

Issue Analysis Form



Date: March 28, 2023
Item: Ordinance to add new Definitions to Align with the State Code and to Change the Process by Which Transient Occupancy Taxes are Collected
Lead Department(s): County Attorney/Commissioner of Revenue
Contact Person(s): Dan Whitten

Description and Current Status

The Commissioner of Revenue's Office has requested changes to the transient occupancy code to reflect changes in the Virginia Code.

Definitions regarding Transient Occupancy Tax are being changed to align with State Code definitions.

Section 74-304 is being changed to explain the Collection of Tax process for Accommodations facilitated by an Accommodation Intermediary and those without an Accommodation Intermediary.

Enacting Section 74-304.1 will set out the steps to report and remit Transient Occupancy Taxes to the Commissioner of Revenue's office.

A draft ordinance is attached for consideration; a motion approving the ordinance is requested.

This Ordinance shall be effective immediately.

Sample Motion: I move that the Board approve the attached Ordinance adding new definitions to align with the State Code and to change the process by which transient occupancy taxes are collected.

Government Path

- Does this require EDA action? Yes No
- Does this require BZA action? Yes No
- Does This require Planning Commission Action? Yes No
- Does this require Board of Supervisors action? Yes No
- Does this require a public hearing? Yes No
- If so, before what date? Yes No

Fiscal Impact Statement

County Impact

Notes

ORDINANCE TO AMEND "THE CODE OF THE COUNTY OF
PRINCE GEORGE, VIRGINIA", 2005, AS AMENDED, BY
AMENDING §§ 74-301, 74-302, 74-304, 74-306 AND 74-310 AND BY ENACTING §74-
304.1 TO ADD NEW DEFINITIONS TO ALIGN WITH THE STATE CODE AND TO
CHANGE THE PROCESS BY WHICH TRANSIENT OCCUPANCY TAXES ARE
COLLECTED FROM ACCOMMODATION PROVIDERS AND ACCOMMODATION
INTERMEDIARIES

BE IT ORDAINED by the Board of Supervisors of Prince George County:

- (1) *That The Code of the County of Prince George, Virginia, 2005, as amended, is amended by amending §§ 74-301, 74-302, 74-304, 74-306 and 74-310 and by enacting § 74-304.1 as follows:*

CHAPTER 74 TAXATION

ARTICLE VIII. - TRANSIENT OCCUPANCY TAX

Sec. 74-301. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accommodations means any room or rooms, lodgings, accommodations, or space at a lodging facility for which tax is imposed on the retail sale of the same pursuant to this article.

Accommodations Fee means the room charge less the discount room charge, if any, provided that the accommodations fee must not be less than \$0.

Accommodations Intermediary means any person other than an accommodations provider that (i) facilitates the sale of an accommodation and (ii) either (a) charges a room charge to the customer, and charges an accommodations fee to the customer, which fee it retains as compensation for facilitating the sale; (b) collects a room charge from the customer; or (c) charges a fee, other than an accommodations fee, to the customer, which fee it retains as compensation for facilitating the sale. For purposes of this definition, "facilitates the sale" includes brokering, coordinating, or in any other way arranging for the purchase of the right to use accommodations via a transaction directly, including one or more payment processors, between a customer and an accommodations provider. Accommodations Intermediary does not include a person that meets any of the following requirements:

- (1) **If the accommodations are provided by an accommodation provider operating under a trademark, trade name or service mark belonging to that person;**

- (2) If the person facilitates the sale of an accommodation where (i) the price paid by the customer to such person is equal to the price paid by such person to the accommodations provider for the use of the accommodations and (ii) the only compensation received by such person for facilitating the sale of the accommodation is a commission paid from the accommodation provider to such person; or
- (3) If the person is a licensed as a real estate licensee pursuant to Article 1 (§ 54.1-2100 et seq.) of Chapter 21 of Title 54.1 of the Virginia Code, when acting within the scope of such license.

Accommodations Provider means any person that furnishes accommodations to the public for compensation. The term "furnishes" includes the sale of use or possession or the sale of the right to use or possess.

Commissioner shall mean the Commissioner of the Revenue of the County of Prince George, Virginia or any duly authorized deputies or agents.

County means the County of Prince George, Virginia.

Discount Room Charge means the full amount charged by the accommodation provider to the accommodation intermediary, or any affiliate thereof, for furnishing the accommodations.

~~Hotel means any public or private hotel, inn, hostelry, tourist home or house, motel, rooming house, or other lodging place within the county offering lodging for one or more persons at any one time, and the owner and operator thereof, who, for compensation to any transient.~~

~~Lodging means room or space furnished any transient.~~

Lodging Facility means any public or private hotel, inn, apartment hotel, hostelry, tourist camp, tourist cabin, tourist home or house, camping grounds, club, motel, rooming house, any place that offers short-term lodging, or other place within the County offering accommodations for one or more persons at any one time, and the owner and operator thereof, who, for compensation, furnishes accommodations to any transients.

Person includes, but is not limited to, any individual, firm, partnership, association, corporation, person acting in a representative capacity and combinations of individuals of whatever form and character or any group of individuals acting as a unit.

Retail Sale means a sale to any person for any purpose other than for resale.

Room Charge means the total charge made to, or total price paid by or for, a transient in a retail sale for the use or possession of accommodations at any such lodging facility before taxes. "Room Charge" includes any fee charged to the customer and retained as

compensation for facilitating the sale, whether described as an accommodations fee, facilitation fee, or any other name.

