer, if designated as his or her agent, if satisfied that the delay was excusable, may remit all or any part of such penalty, but not interest at the rate of six percent per year. Penalties and Interest shall be paid and disposed of in the same manner as other revenue under this local law. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this local law.
- (b) The Certificate of the Commissioner of Motor Vehicles or of the County Treasurer, if designated as his or her agent, to the effect that a tax has not been paid or that a return required by this local law has not been filed or that information has not been supplied pursuant to the provisions of this local law shall be presumptive evidence thereof.

Section 15. Returns to be Secret.

Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Commissioner of Motor Vehicles, any officer or employee of the Department of Motor Vehicles, the County Treasurer, any officer or employee of the Treasurer's Office, any agent of the Commissioner of Motor Vehicles or any person who, pursuant to this section, is permitted to inspect any return is furnished, to divulge or make known in any manner any information contained in or relating to any return provided for by this chapter. The officers charged with the 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 Commissioner of Motor Vehicles or the County Treasurer in an action or proceeding under the provisions of this local law or on behalf of any party to an 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 either of which events the court may require the production of and may admit in evidence so much of said returns or of the facts shown thereby as are pertinent to the action or proceeding and no more. The Commissioner of Motor Vehicles or the County Treasurer, if designated as his or her agent, may, nevertheless, publish a copy or a summary of any determination or decision rendered after a formal hearing held pursuant to Section 6 or 8 to this local law. Nothing herein shall be construed to prohibit the delivery to a person or his or her duly authorized representative of a certified copy of any return filed by him or her pursuant to this chapter or of the receipt, document or other form issued pursuant to Section 4 of this local law or a duplicate copy thereof, nor to prohibit the delivery of such a certified copy of such return or any information contained in or relating thereto to the United States of America or any department thereof, the State of New York or any department thereof or the County of Genesee or any department thereof, provided that the same is required for official business, nor to prohibit the inspection for official business of such returns by the County Attorney or other legal representatives of the County or by the District Attorney, nor to exhibit the publication of statistics so classified as to prevent the identification of particular returns or items thereof.

Section 16. Notice 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 or her pursuant to the provision of this local law, in any application made by him or her pursuant to this local law or in any application for registration made by him or her pursuant to § 401 of the Vehicle and Traffic Law 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 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 proceeding or action taken by the Commissioner of Motor Vehicles or the County Treasurer, if designated as his or her agent, 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 the 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 may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents, in writing, made before the expiration of the extended period.
 - (d) If any return, claim, statement, notice, application or other document 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 title is, after such period or such date, delivered by United States Mail to the Commissioner of Motor Vehicles, County Treasurer, bureau, office, officer or person with which or with whom such document is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subsection 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 was deposited in the mail, postage prepaid, properly addressed to the Commissioner of Motor Vehicles, County Treasurer, bureau, office, officer or person with which or with whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the Commissioner of Motor Vehicles, County Treasurer, bureau, office, officer, or person to which or to whom addressed, and the date of registration shall be deemed the postmark date. The Commissioner of Motor Vehicles is authorized to provide by regulation the extent to which the provisions of the preceding sentence with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail. This subsection shall apply in the case of postmarks not made by the United States Postal Service only if and to the extent provided by regulation of the Commissioner of Motor Vehicles.
 - (e) When the last day prescribed under authority of this title (including an extension of time) for performing any acts falls on a Saturday, Sunday or legal holiday in the state of New York, the performance of such act shall be considered timely if it is preformed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

Section 17. County Treasurer as Agent.

The Commissioner of Motor Vehicles is hereby authorized to designate the Genesee County Treasurer as his or her agent to exercise any or all of his or her functions and powers specified or provided for in subsection (d) of Section 5 and in Section 6,8,11,13,14 and 16 of this local law. Where the County Treasurer has been so designated as agent, the County Treasurer, in addition to the powers elsewhere granted to

him or her in this local law, is hereby authorized and empowered:

- (1) To delegate such functions and powers to any employee or employees of the Treasurer's Office;
- (2) For cause shown, to remit penalties and to compromise disputed claims in connection with the taxes hereby imposed;
- (3) To request information concerning motor vehicles and persons subject to the provisions of this local law from the Department of Transportation of the United States or any city or county of the State of New York, and to afford such information to such other state, treasury department, city or county, any provision of this local law to the contrary notwithstanding;
- (4) To request the Sheriffs Department of the County to assist in the enforcement of the provisions of this local law.

Section 18. County Treasurer and Commissioner of Motor Vehicles.

The County Treasurer is hereby authorized and empowered to enter into an agreement with the Commissioner of Motor Vehicles to govern the administration and collection of the taxes imposed by this local law, which agreement shall provide for the exclusive method of collection of such taxes, custody and remittal of the proceeds of such tax; for the payment by the County of the reasonable expenses incurred by the Department of Motor Vehicles in collecting and administering such tax; and for the audit, upon request of the County Treasurer or his or her delegate, of the accuracy of the payment distributions and remittances to the County pursuant to the provisions of this local law, to be conducted at a time agreed upon by the State Comptroller and to be allowed not more frequently than once in each calendar year. Such agreement shall have the force and effect of a rule or regulation of the Commissioner of Motor Vehicles and shall be filed and published in accordance with any statutory requirements relating thereto.

Section 19. Notification to County Attorney.

The Commissioner of Motor Vehicles shall promptly notify the County Attorney of any litigation instituted against him or her which challenges the constitutionality or validity of any provision of this local law or which attempts to limit or question the applicability of such notification shall include a copy of the papers served upon him.

Section 20. Disposition of Revenues.

All revenues resulting from the imposition of the tax under this local law shall be paid into the treasury of the county and shall be credited to and deposited in the general fund of the County.

Section 21. Severability.

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

Section 22. Effective Date.

This local law shall be effective upon filing in the Office of the New York State Secretary of State, and

WHEREAS, The Clerk of the Genesee County Legislature did post a certified notice of the Public Hearing on said proposed Local Law on the bulletin board in the Old Courthouse, and

WHEREAS, The Clerk of the Genesee County Legislature did cause to be published in the Daily News, the Official Newspaper of the County of Genesee, the

Notice of Public Hearing on Local Law Introductory Number Three, Year 2011, and

WHEREAS, The Public Hearing was held at 7:00 p.m. on the ninth day of November, 2011 in Batavia, New York, at which time all interested persons who wished to speak were heard. Now, therefore, Be it

RESOLVED, That “ **A LOCAL LAW TO ESTABLISH A MOTOR VEHICLE HIGHWAY IMPROVEMENT AND USE TAX IN THE COUNTY OF GENESEE** “ to be known as Local Law Number Four of the Year 2011, for the County of Genesee is hereby adopted.

Legislator Upson seconded the resolution which was adopted by 283 votes, Legislator Grasso (43) no.