

# STATE OF NEW YORK

5978--A

2017-2018 Regular Sessions

## IN SENATE

May 9, 2017

Introduced by Sen. FUNKE -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- recommitted to the Committee on Housing, Construction and Community Development in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the multiple residence law and the tax law, in relation to short-term residential rental of private dwellings

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

Section 1. The multiple residence law is amended by adding a new article 2-A to read as follows:

### ARTICLE 2-A

#### SHORT-TERM RESIDENTIAL RENTAL UNITS

##### Section 20. Definitions.

21. Short-term residential rental units; regulation.

22. Registration.

23. Exception.

24. Penalties.

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

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

(a) the unit is offered for tourist or transient use by the permanent resident of the residential unit;

(b) the permanent resident is a natural person; and

(c) the permanent resident has registered the residential unit and maintains good standing on the short-term residential rental registry maintained by the department of state.

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

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

3 3. "Hosting platform" means a person or entity who, pursuant to an  
4 agreement with a short-term rental host:

5 (a) provides a platform for compensation through which unaffiliated  
6 third party short-term rental hosts can offer to rent short-term rental  
7 units; and

8 (b) collects a fee in connection with either:

9 (i) providing the forum in which, or by means of which, the offer of  
10 occupancy of a short-term rental unit is accepted; or

11 (ii) providing the forum in which a short-term rental host can list or  
12 advertise space in a short-term rental unit.

13 § 21. Short-term residential rental units; regulation. 1. A short-term  
14 rental host may operate a dwelling unit as a short-term residential  
15 rental unit provided such dwelling unit:

16 (a) is registered in accordance with section twenty-two of this arti-  
17 cle;

18 (b) is not used to provide single room occupancy as defined by subdivi-  
19 sion forty-four of section four of this chapter;

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

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

24 (e) has a working fire-extinguisher; and

25 (f) is insured by an insurer licensed to write insurance in this state  
26 for at least the value of the dwelling, plus a minimum of three hundred  
27 thousand dollars coverage for third party claims of property damage or  
28 bodily injury that arise out of the operation of a short-term rental  
29 unit. Notwithstanding any other provision of law, no licensed insurer  
30 shall be required to provide such coverage.

31 2. Occupancies of a short-term rental unit shall be subject to taxes  
32 and fees pursuant to articles twenty-eight and twenty-nine of the tax  
33 law and applicable local laws.

34 3. Short-term rental hosts shall maintain records related to guest  
35 stays for one year, including the date of each booking and the identity  
36 and number of guests, and records related to their registration as  
37 short-term rental hosts with the division of housing and community  
38 renewal.

39 4. Hosting platforms shall maintain records related to guest stays for  
40 one year, including the date of each booking and the identity and number  
41 of guests. Hosting platforms shall make all relevant records available  
42 to the department of state consistent in response to valid legal proc-  
43 ess.

44 5. Short-term rental hosts may only list one unit on a short-term  
45 rental platform.

46 § 22. Registration. 1. Short-term rental hosts shall be required to  
47 register a short-term residential unit with the department of state.

48 2. Registration shall be valid for two years, after which time the  
49 short-term rental host may renew his or her registration in a manner  
50 prescribed by the department of state. The department of state may  
51 revoke the registration of a short-term rental host upon a determination  
52 that the short-term rental host has violated any provision of this arti-  
53 cle at least three times in two calendar years, and may determine that  
54 the short-term rental host shall be ineligible for registration for a  
55 period of up to twelve months from the date the third violation is  
56 determined to have occurred.

1 3. The department of state shall set a fee for short-term residential  
2 rental unit registration.

3 § 23. Exception. Notwithstanding the provisions of any other law to  
4 the contrary, this article shall not apply to:

5 1. a private dwelling or apartment whose permanent resident, family  
6 member, or owner remains in the private dwelling or apartment for the  
7 duration of any rental period, provided however, that such private  
8 dwelling or apartment is in compliance with the standards set forth in  
9 the law for bed and breakfast establishments; or

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

15 3. to any individual or owner who rents out their private dwelling or  
16 apartment for fewer than thirty consecutive days who earns no more than  
17 twenty-five hundred dollars per annum in total for all such applicable  
18 rental periods.