Transient means any person who, for a period of fewer than 30 consecutive days, either at his own expense or at the expense of another, obtains **accommodations in any lodging facility for which a charge is made.** ~~the use or possession of a room or space occupied for lodging at any hotel or travel campground for which a price is charged.~~

~~*Travel Campground* means any area, site, lot, field or tract of land offering spaces for recreational vehicles or campsites for transient dwelling purposes, or temporary dwelling during travel, or recreational or vacation uses.~~

Sec. 74-302. - Imposed; amount.

Pursuant to Virginia Code § 58.1-3819, ~~There is hereby levied and imposed, in addition to all other taxes and fees of every kind imposed by law, on each transient, a tax equivalent to seven percent of the total Room Charge price paid by or for any such Transient the customer for the use or possession of Accommodations a room or space occupied for lodging by or for such transient.~~

Sec. 74-304. - **Collection of Tax** ~~Duty to collect and remit; reports.~~

(a) **For any retail sale of Accommodations facilitated by an Accommodation Intermediary, the Accommodations Intermediary will be deemed a facility making a retail sale of an Accommodation. The Accommodations Intermediary must collect the tax imposed pursuant to this Article, computed on the total Room Charge, from the person paying for the Accommodations at the time payment for the Accommodations is made and shall be liable for the same.**

(b) **For any retail sale of Accommodations not facilitated by an Accommodation Intermediary, the Accommodations Provider must collect the tax imposed pursuant to this Article, computed on the total Room Charge, from the person paying for the Accommodations at the time payment for the Accommodations is made and shall be liable for the same.**

~~It shall be the duty of every person receiving the total price paid by the customer for the use or possession of a room or space occupied for lodging by or for a transient, with respect to which a tax is levied under this article, to collect the amount of tax hereby imposed at the time payment for such room rental is made. The taxes collected during each calendar month shall be reported and remitted by each person to the commissioner of the revenue, on or before the 20th day of the following calendar month. The taxes collected by the person shall be deemed to be held in trust by such person until they have been remitted to the commissioner of the revenue. The required report shall be in such form as may be prescribed by the commissioner of the revenue. All remittances received by the commissioner of the revenue shall be turned over promptly to the county treasurer.~~

Sec. 74-304.1 – Report and Remittance of Tax.

- (a) **For any retail sale of Accommodations facilitated by an Accommodations Intermediary, the Accommodations Intermediary must remit the tax imposed pursuant to this Article to the Commissioner.**
- (b) **For any retail sale of accommodations not facilitated by an accommodations intermediary, the accommodations provider must remit the tax imposed pursuant to this article to the commissioner.**
- (c) **For any transaction for the retail sale of accommodations involving two or more parties that meet the definition of accommodations intermediary, nothing in this article prohibits such parties from making an agreement regarding which party will be responsible for collecting and remitting the tax, so long as the party so responsible is registered with the Commissioner for purposes of remitting the tax. In such event, the party that agrees to collect and remit the tax will be the sole party liable for the tax, and the other parties to such agreement will not be liable for such tax.**
- (d) **The person collecting any such tax required pursuant to this article must make out a report on such forms and setting forth such information as the Commissioner may prescribe and require, showing the amount of total room charges collected, and the tax required to be collected, and must sign and deliver the same to the Commissioner with a remittance of such tax.**
- (e) **The reports and remittances must be made monthly on or before the 20th day of the month and covering the amount of tax collected during the preceding month. If the remittance is by check or money order; it must be payable to the County and all remittances received hereunder by the Commissioner must be promptly delivered to the Treasurer.**
- (f) **Each accommodations intermediary must submit to the Commissioner the property addresses and gross receipts for all accommodations facilitated by the accommodations intermediary in the County on a monthly basis.**
- (g) **If any person required to collect and remit the tax imposed by this article fails to file a statement and a remittance, or if the Commissioner has reasonable cause to believe that an erroneous statement has been filed; the Commissioner may proceed to determine the amount due to the County pursuant to Virginia Code § 58.1-3903.**

Sec. 74-306. - Penalty and interest for nonremittance.

If any person accommodations provider or accommodations intermediary shall fail or refuse to remit to the Commissioner the tax required to be collected and paid under this article, within the time and in the amount as provided for in this article, there shall be added to such tax a penalty in the amount of ten percent thereof or the sum of \$10.00, whichever shall be greater, and interest thereon at the rate of ten percent per annum, which shall be computed upon the tax and penalty from the date such taxes were due and payable.

Sec. 74-310. - Penalty for violation.

Any person convicted of willful failure or refusal to file a tax return at the times required by this article will be subject to criminal penalties. If the tax lawfully assessed in connection with the return that was not filed is \$1,000 or less, then such failure or refusal to file will be punishable as a Class 3 misdemeanor. If the tax lawfully assessed in connection with the return that was not filed is more than \$1,000, then such failure or refusal to file will be punishable as a Class 1 misdemeanor. In determining the penalty to be applied in the event that a person has not filed a tax return as required by this article, the penalty will be based on the amount due to the County as determined by the Commissioner. ~~It shall be unlawful for any person to violate any of the provisions of this article. Any person violating any of the provisions of this article, upon conviction, shall be punished by a fine of not less than \$25.00 nor more than \$200.00 or by confinement in jail not exceeding 30 days, either or both. Each **such failure or refusal** violation and each day's continuance thereof shall constitute a separate offense. Such conviction shall not relieve any person from the payment, collection, or remittance of the tax as provided in this article.~~

(2) *That the Ordinance shall be effective upon adoption.*