

STATE OF NEW YORK

6592

2021-2022 Regular Sessions

IN ASSEMBLY

March 19, 2021

Introduced by M. of A. VANEL -- read once and referred to the Committee on Housing

AN ACT to amend the multiple dwelling law, the tax law and chapter 161 of the laws of 1970, relating to enabling any city having a population of one million or more to impose and collect taxes on the occupancy of hotel rooms in such city, in relation to the regulation of short-term rental units

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subparagraph 1 of paragraph a of subdivision 8 of section 4 of the multiple dwelling law, as amended by chapter 225 of the laws of 2010, is amended to read as follows:

(1) (A) occupancy of such dwelling unit for fewer than thirty consecutive days by other natural persons living within the household of the permanent occupant such as house guests or lawful boarders, roomers or lodgers; ~~[or]~~

(B) incidental and occasional occupancy of such dwelling unit for fewer than thirty consecutive days by other natural persons when the permanent occupants are temporarily absent for personal reasons such as vacation or medical treatment, provided that there is no monetary compensation paid to the permanent occupants for such occupancy; or

(C) occupancy of such dwelling as a short-term rental unit pursuant to article seven-D of this chapter.

§ 2. The multiple dwelling law is amended by adding a new article 7-D to read as follows:

ARTICLE 7-D

SHORT-TERM RENTAL UNITS

Section 288. Definitions.

289. Short-term rental units authorized.

290. Registration.

291. Requirements of hosting platforms.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets ~~[-]~~ is old law to be omitted.

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1 292. Regulations.

2 § 288. Definitions. For the purposes of this article, the following
3 terms shall have the following meanings:

4 1. "Short-term rental unit" means an entire dwelling unit, or a room,
5 group of rooms, other living or sleeping space, or any other space, made
6 available for rent by guests for less than thirty consecutive days.

7 2. "Short-term rental host" means an owner or tenant of a short-term
8 rental unit who rents such unit to guests.

9 3. "Hosting platform" means a person or entity who, pursuant to an
10 agreement with an operator of a hotel, facilitates the occupancy of a
11 hotel. A person "facilitates the occupancy of a hotel" by, in exchange
12 for a fee, either: (A) providing the forum in which an operator can list
13 or advertise a hotel for occupancy; or (B) providing the forum, in
14 which, or by means of which, the offer for occupancy is accepted.

15 § 289. Short-term rental units authorized. 1. A short-term rental host
16 may operate a dwelling unit as a short-term rental unit provided such
17 dwelling unit:

18 (a) is registered in accordance with section two hundred ninety of
19 this article;

20 (b) is not used to provide single room occupancy as defined by subdi-
21 vision sixteen of section four of this chapter;

22 (c) includes a conspicuously posted evacuation diagram identifying all
23 means of egress from the unit and the building in which it is located;

24 (d) includes a conspicuously posted list of emergency phone numbers
25 for police, fire, and poison control;

26 (e) is not subject to the emergency housing rent control law, the rent
27 and rehabilitation law of the city of New York enacted pursuant to the
28 local emergency housing rent control law, the emergency tenant
29 protection act of nineteen seventy-four, the public housing law, or
30 otherwise rent subsidized, rent controlled, rent stabilized, or consid-
31 ered affordable housing; and

32 (f) is insured for at least five hundred thousand dollars to protect
33 against third party claims of property damage or bodily injury that
34 arise out of the operation of a short-term rental unit. Insurance
35 provided by hosting platforms can satisfy this requirement.

36 2. A short-term rental host shall not operate more than one class A
37 multiple dwelling unit as a short-term rental unit unless the units are
38 at the same address, including apartment number, if applicable.

39 3. Occupancies of a short-term rental unit shall be subject to taxes
40 and fees pursuant to articles twenty-eight and twenty-nine of the tax
41 law and applicable local laws.

42 4. Short-term rental hosts shall maintain records related to guest
43 stays for one year, including the date of each booking and the identity
44 and number of guests, and records related to their registration as
45 short-term rental hosts with the division of housing and community
46 renewal.

47 5. Hosting platforms shall maintain records related to guest stays for
48 one year, including the date of each booking and the identity and number
49 of guests. Hosting platforms shall make all relevant records available
50 to the division of housing and community renewal in response to valid
51 legal process.

52 § 290. Registration. 1. Short-term rental hosts shall be required to
53 register each short-term rental unit with the division of housing and
54 community renewal.

55 2. Registrations shall be valid for two years, after which time the
56 short-term rental host may renew his or her registration in a manner

1 prescribed by the division of housing and community renewal. The divi-
2 sion of housing and community renewal may revoke the registration of a
3 short-term rental host upon a determination that the short-term rental
4 host has violated any provision of this article at least three times in
5 two calendar years, and may determine that the short-term rental host
6 shall be ineligible for registration for a period of up to twelve months
7 from the date the third violation is determined to have occurred.

