STATE OF NEW YORK

7520

2017-2018 Regular Sessions

IN ASSEMBLY

April 28, 2017

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

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:

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 seven-D to read as follows:

ARTICLE 7-D

SHORT-TERM RENTAL UNITS

Section 288. Definitions.

289. Short-term rental units authorized.

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

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290. Registration.
291. Requirements of hosting platforms.
292. Regulations.

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

1. "Short-term 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.

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

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

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

(b) collects a fee in connection with either:

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

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

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

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

(b) is not used to provide single room occupancy as defined by subdivision sixteen of section four of this chapter;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. The maximum fine for violating subdivision four of section two hundred eighty-nine of this chapter shall be one thousand dollars for a first offense; four thousand dollars for the second offense; and seven thousand five hundred dollars for the third or any subsequent offense. The maximum fine for violating subdivision two of section two hundred eighty-nine of this chapter shall be the difference between the annual rent generated by the short-term rental and the annual legal rent, plus an additional fine of fifty dollars for the first offense, one hundred dollars for the second offense, and two hundred fifty dollars for the third offense. The maximum fine for violating subdivision three of section two hundred eighty-nine of this chapter shall be the amount of revenue generated from the short-term rental plus an additional fine of fifty dollars for the first offense, one hundred dollars for the second offense, and two hundred fifty dollars for the third offense. The maximum fine for all other provisions of sections two hundred eighty-nine or two hundred ninety of this chapter shall be fifty dollars for a first offense; one hundred dollars for the second offense; and two hundred fifty dollars for the third or any subsequent offense.

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

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

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

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

(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.

(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 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 hosting platform,** a room remarketer or another person on behalf of [~~either~~] **any** of them. **Rent shall not include a separately stated fee or similar charge paid by the occupant to the hosting platform for: (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 operator of the hotel; or (iii) facilitating payment between the occupant and the operator of the hotel.**

(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. **This term does not include a hosting platform.**

(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:

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

(ii) collects a fee in connection with either:

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

(B) providing the forum in which a hotel operator can list or advertise space in a hotel for occupancy.

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

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

§ 6. 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 paragraphs one through three of 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.

§ 7. 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 hosting platforms where the hosting platform voluntarily consents to assume the tax collection and remittance responsibilities of an operator of a hotel unless relieved of such obligation pursuant to paragraph four of subdivision (l) of section eleven hundred thirty-two of this part.** 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) of subdivision (b) of section eleven hundred one 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**.

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

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

cle and article twenty-nine of this chapter and any regulations adopted pursuant thereto; (iii) register to collect tax under section eleven hundred thirty-four of this part; and (iv) retain records and information as required by the commissioner 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) 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.

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

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

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

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

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

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 operator of the hotel; provided however, that with regard to any occupancies sold by an operator of the hotel that are facilitated by a hosting platform who is affiliated with such operator, the operator shall be deemed liable as a person under a duty to act for such hosting platform for purposes of subdivision one of section eleven hundred thirty-one of this part.

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

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

(7) Information provided by a hosting platform to the commissioner shall be confidential. Such confidential information shall not be disclosed by the commissioner unless the hosting platform has given written consent to make such disclosure or there is an agreement between the hosting platform and the commissioner to make such disclosure. Notwithstanding any law to the contrary, information provided by a hosting platform shall not be subject to article six of the public officers law and shall not be provided to any other agency of the state, locality, or any other government entity or political subdivision.

§ 9. Section 1202 of the tax law is amended by adding a new subdivision (h) to read as follows:

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

§ 10. Section 1 of 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, is amended by adding a new subdivision 11 to read as follows:

(11) It is expressly recognized that any city agency administering the taxes authorized by this act is permitted to enter into voluntary agreements with any person or third party, including but not limited to hosting platforms, to permit such person, third party, or platform to collect and remit such taxes on behalf of the party or parties required to collect and remit them under the applicable statutes. The voluntary agreement shall be evinced by a signed, written agreement between the city agency responsible for administering the taxes and the person or third party assuming the obligation to collect and remit the taxes.

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