S T A T E  O F  N E W  Y O R K

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2015-2016 Regular Sessions

I N  A S S E M B L Y

May 27, 2015

Introduced by M. of A. BLAKE -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to renting of housing through marketplace providers

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision (c) of section 1101 of the tax law is amended by adding two new paragraphs 9 and 10 to read as follows:

(9) MARKETPLACE PROVIDER OF OCCUPANCY. A PERSON WHO, PURSUANT TO AN AGREEMENT WITH A MARKETPLACE SELLER OF OCCUPANCY, BOTH FACILITATES OCCUPANCY BY SUCH MARKETPLACE SELLER OF OCCUPANCY AND VOLUNTARILY CONSENTS TO ASSUME THE SALES TAX COLLECTION AND REMITTANCE RESPONSIBILITIES OF THE MARKETPLACE SELLER OF OCCUPANCY. A PERSON "FACILITATES OCCUPANCY" FOR PURPOSES OF THIS PARAGRAPH WHEN THE PERSON MEETS ALL OF THE FOLLOWING CONDITIONS: (I) SUCH PERSON, OR AN AFFILIATED PERSON, DIRECTLY OR INDIRECTLY COLLECTS OR RECEIVES THE RENT PAID BY AN OCCUPANT TO A MARKETPLACE SELLER OF OCCUPANCY; AND

(II) SUCH PERSON PERFORMS EITHER OF THE FOLLOWING ACTIVITIES:

(A) PROVIDES THE FORUM IN WHICH, OR BY MEANS OF WHICH, THE OFFER OF OCCUPANCY IS ACCEPTED, INCLUDING AN INTERNET WEBSITE OR SIMILAR FORUM; OR

(B) ARRANGES FOR THE EXCHANGE OF INFORMATION OR MESSAGES BETWEEN THE OCCUPANT AND THE MARKETPLACE SELLER OF OCCUPANCY. A PERSON WHO VOLUNTARILY AGREES TO ASSUME THE SALES TAX COLLECTION AND REMITTANCE RESPONSIBILITIES OF THE MARKETPLACE SELLER OF OCCUPANCY SHALL REGISTER TO COLLECT TAX UNDER SECTION ELEVEN HUNDRED THIRTY-FOUR OF THIS ARTICLE. FOR PURPOSES OF THIS PARAGRAPH, TWO PERSONS ARE AFFILIATED IF ONE PERSON HAS AN OWNERSHIP INTEREST OF MORE THAN FIVE PERCENT, WHETHER DIRECT OR INDIRECT, IN THE OTHER, OR WHERE AN OWNERSHIP INTEREST OF MORE THAN FIVE PERCENT, WHETHER DIRECT OR INDIRECT, IS HELD IN EACH OF SUCH PERSONS BY

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

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ANOTHER PERSON OR BY A GROUP OF OTHER PERSONS WHICH ARE AFFILIATED PERSONS WITH RESPECT TO EACH OTHER.

(10) MARKETPLACE SELLER OF OCCUPANCY. ANY PERSON, WHETHER OR NOT SUCH PERSON IS REQUIRED TO REGISTER TO COLLECT TAX UNDER SECTION ELEVEN HUNDRED THIRTY-FOUR OF THIS ARTICLE, WHO (I) BOTH:

(A) HAS AN AGREEMENT WITH A MARKETPLACE PROVIDER OF OCCUPANCY UNDER WHICH SUCH MARKETPLACE PROVIDER OF OCCUPANCY WILL FACILITATE OCCUPANCIES FOR SUCH PERSON WITHIN THE MEANING OF PARAGRAPH NINE OF THIS SUBDIVISION; AND

(B) HAS AN AGREEMENT WITH A MARKETPLACE PROVIDER OF OCCUPANCY TO PERMIT SUCH MARKETPLACE PROVIDER OF OCCUPANCY TO VOLUNTARILY COLLECT AND REMIT SALES TAX ON OCCUPANCIES FACILITATED BY SUCH MARKETPLACE PROVIDER OF OCCUPANCY; AND

(II) DIRECTLY OR INDIRECTLY COLLECTS OR RECEIVES RENTS.