19 § 24. Penalties. Notwithstanding the provisions of any other law to  
20 the contrary, anyone found in violation of the provisions of this arti-  
21 cle shall be subject to a civil penalty of not less than one thousand  
22 dollars nor more than twenty-five thousand dollars for each violation.  
23 In addition to such civil penalty, a separate additional penalty may be  
24 imposed of not more than one thousand dollars for each day that the  
25 violation is not corrected.

26 § 2. Subdivision (c) of section 1101 of the tax law, as added by chap-  
27 ter 93 of the laws of 1965, paragraphs 2, 3, 4 and 6 as amended by  
28 section 2 and paragraph 8 as added by section 3 of part AA of chapter 57  
29 of the laws of 2010, and paragraph 5 as amended by chapter 575 of the  
30 laws of 1965, is amended to read as follows:

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

35 (1) Hotel. A building or portion of it which is regularly used and  
36 kept open as such for the lodging of guests. The term "hotel" includes  
37 an apartment hotel, a motel, boarding house or club, whether or not  
38 meals are served, and short-term rental units.

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

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

48 (4) Operator. Any person operating a hotel. Such term shall include a  
49 room remarketer and such room remarketer shall be deemed to operate a  
50 hotel, or portion thereof, with respect to which such person has the  
51 rights of a room remarketer.

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

55 (6) Rent. The consideration received for occupancy, including any  
56 service or other charge or amount required to be paid as a condition for

1 occupancy, valued in money, whether received in money or otherwise and  
2 whether received by the operator ~~[or]~~, a hosting platform, a room  
3 remarketer or another person on behalf of ~~[either]~~ any of them.

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

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

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

20 (10) Hosting platform. A person or entity who, pursuant to an agree-  
21 ment with an operator of a hotel:

22 (i) provides a platform for compensation through which an unaffiliated  
23 third party hotel operator offers to rent space in a hotel; and

24 (ii) collects a fee in connection with either:

25 (A) providing the forum in which, or by means of which, the offer of  
26 occupancy of a hotel room is accepted; or

27 (B) providing the forum in which a hotel operator can list or adver-  
28 tise space in a hotel for occupancy.

29 § 3. Subdivision (e) of section 1105 of the tax law is amended by  
30 adding a new paragraph 3 to read as follows:

31 (3) The rent for every occupancy of a room or rooms in a hotel offered  
32 for rent through a hosting platform, as defined in paragraph ten of  
33 subdivision (c) of section eleven hundred one of this article, regard-  
34 less of whether it is furnished, limited to a single family occupancy,  
35 or provides housekeeping, food, or other common hotel services, includ-  
36 ing, but not limited to, entertainment or planned activities.

37 § 4. Subdivision 1 of section 1131 of the tax law, as amended by chap-  
38 ter 576 of the laws of 1994, is amended to read as follows:

39 (1) "Persons required to collect tax" or "person required to collect  
40 any tax imposed by this article" shall include: every vendor of tangible  
41 personal property or services; every recipient of amusement charges;  
42 ~~[and]~~ every operator of a hotel~~[r]~~; and hosting platforms unless  
43 relieved of such obligation pursuant to paragraph three of subdivision  
44 (1) of section eleven hundred thirty-two of this part. Said terms shall  
45 also include any officer, director or employee of a corporation or of a  
46 dissolved corporation, any employee of a partnership, any employee or  
47 manager of a limited liability company, or any employee of an individual  
48 proprietorship who as such officer, director, employee or manager is  
49 under a duty to act for such corporation, partnership, limited liability  
50 company or individual proprietorship in complying with any requirement  
51 of this article; and any member of a partnership or limited liability  
52 company. Provided, however, that any person who is a vendor solely by  
53 reason of clause (D) or (E) of subparagraph (i) of paragraph (8) of  
54 subdivision (b) of section eleven hundred one of this article shall not  
55 be a "person required to collect any tax imposed by this article" until  
56 twenty days after the date by which such person is required to file a

1 certificate of registration pursuant to section eleven hundred thirty-  
2 four of this part.

