

STATE OF NEW YORK

7182

IN SENATE

(Prefiled)

January 3, 2018

Introduced by Sen. BONACIC -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the multiple dwelling law and the tax law, in relation to the regulation of short-term rental units; and to amend 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 authorizing any city agency administering certain taxes to enter into voluntary agreements to permit the collection and remittance of such taxes

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

1 Section 1. Subparagraph 1 of paragraph a of subdivision 8 of section 4
2 of the multiple dwelling law, as amended by chapter 225 of the laws of
3 2010, is amended to read as follows:

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

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

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

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

ARTICLE 7-D

SHORT-TERM RENTAL UNITS

Section 288. Definitions.

289. Short-term rental units authorized.

290. Registration.

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

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1 291. Requirements of hosting platforms.

2 292. Regulations.

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

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

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

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

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

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

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

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

20 § 289. Short term rental units authorized. 1. A short-term rental host
21 may operate a dwelling unit as a short-term rental unit provided such
22 dwelling unit:

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

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

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

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

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

35 2. A short-term rental host may only operate a rent-stabilized dwell-
36 ing unit as a short-term rental unit if the annual rent generated from
37 short-term rent does not exceed the annual legal rent for the unit as
38 defined by the division of housing and community renewal; provided
39 however, that a violation of this subdivision shall not be a ground for
40 eviction under the rent stabilization code unless the short-term rental
41 host has received two prior violations under the rent stabilization
42 code.

43 3. A short-term rental host may not operate a dwelling unit as a
44 short-term rental unit if the unit is a rent-controlled unit subject to
45 the local emergency rent control act or chapter seven of subtitle S of
46 title nine of New York's compilation of codes, rules, and regulations,
47 an income-based public housing unit, or a dwelling unit paid for with
48 vouchers or other monetary subsidies, in whole or in part, from a
49 government entity.

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

53 5. Occupancies of a short-term rental unit shall be subject to taxes
54 and fees pursuant to articles twenty-eight and twenty-nine of the tax
55 law and applicable local laws.

1 6. Short-term rental hosts shall maintain records related to guest
2 stays for one year, including the date of each booking and the identity
3 and number of guests, and records related to their registration as
4 short-term rental hosts with the division of housing and community
5 renewal.

6 7. Hosting platforms shall maintain records related to guest stays for
7 one year, including the date of each booking and the identity and number
8 of guests. Hosting platforms shall make all relevant records available
9 to the division of housing and community renewal consistent in response
10 to valid legal process.

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

14 2. Registrations shall be valid for two years, after which time the
15 short-term rental host may renew his or her registration in a manner
16 prescribed by the division of housing and community renewal. The divi-
17 sion of housing and community renewal may revoke the registration of a
18 short-term rental host upon a determination that the short-term rental
19 host has violated any provision of this article at least three times in
20 two calendar years, and may determine that the short-term rental host
21 shall be ineligible for registration for a period of up to twelve months
22 from the date the third violation is determined to have occurred.

23 3. The division of housing and community renewal shall set a fee for
24 short-term rental registration not to exceed one hundred dollars, with
25 revenue dedicated to enforcement of short-term rental laws.

26 4. Hosting platforms are authorized to facilitate the registration
27 process by collecting the required information and transmitting it to
28 the division of housing and community renewal for processing.

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

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

33 2. provide the division of housing and community renewal and the New
34 York city mayor's office of special enforcement with anonymized statis-
35 tics on a quarterly basis regarding the short-term rental of properties
36 on their platforms in cities with a population of one million or more.
37 Such report shall be submitted within thirty days following the end of
38 each calendar quarter in which it operates as a hosting platform in a
39 manner to be determined by the division of housing and community
40 renewal. The information to be disclosed shall include:

41 (a) statistics regarding each short-term rental unit that was rented
42 on the platform during the previous quarter, including city, borough,
43 zip code, listing type (such as whether the listing is for an entire or
44 shared property), the number of nights rented for the reporting period,
45 the number of nights rented for the calendar year, and the total amount
46 of revenue submitted to the short-term rental host in connection with
47 the rental of the unit in question. Information regarding the number of
48 nights rented shall be reported in ranges of twenty-five. Information
49 regarding the total amount of revenue shall be reported in ranges of ten
50 thousand dollars; and

51 (b) statistics regarding each short-term rental host who rented a
52 short-term rental unit on the platform during the previous quarter,
53 including:

54 (i) the number of distinct addresses simultaneously advertised as
55 short-term rentals during the prior reporting period for each short-term

1 rental host simultaneously advertising more than one distinct address as
2 a short-term rental during the reporting period; and

3 (ii) the number of such distinct addresses simultaneously rented as
4 short-term rentals during the reporting period for each short-term
5 rental host simultaneously advertising more than one distinct address as
6 a short-term rental during the reporting period. Hosting platforms
7 shall not have the obligation to disclose any listing or host-level
8 information if the disclosure could reasonably lead to the identifica-
9 tion of a specific property or short-term rental host.