S 2. Paragraph 6 of subdivision (c) of section 1101 of the tax law, as amended by section 2 of part AA of chapter 57 of the laws of 2010, is amended to read as follows:

(6) Rent. The consideration received for occupancy, including any service or other charge or amount required to be paid as a condition for occupancy, valued in money, whether received in money or otherwise and whether received by the operator or a room remarketer or another person on behalf of either of them. RENT SHALL NOT INCLUDE A SEPARATELY STATED FEE OR SIMILAR CHARGE PAID BY THE OCCUPANT TO THE MARKETPLACE PROVIDER FOR SERVICES INCLUDING BUT NOT LIMITED TO: (I) PROVIDING THE FORUM IN WHICH, OR BY MEANS OF WHICH, THE OFFER OF OCCUPANCY IS ACCEPTED, INCLUDING AN INTERNET WEBSITE OR SIMILAR FORUM;

(II) ARRANGING FOR THE EXCHANGE OF INFORMATION OR MESSAGES BETWEEN THE OCCUPANT AND THE MARKETPLACE SELLER OF OCCUPANCY; OR

(III) FACILITATING PAYMENT BETWEEN THE MARKETPLACE SELLER OF OCCUPANCY AND THE OCCUPANT.

S 3. Subdivision 1 of section 1131 of the tax law, as amended by chapter 576 of the laws of 1994, 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; [and] every operator of a hotel; AND EVERY MARKETPLACE PROVIDER OF OCCUPANCY AS DESCRIBED IN PARAGRAPH NINE OF SUBDIVISION (C) 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; 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)] EIGHT 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.

S 4. Section 1132 of the tax law is amended by adding a new subdivision (l) to read as follows:

(L) (1) A MARKET PLACE PROVIDER OF OCCUPANCY SHALL: (I) COMPLY WITH ALL THE PROVISIONS OF THIS ARTICLE AND ARTICLE TWENTY-NINE OF THIS CHAP-

TER AND OF ANY REGULATIONS ADOPTED PURSUANT THERETO, AND TO ALL THE REQUIREMENTS AND OBLIGATIONS THEREOF, INCLUDING THE RIGHT TO ACCEPT A CERTIFICATE OR OTHER DOCUMENTATION FROM A CUSTOMER SUBSTANTIATING AN EXEMPTION OR EXCLUSION FROM TAX, AND HAVE ALL THE DUTIES, BENEFITS AND ENTITLEMENTS OF A PERSON REQUIRED TO COLLECT TAX UNDER THIS ARTICLE AND PURSUANT TO THE AUTHORITY OF ARTICLE TWENTY-NINE OF THIS CHAPTER WITH RESPECT TO SUCH OCCUPANCY, AND SUCH TAX REQUIRED TO BE COLLECTED, AS IF SUCH MARKETPLACE PROVIDER OF OCCUPANCY WERE THE OPERATOR 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; AND

(II) KEEP SUCH RECORDS AND INFORMATION AND COOPERATE WITH THE COMMISSIONER TO ENSURE THE PROPER COLLECTION AND REMITTANCE OF TAX IMPOSED, COLLECTED OR REQUIRED TO BE COLLECTED UNDER THIS ARTICLE AND ARTICLE TWENTY-NINE OF THIS CHAPTER.

(2) A MARKETPLACE SELLER OF OCCUPANCY IS NOT A PERSON REQUIRED TO COLLECT TAX FOR PURPOSES OF THIS SECTION IN REGARD TO A PARTICULAR OCCUPANCY SUBJECT TO TAX UNDER SUBDIVISION (E) OF SECTION ELEVEN HUNDRED FIVE OF THIS ARTICLE IF, IN REGARD TO SUCH OCCUPANCY:

(I) THE MARKETPLACE SELLER OF OCCUPANCY CAN SHOW THAT SUCH OCCUPANCY WAS FACILITATED BY A MARKETPLACE PROVIDER OF OCCUPANCY AS DESCRIBED IN PARAGRAPH NINE OF SUBDIVISION (C) OF SECTION ELEVEN HUNDRED ONE OF THIS ARTICLE FROM WHOM SUCH MARKETPLACE SELLER OF OCCUPANCY HAS RECEIVED IN GOOD FAITH A PROPERLY COMPLETED CERTIFICATE OF COLLECTION IN A FORM PRESCRIBED BY THE COMMISSIONER CERTIFYING THAT THE MARKETPLACE PROVIDER OF OCCUPANCY HAS AGREED TO ASSUME THE SALES TAX COLLECTION AND FILING RESPONSIBILITIES OF THE MARKETPLACE SELLER OF OCCUPANCY, IS REGISTERED TO COLLECT SALES TAX AND WILL COLLECT SALES TAX ON ALL TAXABLE OCCUPANCIES BY THE MARKETPLACE SELLER OF OCCUPANCY AND WITH SUCH OTHER INFORMATION AS THE COMMISSIONER MAY PRESCRIBE; AND

