2015 Session

Budget Bill - HB1400 (Introduced)

Item 3-5.12

§ 3-5.12 RETAIL SALES AND USE TAXES ON ACCOMMODATIONS

A. Notwithstanding any language to the contrary in § 58.1-600 et seq., Code of Virginia, in the case of the "retail sale" of any accommodations in which an accommodations intermediary facilitates the sale, (i) the accommodations provider shall collect from the accommodations intermediary the retail sales and use taxes imposed in accordance with § 58.1-600 et. seq., Code of Virginia, computed on the discount room charge, and shall be liable for and remit the same to the Department of Taxation, and (ii) the accommodations intermediary shall collect the retail sales and use taxes imposed in accordance with § 58.1-600 et seq., Code of Virginia, computed on the room charge, and shall (a) be liable for and remit the portion of such taxes that relates to the accommodations fee to the Department and (b) shall be liable for and shall remit the portion of such taxes that relates to the discount room charge to the accommodations provider for purposes of payment of the tax under clause (i).

B. For the purposes of this section, the following definitions shall be applicable:

1. "Accommodations" means any room or rooms, lodgings, or accommodations in any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodgings, space, or accommodations are regularly furnished to transients for a consideration.

2. "Accommodations fee" means the room charge less the discount room charge, if any, provided that the accommodations fee shall not be less than $0.

3. "Accommodations intermediary" means any person other than an accommodations provider that facilitates the sale of an accommodation, acts as the merchant of record, 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 or the right to use accommodations by a customer.

4. "Accommodations provider" means 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.

5. "Affiliate" means the same as such term is defined in § 58.1-439.18, Code of Virginia.

6. "Discount room charge" means the full amount charged by the accommodations provider to the accommodations intermediary (or an affiliate thereof) for furnishing the accommodation.

7. "Retail sale" or a "sale at retail" shall have the same definition as such term is defined in § 58.1-602; however, the terms shall specifically include charges imposed by any accommodation intermediary for accommodations furnished to transients for less than 90 continuous days.

8. "Room charge" means 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 23VAC10-210-730 and related rulings of the Department on the same.

C. In any "retail sale" of any accommodations, the accommodations intermediary shall separately state the amount of the tax on the bill, invoice, or similar documentation and shall add the tax to the room charge; thereafter, such tax shall be a debt from the person renting the accommodations to the accommodations intermediary, recoverable at law in the same manner as other debts.

D. For purposes of meeting the requirements of § 58.1-612, Code of Virginia, an accommodations intermediary shall be deemed a dealer making a retail sale of an accommodation, and shall be deemed to have sufficient activity within the Commonwealth to require registration pursuant to § 58.1-613, Code of Virginia, if the intermediary regularly facilitates the sale of an accommodation located in the Commonwealth.

E. The Department of Taxation shall develop and make publicly available guidelines for purposes of developing processes and procedures to implement this section. The development, issuance, and publication of the guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq., Code of Virginia).