STATE OF NEW YORK

11004

IN ASSEMBLY

September 9, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Darling) -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to short-term rental taxes

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, as added by chapter 93 of the laws of 1965, paragraphs 2, 3, 4 and 6 as amended by section 2 of part AA of chapter 57 of the laws of 2010, paragraph 5 as amended by chapter 575 of the laws of 1965, and paragraph 8 as added by section 3 of part AA of chapter 57 of the laws of 2010, is amended 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, 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~~] **a** hotel, a motel, boarding house or club, whether or not meals are served. **This term shall not include a short-term rental unit as defined in paragraph nine of this subdivision.**

(2) Occupancy. The use or possession, or the right to the use or possession, of any room in a hotel **or short-term rental unit**. "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 **or short-term rental unit** 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. **This term shall not include a hosting platform as defined in paragraph ten of this subdivision.**

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

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(5) Permanent resident. Any occupant of any room or rooms in a hotel **or short-term rental unit** 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 **by the operator or short-term rental host** to be paid as a condition for occupancy, valued in money, whether received in money or otherwise and whether [~~received~~] **collected** by the operator [~~or a~~]**, short-term rental host, hosting platform,** room remarketer or another person on behalf of [~~either~~] **any** of them.

(7) Room. Any room or rooms of any kind in any part or portion of a hotel **or short-term rental unit**, 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.

(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. The term does not include a hotel.

(10) Hosting platform. A person or entity who, pursuant to an agreement with an operator or short-term rental host, facilitates the occupancy of a hotel or short-term rental unit. A person "facilitates the occupancy" by, in exchange for a fee, either: (A) providing the forum in which an operator or short-term rental host can list or advertise a room for occupancy; or (B) providing the forum in which, or by means of which, the offer for occupancy is accepted.

(11) Short-term rental host. An owner, tenant, or occupant of a short-term rental unit who offers occupancy in such a short-term rental unit for rent.

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

(3) Except within cities with a population of one million or more, the rent for every occupancy of a room or rooms in a short-term rental unit, except for a permanent resident or where the rent is not more than at the rate of two dollars per day.

§ 3. Subdivision 1 of section 1131 of the tax law, as amended by section 2 of part G of chapter 59 of the laws of 2019, 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; **every hosting platform with respect to occupancies it facilitates as described in paragraph ten of subdivision (c) of section eleven hundred one of this article;** every operator of a hotel **or short-term rental host, except with respect to occupancies facilitated by a hosting platform**; and every marketplace provider with respect to sales of tangible personal property it facilitates as described in paragraph one of subdivision (e) 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, or has so acted; 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 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.

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

(m) 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 or short-term rental host of the short-term rental unit 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.

§ 5. Section 1133 of the tax law is amended by adding a new subdivision (g) to read as follows:

(g) A hosting platform is relieved of liability under this article for failure to collect the correct amount of tax to the extent that the hosting platform can show that the error was due to incorrect or insufficient information given to the hosting platform by the operator or short-term rental host, whether intentional or unintentional.

§ 6. Section 1137 of the tax law is amended by adding a new subdivision (g) to read as follows:

(g) A hosting platform who facilitates the occupancy of a hotel or short-term rental unit is relieved from the duty to remit to the commissioner the tax imposed by this article in regard to a particular occupancy if, pursuant to an agreement with an operator or short-term rental host registered with the commission as required by section eleven hundred thirty-four of this part, the hosting platform and operator or short-term rental host agree that the operator or short-term rental host is required to remit the tax directly to the commissioner. In such situation, the operator or short-term rental host shall be treated as if it collected the tax and shall have all of the rights and obligations imposed by law on persons required to collect tax, including but not limited to the liability imposed by section eleven hundred thirty-three of this part.

§ 7. Section 1142 of the tax law is amended by adding a new subdivision 16 to read as follows:

16. Notwithstanding any provision of law to the contrary, including but not limited to subdivisions four, five, and six of this section, no hosting platform shall be required to list any operator of a hotel or short-term rental host of a short-term rental unit on any return required to be filed with the commissioner under the applicable tax laws and any regulations adopted pursuant thereto. 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. 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, short-term rental host of a short-term rental unit, or any occupant to whom occupancy is rented from an operator of a hotel or short-term rental unit of a short-term rental host, nor shall any hosting platform be required to disclose any personally identifiable information relating to any operator of a hotel, short-term rental host of a short-term rental unit, or occupant to whom occupancy is rented from an operator of a hotel or short-term rental host of a short-term rental unit. Provided, however, that if a hosting platform and operator or short-term rental host have entered into an agreement pursuant to section eleven hundred thirty-six of this part, only the operator or short-term rental host shall be subject to audit by the commissioner.

§ 8. Clause 1 of subparagraph (i) of the opening paragraph of section 1210 of the tax law, as amended by chapter 200 of the laws of 2009, is amended to read as follows:

(1) any such city having a population of one million or more is hereby authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes in any such city, at the rate of four and one-half percent, except that tax shall not be imposed on short-term rental units as defined in paragraph nine of subdivision (c) of section eleven hundred one of this chapter;

§ 9. Section 1243 of the tax law is amended by adding a new subdivision (c) to read as follows:

(c) No determination or proposed determination of tax or determination on any application for refund shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received, or by any action or proceeding other than a proceeding under article seventy-eight of the civil practice law and rules, except as otherwise provided in subdivision (a) or (b) of this section.

§ 10. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2021.