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

AN ACT concerning

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

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

BY adding to
Article – Local Government
Section 20–439 through 20–447 to be under the new part "Part III. Limited Residential Lodging Taxes"

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets] indicate matter deleted from existing law.

Annotated Code of Maryland
(2013 Volume and 2015 Supplement)

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

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

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

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

Article – Local Government

20–437. RESERVED.

20–438. RESERVED.

PART III. LIMITED RESIDENTIAL LODGING TAXES.

20–439.

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

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

(C) "HOSTING PLATFORM" MEANS A PERSON THAT FACILITATES RESERVATIONS OR COLLECTS PAYMENT FOR A BOOKING TRANSACTION ON BEHALF

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

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

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

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

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

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

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

20–440.

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

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

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

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

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

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

20–441.

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

(1) THE STATE SALES AND USE TAX;

(2) THE COUNTY LIMITED RESIDENTIAL LODGING TAX; AND

(3) THE MUNICIPALITY LIMITED RESIDENTIAL LODGING TAX.

20–442.

(A) A HOSTING PLATFORM SHALL:

(1) GIVE A PERSON REQUIRED TO PAY THE STATE SALES AND USE TAX AND LIMITED RESIDENTIAL LODGING TAX A STATEMENT THAT IDENTIFIES THE TRANSIENT CHARGE AS AN ITEM SEPARATE FROM ANY OTHER TAX OR CHARGE; AND

(2) COLLECT THE STATE SALES AND USE TAX AND LIMITED RESIDENTIAL LODGING TAX FROM THE PERSON WHO PAYS THE TRANSIENT CHARGE.

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

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

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

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

20–443.

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

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

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

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

20–444.

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

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

20–445.

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

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

20–446.

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

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

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

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

(I) $10,000; OR

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

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

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

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

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

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

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

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

20–447.

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

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

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

(III) INFORMATION RELATING TO AN AUDIT OR INVESTIGATION.

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

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

1 (II) MAY NOT BE DISCLOSED:

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

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

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

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

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

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

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

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

23 (1) A LIMITED RESIDENTIAL LODGING TRANSACTION;

24 (2) A LIMITED RESIDENTIAL LODGING OPERATOR; OR

25 (3) AN OCCUPANT OF A LIMITED RESIDENTIAL LODGING.

26 **Article – Tax – General**

27 11–101.

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

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

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

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

(3) "ACCOMMODATIONS INTERMEDIARY" INCLUDES A HOSTING PLATFORM.

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

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

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