



News Release # 2

Citizens Group Files Lawsuit, Challenges Constitutionality of Local Occupancy Tax Law.

**Citizens Group accuses Yates County Legislature of Unfair Practices,
questions its adherence to NYS Assembly's legal definitions.**

A lawsuit was filed yesterday, Tuesday, March 11, 2008, against Yates County, NY and Bonnie L. Percy, Yates County Treasurer, by concerned citizen members of the *YatesOUCHtax Advocacy Alliance* and members of the lodging community, opposing the Yates County Occupancy Tax which took effect January 1, 2008. Plaintiffs believe that the tax was enacted in an unfair manner, without adequate notice or citizens' input, that it was applied unfairly, such as against principally lakefront property owners, that it is unreasonable, criminalizing those who don't follow the county's arbitrary, confusing and undefined "rules," and that the legislators are guilty of ignoring and not adequately responding to the many issues raised by the *YatesOUCHtax Advocacy Alliance* since it became aware of the occupancy tax enactment.

A Last Resort: "Unfortunately, in spite of repeated and reasoned attempts to find fair and equitable resolution with the Legislature of Yates County, with the Yates County Finance Committee led by Taylor Fitch, and with Yates County's Occupancy (Collections) Committee, our requests were not heeded for repeal of this very discriminatory tax or for decriminalizing its onerous penalties on Yates County property owners," said Richard Testa, a member of the *YatesOUCHtax Steering Committee*. "Only after all these good will efforts were made and totally ignored by County Administrator Sarah Purdy, and ignored by the Yates County Legislators (except for Nancy Taylor who had the courage to oppose bad legislation), and only after the legislators were presented with hundreds of petitions from property owners to which they refused to respond, did Plaintiffs, with no other alternative, file suit."

The lawsuit, filed by Harris Beach on behalf of the selected plaintiffs, asks for a declaratory judgment to annul the Yates County Occupancy Tax Law.

Petitions: The citizens' group, called the *YatesOUCHtax Advocacy Alliance*, incorporates the exclamation of property owners when they first heard the tax news: "OUCH!" Their Petition, for which hundreds of signatories were presented to the Yates County Legislature, calls for:

- 1) Immediate suspension of any application of the Yates Occupancy Tax Law (YOTL) to renters of cottages, houses and private homes for 2008.
- 2) Amend YOTL to exclude and exempt all property owners of three or fewer rental units (paralleling the Ontario County Occupancy Tax Law.)
- 3) Decriminalize any and all violations of YOTL back to its enactment.
- 4) Eliminate all fines and penalties on property owners of 3 or fewer rental units.

Background: Yates County first needed permission of the NYS Legislature to be able to enact an occupancy tax. The bill was sponsored by Senator Winner and Assemblyman Bacalles, and it passed the NYS Legislature on August 15, 2007 with little public notice or fanfare. It allowed (but did not require) Yates County to levy a 4% occupancy tax on Hotels and Motels. On November 13, 2007 the Yates County Legislature enacted the Occupancy Tax Law and, surprisingly, defined private homes and lakeside cottages which have rentals as "hotels and motels" without any explanation. It is notable that Senator Winner in a letter to Finger Lakes Premier Properties on August 27, 2007 had stated that: "...you will note that the bill does not specify the inclusion of "vacation rentals" in the definition of hotel or motel." Individual property owners who would be affected by such a tax did not have the opportunity to input or to be heard. In early December, 2007, at a time when many property owners had already departed the area and resistance would likely be less, Yates County gave "notice" to principally lakefront property owners that the occupancy tax would be effective January 1, 2008. A summary of the new law was enclosed in the mailing, threatening a year in jail AND/or \$1000 fine for failure to comply. Property owners were given less than 30 days to consult counsel, to notify their prospective renters, or to determine for themselves the validity and meaning of the legislation so surreptitiously enacted and arbitrarily promulgated.

In the ensuing weeks, a citizens' action group formed, and continues to welcome new members, in opposition to what is perceived as an unfair, discriminatory and deleterious tax, particularly on individual property owners. The group believes that tourism will ultimately suffer as a result. There already is evidence of prospective renters choosing to NOT stay in Yates County because of the extra expense, and instead choosing Ontario County, for example, where they will not have to pay an occupancy tax on their lakeshore rentals. Thus, the spending of those lost vacationers (in restaurants, shops, other activities, etc.) will also be lost to Yates County due to the short-sighted lack of vision of this ill-considered legislation. Moreover, the Advocacy Alliance believes the occupancy tax will ultimately lead to accelerating the conversion of residential properties to

corporate and developer takeover by forcing individual cottage owners to sell their properties sooner.

Many people who rent their cottages do so in order to be able to pay their outlandish property taxes. “It is particularly egregious to charge people a tax on having to give up weeks on their own properties in order to be able to pay their property taxes,” said Dr. Jerid Fisher, member of the Advocacy Alliance’s Steering Committee and a Plaintiff in the lawsuit. “Terms of the legislation are punitive and onerous, including seizure of property.” Moreover, the paperwork of filing four times per year is burdensome to individual property owners who are not principally in the rental business and the risk of criminal penalties will necessitate an additional expense to the property owner of \$500-1500 per year for an accountant to handle matters. Understandably, rental agencies cannot take on the responsibility that the legislature hoped to dump on them, and individual property owners will probably be responsible for all the paperwork and all the compliance risk.

Mobilizing the Electorate: That hundreds of petitions were collected over less than a two week period, and continue to be received, shows a widespread support for eliminating the occupancy tax and for decriminalization of its penalties. “Many folks feel angry, upset and betrayed,” said Diane Harris, a member of the *YatesOUCHtax Advocacy Alliance’s Steering Committee*. “Having a website, www.YatesOUCHtax.com, has made all the difference in informing people and being able to mobilize them quickly.” In the past it might have taken months of personal visits to find people at home. It might have taken many public meetings in rented facilities, and multiple mailings to get anywhere near this groundswell of response that we’ve received in the last two weeks.” The site is open; forum postings may be added, and petitions can be downloaded, signed and returned to YatesOUCHtax Advocacy Alliance’s PO Box 196, Canandaigua NY 14424.

The petitioners hope that the Yates County Legislature will begin to listen to the property owners who oppose this unfair tax and who have now been forced to enter into a lawsuit. A starter fund of more than \$25,000, with a continuing stream of contributions, is available to the Plaintiffs to pursue this lawsuit. Some members of the YatesOUCHtax Advocacy Alliance have also expressed their intent to work against the re-election of current Yates County legislators who voted for the tax, and are hoping candidates will step forward who have the good of Yates County at heart.

Contacts for More Information:

Website: www.YatesOUCHtax.com is the group’s website and includes the Occupancy Law, a position statement, the Petition which can be downloaded/signed/mailed back, Correspondence with the Legislature and others, News and a Forum on which to express opinions are included.

Email: Protest@YatesOUCHtax.com is the direct email contact to the Advocacy Alliance.

Fax: 585-425-4703

Mailing Address: YatesOUCHtax Advocacy Alliance; PO Box 196, Canandaigua NY 14424