

DEPARTMENT OF TAXATION

2022 Fiscal Impact Statement

1. **Patron** Joseph P. McNamara

3. **Committee** House Finance

4. **Title** Retail Sales and Use Tax and Transient
Occupancy Taxes; Accommodations
Intermediaries

2. **Bill Number** HB 274

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would broaden the definition of “accommodations intermediary” for purposes of the Retail Sales and Use Tax (“RSUT”) and the Transient Occupancy Taxes to additionally include a person that collects the room charge from the customer or charges a fee other than an accommodations fee to the customer, which fee it retains as compensation for facilitating the sale. The bill would also amend the definition of “room charge” for purposes of the RSUT and the Transient Occupancy Taxes to no longer require that an accommodations intermediary be the entity charging the customer full retail price for use of the accommodations.

Under current law, the definition of “accommodations intermediary” includes only any person other than an accommodations provider that facilitates the sale of an accommodation, charges a room charge to the customer, and charges an accommodations fee to the customer, which fee it retains as compensation for facilitating the sale. “Room charge” currently means the full retail price charged to the customer by the accommodations intermediary for the use of the accommodations, including any accommodations fee, before taxes.

If enacted during the regular session of the 2022 General Assembly, this bill would become effective July 1, 2022.

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

8. **Fiscal implications:**

Administrative Costs

This bill would have no impact on state or local administrative costs.

Revenue Impact

This bill could have an unknown positive impact on state and local revenues.

9. Specific agency or political subdivisions affected:

Department of Taxation ("the Department")
All localities

10. Technical amendment necessary: No.

11. Other comments:

Current Law

Senate Bill 1398 (*2021 Acts of Assembly*, Special Session I, Chapter 383) changed the application of the Retail Sales and Use Tax ("RSUT") and transient occupancy taxes to sales of accommodations facilitated by accommodations intermediaries beginning September 1, 2021. The law change required that the taxes due upon a transaction for the sale of transient accommodation facilitated by an intermediary be computed on the total charges for the accommodations charged to the customer, including the accommodations fee collected by an accommodations intermediary.

Notwithstanding the law change, accommodations providers remain responsible and liable for collecting and remitting the sales and transient occupancy taxes due on transactions where there was no intermediary, with the sales tax being remitted to the Department. The tax is computed on the total charges for the accommodations charged to the customer. Regardless of whether an intermediary facilitates the transaction, any transient occupancy tax collected is remitted to the locality, either by the accommodations provider or the intermediary.

For transactions utilizing an intermediary, the intermediary is deemed the dealer making a retail sale of accommodations. The intermediary is required to collect the sales tax computed on the whole room charge. When the accommodations are at a hotel, the accommodations intermediary must remit the taxes collected on the accommodations fee to the Department or locality, as applicable, and any remaining tax to the hotel, which amount the hotel then remits to the Department or locality, as applicable. If the accommodations are not a hotel, the accommodations intermediary must remit the sales tax collected on the entire amount of the transaction to the Department and the occupancy tax collected to the locality.

Many accommodations intermediaries are online companies which may not have a physical presence in Virginia. Pursuant to Chapters 815 and 816 of the 2019 *Acts of Assembly*, remote dealers and marketplace facilitators are required to register for collection of the Retail Sales and Use Tax if they conduct or facilitate sales of greater than \$100,000 or numbering at least 200 transactions annually.

Proposal

This bill would broaden the definition of “accommodations intermediary” to be any person other than an accommodations provider that (i) facilitates the sale of an accommodation, and (ii) either (a) charges a room charge to the customer, and charges an accommodations fee to the customer, which fee it retains as compensation for facilitating the sale; (b) collects a room charge from the customer; or (c) charges a fee, other than an accommodations fee, to the customer, which fee it retains as compensation for facilitating the sale. The bill would also amend the definition of “room charge” to no longer require that an accommodations intermediary be the entity charging the customer full retail price for use of the accommodations.

If enacted during the regular session of the 2022 General Assembly, this bill would become effective July 1, 2022.

Similar Legislation

House Bill 518 would broaden the RSUT definitions of “accommodations intermediary” and “room charge” and would also eliminate the bifurcation of remittances of sales and occupancy taxes when sales of accommodations are facilitated by an intermediary.

Senate Bill 553 is identical to this bill.

cc : Secretary of Finance

Date: 1/19/2022 VB
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