

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 209

(Howard County Delegation)

Ways and Means

Budget and Taxation

Howard County - Room Rental Tax - Room Rental Fee Ho. Co. 12-15

This bill clarifies that the Howard County hotel rental tax applies to the total charge for the rental of a room, including any room rental fee charged by a room rental intermediary but not including any tax.

The bill takes effect July 1, 2015.

Fiscal Summary

State Effect: No direct effect on State revenues.

Local Effect: Howard County hotel rental tax revenues are expected to increase beginning in FY 2016. The amount of the revenue increase depends on the amount of hotel room rentals that are sold by intermediaries and the amount of fees that are not included in the taxable price of these hotel room rentals. Expenditures are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: A room rental fee is defined as a fee charged by a room rental intermediary to a transient for facilitating the rental of a room. A room rental fee does not include a commission paid by a hotelkeeper to a person after facilitating the rental of a room. A room rental intermediary means a person, other than a hotelkeeper, who facilitates the rental of a room and charges a transient for the rental of a room.

Current Law: Howard County is authorized to impose and collect a hotel rental tax of up to 7% for sleep accommodations for transients.

Background:

Online Travel Companies

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 the Howard County hotel rental tax 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 for the State sales and use tax imposed on hotel rentals 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. Newspaper reports indicate that the counties received the following settlement amounts: Baltimore City – \$2.3 million; Baltimore County – \$1.0 million; Montgomery County – \$1.1 million; and Worcester County – \$150,000.

Local Hotel Rental Taxes

Hotel rental taxes are currently authorized in all 23 counties and Baltimore City, with rates ranging from 3.0% to 9.5% as shown in **Exhibit 1**. On January 20, 2015, the Harford County Council enacted a 6% hotel rental tax to be imposed beginning March 23, 2015.

State law requires, after a distribution for specified administrative costs, that hotel rental tax revenues be distributed to the county's general fund, except:

- in a code county and Calvert, Cecil, Garrett, and St. Mary's counties, the portion of the tax attributable to a hotel in a municipality must be distributed to the municipality;
- Carroll County may retain a reasonable amount of revenues for administrative expenses and the remaining balance must be used for tourism and general promotion of the county;
- Dorchester County must provide 80% of revenues attributed to hotels located in a municipality to the municipality;
- Frederick County must designate a portion of the hotel rental tax revenue to the Tourism Council of Frederick County and a portion to the county commissioners to be used for a visitor center;
- Garrett County must designate a portion of revenues for the promotion of the county;
- Howard County must distribute any revenue attributable to a hotel rental tax rate of greater than 5% as follows: (1) two-thirds to the Howard County Tourism Council and (2) one-third to the Howard County Economic Development Authority;
- Washington County must use 50% of revenues to fund the Hagerstown/Washington County Convention and Visitors Bureau; and
- Wicomico County must provide 16.7% of the revenue to the Salisbury Zoological Park, 16.7% to the Wicomico County Youth and Civic Center, and the remainder must be used for the Wicomico County Convention and Visitors Bureau.

Howard County is estimated to collect \$4.9 million in hotel rental tax revenues in fiscal 2015.

Local Fiscal Effect: The Howard County Finance Department reports that the county is not currently collecting the tax on third-party fees. As such, the bill is expected to result in increased hotel rental tax collections for the county. The amount of the revenue increase depends on the amount of hotel room rentals that are sold by intermediaries and the amount of fees that are not included in the taxable price of these hotel room rentals.

Exhibit 1
Hotel Rental Tax Revenues

County	County Tax Rates		FY 2015	Per Capita Revenues	Per Capita Ranking
	FY 2014	FY 2015			
Allegany	8.0%	8.0%	\$1,024,345	\$14	8
Anne Arundel	7.0%	7.0%	12,944,000	23	5
Baltimore City	9.5%	9.5%	32,001,000	51	3
Baltimore	8.0%	8.0%	8,300,000	10	11
Calvert	5.0%	5.0%	800,000	9	14
Caroline	5.0%	5.0%	40,500	1	22
Carroll	5.0%	5.0%	359,641	2	20
Cecil	3.0%	3.0%	91,536	1	23
Charles	5.0%	5.0%	940,000	6	17
Dorchester	5.0%	5.0%	300,000	9	13
Frederick	3.0%	3.0%	1,331,506	6	18
Garrett	6.0%	6.0%	2,100,000	70	2
Harford	0.0%	6.0% *	0	0	24
Howard	7.0%	7.0%	4,900,000	16	7
Kent	5.0%	5.0%	124,000	6	16
Montgomery	7.0%	7.0%	17,512,115	17	6
Prince George's	5.0%	5.0%	4,850,700	5	19
Queen Anne's	5.0%	5.0%	480,000	10	12
St. Mary's	5.0%	5.0%	850,000	8	15
Somerset	5.0%	5.0%	55,000	2	21
Talbot	4.0%	4.0%	1,250,000	33	4
Washington	6.0%	6.0%	2,000,000	13	9
Wicomico	6.0%	6.0%	1,100,292	11	10
Worcester	4.5%	4.5%	13,015,083	252	1
Total			\$106,369,718	\$18	

*Tax is effective March 23, 2015.

Source: FY 2015 county budgets; Department of Legislative Services

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Howard County, Comptroller's Office, Department of Legislative Services

Fiscal Note History: First Reader - February 16, 2015
md/jrb Revised - House Third Reader - March 24, 2015

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