

SENATE BILL 776

Q7, Q4

6lr1247
CF 6lr2253

By: **Senator Astle**

Introduced and read first time: February 5, 2016

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Hotel Rental Tax and Sales and Use Tax – Limited Residential Lodging**

3 FOR the purpose of imposing, under certain circumstances, the State sales and use tax on
4 certain limited residential lodgings; imposing, under certain circumstances, a
5 limited residential lodging tax on certain limited residential lodging transactions
6 booked through a hosting platform; requiring certain hosting platforms to collect and
7 remit the limited residential lodging tax; providing that revenue from the limited
8 residential lodging tax is required to be distributed in the same manner as certain
9 hotel rental tax revenue; requiring a hosting platform that offers certain lodgings to
10 register with the Comptroller for the collection of certain taxes; requiring a hosting
11 platform to give certain individuals a certain statement and collect certain taxes;
12 requiring a person to pay certain taxes when a person pays a certain charge;
13 requiring a hosting platform to hold certain taxes in trust; providing that an
14 individual that enters into a certain agreement with a hosting platform may not be
15 held liable for certain failures; requiring a hosting platform to complete, sign, and
16 file certain tax returns on or before a certain day; requiring the Comptroller to
17 provide the form and content of a certain tax return; providing record retention
18 requirements for limited residential lodging operators; requiring the Comptroller to
19 make certain distributions from the limited residential lodging tax revenue;
20 requiring the Comptroller to provide a county or municipality with certain
21 information; authorizing the Comptroller to impose a certain fee; imposing certain
22 penalties, under certain circumstances, on a hosting platform; limiting the use of
23 certain information; providing that only the Comptroller may conduct certain audits
24 in a certain manner; defining certain terms; providing for the application of this Act;
25 and generally relating to the taxation of certain limited residential lodging
26 transactions.

27 BY adding to

28 Article – Local Government

29 Section 20–439 through 20–447 to be under the new part “Part III. Limited
30 Residential Lodging Taxes”

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2013 Volume and 2015 Supplement)

3 BY repealing and reenacting, without amendments,
4 Article – Tax – General
5 Section 11–101(a)
6 Annotated Code of Maryland
7 (2010 Replacement Volume and 2015 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article – Tax – General
10 Section 11–101(a–1) and (a–2)
11 Annotated Code of Maryland
12 (2010 Replacement Volume and 2015 Supplement)
13 (As enacted by Chapter 3 of the Acts of the General Assembly of 2016)

14 BY adding to
15 Article – Tax – General
16 Section 11–101(c–1) and (c–2)
17 Annotated Code of Maryland
18 (2010 Replacement Volume and 2015 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
20 That the Laws of Maryland read as follows:

21 **Article – Local Government**

22 **20–437. RESERVED.**

23 **20–438. RESERVED.**

24 **PART III. LIMITED RESIDENTIAL LODGING TAXES.**

25 **20–439.**

26 (A) IN THIS PART THE FOLLOWING WORDS HAVE THE MEANINGS
27 INDICATED.

28 (B) “BOOKING TRANSACTION” MEANS ANY TRANSACTION IN WHICH THERE
29 IS A CHARGE TO OCCUPY ANY DWELLING, SLEEPING, OR LODGING
30 ACCOMMODATIONS THROUGH A HOSTING PLATFORM.

31 (C) “HOSTING PLATFORM” MEANS A PERSON THAT FACILITATES
32 RESERVATIONS OR COLLECTS PAYMENT FOR A BOOKING TRANSACTION ON BEHALF

1 OF A LIMITED RESIDENTIAL LODGING OPERATOR THROUGH AN ONLINE DIGITAL
2 PLATFORM.

3 (D) "LIMITED RESIDENTIAL LODGING" MEANS THE ACCESSORY OR
4 SECONDARY USE OF A RESIDENTIAL DWELLING UNIT OR A PORTION OF THE UNIT BY
5 A LIMITED RESIDENTIAL LODGING OPERATOR TO PROVIDE, IN EXCHANGE FOR
6 COMPENSATION, A ROOM OR SPACE THAT IS SUITABLE OR INTENDED FOR
7 DWELLING, SLEEPING, OR LODGING PURPOSES.

8 (E) "LIMITED RESIDENTIAL LODGING OPERATOR" MEANS AN OPERATOR
9 WHO USES A HOSTING PLATFORM.

