STATE OF NEW YORK

5665

2021-2022 Regular Sessions

IN SENATE

March 15, 2021

Introduced by Sen. KENNEDY -- 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 residence law and the tax law, in relation to short-term residential rental of private dwellings in certain municipalities

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. Tax exemption in certain circumstances.
24-a. 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 within a dwelling, made available for rent by guests for less than thirty consecutive days, where the unit is offered for tourist or transient use by the host of the residential unit.

2. "Short-term rental host" means a person in valid legal possession 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:

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

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(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.

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

(a) is registered in accordance with section twenty-two of this article;

(b) is not used to provide single room occupancy as defined by subdivision forty-four 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;

(e) has a working fire-extinguisher; and

(f) is insured by an insurer licensed to write insurance in this state or procured by a duly licensed excess line broker pursuant to section two thousand one hundred eighteen of the insurance law for at least the value of the dwelling, plus a minimum of three hundred thousand dollars coverage for third party claims of property damage or bodily injury that arise out of the operation of a short-term rental unit. Notwithstanding any other provision of law, no insurer shall be required to provide such coverage.

2. 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.

3. Short-term rental hosts shall maintain records related to guest stays for two years following the end of the calendar year in which an individual rental stay occurred, including the date of each stay and the identity and number of guests, the cost for each stay, including relevant tax, and records related to their registration as short-term rental hosts with the department of state. As a requirement for registration under section twenty-two of this article, hosts shall provide these records to the department of state on an annual basis. The department may share this report with county, city, town, or village governments.

4. Notwithstanding the provisions of any other law or administrative action to the contrary, hosting platforms shall develop and maintain a report related to short-term rental unit guest stays that the hosting platform has facilitated in the state for two years following the end of the calendar year in which an individual rental stay occurred. The report shall include the dates of each stay and the identity and number of guests, the cost for each stay, including relevant tax, the physical address, including any unit designation, of each short-term rental unit booked, the full legal name of each short-term rental unit's host, and each short-term rental unit's registration number. Hosting platforms shall make this report and, where applicable all relevant records, available to the department of state consistent in response to valid legal process. The department may share this report with county, city, town, or village governments when lawfully requested.

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

6. It shall be unlawful for a hosting platform to facilitate booking transactions for short-term rental units located in this state if the short-term rental unit and its owner or tenant have not been issued a current, valid registration by the department of state and the short-term rental unit is not otherwise lawful at the time it is rented by a guest.

7. The provisions of this article shall apply to municipalities with a population less than one million.

§ 22. Registration. 1. Short-term rental hosts shall be required to register a short-term residential unit with the department of state. Only hosts who are natural persons shall qualify for registration.

2. Registration 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 department of state. The department of state 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. Listing or using a dwelling unit, or portion thereof, as a short-term residential rental unit without current, valid registration shall be unlawful and shall make natural persons ineligible for registration for a period of twelve months from the date the violation is determined to have occurred.

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

4. A short-term rental host shall include their current, valid registration number on all offerings, listings or advertisements for short-term rental guest stays.

5. A tenant, or other person that does not own the unit but is in valid legal possession of a short-term rental unit, shall not qualify for registration if they are not the permanent occupant of the dwelling unit in question and have not been granted permission in writing by the owner for its short-term rental, to be verified by the department of state.

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

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

2. 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

§ 24. Tax exemption in certain circumstances. No taxes collected pursuant to article twenty-eight or twenty-nine of the tax law shall be imposed upon the short-term rental of a unit if the host transfers such short-term rental not more than fourteen days in a calendar year, provided, that the host has first: (i) registered with the department of state in accordance with section twenty-two of this article; and (ii) filed a declaration with the secretary of state, signed by the operator, setting forth the intention to transfer the short-term rental for not more than fourteen days in a calendar year. Such a declaration, if

applicable, shall be required annually in a manner determined by the commissioner of taxation and finance. If the operator rents the short-term rental for fifteen days or more in the same calendar year, or fails to register and file a declaration as required by this section, then the operator shall be liable for the payment of required taxes collected pursuant to article twenty-eight or twenty-nine of the tax law, including payment of required taxes and fees on the first fourteen days the short-term rental was transferred in the calendar year.

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

§ 2. 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 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 of this article, and subdivision (a) of section eleven hundred four of this article, 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.

(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. (i) A person or entity who, pursuant to an agreement with an operator of a hotel:

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

(B) collects a fee in connection with either:

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

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

(ii) A hosting platform shall not include a person or entity who facilitates bookings of hotel rooms solely on behalf of affiliated persons or entities, including franchisees, operating under a shared hotel brand.

§ 3. 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.

§ 4. 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 operator of a hotel; [~~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**; and hosting platforms unless relieved on such obligation pursuant to paragraph three of subdivision (m) 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, 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.

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

(m)(1) A hosting platform shall be required to (i) collect from the occupants the applicable taxes arising from such occupancies; (ii) comply with all the provisions of this article 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) 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.

(4) The commissioner may, in his or her discretion 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.

(5) 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.

§ 6. Subpart A of part 1 of article 29 of the tax law is amended by adding a new section 1200 to read as follows:

§ 1200. Definition. For the purposes of this article "hotel" shall mean a building or portion of such building which is regularly used and kept open as such for the lodging of guests, including: (a) an apartment hotel, (b) a motel, (c) a boarding house or club, whether or not meals are served, and (d) short-term residential rental units as defined in subdivision one of section twenty of the multiple residence law.

§ 7. Notwithstanding any other provisions of law to the contrary, a county, city, town, or village government may enact a local law prohibiting or further limiting the listing or use of dwelling units, or portions thereof, as short-term residential rental units.

§ 8. If any provision of this act, or any application of any provision of this act, is held to be invalid, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

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