10 3. maintain records of all transactions in cities with a population of
11 a million or more for a period of twelve months.

12 4. inform short-term rental hosts of the registration requirement and,
13 if requested to do so, collect and transmit the required information to
14 the division of housing and community renewal on behalf of the short-
15 term rental host.

16 § 292. Regulations. The division of housing and community renewal
17 shall promulgate regulations necessary and appropriate to enforce this
18 article, including regulations to facilitate the registration of short-
19 term rental hosts and to facilitate information sharing between and
20 among the division, hosting platforms, and other enforcement agencies.

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

23 1-b. a. Every person who shall violate or assist in the violation of
24 any provision of sections two hundred eighty-nine or two hundred ninety
25 of this chapter shall be guilty of an offense, and any person found to
26 have committed three or more offenses of such sections may be prohibited
27 from operating a short-term rental unit for a period of one year.

28 b. The maximum fine for violating subdivision four of section two
29 hundred eighty-nine of this chapter shall be one thousand dollars for a
30 first offense; four thousand dollars for the second offense; and seven
31 thousand five hundred dollars for the third or any subsequent offense.
32 The maximum fine for violating subdivision two of section two hundred
33 eighty-nine of this chapter shall be the difference between the annual
34 rent generated by the short-term rental and the annual legal rent, plus
35 an additional fine of fifty dollars for the first offense, one hundred
36 dollars for the second offense, and two hundred fifty dollars for the
37 third offense. The maximum fine for violating subdivision three of
38 section two hundred eighty-nine of this chapter shall be the amount of
39 revenue generated from the short-term rental plus an additional fine of
40 fifty dollars for the first offense, one hundred dollars for the second
41 offense, and two hundred fifty dollars for the third offense. The maxi-
42 imum fine for all other provisions of sections two hundred eighty-nine or
43 two hundred ninety of this chapter shall be fifty dollars for a first
44 offense; one hundred dollars for the second offense; and two hundred
45 fifty dollars for the third or any subsequent offense.

46 c. Any violation under this subdivision shall not be a crime and the
47 penalty or punishment imposed therefor shall not be deemed for any
48 purpose a penal or criminal penalty or punishment, and shall not impose
49 any disability upon or affect or impair the credibility as a witness, or
50 otherwise, of any person convicted thereof.

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

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

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

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

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

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

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

24 (6) Rent. The consideration received for occupancy, including any
25 service or other charge or amount required to be paid as a condition for
26 occupancy, valued in money, whether received in money or otherwise and
27 whether received by the operator [~~or~~], a hosting platform, a room
28 remarketer or another person on behalf of [~~either~~] any of them. Rent
29 shall not include a separately stated fee or similar charge paid by the
30 occupant to the hosting platform for: (i) providing the forum in which,
31 or by means of which, the offer of occupancy is accepted, including an
32 internet website or similar forum; (ii) arranging for the exchange of
33 information or messages between the occupant and the operator of the
34 hotel; or (iii) facilitating payment between the occupant and the opera-
35 tor of the hotel.

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

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

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

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

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

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

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

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

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

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

13 § 6. Subdivision (a) of section 1104 of the tax law, as added by chap-
14 ter 3 of the laws of 2004, is amended to read as follows:

15 (a) Imposition. In addition to any other fee or tax imposed by this
16 article or any other law, on and after April first, two thousand five,
17 there is hereby imposed within the territorial limits of a city with a
18 population of a million or more and there shall be paid a unit fee on
19 every occupancy of a unit in a hotel in such city subject to tax under
20 paragraphs one through three of subdivision (e) of section eleven
21 hundred five of this part at the rate of one dollar and fifty cents per
22 unit per day, except that such unit fee shall not be imposed upon (1)
23 occupancy by a permanent resident or (2) where the rent per unit is not
24 more than at the rate of two dollars per day.

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

27 (1) "Persons required to collect tax" or "person required to collect
28 any tax imposed by this article" shall include: every vendor of tangible
29 personal property or services; every recipient of amusement charges;
30 ~~and~~ every operator of a hotel[-]; and hosting platforms where the
31 hosting platform voluntarily consents to assume the tax collection and
32 remittance responsibilities of an operator of a hotel unless relieved of
33 such obligation pursuant to paragraph four of subdivision (1) of section
34 eleven hundred thirty-two of this part. Said terms shall also include
35 any officer, director or employee of a corporation or of a dissolved
36 corporation, any employee of a partnership, any employee or manager of a
37 limited liability company, or any employee of an individual proprietor-
38 ship who as such officer, director, employee or manager is under a duty
39 to act for such corporation, partnership, limited liability company or
40 individual proprietorship in complying with any requirement of this
41 article; and any member of a partnership or limited liability company.
42 Provided, however, that any person who is a vendor solely by reason of
43 clause (D) or (E) of subparagraph (i) of paragraph (8) of subdivision
44 (b) of section eleven hundred one shall not be a "person required to
45 collect any tax imposed by this article" until twenty days after the
46 date by which such person is required to file a certificate of registra-
47 tion pursuant to section eleven hundred thirty-four of this part.

