

DEPARTMENT OF TAXATION

2022 Fiscal Impact Statement

1. **Patron** Jill Holtzman Vogel

3. **Committee** House Finance

4. **Title** Sales and transient occupancy taxes;
Accommodations intermediaries

2. **Bill Number** SB 651

House of Origin:

 Introduced

 Substitute

 Engrossed

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would change the process by which the Retail Sales and Use Tax ("RSUT") and transient occupancy taxes are collected from accommodations sales involving accommodations intermediaries. The bill would require accommodations intermediaries to collect sales and occupancy taxes and remit them to the Department of Taxation ("the Department") or a locality, as applicable, eliminating the requirement to remit any portion to the hotel. The bill would also provide that in a transaction involving multiple parties that may be considered accommodations intermediaries, such parties may agree that one party shall be responsible for collecting and remitting the taxes. In such event, the party agreeing to collect and remit such taxes would be the sole party liable for the tax. The bill would also require intermediaries to submit to a locality each month the property addresses and gross receipts for all accommodations facilitated by the intermediary in such locality.

This bill would broaden the definition of "accommodations intermediary" for purposes of the RSUT and transient occupancy taxes to include any accommodations facilitator that collects a 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 to no longer require that an accommodations intermediary be the entity charging the customer full retail price for use of the accommodations, and would clarify that a room charge includes any fee, other than an accommodations fee, charged to the customer and retained as compensation for facilitating the sale.

Under current law, when accommodations are provided at a hotel, accommodations intermediaries facilitating the sale are required to collect and remit RSUT and occupancy taxes to the Department, the locality, and the hotel, as applicable. The current definition of "accommodations intermediary" is limited to a 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.

This bill would become effective October 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
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.

Under current law, the definition of “accommodations intermediary” is limited to a 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.

Proposal

This bill would change the process by which sales and transient occupancy taxes are collected from accommodations sales involving accommodations intermediaries. The bill would require accommodations intermediaries to collect sales and occupancy taxes and remit them to the Department or a locality, as applicable. The bill would eliminate the requirement that, where the accommodations are provided at a hotel, accommodations intermediaries remit the portion of the sales tax not attributable to the accommodations fee to the hotel for the hotel to remit to the Department.

The bill would also provide that in a transaction involving multiple parties that may be considered accommodations intermediaries, such parties may agree that one party shall be responsible for collecting and remitting the taxes. In such event, the party agreeing to collect and remit such taxes shall be the sole party liable for the tax. The bill would also require intermediaries to submit to a locality each month the property addresses and gross receipts for all accommodations facilitated by the intermediary in such locality.

This bill would broaden the definition of “accommodations intermediary” for purposes of the RSUT and transient occupancy taxes 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” for purposes of the RSUT and 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 and would include any fee charged to the customer for facilitating the sale.

The Department would be required to convene and facilitate a workgroup to examine the processes currently used to collect occupancy taxes and make recommendations for improving the efficiency and uniformity of such processes. The workgroup would be required to include one representative of the Commissioners of the Revenue, one representative of the Treasurers, one representative of counties, one representative of cities and towns, two representatives of the hotel industry, and two representatives of accommodations intermediaries as defined in *Va. Code* § 58.1-602. The Department would be required to prepare and submit a report of the work group's findings and recommendations to the Chairmen of the House Committee on Finance and the Senate Committee on Finance and Appropriations no later than October 31, 2022.

The bill would also require the Department to publish guidelines regarding the law change no later than August 1, 2022.

This bill would become effective October 1, 2022.

Similar Legislation

House Bill 518 would broaden the definition of “accommodations intermediary” and “room charge” for purposes of RSUT and transient occupancy taxes, would change the process by which occupancy taxes are remitted by intermediaries, and would allow, for transactions where multiple entities qualify as intermediary, intermediaries to agree for one party to collect and remit and be liable for the taxes due. The bill would also require the Department of Taxation to convene a workgroup to study the process for remitting occupancy taxes.

cc : Secretary of Finance

Date: 2/20/2022 VB
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