

5523

2015-2016 Regular Sessions

I N S E N A T E

May 14, 2015

Introduced by Sen. BOYLE -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

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:

1 Section 1. Subdivision (c) of section 1101 of the tax law is amended
2 by adding two new paragraphs 9 and 10 to read as follows:
3 (9) MARKETPLACE PROVIDER OF OCCUPANCY. A PERSON WHO, PURSUANT TO AN
4 AGREEMENT WITH A MARKETPLACE SELLER OF OCCUPANCY, BOTH FACILITATES OCCU-
5 PANCY BY SUCH MARKETPLACE SELLER OF OCCUPANCY AND VOLUNTARILY CONSENTS
6 TO ASSUME THE SALES TAX COLLECTION AND REMITTANCE RESPONSIBILITIES OF
7 THE MARKETPLACE SELLER OF OCCUPANCY. A PERSON "FACILITATES OCCUPANCY"
8 FOR PURPOSES OF THIS PARAGRAPH WHEN THE PERSON MEETS ALL OF THE FOLLOW-
9 ING CONDITIONS: (I) SUCH PERSON, OR AN AFFILIATED PERSON, DIRECTLY OR
10 INDIRECTLY COLLECTS OR RECEIVES THE RENT PAID BY AN OCCUPANT TO A
11 MARKETPLACE SELLER OF OCCUPANCY; AND
12 (II) SUCH PERSON PERFORMS EITHER OF THE FOLLOWING ACTIVITIES:
13 (A) PROVIDES THE FORUM IN WHICH, OR BY MEANS OF WHICH, THE OFFER OF
14 OCCUPANCY IS ACCEPTED, INCLUDING AN INTERNET WEBSITE OR SIMILAR FORUM;
15 OR
16 (B) ARRANGES FOR THE EXCHANGE OF INFORMATION OR MESSAGES BETWEEN THE
17 OCCUPANT AND THE MARKETPLACE SELLER OF OCCUPANCY. A PERSON WHO VOLUNTAR-
18 ILY AGREES TO ASSUME THE SALES TAX COLLECTION AND REMITTANCE RESPONSI-
19 BILITIES OF THE MARKETPLACE SELLER OF OCCUPANCY SHALL REGISTER TO
20 COLLECT TAX UNDER SECTION ELEVEN HUNDRED THIRTY-FOUR OF THIS ARTICLE.
21 FOR PURPOSES OF THIS PARAGRAPH, TWO PERSONS ARE AFFILIATED IF ONE PERSON
22 HAS AN OWNERSHIP INTEREST OF MORE THAN FIVE PERCENT, WHETHER DIRECT OR
23 INDIRECT, IN THE OTHER, OR WHERE AN OWNERSHIP INTEREST OF MORE THAN FIVE
24 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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1 ANOTHER PERSON OR BY A GROUP OF OTHER PERSONS WHICH ARE AFFILIATED
2 PERSONS WITH RESPECT TO EACH OTHER.

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

6 (A) HAS AN AGREEMENT WITH A MARKETPLACE PROVIDER OF OCCUPANCY UNDER
7 WHICH SUCH MARKETPLACE PROVIDER OF OCCUPANCY WILL FACILITATE OCCUPANCIES
8 FOR SUCH PERSON WITHIN THE MEANING OF PARAGRAPH NINE OF THIS SUBDIVI-
9 SION; AND

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

14 (II) DIRECTLY OR INDIRECTLY COLLECTS OR RECEIVES RENTS.

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

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

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

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

31 S 3. Subdivision 1 of section 1131 of the tax law, as amended by chap-
32 ter 576 of the laws of 1994, is amended to read as follows:

33 (1) "Persons required to collect tax" or "person required to collect
34 any tax imposed by this article" shall include: every vendor of tangible
35 personal property or services; every recipient of amusement charges;
36 [and] every operator of a hotel; AND EVERY MARKETPLACE PROVIDER OF OCCU-
37 PANCY AS DESCRIBED IN PARAGRAPH NINE OF SUBDIVISION (C) OF SECTION ELEV-
38 EN HUNDRED ONE OF THIS ARTICLE. Said terms shall also include any offi-
39 cer, director or employee of a corporation or of a dissolved
40 corporation, any employee of a partnership, any employee or manager of a
41 limited liability company, or any employee of an individual proprietor-
42 ship who as such officer, director, employee or manager is under a duty
43 to act for such corporation, partnership, limited liability company or
44 individual proprietorship in complying with any requirement of this
45 article; and any member of a partnership or limited liability company.
46 Provided, however, that any person who is a vendor solely by reason of
47 clause (D) or (E) of subparagraph (i) of paragraph [(8)] EIGHT of subdi-
48 vision (b) of section eleven hundred one OF THIS ARTICLE shall not be a
49 "person required to collect any tax imposed by this article" until twen-
50 ty days after the date by which such person is required to file a
51 certificate of registration pursuant to section eleven hundred thirty-
52 four OF THIS PART.

