

**DEPARTMENT OF TAXATION
2021 Fiscal Impact Statement**

1. **Patron** Thomas K. Norment, Jr.
3. **Committee** Senate Finance and Appropriations
4. **Title** Retail sales and transient occupancy taxes on room rentals; Tourism Promotion Fund created

2. **Bill Number** SB 1398
House of Origin:
 Introduced
 X **Substitute**
 Engrossed
- Second House:**
 In Committee
 Substitute
 Enrolled

5. Summary/Purpose:

The Department of Taxation (“the Department”) understands that the Patron intends on offering a substitute. This Fiscal Impact Statement is based on the substitute.

This bill would provide that 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 create the Tourism Promotion Fund (TPF). An amount equal to the estimated sales tax revenue generated from the tax on accommodations fees would be appropriated to the TPF each fiscal year.

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.)

8. Fiscal implications:

Administrative Costs

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 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 TPF be made in an amount estimated to be equal to the 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

10. Technical amendment necessary: Yes.

Page 15, Line 385: after discount
Insert: room

Page 25, Line 648: after discount
Insert: room

Page 27, Line 697: after discount
Insert: room

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 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 create the TPF. An amount equal to the estimated sales tax revenue generated from the tax on accommodations fees would be appropriated to the TPF. Funds allocated to the TPF are to be used for destination marketing programs and to provide grants to local tourism authorities for the same purpose.

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

Similar Legislation

House Bill 2158 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 Destination Marketing Fund and transient occupancy taxes to the localities for purposes of destination marketing.

cc : Secretary of Finance

Date: 2/1/2021 VB
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