SPONSOR: Rep. K. Williams & Sen. Mantzavinos

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 2
FOR
HOUSE BILL NO. 168
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 9 AND 30 OF THE DELAWARE CODE RELATING TO LODGING TAX.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend § 2301, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2301. Occupations requiring licenses; definitions; fees; exemptions.

(a) "Persons" as defined in § 2701 of this title engaged in the occupations listed and defined in this section shall pay annual license taxes at the rates specified below. In addition to the license fee indicated below, each such person shall pay a fee of $25 for each additional branch or business location, except that a finance or small loan agency as defined in this section shall pay the basic annual fee for each place of business.

(28) *Accommodations intermediary*, $25. "Accommodations intermediary" means any person engaged in the business of facilitating or arranging a short-term rental, as defined in § 6201 of this title, to an occupant on a website or through other means, including the renting of properties subject to a timeshare plan as defined by 11 U.S.C. § 101. The term accommodations intermediary includes a real estate broker licensed under paragraph (a)(16) of this section, but only includes the broker of record and not real estate licensees working under that broker. This license fee shall not apply to a hotel, motel, or tourist home subject to a separate license fee under this subsection. The owner of a short-term rental, as defined in § 6201 of this title, that exclusively uses a third-party accommodations intermediary shall not be deemed an accommodations intermediary under this section.

(f) Paragraphs (a)(5), (8), (9), (12), (13), ~~(17) and (19) (25)~~ (17), (19)-(25), and (28) of this section shall be exempt from the additional license fee imposed by subsection (d) of this section.

Section 2. Amend Part V, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 62. SHORT-TERM RENTAL LODGING TAX

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§ 6201. Definitions.

As used in this chapter:

(1) "Accommodations intermediary" means as defined in § 2301 of this title.

(2) "Rent" means the consideration received for occupancy, valued in money, whether received in money or otherwise. "Rent" does not include the following:

a. Municipal taxes, if any.

b. Linen rental fees.

c. Cleaning fees.

d. Insurance fees.

e. Security deposits.

f. Other add-on fees not usually considered part of the rent.

g. Money received from a month-to-month holdover lease.

(3) "Short-term rental" means a house, duplex, multi-plex, apartment, condominium, houseboat, trailer, or other residential dwelling unit where a tourist or transient guest, for consideration, rents sleeping or living accommodations for no more than 31 consecutive nights. "Short-term rental" does not include the following:

a. Hotels, motels, and tourist homes as defined under § 2301 of this title.

b. Rooms, groups of rooms, or other spaces used for assembly.

c. Dormitories or other residential facilities of educational or vocational institutions.

d. Healthcare facilities licensed by the State.

e. Campsites, cabins, or similar facilities in campgrounds.

f. Overnight camps for adults or children.

g. A rental arranged directly by the property owner, on a casual and isolated basis, that meets all the following qualifications:

1. The rent is substantially below market rates.

2. The property is used as a rental for no more than 10 nights in aggregate per calendar year.

§ 6202. Levy of short-term rental lodging tax.

There is imposed and assessed a short-term rental lodging tax at the rate of 4.5% of the rent upon every occupancy of a short-term rental within this State.

§ 6203. Collection of tax.

Accommodations intermediaries are responsible for collecting and remitting the short-term rental tax under § 6202 of this title unless the accommodations intermediary has a contractual arrangement with a hotel, motel, tourist home, or other accommodations intermediary, licensed under § 2301 of this title, to collect and remit tax in accordance with this chapter. The short-term rental tax must be collected no later than the earlier of the final payment of all rent due or occupancy of the short-term rental. If a short-term rental stay is cancelled in whole, or in part, the cancelled portion of the stay must not be subject to the short-term rental tax and any amount of tax collected for such cancelled portion must be refunded.

§ 6204. Remittance of tax.

The amount of the tax collected for each month shall be reported and paid over to the Department of Finance not later than the fifteenth day of the month following the month of collection on forms to be prescribed by the Department of Finance. Interest at the rate of 1% per month, or fraction thereof, shall be charged on payments made after the prescribed due date.

§ 6205. Obligations of an accommodations intermediary.

