

TRANSIENT OCCUPANCY TAX AFTER SB1398

October 26, 2021

Karen I. Rose

Commissioner of the Revenue





History

- Senate Bill 1398 was introduced by Senator Thomas Norment to address the problem of Online Travel Agencies (OTA) (Expedia, Booking.com, Travelocity etc) not paying sales tax and transient occupancy on the full price.
- Prior to this legislation an OTA would contract with a hotel for example for a \$100 room and the customer would pay the OTA \$100 plus the 5.3% sales tax and the 7% transient occupancy tax or a total of \$112.30 but the OTA would remit the hotel the wholesale room price of \$80 and the sales tax and the transient occupancy on the \$80 room rate or a total of \$89.84 so the state and locality were not getting the entire taxes collected.
- The state and locality were losing a % of the tax and the Virginia hotels were having to remit more money than their online competitors.



Definitions

- **Accommodations** Any room or space for which tax is imposed on the retail sale of the same pursuant to this article.
- **Accommodations Provider** Any person that furnishes accommodations to the general public for compensation. The term "furnishes" includes the sale of use or possession or the sale of the right to use or possess.



Translation

- **Accommodations** *The house or hotel room where the guest will sleep or stay.*
- **Accommodations Provider** *The person or company who owns the house or hotel.*



Definitions

- **Accommodations Intermediary** Any person other than an accommodations provider that facilitates the sale of an accommodation, charges a room charge to the customer, and charges an accommodations fee to the customer, which fee it retains as compensation for facilitating the sale. For purposes of this definition, "facilitates the sale" includes brokering, coordinating, or in any other way arranging for the purchase of the right to use accommodations via a transaction directly, including via one or more payment processors, between a customer and an accommodations provider.



Translation

- **Accommodations Intermediary** *Online platforms such as Expedia, VRBO, Kayak, Hotels.com, etc...*

EXCEPT...

Apparently NOT AIRBnB.



Definitions

- **Room Charge** The full retail price charged to the customer by the accommodations intermediary for the use of the accommodations, including any accommodations fee, before taxes. The room charge shall be determined in accordance with 23VAC10-210-730 and the related rulings of the Department on the same.
- **Discount Room Charge** The full amount charged by the accommodations provider to the accommodations intermediary, or an affiliate thereof, for furnishing the accommodations.
- **Accommodations Fee** The room charge less the discount room charge, if any, provided that the accommodations fee shall not be less than \$0.



Translation

- **Room Charge** *The full price paid by the customer before taxes. Includes everything associated with the rental (cleaning fees, pet fees, phone charges, movie charges, etc...)*
- **Discount Room Charge** *The reduced price that the online platform pays to the hotel for the right to list the room.*
- **Accommodations Fee** *This is the online platform's mark-up.*



Ordinance

- Updating to the definitions above.
- Clarifies that the entire amount charged is subject to the transient occupancy tax.
- Clarifies the new responsibilities and obligations for different people depending on their role, the platform, and type of lodging involved.



Questions