

HOUSE No. 3917

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act updating and modernizing the room occupancy excise.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 64G of the General Laws is hereby amended by striking out
2 sections 1 to 12, inclusive, as appearing in the 2016 Official Edition, and inserting in place
3 thereof the following 13 sections:-

4 Section 1. As used in this chapter, the following words shall have the following meanings
5 unless the context clearly requires otherwise:

6 “Bed and breakfast establishment”, a house where 1 or more rooms are let and a breakfast
7 is included in the rent.

8 “Commissioner”, the commissioner of revenue.

9 “Hosting platform”, a person who provides a service through any website, software,
10 online-enabled application, mobile phone application or some other similar process which
11 provides a means for: (i) an operator to advertise, list or offer the use of any accommodation
12 subject to the excise under this chapter in exchange for rent; (ii) an operator to collect the

13 payment of rent on any accommodation; and (iii) a person to arrange, book, reserve or rent a
14 transient accommodation.

15 “Hotel”, a building used for the feeding and lodging of guests licensed or required to be
16 licensed under section 6 of chapter 140.

17 “Lodging house”, a house where lodgings are let to 4 or more persons not within the
18 second degree of kindred to the person conducting it, licensed or required to be licensed under
19 section 23 of chapter 140.

20 “Motel”, a building or portion of a building, other than a hotel or lodging house, in which
21 persons are lodged for hire with or without meals and which is licensed or required to be licensed
22 under section 32B of chapter 140 or is a private club.

23 “Occupancy”, the use or possession or the right to the use or possession of any room in a
24 bed and breakfast establishment, hotel, lodging house, transient accommodation or motel
25 designed and normally used for sleeping and living purposes or the right to the use or possession
26 of the furnishings or the services and accommodations, including breakfast in a bed and
27 breakfast establishment, accompanying the use and possession of such room for a period of not
28 more than 31 consecutive calendar days, regardless of whether such use and possession is as a
29 lessee, tenant, guest or licensee.

30 “Occupant”, a person who, for rent, uses, possesses or has a right to use or possess a
31 room in a bed and breakfast establishment, hotel, lodging house, transient accommodation or
32 motel under a lease, concession, permit, right of access, license or agreement.

33 “Operator”, a person operating a bed and breakfast establishment, hotel, lodging house,
34 transient accommodation or motel including, but not limited to, the owner or proprietor of such
35 premises, the lessee, sublessee, mortgagee in possession, licensee or any other person otherwise
36 operating such bed and breakfast establishment, hotel, lodging house, transient accommodation
37 or motel.

38 “Operator’s agent”, a person, including, but not limited to, a property manager, property
39 management company or real estate agent who is not a hosting platform and on behalf of an
40 operator of a bed and breakfast establishment, lodging house or transient accommodation: (i)
41 manages the operation or upkeep of a property offered for rent; or (ii) books reservations at a
42 property offered for rent.

43 “Person”, includes an individual, partnership, trust or association, with or without
44 transferable shares, joint-stock company, corporation, society, club, organization, institution,
45 estate, receiver, trustee, assignee or referee and any other person acting in a fiduciary or
46 representative capacity, whether appointed by a court or otherwise or any combination of
47 individuals acting as a unit.

48 “Rent”, the consideration received for occupancy valued in money, whether received in
49 money or otherwise, including all receipts, cash, credits and property or services of any kind or
50 nature and also any amount for which credit is allowed by the operator to the occupant without
51 any deduction from the consideration.

52 “Transient accommodation” a vacation, leisure or short-term rental accommodation
53 offering occupancy in exchange for rent including, but not limited to an apartment, single or
54 multiple family housing, cottage, condominium, time-share unit or any furnished residential

55 accommodation within any area zoned for residential or commercial use that is not a hotel,
56 motel, lodging house or bed and breakfast establishment.

57 Section 2. This chapter shall not be construed to include: (i) lodging accommodations at
58 federal, state or municipal institutions, except as provided for in clause (ii); (ii) lodging
59 accommodations, including dormitories, at religious, charitable, philanthropic and public and
60 private educational institutions; provided, however, that this exemption shall not apply to
61 accommodations provided in a manner ancillary to the achievement of the religious, charitable,
62 philanthropic or educational purposes of such institutions; and provided further, that lodging
63 accommodations provided by a public or private college or university that are not student
64 dormitories or faculty housing and that are available to the general public shall be considered
65 ancillary to the educational purpose of such educational institutions; (iii) privately owned and
66 operated convalescent homes for the aged, infirm, indigent or chronically ill; (iv) religious or
67 charitable homes for the aged, infirm, indigent or chronically ill; (v) summer camps for children
68 not more than 18 years of age or individuals with developmental disabilities; provided, however,
69 that such summer camp which offers its facilities off-season to individuals not less than 60 years
70 of age for a period not to exceed 31 days in any calendar year shall not lose its exemption under
71 this section; (vi) lodging accommodations provided to seasonal employees by employers; and
72 (vii) tenancies at will or month to month leases.

