

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 190

(Senator Madaleno, *et al.*)

Budget and Taxation

Ways and Means

Sales and Use Tax - Taxable Price - Accommodations

This bill clarifies the definition of taxable price for purposes of the State sales and use tax as it applies to the sale or use of an accommodation facilitated by an accommodations intermediary. The bill also alters the definition of vendor under the State sales and use tax to include an accommodations intermediary.

The bill takes effect July 1, 2015.

Fiscal Summary

State Effect: The bill is intended to clarify current law with regards to the definition of taxable price; however, the effect on State sales and use tax revenues from hotel room rentals cannot be reliably estimated, as discussed below. Expenditures are not affected.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: An accommodation is defined as a right to occupy a room or lodgings as a transient guest. An accommodations provider is a person that owns, operates, or manages an accommodation and makes the accommodation available for sale or use to a buyer. An accommodations intermediary is a person, other than an accommodations provider, who facilitates the sale or use of an accommodation and charges a buyer the taxable price for the accommodation. A person is considered to facilitate the sale or use of an accommodation if the person brokers, coordinates, or in any other way arranges for the sale or use of an accommodation by a buyer.

Current Law: Tangible personal property is (1) corporeal personal property of any nature or (2) a right to occupy a room or lodgings as a transient guest.

Taxable price is the value, in money, of the consideration of any kind that is paid, delivered, payable, or deliverable by a buyer to a vendor in the consummation and complete performance of a sale without deduction for any expense or cost, including the cost of (1) any labor or service rendered; (2) any material used; or (3) any property sold.

A vendor is a person who (1) engages in the business of an out-of-state vendor; (2) engages in the business of a retail vendor; or (3) holds a specified special license.

Background: Online travel companies (OTCs) typically obtain access to hotel inventory (rooms) through contractual agreements with hotels. OTCs pay a discounted rate for these hotel rooms that they sell (as room rentals), and then retain certain fees that are part of the total price paid by customers. The purchaser of the room rental is typically charged the same rate as the person would be if the hotel room rental was purchased directly from the hotel. The issue that has arisen in recent years is the definition of taxable price that state and local sales and use taxes and hotel rental taxes are to be based on. OTCs have typically been paying and remitting these taxes based on the reduced rate that they pay for the hotel rooms; however, states and local jurisdictions have been arguing in court that these taxes should be collected on the total room rate paid, which is the base for which the taxes would have been imposed if a customer rented the hotel room directly from the hotel.

This bill requires OTCs (intermediaries) to collect and remit sales taxes on a taxable base that is the amount paid by the end user. The Comptroller's Office advises that this is the State's current interpretation of the definition of taxable price and that this issue is currently in the discovery phase in the Maryland Tax Court (*Travelocity v. Comptroller*). The Comptroller is seeking back taxes and penalties and interest of approximately \$6.0 million for sales tax payments from March 2003 through the first quarter of 2011.

Several states have sued OTCs over the interpretation of taxable price and collection of taxes. In Maryland, several local jurisdictions, including Baltimore City and Baltimore, Montgomery, and Worcester counties have sued OTCs over the definition of taxable price as it applies to their respective local hotel rental taxes. These jurisdictions have reached settlement agreements with the various OTCs regarding unpaid taxes.

State Fiscal Effect: The actual effect of the bill cannot be reliably estimated at this time. The bill is intended to clarify current law with regards to the taxable price of hotel room rentals. As such, it would be expected that the amount of sales tax revenues collected would be unchanged. However, because OTCs are not currently paying sales tax using the State's interpretation of taxable price, the bill would result in a revenue increase.

In addition, because the State is currently litigating this issue in the Maryland Tax Court, there is uncertainty as how the passage of this bill would affect the outcome of the case as well as the potential payment of back taxes owed by OTCs.

Additional Information

Prior Introductions: None.

Cross File: Although designated as a cross file, HB 1065 (Delegate Hixon – Ways and Means) is not identical.

Information Source(s): Comptroller’s Office, Department of Legislative Services

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