STATE OF NEW YORK

1658--B

2021-2022 Regular Sessions

IN SENATE

January 14, 2021

Introduced by Sens. SKOUFIS, COONEY, HARCKHAM, HINCHEY, REICHLIN-MELNICK -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Housing, Construction and Community Development in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the multiple dwelling law, the tax law and 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 the regulation of short-term rental units

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 7-D to read as follows:

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

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ARTICLE 7-D
SHORT-TERM RENTAL UNITS

Section 288. Definitions.
289. Short-term rental units authorized.
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 an operator of a hotel, facilitates the occupancy of a hotel. A person "facilitates the occupancy of a hotel" by, in exchange for a fee, either: (A) providing the forum in which an operator can list or advertise a hotel for occupancy; or (B) providing the forum, in which, or by means of which, the offer for occupancy is accepted.

§ 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;

(e) is not subject to the emergency housing rent control law, chapter seven of subtitle S of title nine of New York's compilation of codes, rules and regulations, the rent and rehabilitation law of the city of New York enacted pursuant to the local emergency housing rent control law, the emergency tenant protection act of nineteen seventy-four, the public housing law, or otherwise rent subsidized, rent controlled, rent stabilized, or considered affordable housing; and

(f) is insured for at least five hundred 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 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.

3. 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.

4. 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.

5. 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.

4. Hosting platforms are authorized to facilitate the registration process by collecting the required application information and transmitting it to the division of housing and community renewal for processing if the platform has obtained short-term rental host consent.

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

3. inform short-term rental hosts of the registration requirement and regulations under this article.

§ 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 section two hundred eighty-nine or two hundred ninety of this chapter shall be five hundred dollars for a first offense; and one thousand dollars for the second 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 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**, short-term rental units as defined in paragraph nine of this subdivision, and a bungalow or similar furnished living unit that is limited to a single family occupancy and does not provide housekeeping, food, or other common hotel services, including but not limited to entertainment or planned activities**.

(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. **This term does not include a hosting platform as defined in paragraph ten of this subdivision.**

(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 **by the operator** 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**~~]**, 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, 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. **A hosting platform is not 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.

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

§ 5. 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 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.

§ 6. 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 **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.

§ 7. 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 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.

§ 8. 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, whether intentional or unintentional.

§ 9. 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 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 registered with the commission as required by section eleven hundred thirty-four of this part, the hosting platform and operator agree that the operator is required to remit the tax directly to the commissioner. In such situation, the operator shall be treated as if it collected the tax and shall have all of the rights and obligations imposed by New York law on persons required to collect tax, including but not limited to the liability imposed by section eleven hundred thirty-three of this part.

§ 10. 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 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 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. Provided, however, that if a hosting platform and operator have entered into an agreement pursuant to section eleven hundred thirty-six of this part, only the operator shall be subject to audit by the commissioner.

§ 11. Section 1240 of the tax law, as amended by chapter 356 of the laws of 2014, is amended to read as follows:

§ 1240. Administration and collection. The taxes authorized under sections twelve hundred one through twelve hundred four of this article which are now imposed shall continue to be administered and collected by the fiscal or other officers of the city, county or school district in the same manner as such taxes have been administered and collected by such officers immediately prior to the enactment of this article, in accordance with the applicable provisions of the charter, administrative code, local law, ordinance or resolution then in force, with such amendments in respect to administration and collection as may be enacted, except that any taxes that counties are authorized to impose under sections twelve hundred two-a through twelve hundred two-xx of this article shall be imposed on the same transactions subject to tax under

subdivision (e) of section eleven hundred five of article twenty-eight of this chapter, and shall be collected by any person required to collect tax under section eleven hundred thirty-one of article twenty-eight of this chapter, and such person shall have all the rights, duties, and responsibilities as set forth in the provisions of sections eleven hundred thirty-one through eleven hundred forty-eight of article twenty-eight of this chapter. Provided, however, if a hosting platform and a county have previously entered into an agreement regarding the collection of tax, the terms of such agreement shall continue to govern the collection of such tax. Taxes authorized under sections twelve hundred one through twelve hundred four of this article which may hereafter be imposed by a city, county or school district shall be administered and collected in such manner as may be provided in its charter, administrative code, local laws, ordinances or resolutions, with such amendments in respect to administration and collection as may be enacted, except that any taxes that counties are authorized to impose under sections twelve hundred two-a through twelve hundred two-xx of this article shall be imposed on the same transactions subject to tax under subdivision (e) of section eleven hundred five of article twenty-eight of this chapter, and shall be collected by any person required to collect tax under section eleven hundred thirty-one of article twenty-eight of this chapter, and such person shall have all the rights, duties, and responsibilities as set forth in the provisions of sections eleven hundred thirty-one through eleven hundred forty-eight of article twenty-eight of this chapter. Notwithstanding any other provision of law to the contrary, the authorization to impose tax upon the transfer of real property pursuant to subdivision (b) of section twelve hundred one of this article, shall not, when the conveyance consists of a transfer of property made as a result of an order of the court in a foreclosure proceeding ordering the sale of such property, include the authorization to impose civil or criminal penalties, interest, or other liability upon the referee or sheriff effectuating the transfer.

§ 12. Subdivision 3 of 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 to read as follows:

(3) Such local laws may provide that any tax imposed shall be paid by the person liable therefor to the owner of the hotel room occupied or to the person entitled to be paid the rent or charge for the hotel room occupied for and on account of the city imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the hotel room, or in respect to non-payment of the tax by the person occupying the hotel room, as if the tax were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the finance administrator or other fiscal officers of such city, specified in such local law, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge. Notwithstanding any provision to the contrary, a hosting platform, as defined in paragraph 10 of subdivision (c) of section 1101 of the tax law, shall collect the tax authorized to be imposed by this section.

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