(a) An accommodations intermediary must do all of the following:

(1) Remit data required by the Division of Revenue in a format and manner prescribed by the Division of Revenue, which may include all of the following:

a. Address of rental unit.

b. The number of nights rented for each property.

c. Aggregate rents collected for each property.

(2) Ensure that the accommodations intermediary license number is affixed on all marketing materials for each rental unit.

(3) Provide the State with all data necessary to enforce this chapter.

§ 6206. Distribution of the tax.

The tax shall be distributed as follows: 62.5% to the State General Fund; 12.5% to the Beach Preservation Fund of the Department of Natural Resources and Environmental Control; 12.5% annually shall be designated in the proportion in which collected, to the duly established convention and visitors bureau in each county; and 12.5% to the Delaware Tourism Office.

Section 3. Amend § 6121, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6121. Eligible organizations.

Each county-based convention and visitors bureau, to be eligible to receive such moneys as enumerated in § 6102 and § 6206 of this title must be a registered Delaware nonprofit corporation, qualified under terms of the Internal Revenue Code of 1986, as amended, § 501(c)(6) [26 U.S.C. § 501(c)(6)]. For the Counties of Kent, New Castle and Sussex, the following organizations are designated to receive ~~the 1%~~ funding:

(1) Kent County: A Convention & Visitors Bureau shall be established in a manner to be determined by the Governor of the State and the Administrator of the Kent County Levy Court.

(2) Sussex County: A Convention & Visitors Bureau shall be established in a manner to be determined by the Governor of the State and the Administrator of the Sussex County Council, and representatives from the Lewes Chamber of Commerce, Rehoboth Beach — Dewey Beach Chamber of ~~Commerce and~~ Commerce, the Bethany — Fenwick Area Chamber of ~~Commerce.~~ Commerce, Greater Millsboro Chamber of Commerce, Georgetown Chamber of Commerce, Milton Chamber of Commerce, the Chamber of Commerce for Greater Milford, Inc., and Western Sussex Chamber of Commerce.

(3) In New Castle County: A qualifying county-based Convention & Visitors Bureau (The Greater Wilmington Convention and Visitors Bureau), has been chartered by the Governor of the State, the County Executive of New Castle County, and the Mayor of the City of Wilmington.

Section 4. Amend § 6122, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6122. Reporting and operating conditions.

Such recipient organization shall be subject to all reporting and operating conditions normally imposed upon Delaware nonprofit corporations and public bodies. Recipient organizations shall make every effort to market a variety of lodging options available in the marketplace.

Section 5. Amend § 8112, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8112. Lodging tax.

(a) New Castle County may impose, by duly enacted ordinance, a local lodging tax of no more than 3 percent of the rent, in addition to the amount imposed by the State, for any room in a hotel, motel, ~~or~~ tourist home, or short-term rental, as defined in § 6101 and § 6201 of Title 30, which is located within the unincorporated areas of the county.

(b) [Repealed.]

(c) Sussex County may impose, by duly enacted ordinance, a local lodging tax of no more than 3 percent of the rent, in addition to the amount imposed by the State, for any room or rooms in a hotel, ~~motel or~~ motel, tourist home, or

short-term rental as defined in § 6101 and § 6201 of Title 30, which is located within the unincorporated areas of Sussex County. Any funds realized by Sussex County pursuant to this subsection shall be expended solely within Sussex County, for the capital and operating costs of beach nourishment, waterway dredging, economic development, tourism programs, recreational activities, and water quality and flood control projects. An amount not to exceed 5% of the funds realized from the tax may be used to pay the costs of administering projects funded under this subsection.

(d) Rentals by the Department of Natural Resources and Environmental Control are exempt from the lodging tax established by this section.

Section 6. This Act is severable. If a provision of this Act or the application of this Act to a person or circumstance is held invalid, the invalidity does not affect the provisions or applications of this Act that can be given effect without the invalid provision or application.

Section 7. Section 1 of this Act takes effect 90 days after its enactment into law. Section 2 of this Act is effective immediately and only applies to short-term rental agreements entered into on or after January 1, 2025. Sections 3, 4, 5, and 6 take effect immediately.