10 (F) "LIMITED RESIDENTIAL LODGING TAX" MEANS THE TAX ON A
11 TRANSIENT CHARGE.

12 (G) "OPERATOR" MEANS THE PROPRIETOR OF ANY DWELLING, LODGING,
13 OR SLEEPING ACCOMMODATION OFFERED FOR A CHARGE TO OCCUPANTS.

14 (H) (1) "TRANSIENT CHARGE" MEANS A CHARGE FOR LIMITED
15 RESIDENTIAL LODGING FOR SLEEPING ACCOMMODATIONS.

16 (2) "TRANSIENT CHARGE" INCLUDES ANY RELATED SERVICE CHARGE
17 OR BOOKING FEES.

18 20-440.

19 (A) (1) A LIMITED RESIDENTIAL LODGING IS SUBJECT TO THE STATE
20 SALES AND USE TAX UNDER TITLE 11 OF THE TAX - GENERAL ARTICLE AND THE
21 TAX MAY BE COLLECTED AND REMITTED WITH THE LIMITED RESIDENTIAL LODGING
22 TAX IMPOSED UNDER THIS PART.

23 (2) IF A COUNTY IMPOSES A HOTEL RENTAL TAX UNDER THIS
24 SUBTITLE OR ANY OTHER LAW, A LIMITED RESIDENTIAL LODGING IS SUBJECT TO
25 THE LIMITED RESIDENTIAL LODGING TAX AT THE SAME RATE AS THE HOTEL RENTAL
26 TAX IMPOSED BY THE COUNTY.

27 (3) IF A MUNICIPALITY IMPOSES A HOTEL RENTAL TAX UNDER THIS
28 SUBTITLE OR OTHER LAW, A LIMITED RESIDENTIAL LODGING IS SUBJECT TO THE
29 LIMITED RESIDENTIAL LODGING TAX AT THE SAME RATE AS THE HOTEL RENTAL TAX
30 IMPOSED BY THE MUNICIPALITY.

31 (B) A HOSTING PLATFORM THAT IS REGISTERED WITH THE COMPTROLLER
32 TO COLLECT AND REMIT THE STATE SALES AND USE TAX OR THE COUNTY OR

1 MUNICIPALITY LIMITED RESIDENTIAL LODGING TAX THAT APPLIES TO A LIMITED
2 RESIDENTIAL LODGING TRANSACTION FACILITATED BY THE HOSTING PLATFORM
3 SHALL REMIT, ON THE DAY REQUIRED UNDER § 20-443 OF THIS PART, THE TOTAL
4 AMOUNT OF TAX COLLECTED TO THE COMPTROLLER WITH A SCHEDULE THAT LISTS
5 THE AMOUNT OF TAX THAT IS DUE TO THE STATE, COUNTY, OR MUNICIPALITY FOR
6 THE REPORTING PERIOD.

7 (C) REVENUE FROM A LIMITED RESIDENTIAL LODGING TAX SHALL BE
8 DISTRIBUTED IN THE SAME MANNER AS HOTEL RENTAL TAX REVENUE IS
9 DISTRIBUTED UNDER THIS SUBTITLE OR ANY APPLICABLE LAW.

10 20-441.

11 A HOSTING PLATFORM THAT OFFERS LIMITED RESIDENTIAL LODGING IN THE
12 STATE SHALL REGISTER WITH THE COMPTROLLER TO COLLECT:

- 13 (1) THE STATE SALES AND USE TAX;
- 14 (2) THE COUNTY LIMITED RESIDENTIAL LODGING TAX; AND
- 15 (3) THE MUNICIPALITY LIMITED RESIDENTIAL LODGING TAX.

16 20-442.

17 (A) A HOSTING PLATFORM SHALL:

- 18 (1) GIVE A PERSON REQUIRED TO PAY THE STATE SALES AND USE TAX
19 AND LIMITED RESIDENTIAL LODGING TAX A STATEMENT THAT IDENTIFIES THE
20 TRANSIENT CHARGE AS AN ITEM SEPARATE FROM ANY OTHER TAX OR CHARGE; AND
- 21 (2) COLLECT THE STATE SALES AND USE TAX AND LIMITED
22 RESIDENTIAL LODGING TAX FROM THE PERSON WHO PAYS THE TRANSIENT CHARGE.