8 3. Hosting platforms are authorized to facilitate the registration
9 process by collecting the required application information and transmit-
10 ting it to the division of housing and community renewal for processing
11 if the platform has obtained short-term rental host consent.

12 § 291. Requirements of hosting platforms. Hosting platforms shall:

13 1. create a dedicated means by which complaints can be submitted by
14 short-term rental hosts, guests, and community members. These means
15 shall be available twenty-four hours a day, seven days a week.

16 2. maintain records of all transactions in cities with a population of
17 a million or more for a period of twelve months.

18 3. inform short-term rental hosts of the registration requirement and
19 regulations under this article.

20 § 292. Regulations. The division of housing and community renewal
21 shall promulgate regulations necessary and appropriate to enforce this
22 article, including regulations to facilitate the registration of short-
23 term rental hosts.

24 § 3. Section 304 of the multiple dwelling law is amended by adding a
25 new subdivision 1-b to read as follows:

26 1-b. a. Every person who shall violate or assist in the violation of
27 any provision of sections two hundred eighty-nine or two hundred ninety
28 of this chapter shall be guilty of an offense, and any person found to
29 have committed three or more offenses of such sections may be prohibited
30 from operating a short-term rental unit for a period of one year.

31 b. The maximum fine for violating section two hundred eighty-nine or
32 two hundred ninety of this chapter shall be five hundred dollars for a
33 first offense; and one thousand dollars for the second or any subsequent
34 offense.

35 c. Any violation under this subdivision shall not be a crime and the
36 penalty or punishment imposed therefor shall not be deemed for any
37 purpose a penal or criminal penalty or punishment, and shall not impose
38 any disability upon or affect or impair the credibility as a witness, or
39 otherwise, of any person convicted thereof.

40 § 4. Subdivision (c) of section 1101 of the tax law, as added by chap-
41 ter 93 of the laws of 1965, paragraphs 2, 3, 4 and 6 as amended by
42 section 2 and paragraph 8 as added by section 3 of part AA of chapter 57
43 of the laws of 2010, and paragraph 5 as amended by chapter 575 of the
44 laws of 1965, is amended and two new paragraphs 9 and 10 are added to
45 read as follows:

46 (c) When used in this article for the purposes of the tax imposed
47 under subdivision (e) of section eleven hundred five, and subdivision
48 (a) of section eleven hundred four, the following terms shall mean:

49 (1) Hotel. A building or portion of it which is regularly used and
50 kept open as such for the lodging of guests. The term "hotel" includes
51 an apartment hotel, a motel, boarding house or club, whether or not
52 meals are served, short-term rental units as defined in paragraph nine
53 of this subdivision, and a bungalow or similar furnished living unit
54 that is limited to a single family occupancy and does not provide house-
55 keeping, food, or other common hotel services, including but not limited
56 to entertainment or planned activities.

(2) Occupancy. The use or possession, or the right to the use or possession, of any room in a hotel. "Right to the use or possession" includes the rights of a room remarketer as described in paragraph eight of this subdivision.

(3) Occupant. A person who, for a consideration, uses, possesses, or has the right to use or possess, any room in a hotel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise. "Right to use or possess" includes the rights of a room remarketer as described in paragraph eight of this subdivision.

(4) Operator. Any person operating a hotel. Such term shall include a room remarketer and such room remarketer shall be deemed to operate a hotel, or portion thereof, with respect to which such person has the rights of a room remarketer. This term does not include a hosting platform as defined in paragraph ten of this subdivision.

(5) Permanent resident. Any occupant of any room or rooms in a hotel for at least ninety consecutive days shall be considered a permanent resident with regard to the period of such occupancy.

(6) Rent. The consideration received for occupancy, including any service or other charge or amount required by the operator to be paid as a condition for occupancy, valued in money, whether received in money or otherwise and whether ~~received~~ collected by the operator ~~[or a]~~, hosting platform, room remarketer or another person on behalf of ~~[either]~~ any of them.

(7) Room. Any room or rooms of any kind in any part or portion of a hotel, which is available for or let out for any purpose other than a place of assembly.

(8) Room remarketer. A person who reserves, arranges for, conveys, or furnishes occupancy, whether directly or indirectly, to an occupant for rent in an amount determined by the room remarketer, directly or indirectly, whether pursuant to a written or other agreement. Such person's ability or authority to reserve, arrange for, convey, or furnish occupancy, directly or indirectly, and to determine rent therefor, shall be the "rights of a room remarketer". A room remarketer is not a permanent resident with respect to a room for which such person has the rights of a room remarketer. A hosting platform shall not include a room remarketer.

(9) Short-term rental unit. A room, group of rooms, or other living or sleeping space, or any other space let to occupants, including but not limited to private dwellings, residences, or buildings used as residences.