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

50 (1)(1) A hosting platform may enter into a voluntary agreement with
51 the commissioner, under which the hosting platform shall collect and
52 remit taxes on occupancies of rentals of hotels on or after the effec-
53 tive date of the voluntary agreement; provided however, that when a
54 hosting platform enters into such a voluntary agreement, it shall be
55 required to (i) collect from the occupants the applicable taxes arising
56 from such occupancies; (ii) comply with all the provisions of this arti-

1 cle and article twenty-nine of this chapter and any regulations adopted
2 pursuant thereto; (iii) register to collect tax under section eleven
3 hundred thirty-four of this part; and (iv) retain records and informa-
4 tion as required by the commissioner and cooperate with the commissioner
5 to ensure the proper collection and remittance of tax imposed,
6 collected, or required to be collected under this article and article
7 twenty-nine of this chapter.

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

19 (3) No hosting platform shall be required to list any operator of a
20 hotel on any return required to be filed under this article and article
21 twenty-nine of this chapter or under any regulations adopted pursuant
22 thereto. Audits of any hosting platform shall be conducted solely on the
23 basis of the tax identification number associated with each hosting
24 platform and shall not be conducted directly or indirectly on any opera-
25 tor of a hotel or any occupant to whom occupancy is rented from an oper-
26 ator of a hotel, nor shall any hosting platform be required to disclose
27 any personally identifiable information relating to any operator of a
28 hotel or occupant to whom occupancy is rented from an operator of a
29 hotel.

30 (4) An operator of a hotel is not a person required to collect tax for
31 purposes of this part with respect to taxes imposed upon occupancies of
32 hotels if:

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

36 (ii) the operator of the hotel accepted from the hosting platform a
37 properly completed certificate of collection in a form prescribed by the
38 commissioner certifying that the hosting platform has agreed to assume
39 the tax collection and filing responsibilities of the operator of the
40 hotel; and

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

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

1 (5) The commissioner may, in his or her discretion, (i) develop stand-
2 ard language, or approve language developed by a hosting platform, in
3 which the hosting platform obligates itself to collect the tax on behalf
4 of all the operators of hotels; and (ii) provide by regulation or other-
5 wise that the inclusion of such language in an agreement between a host-
6 ing platform and the commissioner as provided for in paragraph one of
7 this subdivision shall, upon notice to the operator, have the same
8 effect as an operator's acceptance of a certificate of collection from a
9 hosting platform under paragraph four of this subdivision.

10 (6) In the event an operator of a hotel is a room remarketer, and all
11 other provisions of this subdivision are met such that a hosting plat-
12 form is obligated to collect tax, and does in fact collect tax as
13 evidenced by the books and records of such hosting platform, then the
14 provisions of subdivision (e) of section eleven hundred nineteen of this
15 article shall be applicable.

16 (7) Information provided by a hosting platform to the commissioner
17 shall be confidential. Such confidential information shall not be
18 disclosed by the commissioner unless the hosting platform has given
19 written consent to make such disclosure or there is an agreement between
20 the hosting platform and the commissioner to make such disclosure.
21 Notwithstanding any law to the contrary, information provided by a host-
22 ing platform shall not be subject to article six of the public officers
23 law and shall not be provided to any other agency of the state, locali-
24 ty, or any other government entity or political subdivision.

25 § 9. Section 1202 of the tax law is amended by adding a new subdivi-
26 sion (h) to read as follows:

27 (h) It is expressly recognized that any county authorized and
28 empowered to impose hotel, motel, or occupancy taxes pursuant to subpart
29 A of part one of this article has the authority to permit the county
30 agency that administers such taxes to enter into voluntary agreements
31 with any person or third party, including but not limited to hosting
32 platforms, to permit such person, third party, or platform to collect
33 and remit such taxes on behalf of the party or parties required to
34 collect and remit them under the applicable statutes. The voluntary
35 agreement shall be evinced by a signed, written agreement between the
36 county agency that administers such taxes and the person or third party
37 assuming the obligation to collect and remit the taxes.

38 § 10. Section 1 of chapter 161 of the laws of 1970, relating to enabl-
39 ing any city having a population of one million or more to impose and
40 collect taxes on the occupancy of hotel rooms in such city, is amended
41 by adding a new subdivision 11 to read as follows:

42 (11) It is expressly recognized that any city agency administering the
43 taxes authorized by this act is permitted to enter into voluntary agree-
44 ments with any person or third party, including but not limited to host-
45 ing platforms, to permit such person, third party, or platform to
46 collect and remit such taxes on behalf of the party or parties required
47 to collect and remit them under the applicable statutes. The voluntary
48 agreement shall be evinced by a signed, written agreement between the
49 city agency responsible for administering the taxes and the person or
50 third party assuming the obligation to collect and remit the taxes.

51 § 11. This act shall take effect on the one hundred twentieth day
52 after it shall have become a law.