23 (B) A PERSON SHALL PAY THE STATE SALES AND USE TAX AND LIMITED
24 RESIDENTIAL LODGING TAX TO THE HOSTING PLATFORM WHEN THE PERSON PAYS
25 THE TRANSIENT CHARGE.

26 (C) (1) A HOSTING PLATFORM SHALL HOLD THE STATE SALES AND USE
27 TAX AND LIMITED RESIDENTIAL LODGING TAX COLLECTED IN TRUST UNTIL THE
28 HOSTING PLATFORM REMITS THE TAXES COLLECTED TO THE COMPTROLLER.

1 **(2) A HOSTING PLATFORM SHALL COLLECT THE LIMITED**
2 **RESIDENTIAL LODGING TAX ON BEHALF OF A LIMITED RESIDENTIAL LODGING**
3 **OPERATOR.**

4 **(3) A LIMITED RESIDENTIAL LODGING OPERATOR THAT ENTERS INTO**
5 **AN AGREEMENT WITH A HOSTING PLATFORM TO COLLECT AND REMIT THE STATE**
6 **SALES AND USE TAX AND LIMITED RESIDENTIAL LODGING TAX MAY NOT BE HELD**
7 **LIABLE FOR THE FAILURE OF A HOSTING PLATFORM TO COLLECT AND REMIT THE**
8 **TAXES OR FILE ANY REQUIRED TAX RETURNS.**

9 **20-443.**

10 **(A) A HOSTING PLATFORM SHALL COMPLETE, SIGN, AND FILE A STATE**
11 **SALES AND USE TAX RETURN AND A LIMITED RESIDENTIAL LODGING TAX RETURN**
12 **WITH THE COMPTROLLER ON OR BEFORE THE 10TH DAY OF A MONTH THAT**
13 **FOLLOWS A MONTH IN WHICH THE HOSTING PLATFORM COLLECTS THE TAXES.**

14 **(B) THE COMPTROLLER SHALL PROVIDE FOR THE FORM AND CONTENT OF**
15 **THE LIMITED RESIDENTIAL LODGING TAX RETURN.**

16 **(C) (1) A LIMITED RESIDENTIAL LODGING OPERATOR SHALL KEEP, FOR**
17 **AT LEAST 4 YEARS, COMPLETE AND ACCURATE RECORDS OF THE DATES OF ANY**
18 **LIMITED RESIDENTIAL LODGINGS AND THE NUMBER OF OCCUPANTS THAT USED THE**
19 **LIMITED RESIDENTIAL LODGING.**

20 **(2) A LIMITED RESIDENTIAL LODGING OPERATOR MAY BE REQUIRED**
21 **TO MAKE ONLY THE RECORDS UNDER PARAGRAPH (1) OF THIS SUBSECTION**
22 **AVAILABLE IN RESPONSE TO A SUBPOENA SERVED BY THE COMPTROLLER.**

23 **20-444.**

24 **(A) FROM THE LIMITED RESIDENTIAL LODGING TAX REVENUE, THE**
25 **COMPTROLLER SHALL DISTRIBUTE THE AMOUNT NECESSARY TO ADMINISTER THE**
26 **LIMITED RESIDENTIAL LODGING TAX.**

27 **(B) AFTER MAKING THE DISTRIBUTION REQUIRED UNDER SUBSECTION (A)**
28 **OF THIS SECTION, THE COMPTROLLER SHALL DISTRIBUTE THE LIMITED**
29 **RESIDENTIAL LODGING TAX TO THE COUNTY OR MUNICIPALITY WHERE THE LIMITED**
30 **RESIDENTIAL LODGING TAX WAS INCURRED IN THE SAME MANNER THAT THE HOTEL**
31 **RENTAL TAX IS DISTRIBUTED UNDER THIS SUBTITLE OR OTHER LAW.**

32 **20-445.**

1 **(A) THE COMPTROLLER SHALL PROVIDE A COUNTY OR MUNICIPALITY WITH**
2 **INFORMATION TO HELP THE COUNTY OR MUNICIPALITY VERIFY THE AMOUNT OF**
3 **LIMITED RESIDENTIAL LODGING TAX GENERATED IN THE COUNTY OR**
4 **MUNICIPALITY.**

5 **(B) THE COMPTROLLER MAY CHARGE A COUNTY OR MUNICIPALITY A**
6 **REASONABLE FEE FOR THE COST OF PROVIDING INFORMATION UNDER THIS**
7 **SECTION.**