73 For the purposes of this section, an individual with a developmental disability shall mean
74 an individual who has a severe chronic disability which: (A) is attributable to a mental or
75 physical impairment or combination of mental and physical impairments; (B) is likely to
76 continue indefinitely; (C) results in substantial functional limitations in 3 or more of the
77 following areas of major life activity: (1) self-care; (2) receptive and expressive language; (3)

78 learning; (4) mobility; (5) self-direction; (6) capacity for independent living; and (7) economic
79 self-sufficiency; and (D) reflects the individual's need for a combination and sequence of special,
80 interdisciplinary or generic care, treatment or other services which are of lifelong or extended
81 duration and are individually planned and coordinated.

82 Section 3. An excise shall be imposed upon the transfer of occupancy of a room in a bed
83 and breakfast establishment, hotel, lodging house, transient accommodation or motel by an
84 operator at the rate of 5 per cent of the total amount of rent for each such occupancy. An excise
85 shall not be imposed if the total amount of rent is less than \$15 per day or its equivalent.

86 The operator shall pay the excise to the commissioner at the time provided for filing the
87 return required by section 16 of chapter 62C.

88 Section 3A. A city or town which accepts this section may impose a local excise tax upon
89 the transfer of occupancy of any room in a bed and breakfast establishment, hotel, lodging house,
90 transient accommodation or motel located within that city or town by an operator at a rate of not
91 more than 6 per cent of the total amount of rent for each such occupancy; provided, however,
92 that the city of Boston is hereby authorized to impose such local excise upon the transfer of
93 occupancy of a room in a bed and breakfast establishment, hotel, lodging house, transient
94 accommodation or motel located within the city of Boston by an operator at the rate of not more
95 than 6.5 per cent of the total amount of rent of each such occupancy. No excise shall be imposed
96 if the total amount of rent is less than \$15 per day or its equivalent or if the accommodation is
97 exempt under section 2. The operator shall pay the local excise tax imposed under this section to
98 the commissioner at the same time and in the same manner as the excise tax due to the
99 commonwealth. All sums received by the commissioner under this section as excise, penalties or

100 forfeitures, interest, costs of suit and fines shall at least quarterly be distributed, credited and paid
101 by the state treasurer upon certification of the commissioner to each city or town that has adopted
102 this section in proportion to the amount of such sums received from the transfer of occupancy in
103 each such city or town. This section shall only take effect in a city or town accepting this section
104 by a majority vote of the: city council with the approval of the mayor, in the case of a city with a
105 Plan A, Plan B or Plan F charter; city council, in the case of a city with a Plan C, Plan D or Plan
106 E charter; annual town meeting or a special meeting called for that purpose in the case of a
107 municipality with a town meeting form of government; or town council, in the case of a
108 municipality with a town council form of government. This section shall take effect on the first
109 day of the calendar quarter following 30 days after such acceptance or on the first day of such
110 later calendar quarter as the city or town may designate. The city or town, in accepting this
111 section, may not revoke or otherwise amend the applicable local tax rate more often than once in
112 a 12-month period.

113 The commissioner shall make available to a city or town requesting such information, the
114 total amount of room occupancy tax collected in the preceding fiscal year in the city or town
115 requesting the information.

116 Section 4. Reimbursement for the excise under this chapter shall be paid by the occupant
117 of such a room to the operator and each operator shall add to the rent and shall collect from the
118 occupant the full amount of the excise imposed by this chapter or an amount equal as nearly as
119 possible or practical to the average equivalent thereof. Such excise shall be a debt from the
120 occupant to the operator, when so added to the rent, and shall be recoverable at law in the same
121 manner as other debts.

122 Section 4A. The commissioner may enter into a voluntary collection agreement with a
123 hosting platform or an operator’s agent required to remit the excise under section 13, who is
124 willing to assume liability for the collection and remittance of the excise imposed under this
125 chapter on behalf of the operators that hosting platform or operator’s agent represents. The
126 hosting platform or operator’s agent shall not be liable for any faults in collecting or remitting
127 the excise caused by the hosting platform’s or operator’s agent’s reasonable reliance on
128 representations made to it by the operator about the nature of the property being rented, the
129 duration of the occupancy or other similar misrepresentations made by the operator to the hosting
130 platform or operator’s agent. The operator shall be liable for any unpaid excise resulting from
131 any such misrepresentations. A hosting platform or operator’s agent shall not be liable for any
132 over collection of the excise if the excise collected was remitted to the commissioner and if the
133 over collection resulted from the hosting platform’s or operator’s agent’s reasonable reliance on
134 the operator’s representations about the nature of the property being rented, about the nature of
135 the occupancy or whether such property was exempt from the excise. The operator shall be liable
136 for any monetary damages to the occupant resulting from any such misrepresentations.

