

JOEL CARLSON
Legal Research ♦ Government Affairs

March 5, 2024

TO: Rep. Dave Lislegard, Chair, House Property Tax Committee
FR: Joel Carlson / Expedia Group
RE: HF 3414 Accommodations Intermediaries / Local Lodging Taxes

There is a great deal of misinformation about the application of local lodging taxes to the service fees that are earned by accommodations intermediaries. This tax debate has gone on since at least 2009, and the legislature has consistently refused to change the law to make travel intermediaries subject to local lodging taxes in over 140 jurisdictions in Minnesota.

ACCOMMODATION INTERMEDIARIES ARE SERVICES SUBJECT TO SALES TAX

In the 2011 Special Session, the legislature defined an "accommodation intermediary" and an "accommodations provider" in statute for sales tax purposes.

Mn. Stat. 297A.61 subd. 3

Subd. 47. Accommodations intermediary. "Accommodations intermediary" means **any** person or entity, other than an accommodations provider, that facilitates the sale of lodging as defined in subdivision 3, paragraph (g), clause (2), and that charges a room charge to a customer. The term "facilitates the sale" includes brokering, coordinating, or in any way arranging for the purchase of or the right to use accommodations by a customer.

Subd. 48. Accommodations provider. "Accommodations provider" means any person or entity that furnishes lodging as defined in subdivision 3, paragraph (g), clause (2), to the general public for compensation. The term "furnishes" includes the sale of use or possession, or the sale of the right to use or possess.

The Department of Revenue has published several revenue notices that further define the terms to include vacation home rental operators, travel consolidators, tour operators, and any other person that facilitates the sale of lodging. **DOR Notice #12-07 and #17-06**

Contrary to the talking points provided by proponents, a travel intermediary is not simply an online travel company (OTC).

Some accommodation intermediaries comply with the sales tax requirement but many of the thousands of travel intermediaries operating in Minnesota do not. There are over 4000 vacation home rentals in Minnesota alone, yet there are under 200 registered travel intermediaries.

ACCOMMODATION INTERMEDIARIES DO NOT PROVIDE LODGING

While the imposition of the state's sales tax was clear, the legislature never amended the local lodging tax. The local lodging tax is a "gross receipts" tax of up to 3% for the furnishing of lodging for periods of less than 30 days.

Mn. Stat. 469.190

469.190 LOCAL LODGING TAX Subdivision 1. Authorization.

Notwithstanding section 477A.016 or any other law, a statutory or home rule charter city may by ordinance, and a town may by the affirmative vote of the electors at the annual town meeting, or at a special town meeting, impose a tax of up to **three percent on the gross receipts from the furnishing for consideration of lodging** at a hotel, motel, rooming house, tourist court, or resort, other than the renting or leasing of it for a continuous period of 30 days or more. A statutory or home rule charter city may by ordinance impose the tax authorized under this subdivision on the camping site receipts of a municipal campground.

The "gross receipts tax" collected by the lodging facility for furnishing lodging is collected and remitted directly to the city in all but four jurisdictions in Minnesota. Each city may impose the tax by ordinance at any rate up to 3% and most also license the lodging establishments within their jurisdictions. They know each facility and can easily connect with them for tax collection. This makes great sense, as 95% of the local lodging tax is used for promotion to attract visitors. The state sales tax is not dedicated to such a purpose.

Several cities have come to the legislature to increase their local lodging tax, making them significantly higher than 3% and funding items beyond tourism promotion. Bloomington's local lodging tax is 7%, higher than even the state's sales tax. However, the legislature has not allowed local lodging taxes to be assessed against every service that takes place in their city that impacts lodging and has never amended the local lodging tax to require the thousands of travel intermediaries to become local taxpayers in each of these cities.

HOW AN ACCOMMODATION INTERMEDIARY TRANSACTION WORKS

An accommodation intermediary has an established agreement with a lodging facility to allow access to the lodging establishments reservation system so that they can market the property at a price **set by the lodging establishment**.

Once a customer books and confirms a reservation for the lodging establishment the room charge **plus** all applicable state and local lodging taxes is collected from the customer and paid to the lodging establishment. The accommodation intermediary retains their service fee

for advertising and arranging the reservation and pays state sales tax on this service fee. They never furnish lodging and therefore do not remit local lodging taxes.

All local lodging taxes and state sales taxes are paid on the full price the consumer paid the lodging establishment for furnishing lodging. The accommodation intermediary pays a state sales tax on the accommodation service as required by law.

IMPOSING LOCAL LODGING TAXES CREATES AN IMPOSSIBLE BURDEN

There are several practical and legal problems with the proposal to impose local lodging taxes upon non-local businesses including the cumbersome and expensive problem of administration. Unlike a locally licensed lodging establishment, local governments will have no way to identify what intermediaries are working within their jurisdictions, making uniform taxation unlikely, at best.

A large establishment might have several online or hard-line booking options, which would require significant auditing to determine. Convention booking and tour groups, vacation home rentals and sites like AirBnB arrange accommodations at different properties all over the state. Real Estate agents book short term rentals for clients routinely. All would become local taxpayers in each city, with a different tax rate and no consistent payment date.

If the city doesn't collect from each intermediary, the law would be (and probably already is) ripe for a constitutional challenge.

Minnesota Constitution, Article 10, Sec. 1

The power of taxation shall never be surrendered, suspended or contracted away. Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes.....

LOST OPPORTUNITIES FOR SMALL CITIES AND LODGING

An even more practical problem for Minnesota and its tourism and lodging businesses is the potential for lost bookings. This proposal will make compliance unaffordable for companies to operate or market lodging in many small cities. Some may simply refuse to market properties that have limited reservations, which benefits no one.

Accommodation intermediaries provide a free opportunity to promote local lodging facilities, which will be diminished under this proposal. The limited benefit to large metro cities and regional centers comes at the expense of small properties that can't afford to market themselves. The broad distribution and the competitive marketplace the accommodation intermediaries provide benefit cities and tourism across the state.

Hopefully, the effort to limiting this marketing advantage to large cities will again be rejected.