# DEPARTMENT OF TAXATION
# 2010 Fiscal Impact Statement

**1. Patron** Robert H. Brink

**2. Bill Number** HB 791

**House of Origin:**

X **Introduced**
_____ **Substitute**
_____ **Engrossed**

**Second House:**

_____ **In Committee**
_____ **Substitute**
_____ **Enrolled**

**3. Committee** House Finance

**4. Title** Retail Sales and Use Tax; Transient Occupancy Tax; Room Rentals

**5. Summary/Purpose:**

This bill would provide that the state retail sales and local transient occupancy taxes on charges for any room, lodging, or other accommodations rental are computed based upon the total charges or the total price paid for the use or possession of the room. The bill would impose upon the accommodations provider, the obligation to collect and remit the applicable taxes to TAX, and to separately state the amount of the tax on the patron's bill, invoice, or similar documentation, before adding the tax to the total charges for the room.

In the event that the accommodations provider contracts with a third party intermediary to facilitate the rental of the accommodations, this bill would stipulate that if the intermediary collects the taxes, the intermediary would be required to separately state the amount of retail sales and use taxes due on the bill or invoice. In addition, the intermediary would be deemed to be holding those taxes in trust and would be liable to TAX for payment of any taxes collected. These provisions would not relieve the accommodations provider from liability for tax on the total amount received from the intermediary on the applicable transaction.

Under current law, the Retail Sales and Use Tax is imposed on the gross proceeds derived from the charge for transient accommodations made by the entity providing the accommodations. Third parties who facilitate these transactions are not liable to collect the tax on any fees they may charge in connection with the provision of these services.

The effective date of this bill is not specified.

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

**7. Budget amendment necessary:** No.

**8. Fiscal implications:**

Administrative Costs

TAX considers implementation of this bill as "routine," and does not require additional funding.

Revenue Impact

This bill would result in a gain in state and local revenues, the amount of which is unknown.

**9. Specific agency or political subdivisions affected:**

TAX
All localities

**10. Technical amendment necessary:** No.

**11. Other comments:**

Retail Sales and Use Tax

Under current law, the Retail Sales and Use Tax applies to the sale or charge for any room or rooms, lodgings, or accommodations furnished to transients by any hotel, motel, inn, tourist cabin, camping grounds, club or other similar place. Any additional charges made in connection with the rental of a room or other lodging or accommodations are deemed to be a part of the charge for the room and are also subject to the tax. This includes additional charges for pay-per view movies, television, and video games, local telephone calls and similar services. Internet Access Services and toll charges for long-distance telephone calls furnished in connection with the accommodation are not subject to the tax; however, any mark-up made by the accommodations provider over the cost of the long-distance phone charge is taxable.

Third party intermediaries often enter into contracts with accommodation providers to allow guests to reserve accommodations online through the intermediary. These intermediaries often have no physical property in the state of Virginia. Under agreements with the accommodations providers, the third party intermediaries generally collect the total amount that the accommodations provider charges for the use and possession of the room plus any related fees from the customer, as well as a separate service charge for services provided by the intermediary.

In October of 2006, TAX issued a ruling addressing whether the service charges imposed upon the customer by these third party intermediaries, were subject to the Retail Sales and Use Tax. The Tax Commissioner determined that the imposition language in the statute specifically enumerated the entities whose fees and charges would be subject to the Retail Sales and Use Tax. The statute defines "retail sale" to specifically include

> [T]he sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for less than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space or accommodations are regularly furnished to transients for a consideration (Emphasis added).

Because the third party intermediaries were not among the list of entities specifically enumerated in the statute whose charges were subject to tax, the Tax Commissioner ruled that the service charges imposed by these intermediaries were exempt of the Retail Sales and Use Tax. Thus, the Retail Sales and Use Tax and the local transient occupancy taxes do not apply to the service charges imposed by third party intermediaries.

Local Transient Occupancy Taxes

Under current law, any county may impose a transient occupancy tax at a maximum rate of two percent, upon the adoption of an ordinance, on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms. The tax, however, does not apply to rooms rented on a continuous basis by the same individual or group for 30 or more continuous days. The tax applies to rooms intended or suitable for dwelling and sleeping. Therefore, the tax does not apply to such rooms used for alternative purposes, such as banquet rooms and meeting rooms.

Proposal

This bill would provide that the state retail sales and local transient occupancy taxes on charges for any room, lodging, or other accommodations rental are computed based upon the total charges or the total price paid for the use or possession of the room. The bill would impose upon the accommodations provider the obligation to collect and remit the applicable taxes to TAX, and to separately state the amount of the tax on the patron's bill, invoice, or similar documentation, before adding the tax to the total charges for the room.

In the event that the accommodations provider contracts with an intermediary or other party to facilitate the rental of the accommodations, this bill would stipulate that if the intermediary collects the taxes, the intermediary would be required to separately state the amount of retail sales and use taxes due on the bill or invoice. In addition, the intermediary would be deemed to be holding those taxes in trust and would be liable to TAX for payment of any taxes collected. These provisions would not relieve the accommodations provider from liability for tax on the total amount received from the intermediary on the applicable transaction.

Similar Legislation

**House Bill 893 and Senate Bill 452** are identical to this bill.

**House Bill 370** would add Alleghany County to the list of localities that are currently authorized to impose a transient occupancy tax at a maximum rate of five percent.

**House Bill 972 and Senate Bill 218** (identical) would provide that any additional transient occupancy tax or any increase in the rate of an existing transient occupancy tax in Fairfax County does not apply within the limits of any town located in Fairfax County, unless the governing body of the town consents.

**Senate Bill 342** would authorize any county, by ordinance, to levy a transient occupancy tax on single-family residences rented out for continuous occupancy for fewer than 30 consecutive days.

cc : Secretary of Finance

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