137 Section 5. The amount of the excise collected by the operator from the occupant under
138 this chapter shall be stated and charged separately from the rent and shown separately on any
139 record thereof at the time the transfer of occupancy is made or on any evidence of such transfer
140 issued or used by the operator.

141 Section 6. A person shall not operate a bed and breakfast establishment, hotel, lodging
142 house, transient accommodation or motel unless a certificate of registration has been issued to
143 the person in accordance with section 67 of chapter 62C.

144 Section 7A. An operator who has paid the commissioner an excise under section 3 upon
145 an account later determined to be worthless shall be entitled to an abatement of the excise paid
146 on the worthless account. The claim for abatement shall annually be filed not later than April 15,
147 covering the amount of the excise on the accounts determined to be worthless in the prior
148 calendar year.

149 An operator who shall recover an excise on an account previously determined to be
150 worthless, for which an application for abatement has been filed, shall report and include the
151 same in a monthly return at the time of recovery.

152 Section 7B. Every operator who fails to pay to the commissioner the sums required to be
153 paid by this chapter shall be personally and individually liable. The term “operator”, as used in
154 this section, includes an officer or employee of a corporation or a member or employee of a
155 partnership or a limited liability company who as such officer, employee or member is under a
156 duty to pay over the taxes imposed by this chapter.

157 An operator who misrepresents to a hosting platform or operator’s agent required to remit
158 the excise under section 13, that the operator’s property is exempt from the excise imposed under
159 section 3 shall be liable for any unpaid excise under this section and shall have committed an
160 unfair trade practice under chapter 93A in making such a misrepresentation to the hosting
161 platform or operator’s agent.

162 Section 12. No excise shall be imposed, pursuant to this chapter, upon the transfer of
163 occupancy of a room in a hotel, lodging house, transient accommodation or motel if the occupant
164 is an employee of the United States military traveling on official United States military orders

165 which encompass the date of that occupancy. Each operator shall maintain records as the
166 commissioner shall require to substantiate exemptions claimed under this section.

167 Section 13. The operator may elect to allow a hosting platform or any operator's agent to
168 collect rent or facilitate the collection or payment of rent on their behalf through a written
169 agreement on an accommodation subject to the excise under this chapter. A hosting platform or
170 operator's agent that enters into a written agreement with the operator to collect rent or facilitate
171 the collection or payment of rent on behalf of the operator on an accommodation subject to the
172 excise under this chapter shall: (i) apply for and obtain a certificate of registration from the
173 commissioner in accordance with section 67 of chapter 62C; and (ii) assess, collect, report and
174 remit the excise to the commissioner as described in sections 3, 4, 5, 6 and 7A. The certificate of
175 registration obtained from the commissioner under this subsection shall identify and be in the
176 name of the individual operator, not the hosting platform or operator's agent.

177 A hosting platform or an operator's agent collecting and remitting the excise on behalf of
178 the operator shall provide notification within a reasonable time to the operator that the excise has
179 been collected and remitted to the commissioner under section 3. The notification may be
180 delivered in-hand or by mail or conveyed by electronic message, mobile or smart phone
181 application or some other similar electronic process, digital media or communication portal. An
182 operator shall not be responsible for collecting and remitting the excise on any transaction for
183 which it has received notification from a hosting platform or operator's agent that the excise has
184 been collected and remitted to the commissioner on their behalf.

185 The commissioner may promulgate rules and regulations for the assessing, reporting,
186 collecting, remitting and enforcement of the room occupancy excise under this section.

187 SECTION 2. The commissioner may promulgate rules and regulations to implement and
188 operate voluntary collection agreements under section 6 of chapter 64G of the General Laws, as
189 appearing in section 1, within 6 months of the effective date of this act; provided, however, that
190 the rules and regulations shall contain minimum standards for a hosting platform and an
191 operator's agent to be eligible to enter into a voluntary collection agreement with the
192 commissioner.

193 SECTION 3. Sections 1 to 12, inclusive, of chapter 64G, as so appearing, shall be
194 effective for contracts entered into on or after July 1, 2018.

195 SECTION 4. Section 1 shall be effective for tax years beginning on or after January 1,
196 2019.