

# DEPARTMENT OF TAXATION

## 2016 Fiscal Impact Statement

1. **Patron** Jill Holtzman Vogel

2. **Bill Number** SB 416

3. **Committee** Passed House and Senate

**House of Origin:**

           **Introduced**

           **Substitute**

           **Engrossed**

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

**Second House:**

           **In Committee**

           **Substitute**

      X       **Enrolled**

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

This bill would require the Virginia 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. 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 bill would also create a statutory mechanism for the regulation and taxation of qualifying short-term rental transactions. The Limited Residential Lodging Act ("the Act") would require reenactment by the 2017 General Assembly before its provisions would take effect. Under the Act's terms, qualifying residents and tenants of a private residence would be authorized to rent out all or a portion of the residence on a temporary basis. The Act would establish rules and procedures for online facilitators ("hosting platforms") 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 ("lodging operators"), as well as penalty structures for registered hosting platforms that fail to file the required returns or remit the full amount of tax due on these transactions.

The effective date of this bill is not specified. The provisions of the Act would only take effect if reenacted by the 2017 Session of the General Assembly.

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

7. **No Fiscal Impact:** (See Line 8.)

### 8. **Fiscal implications:**

Based on similar studies, the Department estimates that its participation in this study would require some diversion of efforts from other functions, and would have no additional administrative impact. This bill would have no direct impact on state or local revenues.

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

Virginia Housing Commission  
Department of Taxation

**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.

### 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 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 these and other short-term rentals of bed and breakfast establishments, vacation rentals, and other transient occupancy venues. The bill would require that the working group complete its work by December 1, 2016. Presumably, the Housing Commission study would provide the 2017 General Assembly additional information to inform its decision as to whether to support the Limited Residential Lodging Act or similar legislation, should either be introduced in 2017.

### Specific Provisions of the Limited Residential Lodging Act

The Act would provide procedures for the regulation and taxation of temporary rental transactions in which residents or tenants rent out all or a portion of their private residences for a temporary period, generally, fewer than 30 days. The provisions of the Act would apply only if: 1) the property continues to be used primarily as a residence; 2) sales and use and occupancy taxes are collected and remitted by the lodging operator or hosting platform; and 3) the rental does not include simultaneous occupancy by more than one party under separate contracts.

### **Regulatory Provisions**

Under the Act, localities would be precluded from enacting ordinances that prohibit or restrict the use of a residential dwelling as limited residential lodging or that would impose additional regulations on their operators regarding these operations. The only exception would apply to those residential units for which applicable taxes are not timely paid by the registered hosting platform or lodging operator. Localities would remain authorized to adopt ordinances and regulations generally applicable to residential use and zoning, to require limited residential lodging operators to maintain liability insurance, and to require lodging operators to register their names and addresses through that locality's online portal.

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

The Act 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 the temporary rental of all or a portion of a primary residence. Under the Act, the sales and use tax would apply for any

such rentals for a period of fewer than 90 days. The local and regional transient occupancy taxes would apply to those residences rented for the time period subject to the transient occupancy tax in the applicable locality under current law. The Act 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 the Act.

The Act would require hosting platforms to register with the Department to collect and remit the applicable taxes associated with the booking, and to notify the lodging operator of the platform's registration. The hosting platform would not provide the Department with any identifying information of the lodging operator, such as the operator's name or address.

In addition, the Act would allow the Department to recover its administrative costs incurred in collecting the 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 the Act, 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 Act would deem any information the Department obtains from a registered hosting platform as confidential, and regardless of the exclusions from the confidentiality provisions under current law, would prohibit the Department from disclosing to any other agency any such confidential information. Any agreement entered into between the Department and the hosting platform would not be considered confidential tax information. Currently, the Department may divulge otherwise confidential taxpayer information to another agency or subdivision of the Commonwealth in the line of duty under state law.

### **Penalties**

Additionally, the Act 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.

Under the Act, the Department would collect and distribute the penalties as if they were part of the tax imposed.

### **Additional Provisions**

Additionally, the Act would require the Department of Taxation to develop regulations in order to implement its provisions. The initial regulations would be exempt from the Administrative Process Act.

The provisions of the Act would take effect only upon reenactment by the 2017 General Assembly.

cc : Secretary of Finance

Date: 3/7/2016 KP  
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