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

5 (1)(1) A hosting platform shall be required to (i) collect from the  
6 occupants the applicable taxes arising from such occupancies; (ii)  
7 comply with all the provisions of this article and article twenty-nine  
8 of this chapter and any regulations adopted pursuant thereto; (iii)  
9 register to collect tax under section eleven hundred thirty-four of this  
10 part; and (iv) retain records and information as required by the commis-  
11 sioner and cooperate with the commissioner to ensure the proper  
12 collection and remittance of tax imposed, collected, or required to be  
13 collected under this article and article twenty-nine of this chapter.

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

25 (3) An operator of a hotel is not a person required to collect tax for  
26 purposes of this part with respect to taxes imposed upon occupancies of  
27 hotels if:

28 (i) the operator of the hotel can show that the occupancy was facili-  
29 tated by a hosting platform who is registered to collect tax pursuant to  
30 section eleven hundred thirty-four of this part; and

31 (ii) the operator of the hotel accepted from the hosting platform a  
32 properly completed certificate of collection in a form prescribed by the  
33 commissioner certifying that the hosting platform has agreed to assume  
34 the tax collection and filing responsibilities of the operator of the  
35 hotel; and

36 (iii) any failure of the hosting platform to collect the proper amount  
37 of tax with respect to such occupancy was not the result of the operator  
38 of the hotel providing incorrect information to the hosting platform,  
39 whether intentional or unintentional.

40 This provision shall be administered in a manner consistent with  
41 subparagraph (i) of paragraph one of subdivision (c) of this section as  
42 if a certificate of collection were a resale or exemption certificate  
43 for purposes of such subparagraph, including with regard to the  
44 completeness of such certificate of collection and the timing of its  
45 acceptance by the operator of the hotel; provided however, that with  
46 regard to any occupancies sold by an operator of the hotel that are  
47 facilitated by a hosting platform who is affiliated with such operator,  
48 the operator shall be deemed liable as a person under a duty to act for  
49 such hosting platform for purposes of subdivision one of section eleven  
50 hundred thirty-one of this part.

51 (4) The commissioner may, in his or her discretion develop standard  
52 language, or approve language developed by a hosting platform, in which  
53 the hosting platform obligates itself to collect the tax on behalf of  
54 all the operators of hotels.

55 (5) In the event an operator of a hotel is a room remarketer, and all  
56 other provisions of this subdivision are met such that a hosting plat-

1 form is obligated to collect tax, and does in fact collect tax as  
2 evidenced by the books and records of such hosting platform, then the  
3 provisions of subdivision (e) of section eleven hundred nineteen of this  
4 article shall be applicable.

5 § 6. The tax law is amended by adding a new section 1200 to read as  
6 follows:

7 § 1200. Definitions. For the purposes of this article, the following  
8 terms shall have the following meanings: (a) "hotel" shall mean a build-  
9 ing or portion of such building which is regularly used and kept open as  
10 such for the lodging of guests, including: (i) an apartment hotel; (ii)  
11 a motel, (iii) a boarding house or club, whether or not meals are  
12 served, and (iv) short-term residential rental units as defined in  
13 subdivision one of section twenty of the multiple residence law.

14 § 7. Notwithstanding any other provisions of law to the contrary, a  
15 county, city, town, or village government may enact a local law prohib-  
16 iting or limiting the listing or use of short-term residential rental  
17 units.

18 § 8. This act shall take effect on the one hundred twentieth day after  
19 it shall have become a law.