53 S 4. Section 1132 of the tax law is amended by adding a new subdivi-
54 sion (1) to read as follows:

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

1 TER AND OF ANY REGULATIONS ADOPTED PURSUANT THERETO, AND TO ALL THE
2 REQUIREMENTS AND OBLIGATIONS THEREOF, INCLUDING THE RIGHT TO ACCEPT A
3 CERTIFICATE OR OTHER DOCUMENTATION FROM A CUSTOMER SUBSTANTIATING AN
4 EXEMPTION OR EXCLUSION FROM TAX, AND HAVE ALL THE DUTIES, BENEFITS AND
5 ENTITLEMENTS OF A PERSON REQUIRED TO COLLECT TAX UNDER THIS ARTICLE AND
6 PURSUANT TO THE AUTHORITY OF ARTICLE TWENTY-NINE OF THIS CHAPTER WITH
7 RESPECT TO SUCH OCCUPANCY, AND SUCH TAX REQUIRED TO BE COLLECTED, AS IF
8 SUCH MARKETPLACE PROVIDER OF OCCUPANCY WERE THE OPERATOR WITH RESPECT TO
9 SUCH OCCUPANCY, INCLUDING THE RIGHT TO RECEIVE THE REFUND AUTHORIZED BY
10 SUBDIVISION (E) OF THIS SECTION AND THE CREDIT ALLOWED BY SUBDIVISION
11 (F) OF SECTION ELEVEN HUNDRED THIRTY-SEVEN OF THIS PART; AND

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

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

20 (I) THE MARKETPLACE SELLER OF OCCUPANCY CAN SHOW THAT SUCH OCCUPANCY
21 WAS FACILITATED BY A MARKETPLACE PROVIDER OF OCCUPANCY AS DESCRIBED IN
22 PARAGRAPH NINE OF SUBDIVISION (C) OF SECTION ELEVEN HUNDRED ONE OF THIS
23 ARTICLE FROM WHOM SUCH MARKETPLACE SELLER OF OCCUPANCY HAS RECEIVED IN
24 GOOD FAITH A PROPERLY COMPLETED CERTIFICATE OF COLLECTION IN A FORM
25 PRESCRIBED BY THE COMMISSIONER CERTIFYING THAT THE MARKETPLACE PROVIDER
26 OF OCCUPANCY HAS AGREED TO ASSUME THE SALES TAX COLLECTION AND FILING
27 RESPONSIBILITIES OF THE MARKETPLACE SELLER OF OCCUPANCY, IS REGISTERED
28 TO COLLECT SALES TAX AND WILL COLLECT SALES TAX ON ALL TAXABLE OCCUPAN-
29 CIES BY THE MARKETPLACE SELLER OF OCCUPANCY AND WITH SUCH OTHER INFORMA-
30 TION AS THE COMMISSIONER MAY PRESCRIBE; AND

31 (II) ANY FAILURE OF THE MARKETPLACE PROVIDER OF OCCUPANCY TO COLLECT
32 THE PROPER AMOUNT OF TAX IN REGARD OF SUCH OCCUPANCY WAS NOT THE RESULT
33 OF SUCH MARKETPLACE SELLER OF OCCUPANCY PROVIDING THE MARKETPLACE
34 PROVIDER OF OCCUPANCY WITH INCORRECT INFORMATION. THIS PROVISION SHALL
35 BE ADMINISTERED IN A MANNER CONSISTENT WITH SUBPARAGRAPH (I) OF PARA-
36 GRAPH ONE OF SUBDIVISION (C) OF THIS SECTION AS IF A CERTIFICATE OF
37 COLLECTION WERE A RESALE OR EXEMPTION CERTIFICATE FOR PURPOSES OF SUCH
38 SUBPARAGRAPH, INCLUDING WITH REGARD TO THE COMPLETENESS OF SUCH CERTIF-
39 ICATE OF COLLECTION AND THE TIMING OF ITS ACCEPTANCE BY THE MARKETPLACE
40 SELLER OF OCCUPANCY. PROVIDED THAT, WITH REGARD TO ANY OCCUPANCIES SOLD
41 BY A MARKETPLACE SELLER OF OCCUPANCY THAT ARE FACILITATED BY A MARKET-
42 PLACE PROVIDER OF OCCUPANCY WHO IS AFFILIATED WITH SUCH MARKETPLACE
43 SELLER OF OCCUPANCY AS DESCRIBED IN PARAGRAPH NINE OF SUBDIVISION (C) OF
44 SECTION ELEVEN HUNDRED ONE OF THIS ARTICLE, A MARKETPLACE SELLER OF
45 OCCUPANCY SHALL BE DEEMED LIABLE AS A PERSON UNDER A DUTY TO ACT FOR
46 SUCH MARKETPLACE PROVIDER OF OCCUPANCY FOR PURPOSES OF SUBDIVISION ONE
47 OF SECTION ELEVEN HUNDRED THIRTY-ONE OF THIS PART.

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

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

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

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

12 S 5. This act shall take effect immediately.