8 **20-446.**

9 **(A) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IF A HOSTING**
10 **PLATFORM THAT IS REGISTERED WITH THE COMPTROLLER FAILS TO FILE A**
11 **LIMITED RESIDENTIAL LODGING TAX RETURN REQUIRED UNDER THIS PART, THE**
12 **COMPTROLLER SHALL ASSESS:**

13 **(I) A PENALTY IN THE AMOUNT OF \$500 IF THE LIMITED**
14 **RESIDENTIAL LODGING TAX RETURN IS FILED ON OR BEFORE 30 DAYS AFTER THE**
15 **DATE REQUIRED UNDER THIS PART; AND**

16 **(II) A PENALTY IN THE AMOUNT OF \$1,000 FOR EACH 30-DAY**
17 **PERIOD, OR FRACTION OF A 30-DAY PERIOD, IF THE LIMITED RESIDENTIAL**
18 **LODGING TAX RETURN IS FILED ON OR AFTER 31 DAYS OF THE DATE REQUIRED**
19 **UNDER THIS PART.**

20 **(2) THE PENALTY UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY**
21 **NOT EXCEED THE LESSER OF:**

22 **(I) \$10,000; OR**

23 **(II) 5% OF THE LIMITED RESIDENTIAL LODGING TAX DUE.**

24 **(3) THE COMPTROLLER, FOR GOOD CAUSE, MAY WAIVE THE PENALTY**
25 **REQUIRED UNDER THIS PARAGRAPH.**

26 **(B) IF A HOSTING PLATFORM THAT IS REGISTERED WITH THE**
27 **COMPTROLLER FAILS TO PAY OR UNDERPAYS THE LIMITED RESIDENTIAL LODGING**
28 **TAX REQUIRED UNDER THIS PART, THE COMPTROLLER SHALL ASSESS:**

29 **(1) A PENALTY IN THE AMOUNT OF 3% OF THE UNDERPAYMENT IF THE**
30 **LIMITED RESIDENTIAL LODGING TAX IS PAID ON OR BEFORE 30 DAYS AFTER THE**
31 **DATE REQUIRED UNDER THIS PART; AND**

1 **(2) A PENALTY IN THE AMOUNT OF AN ADDITIONAL 3% OF THE**
2 **UNDERPAYMENT FOR EACH 30-DAY PERIOD, OR FRACTION OF A 30-DAY PERIOD, IF**
3 **THE LIMITED RESIDENTIAL LODGING TAX IS PAID ON OR AFTER 31 DAYS AFTER THE**
4 **DATE REQUIRED UNDER THIS PART.**

5 **(C) IF A HOSTING PLATFORM THAT IS REGISTERED WITH THE**
6 **COMPTROLLER WILLFULLY FILES A FALSE OR FRAUDULENT LIMITED RESIDENTIAL**
7 **LODGING TAX RETURN UNDER THIS PART WITH THE INTENT TO DEFRAUD A COUNTY**
8 **OR A MUNICIPALITY OF THE LIMITED RESIDENTIAL LODGING TAX, THE**
9 **COMPTROLLER SHALL ASSESS A PENALTY EQUAL TO 50% OF THE DIFFERENCE**
10 **BETWEEN THE AMOUNT OF LIMITED RESIDENTIAL LODGING TAX REPORTED ON THE**
11 **LIMITED RESIDENTIAL LODGING TAX RETURN AND THE AMOUNT OF LIMITED**
12 **RESIDENTIAL LODGING TAX THE COMPTROLLER DETERMINES IS DUE.**

13 **(D) A PENALTY UNDER THIS SECTION SHALL BE PAID BY THE HOSTING**
14 **PLATFORM AND COLLECTED BY THE COMPTROLLER IN THE SAME MANNER AS THE**
15 **LIMITED RESIDENTIAL LODGING TAX.**

16 **(E) THE PENALTIES THAT APPLY TO THE ADMINISTRATION OF THE STATE**
17 **SALES AND USE TAX UNDER TITLE 13 OF THE TAX – GENERAL ARTICLE APPLY TO**
18 **THE STATE SALES AND USE TAX THAT IS REMITTED WITH THE LIMITED RESIDENTIAL**
19 **LODGING TAX RETURN UNDER THIS PART.**