(10) Hosting platform. A person or entity who, pursuant to an agreement with an operator of a hotel, facilitates the occupancy of a hotel. A person "facilitates the occupancy of a hotel" by, in exchange for a fee, either: (A) providing the forum in which an operator can list or advertise a hotel for occupancy; or (B) providing the forum in which, or by means of which, the offer for occupancy is accepted.

§ 5. Subdivision (a) of section 1104 of the tax law, as added by chapter 3 of the laws of 2004, is amended to read as follows:

(a) Imposition. In addition to any other fee or tax imposed by this article or any other law, on and after April first, two thousand five, there is hereby imposed within the territorial limits of a city with a population of a million or more and there shall be paid a unit fee on every occupancy of a unit in a hotel in such city subject to tax under subdivision (e) of section eleven hundred five of this part at the rate of one dollar and fifty cents per unit per day, except that such unit fee shall not be imposed upon (1) occupancy by a permanent resident or

(2) where the rent per unit is not more than at the rate of two dollars per day.

§ 6. Subdivision 1 of section 1131 of the tax law, as amended by section 2 of part G of chapter 59 of the laws of 2019, is amended to read as follows:

(1) "Persons required to collect tax" or "person required to collect any tax imposed by this article" shall include: every vendor of tangible personal property or services; every recipient of amusement charges; every hosting platform with respect to occupancies it facilitates as described in paragraph ten of subdivision (c) of section eleven hundred one of this article; every operator of a hotel except with respect to occupancies facilitated by a hosting platform; and every marketplace provider with respect to sales of tangible personal property it facilitates as described in paragraph one of subdivision (e) of section eleven hundred one of this article. Said terms shall also include any officer, director or employee of a corporation or of a dissolved corporation, any employee of a partnership, any employee or manager of a limited liability company, or any employee of an individual proprietorship who as such officer, director, employee or manager is under a duty to act for such corporation, partnership, limited liability company or individual proprietorship in complying with any requirement of this article, or has so acted; and any member of a partnership or limited liability company. Provided, however, that any person who is a vendor solely by reason of clause (D) or (E) of subparagraph (i) of paragraph (8) of subdivision (b) of section eleven hundred one of this article shall not be a "person required to collect any tax imposed by this article" until twenty days after the date by which such person is required to file a certificate of registration pursuant to section eleven hundred thirty-four of this part.

§ 7. Section 1132 of the tax law is amended by adding a new subdivision (m) to read as follows:

(m) In carrying out the obligations imposed under this section, a hosting platform shall have all the duties, benefits, and entitlements of a person required to collect tax under this article and article twenty-nine of this chapter with respect to the occupancies giving rise to the tax obligation, including the right to accept a certificate or other documentation from an occupant substantiating an exemption or exclusion from tax, as if such hosting platform were the operator of the hotel with respect to such occupancy, including the right to receive the refund authorized by subdivision (e) of this section and the credit allowed by subdivision (f) of section eleven hundred thirty-seven of this part.

§ 8. Section 1133 of the tax law is amended by adding a new subdivision (g) to read as follows:

(g) a hosting platform is relieved of liability under this article for failure to collect the correct amount of tax to the extent that the hosting platform can show that the error was due to incorrect or insufficient information given to the hosting platform by the operator, whether intentional or unintentional.

§ 9. Section 1137 of the tax law is amended by adding a new subdivision (g) to read as follows:

(g) a hosting platform who facilitates the occupancy of a hotel is relieved from the duty to remit to the commissioner the tax imposed by this article in regard to a particular occupancy if, pursuant to an agreement with an operator registered with the commission as required by section eleven hundred thirty-four of this part, the hosting platform

1 and operator agree that the operator is required to remit the tax
2 directly to the commissioner. In such situation, the operator shall be
3 treated as if it collected the tax and shall have all of the rights and
4 obligations imposed by New York law on persons required to collect tax,
5 including but not limited to the liability imposed by section eleven
6 hundred thirty-three of this part.

7 § 10. Section 1142 of the tax law is amended by adding a new subdivi-
8 sion 16 to read as follows:

9 16. Notwithstanding any provision of law to the contrary, including
10 but not limited to subdivisions four, five, and six of this section, no
11 hosting platform shall be required to list any operator of a hotel on
12 any return required to be filed with the commissioner under the applica-
13 ble tax laws and any regulations adopted pursuant thereto. Information
14 provided by a hosting platform to the commissioner shall be confiden-
15 tial. Such confidential information shall not be disclosed by the
16 commissioner unless the hosting platform has given written consent to
17 make such disclosure or there is an agreement between the hosting plat-
18 form and the commissioner to make such disclosure. Notwithstanding any
19 law to the contrary, information provided by a hosting platform shall
20 not be subject to article six of the public officers law and shall not
21 be provided to any other agency of the state, locality, or any other
22 government entity or political subdivision. Audits of any hosting plat-
23 form shall be conducted solely on the basis of the tax identification
24 number associated with each hosting platform and shall not be conducted
25 directly or indirectly on any operator of a hotel or any occupant to
26 whom occupancy is rented from an operator of a hotel, nor shall any
27 hosting platform be required to disclose any personally identifiable
28 information relating to any operator of a hotel or occupant to whom
29 occupancy is rented from an operator of a hotel. Provided, however, that
30 if a hosting platform and operator have entered into an agreement pursu-
31 ant to section eleven hundred thirty-six of this part, only the operator
32 shall be subject to audit by the commissioner.

