

STATE OF NEW YORK

6003

2021-2022 Regular Sessions

IN ASSEMBLY

March 4, 2021

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

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:

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

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

LBD06894-01-1

(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

1 current, valid registration by the department of state and the short-
2 term rental unit is not otherwise lawful at the time it is rented by a
3 guest.

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

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

9 2. Registration shall be valid for two years, after which time the
10 short-term rental host may renew his or her registration in a manner
11 prescribed by the department of state. The department of state may
12 revoke the registration of a short-term rental host upon a determination
13 that the short-term rental host has violated any provision of this arti-
14 cle at least three times in two calendar years, and may determine that
15 the short-term rental host shall be ineligible for registration for a
16 period of up to twelve months from the date the third violation is
17 determined to have occurred. Listing or using a dwelling unit, or
18 portion thereof, as a short-term residential rental unit without
19 current, valid registration shall be unlawful and shall make natural
20 persons ineligible for registration for a period of twelve months from
21 the date the violation is determined to have occurred.

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

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

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

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

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

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

45 § 24. Tax exemption in certain circumstances. No taxes collected
46 pursuant to article twenty-eight or twenty-nine of the tax law shall be
47 imposed upon the short-term rental of a unit if the host transfers such
48 short-term rental not more than fourteen days in a calendar year,
49 provided, that the host has first: (i) registered with the department of
50 state in accordance with section twenty-two of this article; and (ii)
51 filed a declaration with the secretary of state, signed by the operator,
52 setting forth the intention to transfer the short-term rental for not
53 more than fourteen days in a calendar year. Such a declaration, if
54 applicable, shall be required annually in a manner determined by the
55 commissioner of taxation and finance. If the operator rents the short-
56 term rental for fifteen days or more in the same calendar year, or fails

1 to register and file a declaration as required by this section, then the
2 operator shall be liable for the payment of required taxes collected
3 pursuant to article twenty-eight or twenty-nine of the tax law, includ-
4 ing payment of required taxes and fees on the first fourteen days the
5 short-term rental was transferred in the calendar year.

6 § 24-a. Penalties. Notwithstanding the provisions of any other law to
7 the contrary, anyone found in violation of the provisions of this arti-
8 cle shall be subject to a civil penalty of not less than one thousand
9 dollars nor more than twenty-five thousand dollars for each violation.
10 In addition to such civil penalty, a separate additional penalty may be
11 imposed of not more than one thousand dollars for each day that the
12 violation is not corrected.

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

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

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

26 (2) Occupancy. The use or possession, or the right to the use or
27 possession, of any room in a hotel. "Right to the use or possession"
28 includes the rights of a room remarketer as described in paragraph eight
29 of this subdivision.

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

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

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

42 (6) Rent. The consideration received for occupancy, including any
43 service or other charge or amount required to be paid as a condition for
44 occupancy, valued in money, whether received in money or otherwise and
45 whether received by the operator [~~or~~], a hosting platform, a room
46 remarketer or another person on behalf of [~~either~~] any of them.

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

50 (8) Room remarketer. A person who reserves, arranges for, conveys, or
51 furnishes occupancy, whether directly or indirectly, to an occupant for
52 rent in an amount determined by the room remarketer, directly or indi-
53 rectly, whether pursuant to a written or other agreement. Such person's
54 ability or authority to reserve, arrange for, convey, or furnish occu-
55 pancy, directly or indirectly, and to determine rent therefor, shall be
56 the "rights of a room remarketer". A room remarketer is not a permanent

1 resident with respect to a room for which such person has the rights of
2 a room remarketer. This term does not include a hosting platform.

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

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

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

11 (B) collects a fee in connection with either:

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

14 (2) providing the forum in which a hotel operator can list or adver-
15 tise space in a hotel for occupancy.

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

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

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

28 § 4. Subdivision 1 of section 1131 of the tax law, as amended by
29 section 2 of part G of chapter 59 of the laws of 2019, is amended to
30 read as follows:

31 (1) "Persons required to collect tax" or "person required to collect
32 any tax imposed by this article" shall include: every vendor of tangible
33 personal property or services; every recipient of amusement charges;
34 every operator of a hotel; ~~and~~ every marketplace provider with respect
35 to sales of tangible personal property it facilitates as described in
36 paragraph one of subdivision (e) of section eleven hundred one of this
37 article; and hosting platforms unless relieved on such obligation pursu-
38 ant to paragraph three of subdivision (m) of section eleven hundred
39 thirty-two of this part. Said terms shall also include any officer,
40 director or employee of a corporation or of a dissolved corporation, any
41 employee of a partnership, any employee or manager of a limited liabil-
42 ity company, or any employee of an individual proprietorship who as such
43 officer, director, employee or manager is under a duty to act for such
44 corporation, partnership, limited liability company or individual
45 proprietorship in complying with any requirement of this article, or has
46 so acted; and any member of a partnership or limited liability company.
47 Provided, however, that any person who is a vendor solely by reason of
48 clause (D) or (E) of subparagraph (i) of paragraph (8) of subdivision
49 (b) of section eleven hundred one of this article shall not be a "person
50 required to collect any tax imposed by this article" until twenty days
51 after the date by which such person is required to file a certificate of
52 registration pursuant to section eleven hundred thirty-four of this
53 part.

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

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

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

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

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

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

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

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

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

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

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

3 § 1200. Definition. For the purposes of this article "hotel" shall
4 mean a building or portion of such building which is regularly used and
5 kept open as such for the lodging of guests, including: (a) an apartment
6 hotel, (b) a motel, (c) a boarding house or club, whether or not meals
7 are served, and (d) short-term residential rental units as defined in
8 subdivision one of section twenty of the multiple residence law.

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

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

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