

# DEPARTMENT OF TAXATION

## 2016 Fiscal Impact Statement

1. **Patron** Christopher K. Peace

2. **Bill Number** HB 812

3. **Committee** Senate General Laws and Technology

**House of Origin:**

           **Introduced**

           **Substitute**

           **Engrossed**

4. **Title** Procedures for the Taxation and Regulation  
of Limited Residential Lodging Transactions

**Second House:**

  X   **In Committee**

           **Substitute**

           **Enrolled**

### 5. **Summary/Purpose:**

This bill would establish the Limited Residential Lodging Act, which would allow primary residents of a home to rent out all or a portion of the home on a temporary basis and would provide procedures for the regulation and taxation of these transactions. Specifically, the bill would establish rules and procedures for online facilitators ("hosting platforms") that elect to collect and remit state and local retail sales and use taxes and transient occupancy taxes on behalf of the residents who engage in these transactions ("limited residential lodging operators" or "lodging operators"). The bill would allow a hosting platform to enter into agreements with and register with the Department of Taxation to collect and remit the taxes on behalf of the lodging operators, and once registered, would require the platform to remit to the Department any such taxes. Additionally, the bill would prohibit the Department from disclosing any information obtained from the hosting platform in connection with these transactions without the written consent of the hosting platform or in accordance with an agreement between the platform and the Department. The bill would exempt any such information from the Virginia Freedom of Information Act, and would prohibit the Department from disclosing the information to any other agency of the Commonwealth. Also, the bill would allow only the Department or its authorized agent to audit applicable taxes payable by the hosting platform and would prohibit the Department from conducting the audit on the individual operator or occupant when the taxes are payable by the hosting platform. Finally, the bill would impose penalties on hosting platforms that register with the Department of Taxation, but fail to file the required returns or pay the full amount of tax due.

The effective date of this bill would be September 1, 2016.

6. **Budget amendment necessary:** Yes.

Page 1, Revenue Estimates

Item 275 and 277, Department of Taxation

**7. Fiscal Impact Estimates are: Preliminary. (See Line 8.)**

**7a. Expenditure Impact:**

<i><b>Fiscal Year</b></i>	<i><b>Dollars</b></i>	<i><b>Positions</b></i>	<i><b>Fund</b></i>
[2015-16]	\$ 25,000	0	NGF
[2016-17]	\$390,000	0	NGF
[2017-18]	\$ 20,000	0	NGF
[2018-19]	\$ 0	0	NGF
[2019-20]	\$ 0	0	NGF
[2020-21]	\$ 0	0	NGF
[2021-22]	\$ 0	0	NGF

**8. Fiscal implications:**

Administrative Costs Impact

The Department would incur administrative costs of \$25,000 in Fiscal Year 2016, \$390,000 in Fiscal Year 2017, and \$20,000 in Fiscal Year 2018 in implementing this bill. There would be minor expenses in Fiscal Year 2016 associated with analyzing and designing new forms to be utilized by the hosting platform. The majority of expenses in Fiscal Years 2017-2018 would involve systems analysis, development, and testing. The Department would recover its administrative costs for collecting and distributing the local transient occupancy taxes from the tax receipts.

Revenue Impact

Because this bill would help the Commonwealth realize the sales tax and transient occupancy tax revenues generated from these temporary lodging transactions that otherwise may go unreported, the bill would result in a revenue gain to the state and to local governments. Based upon industry information as to the number of these transactions conducted in Virginia, the bill would generate additional sales and use tax revenues of \$768,000 in Fiscal Year 2017, \$1.05 million in Fiscal Year 2018, \$1.08 million in Fiscal Year 2019, 1.11 million in Fiscal Year 2020, \$1.13 million in Fiscal Year 2021 and \$1.16 million in Fiscal Year 2022. The bill would generate additional transient occupancy tax revenues of \$870,000 in Fiscal Year 2017, \$1.19 million in Fiscal Year 2018, \$1.22 million in Fiscal Year 2019, \$1.25 million in Fiscal Year 2020, \$1.28 million in Fiscal Year 2021, and \$1.32 million in Fiscal Year 2022. A breakdown of these estimates is provided in the chart below:

Sales Tax Distribution	Effective September 1, 2016					
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
State Sales and Use Tax (5.3%)	\$718,036	\$981,315	\$1,006,830	\$1,033,007	\$1,059,865	\$1,087,422
GF-Unrestricted	\$308,021	\$420,962	\$431,907	\$443,137	\$454,658	\$466,479
GF-Restricted	\$151,631	\$207,229	\$212,616	\$218,145	\$223,816	\$229,635
Transportation*	\$108,793	\$148,684	\$152,550	\$156,516	\$160,586	\$164,761
Local Option	\$135,992	\$185,855	\$190,687	\$195,645	\$200,732	\$205,951
HMOF (GF transfer)	\$13,599	\$18,586	\$19,069	\$19,565	\$20,073	\$20,595
Regional Trans. Funds (0.7%)	\$50,317	\$68,766	\$70,554	\$72,389	\$74,271	\$76,202
Hampton Roads (TPO)	\$17,679	\$24,161	\$24,789	\$25,434	\$26,095	\$26,774
Northern Virginia (NVTA)	\$32,638	\$44,605	\$45,765	\$46,955	\$48,176	\$49,428
<b>Total Sales and Use Tax</b>	<b>\$768,353</b>	<b>\$1,050,082</b>	<b>\$1,077,384</b>	<b>\$1,105,396</b>	<b>\$1,134,136</b>	<b>\$1,163,624</b>
<b>Total GF</b>	<b>\$459,652</b>	<b>\$628,191</b>	<b>\$644,523</b>	<b>\$661,281</b>	<b>\$678,474</b>	<b>\$696,115</b>
Local Impact (TO Only)*	\$870,346	\$1,189,473	\$1,220,400	\$1,252,130	\$1,284,685	\$1,318,087
Local Impact (TO + Local Option)	\$1,006,338	\$1,375,328	\$1,411,087	\$1,447,775	\$1,485,417	\$1,524,038

\*Includes two percent regional transient occupancy tax in the Northern Virginia Planning District

## 9. Specific agency or political subdivisions affected:

Department of Taxation  
All localities

## 10. Technical amendment necessary: No.

## 11. Other comments:

### Retail Sales and Use Tax on Transient Accommodations

The Retail Sales and Use Tax applies to the sale or charge for any room or rooms, lodging, or accommodations furnished to transients by any hotel, motel, inn, tourist cabin, camping grounds, club or other similar place in which rooms, lodging, space or accommodations are regularly furnished to transients for a consideration. This statutory language imposes an obligation upon renters of residences to collect the sales and use tax on transactions in which the rental accommodations are furnished to transients for fewer than 90 continuous days, and the transient has not obtained an interest in the property. The Department's longstanding policy is that the temporary rental of a private residence for fewer than 90 continuous days is subject to the sales and use tax in the same manner as charges for hotel or motel accommodations, since they both represent charges for lodging, space or accommodations regularly furnished to transients for a consideration. It is not necessary that the accommodations offered by a taxpayer be provided on a continuous basis in order for them to be considered furnished "regularly" within the meaning of the statute. Rather, the accommodations need only be offered with some frequency, such as on a weekly, monthly, seasonal or some other recurring basis to be considered furnished regularly.

## 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 Department of Taxation has interpreted this provision to apply to the rental of cottages, duplexes, apartments, townhouses, condominiums, and other private residences. Several counties are authorized by statute to impose the tax at higher rates. Cities and towns are not limited in the rate of the transient occupancy tax they may impose. 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.

In addition to the transient occupancy taxes that may be imposed in counties, cities, and towns, legislation enacted in 2013 imposes a new two percent regional transient occupancy tax in the Northern Virginia Planning District. The Northern Virginia region consists of the Counties of Arlington, Fairfax, Loudoun and Prince William and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. Revenues from this tax are deposited by the local treasurer into the state treasury and transferred by the Comptroller into special funds. Although the regional tax is a state tax, it is administered and collected by the locality in which the room or space is located in the same manner as its current local transient occupancy tax.

## BPOL Tax Generally

The BPOL Tax is a tax on businesses for the privilege of engaging in business at a definite place of business within a Virginia locality. The measure or basis of the BPOL tax generally is the gross receipts of the business. The BPOL tax is a tax on gross receipts, not net income. The locality may not assess a license tax on gross receipts upon which it charges a license fee. Localities are not permitted to levy BPOL taxes on real property owners that rent out their real property, other than hotels, motels, motor lodges, auto courts, tourist courts, travel trailer parks, campgrounds, bed and breakfast establishments, lodging houses, rooming houses and boarding houses.

## Proposal

Property owners who wish to offer all or a portion of their homes for temporary rental for a charge, generally for fewer than 30 consecutive days, frequently utilize website platforms that enable the property owner to list and describe the property being offered for rental, and allow tourists and other transients to arrange for the rental of the property and payment of the booking. This bill would provide procedures for the regulation and taxation of these temporary rental transactions. The bill would apply to "limited residential lodging" activities, which involve the secondary use of a residential dwelling for rental for a period of fewer than 30 consecutive days provided that 1) the property continues to be used primarily as a residence; 2) sales and use and occupancy taxes are collected and remitted by the limited residential lodging operator or the hosting platform; and 3) the rental does not include simultaneous occupancy by more than one party under separate contracts.

## **Regulatory Provisions**

The bill would allow for any residential dwelling unit to be used for limited residential lodging and would preempt other state or local laws imposing additional regulations on or prohibiting the operation of limited residential lodging operators or hosting platforms. Localities would be authorized to: 1) enact ordinances regulating noise, parking, trash, and other issues in order to protect the character and livability of the surrounding area, according to the specific limitations in the bill; and 2) impose penalties for the violation of these ordinances, capped at \$200 per violation.

