

# DEPARTMENT OF TAXATION

## 2021 Fiscal Impact Statement

1. **Patron** Thomas K. Norment, Jr.

2. **Bill Number** SB 1398

3. **Committee** Passed House and Senate

**House of Origin:**

           **Introduced**

           **Substitute**

           **Engrossed**

4. **Title** Retail sales and transient occupancy taxes  
on room rentals

**Second House:**

           **In Committee**

           **Substitute**

      X       **Enrolled**

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

This bill would provide that, beginning September 1, 2021, the retail sales and use tax and transient occupancy taxes on accommodations 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 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 provide for an amount equal to the estimated state sales tax revenue generated from the tax on accommodations fees to be appropriated to the Virginia Tourism Authority (VTA) each fiscal year to be used for promoting tourism.

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 2021 General Assembly, Special Session I, this bill would become effective July 1, 2021.

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

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

### 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 an estimated positive revenue impact 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. The bill would not disturb the current distribution of state, regional, local, or additional local sales tax revenues. It would require an annual appropriation to the VTA be made in an amount estimated to be equal to the state sales tax revenue levied 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).

	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
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  
Virginia Tourism Authority

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

### **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. When the accommodations are at a hotel, the accommodations intermediary would be required to 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 would then be required to remit 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.

### *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 are 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, beginning September 1, 2021, 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. 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 would then be required to remit 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.

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 intermediaries (i) where the intermediary owns the trademark or trade name under which the accommodations provider is operating, or (ii) 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 provide for an amount equal to the estimated state sales tax revenue generated from the tax on accommodations fees to be appropriated to the VTA each fiscal year. The bill would require that funds so allocated to the VTA be used for providing grants to promote tourism.

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

cc : Secretary of Finance

Date: 2/25/2021 VB  
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