(II) ANY FAILURE OF THE MARKETPLACE PROVIDER OF OCCUPANCY TO COLLECT THE PROPER AMOUNT OF TAX IN REGARD OF SUCH OCCUPANCY WAS NOT THE RESULT OF SUCH MARKETPLACE SELLER OF OCCUPANCY PROVIDING THE MARKETPLACE PROVIDER OF OCCUPANCY WITH INCORRECT INFORMATION. THIS PROVISION SHALL BE ADMINISTERED IN A MANNER CONSISTENT WITH SUBPARAGRAPH (I) OF PARAGRAPH ONE OF SUBDIVISION (C) OF THIS SECTION AS IF A CERTIFICATE OF COLLECTION WERE A RESALE OR EXEMPTION CERTIFICATE FOR PURPOSES OF SUCH SUBPARAGRAPH, INCLUDING WITH REGARD TO THE COMPLETENESS OF SUCH CERTIFICATE OF COLLECTION AND THE TIMING OF ITS ACCEPTANCE BY THE MARKETPLACE SELLER OF OCCUPANCY. PROVIDED THAT, WITH REGARD TO ANY OCCUPANCIES SOLD BY A MARKETPLACE SELLER OF OCCUPANCY THAT ARE FACILITATED BY A MARKETPLACE PROVIDER OF OCCUPANCY WHO IS AFFILIATED WITH SUCH MARKETPLACE SELLER OF OCCUPANCY AS DESCRIBED IN PARAGRAPH NINE OF SUBDIVISION (C) OF SECTION ELEVEN HUNDRED ONE OF THIS ARTICLE, A MARKETPLACE SELLER OF OCCUPANCY SHALL BE DEEMED LIABLE AS A PERSON UNDER A DUTY TO ACT FOR SUCH MARKETPLACE PROVIDER OF OCCUPANCY FOR PURPOSES OF SUBDIVISION ONE OF SECTION ELEVEN HUNDRED THIRTY-ONE OF THIS PART.

(3) THE COMMISSIONER MAY, IN HIS OR HER DISCRETION: (I) DEVELOP STANDARD LANGUAGE, OR APPROVE LANGUAGE DEVELOPED BY A MARKETPLACE PROVIDER OF OCCUPANCY, IN WHICH THE MARKETPLACE PROVIDER OF OCCUPANCY AS DESCRIBED IN PARAGRAPH NINE OF SUBDIVISION (C) OF SECTION ELEVEN HUNDRED ONE OF THIS ARTICLE OBLIGATES ITSELF TO COLLECT THE TAX ON BEHALF OF ALL THE MARKETPLACE SELLERS OF OCCUPANCY; AND

(II) PROVIDE BY REGULATION OR OTHERWISE THAT THE INCLUSION OF SUCH LANGUAGE IN THE MARKETPLACE PROVIDER OF OCCUPANCY'S AGREEMENT WITH A MARKETPLACE SELLER OF OCCUPANCY THAT IS PUBLICLY AVAILABLE WILL HAVE THE

SAME EFFECT AS A MARKETPLACE SELLER OF OCCUPANCY'S ACCEPTANCE OF A CERTIFICATE OF COLLECTION FROM SUCH MARKETPLACE PROVIDER OF OCCUPANCY UNDER SUBPARAGRAPH TWO OF THIS PARAGRAPH.

(4) IN THE EVENT A MARKETPLACE SELLER OF OCCUPANCY IS A ROOM REMARKETER AS DEFINED IN PARAGRAPH EIGHT OF SUBDIVISION (C) OF SECTION ELEVEN HUNDRED ONE OF THIS ARTICLE, AND ALL OTHER PROVISIONS OF THIS SUBDIVISION ARE MET SUCH THAT A MARKETPLACE PROVIDER OF OCCUPANCY IS OBLIGATED TO COLLECT TAX, AND DOES IN FACT COLLECT TAX AS EVIDENCED BY THE BOOKS AND RECORDS OF SUCH MARKETPLACE SELLER, THEN THE PROVISIONS OF SUBDIVISION (E) OF SECTION ELEVEN HUNDRED NINETEEN OF THIS ARTICLE SHALL BE APPLICABLE.

S 5. This act shall take effect immediately.