## **Imposition and Collection of Applicable Taxes**

The bill would expressly impose “applicable taxes,” which include only the state and local retail sales and use tax, the regional transient occupancy tax, and any local transient occupancy tax imposed by a county, city, or town, on a booking transaction for the temporary rental of all or a portion of a primary residence. The sales and use tax would apply for any such rentals for a period of fewer than 90 days, and the local and regional transient occupancy taxes would apply when the residences are rented for the time period that is subject to the transient occupancy tax under current law in the county, city, or town in which the rental takes place. The bill would exempt lodging operators from the BPOL tax, provided their limited residential lodging activities take place on fewer than 45 days in a calendar year. Additionally, hosting platforms would be exempt from the BPOL tax under this bill.

The bill would allow for the applicable taxes to be collected and remitted to the Department in one of two ways. As one alternative, the bill would authorize a hosting platform to enter into an agreement with the Department of Taxation and to register for and collect these taxes on behalf of the lodging operator. Once registered, the hosting platform would be required to collect and monthly remit the sales and transient occupancy taxes to the Department of Taxation, as well as a schedule listing the aggregated total amounts owed to the state and to each locality. If the hosting platform elects this option, it would essentially stand in the shoes of the lodging operator. The hosting platform would not provide the Department with any identifying information of the lodging operator, such as the operator’s name or address. Moreover, if the hosting platform has notified the lodging operator of the platform’s intent to collect the applicable taxes on the lodging operator’s behalf, the lodging operator would be relieved from the responsibility of obtaining a taxpayer identification number, as well as from any liability for collecting or remitting the state and local sales and use taxes and transient occupancy taxes.

Under the terms of the bill, if the hosting platform does not agree to collect and remit the applicable taxes on the lodging operator’s behalf, the lodging operator would need to obtain a taxpayer identification number and register with the Department of Taxation and with the locality in which the property is located to collect and remit the applicable sales and use and transient occupancy taxes. In this case, the lodging operator would not need to obtain a taxpayer identification number before November 1, 2016.

In addition, the bill would allow the Department to recover its administrative costs incurred in collecting the sales and use and transient occupancy taxes remitted by the hosting

platform. The remaining tax revenues would be distributed according to the provisions under current law for the distribution of the sales and use tax, regional transient occupancy tax, and local transient occupancy tax.

### **Audit and Confidentiality Provisions**

Under this bill, the Department would be the only entity authorized to conduct sales and use and transient occupancy tax audits for transactions for which the hosting platform has agreed to collect and remit the taxes on behalf of the lodging operator. Localities would be prohibited expressly from conducting any such audits. The Department would need to conduct audits of the hosting platform on an anonymous, numbered account basis, would not have access to any personally identifiable information regarding the lodging operator or the occupants, and would be precluded from auditing the lodging operator or the occupant.

The bill would also prohibit the Department from disclosing any confidential information obtained regarding these transactions, including that regarding the return filed by the hosting platform or relating to an audit or investigation, unless the hosting platform has consented to the disclosure in writing or pursuant to its agreement with the Department. This confidential information would also be exempt from the Virginia Freedom of Information Act.

In the event that the hosting platform does not agree to collect and remit the applicable taxes on behalf of the lodging operator, the Department of Taxation and local government and taxing officials would follow the rules provided under current law for conducting audits and disclosing confidential taxpayer information.

### **Penalties**

Additionally, the bill would impose the following penalties on hosting platforms that registered with the Department and failed to file a required return or pay the tax due:

- *Failure to file a return:* Regardless of whether any tax is due for the period in question, the hosting platform would owe a \$500 penalty if it fails to file a required return within one month of the due date, with an additional penalty of \$1,000 for each additional month. After the first month, an additional penalty would be imposed, capped at the lesser of 5 percent of the tax due for that return or \$10,000 in the aggregate. The Department would have the discretion to waive the penalty for good cause.
- *Underpayment:* The hosting platform would owe three percent of the underpayment if the failure to pay the full amount is not for more than one month, and an additional three percent would be added each month the failure continues, capped at 15 percent of the underpayment;
- *False or fraudulent return:* The hosting platform would be subject to a specific penalty of 50 percent of the difference between the amount reported and the amount of the proper tax.

## **Recordkeeping Provisions**

The bill would also require that the lodging operators maintain records that demonstrate primary residency, the dates of any limited residential lodging use, and the number of limited lodgers per activity for a minimum of four years.

## **Additional Provisions**

Additionally, the bill would authorize the Department of Taxation to develop guidelines in order to implement the provisions of the bill. The guidelines would be exempt from the Administrative Process Act.

Finally, the bill would require the Housing Commission to convene a working group consisting of representatives from the hotel and hosting platform industries, state and local government (including tax officials), property owners, and other interested parties to consider issues related to the short-term rental of bed and breakfast establishments, vacation rentals, and other transient occupancy venues. Under the bill, the working group would need to complete its work by December 1, 2016 with the goal of developing legislation for the 2017 General Assembly session.

The effective date of this bill would be September 1, 2016.

## **Similar Legislation**

**Senate Bill 416** is similar to this bill.

cc : Secretary of Finance

Date: 2/19/2016 KP  
DLAS File Name: HB812FE161