20 **20-447.**

21 **(A) (1) THIS SECTION APPLIES TO ANY INFORMATION PROVIDED TO OR**
22 **OBTAINED BY THE COMPTROLLER UNDER THIS PART AND INCLUDES:**

23 **(I) INFORMATION CONTAINED IN A LIMITED RESIDENTIAL**
24 **LODGING TAX RETURN FILED BY A HOSTING PLATFORM;**

25 **(II) INFORMATION RELATING TO UNDERLYING LIMITED**
26 **RESIDENTIAL LODGING TRANSACTIONS; OR**

27 **(III) INFORMATION RELATING TO AN AUDIT OR INVESTIGATION.**

28 **(2) THE INFORMATION DESCRIBED UNDER PARAGRAPH (1) OF THIS**
29 **SUBSECTION:**

30 **(I) IS CONFIDENTIAL AND MAY BE DISCLOSED ONLY IN**
31 **ACCORDANCE WITH THE PROVISIONS OF A WRITTEN AGREEMENT BETWEEN THE**
32 **HOSTING PLATFORM AND THE COMPTROLLER; AND**

(II) MAY NOT BE DISCLOSED:

1. WITHOUT THE WRITTEN CONSENT OF THE HOSTING PLATFORM; OR

2. TO ANY AGENCY OR INSTRUMENTALITY OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE.

(3) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE INFORMATION UNDER PARAGRAPH (1) OF THIS SUBSECTION IS NOT SUBJECT TO DISCLOSURE UNDER ANY APPLICABLE FREEDOM OF INFORMATION ACT REQUEST.

(B) (1) THE LIMITED RESIDENTIAL LODGING TAX UNDER THIS PART IS SUBJECT TO AUDIT BY ONLY THE COMPTROLLER OR THE COMPTROLLER'S REGISTERED AGENT.

(2) THE TAX COLLECTOR OF A COUNTY OR MUNICIPALITY MAY NOT CONDUCT AN AUDIT OF LIMITED RESIDENTIAL LODGING TAXES UNDER THIS PART.

(3) THE AUDIT MAY ONLY BE BASED ON THE LIMITED RESIDENTIAL LODGING TAX RETURNS AND SCHEDULES FILED BY A HOSTING PLATFORM.

(4) THE AUDIT MAY NOT BE CONDUCTED, DIRECTLY OR INDIRECTLY, ON A LIMITED RESIDENTIAL LODGING OPERATOR OR THE OCCUPANT OF A LIMITED RESIDENTIAL LODGING.

(C) THE AUDIT AUTHORIZED UNDER SUBSECTION (B) OF THIS SECTION SHALL BE CONDUCTED ON AN ANONYMOUS NUMBERED ACCOUNT BASIS AND MAY NOT REQUIRE THE PRODUCTION OF ANY PERSONALLY IDENTIFIABLE INFORMATION RELATING TO:

(1) A LIMITED RESIDENTIAL LODGING TRANSACTION;

(2) A LIMITED RESIDENTIAL LODGING OPERATOR; OR

(3) AN OCCUPANT OF A LIMITED RESIDENTIAL LODGING.

Article – Tax – General

11–101.

(a) In this title the following words have the meanings indicated.

1 (a-1) "Accommodation" means a right to occupy a room or lodgings **OR A LIMITED**
2 **RESIDENTIAL LODGING** as a transient guest.

3 (a-2) (1) "Accommodations intermediary" means a person, other than an
4 accommodations provider, who facilitates the sale or use of an accommodation and charges
5 the buyer the taxable price for the accommodation.

6 (2) For purposes of this subsection, a person shall be considered to facilitate
7 the sale or use of an accommodation if the person brokers, coordinates, or in any other way
8 arranges for the sale or use of an accommodation by a buyer.

9 (3) **"ACCOMMODATIONS INTERMEDIARY" INCLUDES A HOSTING**
10 **PLATFORM.**

11 (C-1) **"HOSTING PLATFORM" HAS THE MEANING STATED IN § 20-439 OF THE**
12 **LOCAL GOVERNMENT ARTICLE.**

13 (C-2) **"LIMITED RESIDENTIAL LODGING" HAS THE MEANING STATED IN §**
14 **20-439 OF THE LOCAL GOVERNMENT ARTICLE.**

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2016, and shall apply to all limited residential lodgings booked through a hosting
17 platform after October 1, 2016.