33 § 11. Section 1240 of the tax law, as amended by chapter 356 of the
34 laws of 2014, is amended to read as follows:

35 § 1240. Administration and collection. The taxes authorized under
36 sections twelve hundred one through twelve hundred four of this article
37 which are now imposed shall continue to be administered and collected by
38 the fiscal or other officers of the city, county or school district in
39 the same manner as such taxes have been administered and collected by
40 such officers immediately prior to the enactment of this article, in
41 accordance with the applicable provisions of the charter, administrative
42 code, local law, ordinance or resolution then in force, with such amend-
43 ments in respect to administration and collection as may be enacted,
44 except that any taxes that counties are authorized to impose under
45 sections twelve hundred two-a through twelve hundred two-xx of this
46 article shall be imposed on the same transactions subject to tax under
47 subdivision (e) of section eleven hundred five of article twenty-eight
48 of this chapter, and shall be collected by any person required to
49 collect tax under section eleven hundred thirty-one of article twenty-
50 eight of this chapter, and such person shall have all the rights,
51 duties, and responsibilities as set forth in the provisions of sections
52 eleven hundred thirty-one through eleven hundred forty-eight of article
53 twenty-eight of this chapter. Provided, however, if a hosting platform
54 and a county have previously entered into an agreement regarding the
55 collection of tax, the terms of such agreement shall continue to govern
56 the collection of such tax. Taxes authorized under sections twelve

1 hundred one through twelve hundred four of this article which may here-
2 after be imposed by a city, county or school district shall be adminis-
3 tered and collected in such manner as may be provided in its charter,
4 administrative code, local laws, ordinances or resolutions, with such
5 amendments in respect to administration and collection as may be
6 enacted, except that any taxes that counties are authorized to impose
7 under sections twelve hundred two-a through twelve hundred two-xx of
8 this article shall be imposed on the same transactions subject to tax
9 under subdivision (e) of section eleven hundred five of article twenty-
10 eight of this chapter, and shall be collected by any person required to
11 collect tax under section eleven hundred thirty-one of article twenty-
12 eight of this chapter, and such person shall have all the rights,
13 duties, and responsibilities as set forth in the provisions of sections
14 eleven hundred thirty-one through eleven hundred forty-eight of article
15 twenty-eight of this chapter. Notwithstanding any other provision of law
16 to the contrary, the authorization to impose tax upon the transfer of
17 real property pursuant to subdivision (b) of section twelve hundred one
18 of this article, shall not, when the conveyance consists of a transfer
19 of property made as a result of an order of the court in a foreclosure
20 proceeding ordering the sale of such property, include the authorization
21 to impose civil or criminal penalties, interest, or other liability upon
22 the referee or sheriff effectuating the transfer.

23 § 12. Subdivision 3 of section 1 of chapter 161 of the laws of 1970,
24 relating to enabling any city having a population of one million or more
25 to impose and collect taxes on the occupancy of hotel rooms in such
26 city, is amended to read as follows:

27 (3) Such local laws may provide that any tax imposed shall be paid by
28 the person liable therefor to the owner of the hotel room occupied or to
29 the person entitled to be paid the rent or charge for the hotel room
30 occupied for and on account of the city imposing the tax and that such
31 owner or person entitled to be paid the rent or charge shall be liable
32 for the collection and payment of the tax; and that such owner or person
33 entitled to be paid the rent or charge shall have the same right in
34 respect to collecting the tax from the person occupying the hotel room,
35 or in respect to non-payment of the tax by the person occupying the
36 hotel room, as if the tax were a part of the rent or charge and payable
37 at the same time as the rent or charge; provided, however, that the
38 finance administrator or other fiscal officers of such city, specified
39 in such local law, shall be joined as a party in any action or proceed-
40 ing brought to collect the tax by the owner or by the person entitled to
41 be paid the rent or charge. Notwithstanding any provision to the contra-
42 ry, a hosting platform, as defined in paragraph ten of subdivision (c)
43 of section 1101 of the tax law, shall collect the tax authorized to be
44 imposed by this section.

45 § 13. This act shall take effect on the one hundred twentieth day
46 after it shall have become a law.