

# DEPARTMENT OF TAXATION

## 2010 Fiscal Impact Statement

1. **Patron** Mary Margaret Whipple

2. **Bill Number** SB 452

3. **Committee** Senate Finance

**House of Origin:**

       **Introduced**

  X   **Substitute**

       **Engrossed**

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

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

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

TAX understands that a substitute bill will be introduced. This Fiscal Impact Statement is drafted to that substitute.

This bill would expand the application of the Retail Sales and Use Tax regarding hotels, motels, and other accommodations to authorize the imposition of the tax on the price mark-up and other charges and fees imposed by a third party intermediary. The bill would also outline the procedures for payment of the applicable taxes on these charges.

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 price mark-up and other charges and 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 presence 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 remove the statutory language that limits the application of the Retail Sales and Use Tax to charges imposed by hotels, motels, inns, tourist camps, tourist cabins, camping grounds, clubs, and other accommodation providers, thereby authorizing the imposition of the tax on charges and fees related to the provision of accommodations and imposed by a third party intermediary. The bill would also outline the procedures for payment of the applicable taxes on these charges.

Under the terms of this bill, there are two parties that could potentially be required to collect the Retail Sales and Use Tax on the charges associated with the purchase of an accommodation. An “accommodations provider” would be defined as any person that furnishes accommodations to the general public for compensation. An “accommodations intermediary” would be defined as any person, other than an accommodations provider, that facilitates the sale of an accommodation and charges a room charge to the customer.” “Facilitating the sale” would include brokering, coordinating, or in any other way arranging for the purchase of, or the right to use accommodations by a customer.

Under the terms of this bill, “room charge” would be defined as the full retail price charged to the customer by the accommodations intermediary for the use of the accommodations, including any accommodations fee before taxes. A “discount room charge” would be defined as the full amount charged by the accommodations provider to the accommodations intermediary for furnishing the accommodation. The total price paid by the purchaser of accommodations would be broken down into several different fees. An “accommodations fee” would be defined as the room charge less the discount room charge, if any, provided that the accommodations fee is not less than \$0. The accommodations fee would generally constitute a separate fee imposed by the intermediary, as compensation for the services provided in booking the accommodation.

This bill would provide that when a taxable sale of accommodations is made by an accommodations provider to a customer, and no third party intermediary facilitates the transaction, the accommodations provider would be liable for and required to collect the Retail Sales and Use Tax and remit it to the Department of Taxation (“TAX”). When a third party intermediary facilitates the transaction, the intermediary would be required to collect the room charge, and the Retail Sales and Use Tax computed on the room charge, and remit the portion of the taxes relating to the accommodations fee to TAX and the portion of the taxes relating to the discount room charge directly to the accommodations provider, and would be liable for both amounts. The accommodations provider would, in turn, be required to remit these taxes to TAX. The accommodations provider would only

be liable for the tax computed on the discount room charge and any tax computed on additional charges that are imposed by the accommodations provider.

For all retail sales of accommodations, both the accommodations provider and the intermediary would be required to separately state the amount of the tax on the bill, invoice, or similar documentation and to add the tax to whichever charge it is required to collect.

These provisions would also apply to any local transient occupancy taxes imposed, except that the parties would be required to remit such taxes to the local taxing authority, rather than to TAX.

The effective date of this bill is not specified.

#### Similar Legislation

**House Bill 791** and **House Bill 893** 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.

**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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