

# DEPARTMENT OF TAXATION

## 2021 Fiscal Impact Statement

1. **Patron** Vivian E. Watts

3. **Committee** House Finance

4. **Title** Retail sales and transient occupancy taxes on room rentals; Destination Marketing Fund created

2. **Bill Number** HB 2158

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

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

This bill would provide that the retail sales and use tax and transient occupancy taxes shall be computed upon the basis of the total charges or the total price paid for use or possession of the room. Where an accommodations provider contracts with an intermediary to facilitate the sale of transient accommodations and the intermediary charges the customer for the room and also an accommodations fee, the intermediary would be deemed the dealer for the transaction and would be required to separately state the taxes on the invoice and to collect the taxes on the entire amount paid for the use or possession of the room.

The bill would also create the Destination Marketing Fund (DMF). The sales tax revenue generated from the tax on accommodations fees would be allocated to the DMF. The bill would also require that revenue from the transient occupancy tax on accommodations fees be used by the locality in which it is collected, or the local tourism authority if the locality is a member of one, for the purpose of destination marketing.

Under current law, no sales or transient occupancy tax is levied on any accommodations fee charged by accommodations intermediaries as part of room rental transactions. Instead, the taxes are levied only upon the amount paid to the accommodations provider.

If enacted during the Regular Session of the 2021 General Assembly, this bill would become effective July 1, 2021.

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

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

**7b. Revenue Impact:**

<i><b>Fiscal Year</b></i>	<i><b>Dollars</b></i>	<i><b>Fund</b></i>
2021-22	\$3.65 million	DMF
2022-23	\$4.21 million	DMF
2023-24	\$4.39 million	DMF
2024-25	\$4.59 million	DMF
2025-26	\$4.80 million	DMF
2026-27	\$5.01 million	DMF

**8. Fiscal implications:**

Administrative Costs

The Department of Taxation (“the Department”) considers implementation of this bill to be routine and does not require additional funding. This bill would have an unknown impact on local administrative costs.

Revenue Impact

This bill would have a positive revenue impact to the Destination Marketing Fund of \$3.65 million in Fiscal Year 2022, \$4.21 million in Fiscal Year 2023, \$4.39 million in Fiscal Year 2024, \$4.59 million in Fiscal Year 2025, \$4.80 million in Fiscal Year 2026, and \$5.01 million in Fiscal Year 2027. Such revenues would be generated by the Retail Sales and Use Tax on accommodations fees.

This bill would also have a positive impact on revenues generated by the local and regional Transient Occupancy Taxes, as shown in the table below (in millions). Revenue generated by the transient occupancy tax on accommodations fees would be required to be used by the locality in which it is collected, or the local tourism authority if the locality is a member of one, for the purpose of destination marketing.

	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>
Local Transient Occupancy Tax	\$3.70	\$4.27	\$4.46	\$4.67	\$4.88	\$5.10
Regional Transient Occupancy Tax	\$0.51	\$0.58	\$0.61	\$0.64	\$0.66	\$0.69

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

Department of Taxation  
All localities

**10. Technical amendment necessary:** Yes. Since the transient occupancy tax is remitted to the locality, rather than to the Department, the following technical amendments are suggested.

Page 13, Line 742: after Department  
Insert: , locality,

Page 13, Line 742: after or  
Strike: the

Page 13, Line 742: after provider  
Insert: , as applicable,

## **11. Other comments:**

### Current Law

This bill would modify the application of the sales and transient occupancy taxes on the provision of accommodations in situations where an intermediary facilitates the sale. Currently, no tax is levied on the facilitation fee charged by an accommodations intermediary. This bill would require that the taxes due on the transaction be computed on the total charges for the accommodations charged to the customer.

Accommodations providers would be responsible and liable for collecting and remitting the sales taxes due to the Department on transactions where there was no intermediary. The tax would be 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 would be remitted to the locality, either by the accommodations provider or the intermediary.

For transactions utilizing an intermediary, the intermediary would be deemed the dealer making a retail sale of accommodations. The intermediary would be required to collect the sales tax computed on the whole room charge and the intermediary would be authorized to elect to remit the entire amount collected to the accommodations provider. The provider would then be responsible for remitting the entire amount. Alternatively, the intermediary could elect to remit the sales tax collected on the accommodation fee (intermediary's fee) to the Department directly and the remainder to the accommodations provider.

### *Remote Dealers*

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, even though these accommodations intermediaries were facilitating transactions of sufficient volume or value to require them to register for collection of sales tax, the intermediary fee they were charging is not subject to the Retail Sales and Use Tax.

### Proposal

This bill would provide that the retail sales and transient occupancy taxes shall be computed upon the basis of the total charges or the total price paid for use or possession

of the room. Where an accommodations provider contracts with an intermediary to facilitate the sale of transient accommodations and the intermediary charges the customer for the room and also an accommodations fee, the intermediary would be deemed the dealer for the transaction and would be required to separately state the taxes on the invoice and to collect the taxes on the entire amount paid for the use or possession of the room. Accommodations intermediaries may remit the taxes collected on the entire amount of the transaction to the accommodations provider or may elect to remit the tax collected from the accommodations fee to the Department and the rest of the tax to the accommodations provider.

Accommodations intermediary would include any person other than an accommodations provider that facilitates the sale of an accommodation, charges a room charge to the customer, and retains such fee as compensation for facilitating the sale. The bill would exclude from this definition facilitators where the price paid by the customer to such person is equal to the price paid by the facilitator to the accommodations provider for use of the room and the only compensation received by the facilitator is a commission to the facilitator from the accommodations provider.

The bill would also create the Destination Marketing Fund (DMF). The sales tax revenue generated from the tax on accommodations fees would be allocated to the DMF. Funds allocated to the DMF are to be used for destination marketing programs and to provide grants to local tourism authorities for the same purpose. The bill would also require that revenue from the transient occupancy tax on accommodations fees be used by the locality in which it is collected, or the local tourism authority if the locality is a member of one, for the purpose of destination marketing.

If enacted during the Regular Session of the 2021 General Assembly, this bill would become effective July 1, 2021.

#### Similar Legislation

**Senate Bill 1398** would provide that the retail sales and transient occupancy taxes shall be computed upon the basis of the total charges or the total price paid for use or possession of the room. The bill would allocate sales tax revenue from the accommodations fee to the Tourism Marketing Fund and transient occupancy taxes to the localities for purposes of tourism marketing.

cc : Secretary of Finance

Date: 1/22/2021 VB  
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