



Suggested Focus
for
Transient Occupancy Tax Work Group

Chapters 7 and 640 of the 2022 Acts of Assembly require the Department of Taxation to convene and facilitate a work group to examine the processes currently used to collect local transient occupancy taxes and to make recommendations for improving the efficiency and uniformity of those processes.

Airbnb's goal is to collect and remit the transient occupancy taxes owed to Virginia local governments as quickly and efficiently as possible. Airbnb's national and global tax experience has shown that harmonized rules and consolidated administration of this process will provide the greatest efficiency and encourage compliance for all platforms, big and small, and Airbnb continues to support that goal.

Current Challenges posed by HB 518

The lack of (i) harmonization across VA local occupancy tax laws and (ii) administrative centralization gives rise to significant challenges for all platforms. The following are some of those challenges:

- Local transient occupancy taxes (TOT) are collected across more than 100 Virginia towns, cities, and counties with varying tax rates. As of October 1, 2022, Airbnb and other platforms will be required to collect these taxes on behalf of its hosts and then remit the taxes to each of those localities. The systems will need to be built to display the correct amount of tax to the guest and charge the correct rate across each jurisdiction. This is not a straightforward task and requires significant engineering, product, design and technological expertise.
- The processes for filing a TOT return are as varied as those localities themselves. Some require a monthly remittance, others quarterly, others semi-annually and a few even annually. Even the dates vary within the month that the TOT returns are due.
- The format and data required in the TOT return also vary tremendously by locality. While some localities have made this process fully electronic, others continue to use paper returns and remittance by paper check.
- Under the current system, Airbnb and other platforms could also be subject to audit, notices and one off contacts by over 100 separate entities at any time in Virginia alone. It is therefore not inconceivable that Airbnb would be under audit by one or multiple Virginia entities at all times, on a continuous basis. This is just one state in one country in which Airbnb does business.

The above are examples of the *substantial burden* that will be placed on platforms trying to accurately comply with the law and applies 20th Century thinking to the 21st Century digital economy. The United States Supreme Court's 2018 decision in *South Dakota v. Wayfair* explicitly ruled that tax collection obligations that impose an "undue burden" on interstate

commerce may still be unconstitutional under the Commerce Clause and/or the Due Process Clause. The overwhelming complexity with complying (from collection through remittance and audit) leaves the Virginia law open to a constitutional challenge. Airbnb and Expedia are not the only two accommodation platforms. There are hundreds, if not thousands, who offer the same.

Guiding Principles from Airbnb's Perspective

Airbnb is supportive of the goals as expressed in the General Assembly's charge for the workgroup to "make recommendations for improving the efficiency and uniformity of those processes." We believe this can be accomplished by bringing 21st century business practices to what currently is a 20th century process. The result would be a streamlined local TOT process that could serve as a 21st Century model regime for other states to follow and make Virginia a leader in this area.

To help reach this goal, we recommend that the workgroup specifically focus on the following:

- **Harmonization** - Develop a uniform enabling statute for all locals to follow. The enabling statute will provide uniform tax rules and definitions (scope of taxable listings, exemptions, etc.) that all locals must use when imposing a tourist tax.
- **Consolidation of compliance & administration.** This involves the following:
 - **Consolidated collection and remittance** - Virginia should establish an online method which allows for one return and payment to be made by the taxpayer. The return would split out the amounts to be allocated to each local jurisdiction. This is the most effective and efficient way to reduce the administrative burden on taxpayers. There are various methods that could be implemented to accomplish this goal.
 - **Standardization** --- Develop a uniform TOT return to be accepted by all local jurisdictions. The content of every transient occupancy tax return across the Commonwealth should be identical.
 - **Return/due date uniformity** --- Establish a single, uniform date for the filing of TOT returns. Whether that established date becomes monthly, quarterly, semi-annually or annually, the date for filing transient occupancy tax returns should be identical in every locality across the Commonwealth.
 - **Electronic transaction requirements** --- The use of paper forms for returns and checks for remittances is highly inefficient and should be eliminated. All TOT returns should be filed, and all remittances paid, electronically. Electronic financial transactions are a staple of the 21st century. With uniform data sets and filing date, electronic processing is greatly simplified. This should be the rule for all localities, not an exception.
 - **Electronic streamlined filing requirements** --- Combining the previous two bullet points - a portal should be established which allows the 100+ returns to be filed in one central online repository. The associated payments should be made through this portal also.
 - **Audit** --- The audit or compliance function is often overlooked when reforming tax collection and remittance processes, though is one the biggest burdens placed on platforms. Audit parameters should be developed to ensure that remote seller platforms are not subject to the potential for continuous audit at any time by over 100 local entities in Virginia alone. This could include a single audit on a defined schedule by a third party on behalf of all Virginia localities, similar to the process

used for audit of the local option sales and use tax. Other models may also be available for consideration.

- o **Data Sharing** --- The law currently requires Airbnb to submit large volumes of host data with each return, adding to the already extensive compliance burden. It also calls into question how an audit of the tax return will be carried out if the data required to audit the return is already provided. Accordingly, any additional host data should not be provided as part of the regular compliance, but instead be provided during the audit process, where appropriate, subject to all applicable laws, and in conjunction with the single audit process outlined above.

Airbnb's Proposed Workflow

Airbnb believes that the time and presence of every workgroup member is valuable. It is therefore incumbent upon all of its members to identify the focus areas with a high degree of specificity and then work as expeditiously as possible to review the underlying issues and develop specific actionable recommendations. To that end, we are suggesting the following workflow.

Meeting #1 – This first meeting would include introductions and related comments, review of the 2021 legislation and the General Assembly's charge to the workgroup, the role of the Tax Department in the workgroup activities, and the estimated time frame envisioned for completing the workgroup's efforts. The workgroup would also review the written comments/pre-meeting suggestions submitted and most importantly, develop consensus on the specific items/areas for inquiry. Airbnb would suggest that the items listed in the section above provide a template for that discussion. Airbnb also suggests that the written comments/pre-meeting suggestions are distributed to all attendees in advance of the meeting.

Meeting #2 – For each of the agreed upon specific items/areas for inquiry, workgroup members would present and review the associated business problem from their perspective with the objective of developing consensus agreement on the scope of that problem. While for some specific items/areas, the discussion could lead quickly to agreement on the scope of the problem and a potential recommendation, most discussion of recommendations would by design take place at the next meeting. In either case, where details of a recommendation may need to be further fleshed out, a subset of the group might be tasked with developing the details of that recommendation for presentation at the next meeting.

Meeting #3 – This meeting would be focused on recommendations. It would begin with any follow up on recommendations discussed at the previous meeting including presentation by any small group tasked with fleshing out details. The objective is to complete these before moving on. The remaining areas from the previous meeting, wherein consensus had been reached on the scope of that problem for a specific item/area but no recommendations had been discussed, would be taken up with the objective of developing a consensus recommendation for each.

Meeting #4 – Should a fourth meeting be necessary it would be used to complete work on any unfinished recommendations.

We would envision the Tax Department staff capturing this process in written form for a report to the General Assembly that reflected the specific items/areas of inquiry where consensus was reached as well as those where consensus could not be reached.