

HOUSE No. 4236

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 5, 2016.

The committee on Revenue to whom were referred the petition (accompanied by bill, Senate, No. 1614) of Daniel A. Wolf, Michael O. Moore, Tricia Farley-Bouvier, James B. Eldridge and other members of the General Court for legislation relative to room occupancy excise tax, the petition (accompanied by bill, House, No. 2618) of Aaron Michlewitz, RoseLee Vincent and others relative to the taxation of short-term residential rentals, and the petition (accompanied by bill, House, No. 2645) of Sarah K. Peake and others that cities and towns be authorized to include “transient accommodations” under the room occupancy excise tax, recommending that the accompanying bill (House, No. 4236) ought to pass [Senator Fattman dissenting].

For the committee,

JAY R. KAUFMAN.

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**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act providing for local aid enhancement.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 64G of the General Laws, as appearing in the 2014 Official
2 Edition, is hereby amended by striking it out in its entirety and inserting in place thereof the
3 following:-

4 Section 1. As used in this chapter the following words shall, unless the context requires
5 otherwise, have the following meanings:

6 (a) “Bed and breakfast establishment”, a house where 1 or more rooms are let and a
7 breakfast is included in the rent.

8 (b) “Commissioner”, the commissioner of revenue.

9 (c) “Hosting platform”, any person who provides a service through any website,
10 software, online-enabled application, mobile phone application, or some other similar process
11 which (i) provides a means for an operator to advertise, list, or offer the use of any
12 accommodation subject to the excise under this chapter in exchange for rent; (ii) provides a

means for an operator to collect the payment of rent on any accommodation; and (iii) provides a means for a person to arrange, book, reserve or rent a transient accommodation.

(d) “Hotel”, any building used for the feeding and lodging of guests licensed or required to be licensed under the provisions of section 6 of chapter 140.

(e) “Lodging house”, a house where lodgings are let to four or more persons not within the second degree of kindred to the person conducting it, licensed or required to be licensed under section 23 of chapter 140.

(f) “Motel”, any building or portion thereof, other than a hotel or lodging house, in which persons are lodged for hire with or without meals and which is licensed or required to be licensed under the provisions of section 32B of chapter 140, or is a private club.

(g) “Operator”, any person operating a bed and breakfast establishment, hotel, lodging house, transient accommodation or motel in the commonwealth including, but not limited to, the owner or proprietor of such premises, the lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such bed and breakfast establishment, hotel, lodging house, transient accommodation or motel.

(h) “Operator’s agent”, any person, including but not limited to a property manager, property management company or real estate agent who is not a hosting platform and on behalf of an operator of a bed and breakfast establishment, lodging house or transient accommodation:

(i) manages the operation or upkeep of a property offered for rent; or (ii) books reservations at a property offered for rent.

(i) "Occupancy", the use or possession, or the right to the use or possession, of any room or rooms in a bed and breakfast establishment, hotel, lodging house, transient accommodation or motel designed and normally used for sleeping and living purposes, or the right to the use or possession of the furnishings or the services and accommodations, including breakfast in a bed and breakfast establishment, accompanying the use and possession of such room or rooms, for a period of 31 consecutive calendar days or less, regardless of whether such use and possession is as a lessee, tenant, guest or licensee.

(j) "Occupant", a person who, for rent, uses, possesses or has a right to use or possess, any room or rooms in a bed and breakfast establishment, hotel, lodging house, transient accommodation or motel under any lease, concession, permit, right of access, license or agreement.

(k) "Person", includes an individual, partnership, trust or association, with or without transferable shares, joint-stock company, corporation, society, club, organization, institution, estate, receiver, trustee, assignee or referee and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, or any combination of individuals acting as a unit.

(l) "Rent", the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature and also any amount for which credit is allowed by the operator to the occupant without any deduction therefrom whatsoever.

(m) "Transient accommodation" any vacation, leisure or short-term rental accommodation offering occupancy in exchange for rent, including but not limited to an

apartment, single or multiple family housing, cottage, condominium, time-share unit or any furnished residential accommodation within any area zoned for residential or commercial use that is not a hotel, motel, lodging house, or bed and breakfast establishment.

Section 2. The provisions of this chapter shall not be construed to include (a) lodging accommodations at federal, state or municipal institutions, except as provided for in clause (b) of this paragraph; (b) lodging accommodations, including dormitories, at religious, charitable, philanthropic and public and private educational institutions; provided, however, that this exemption shall not apply to accommodations provided in a manner ancillary to the achievement of the religious, charitable, philanthropic or educational purposes of such institutions; and provided further, that lodging accommodations provided by a public or private college or university that are not student dormitories or faculty housing and that are available to the general public shall be considered ancillary to the educational purpose of such educational institutions; (c) privately owned and operated convalescent homes or homes for the aged, infirm, indigent or chronically ill; (d) religious or charitable homes for the aged, infirm, indigent or chronically ill; (e) summer camps for children 18 years of age or under or developmentally disabled individuals; provided, however, that such summer camp which offers its facilities off-season to individuals 60 years of age or over for a period not to exceed 31 days in any calendar year shall not lose its exemption hereunder; (f) lodging accommodations provided to seasonal employees by employers; and (g) tenancies at will or month to month leases.

For the purposes of this section a developmentally disabled individual shall mean an individual who has a severe chronic disability which:

(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(B) is likely to continue indefinitely;

(C) results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care; (ii) receptive and expressive language; (iii) learning; (iv) mobility; (v) self-direction; (vi) capacity for independent living; and (vii) economic self-sufficiency; and

(D) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

Section 3. An excise is hereby imposed upon the transfer of occupancy of any room or rooms in a bed and breakfast establishment, hotel, lodging house, transient accommodation or motel in this commonwealth by any operator at the rate of 5 per cent of the total amount of rent for each such occupancy. No excise shall be imposed if the total amount of rent is less than 15 dollars per day or its equivalent.

The operator shall pay the excise to the commissioner at the time provided for filing the return required by section 16 of chapter 62C.

Section 3A. Any city or town which accepts the provisions of this section shall be authorized to impose a local excise tax upon the transfer of occupancy of any room or rooms in a bed and breakfast establishment, hotel, lodging house, transient accommodation or motel located within such city or town by any operator at a rate up to, but not exceeding, 6 per cent of the total

97 amount of rent for each such occupancy; provided, however, that the city of Boston is hereby
98 authorized to impose such local excise upon the transfer of occupancy of any room in a bed and
99 breakfast establishment, hotel, lodging house, transient accommodation or motel located within
100 said city by any operator at the rate of up to but not exceeding 6.5 per cent of the total amount of
101 rent of each such occupancy. No excise shall be imposed if the total amount of rent is less than
102 15 dollars per day or its equivalent or if the accommodation is exempt under the provisions of
103 section 2 of this chapter. The operator shall pay the local excise tax imposed under the provisions
104 of this section to the commissioner at the same time and in the same manner as the excise tax due
105 the commonwealth. All sums received by the commissioner under this section as excise,
106 penalties or forfeitures, interest, costs of suit and fines shall at least quarterly be distributed,
107 credited and paid by the state treasurer upon certification of the commissioner to each city or
108 town that has adopted the provisions of this section in proportion to the amount of such sums
109 received from the transfer of occupancy in each such city or town. This section shall only take
110 effect in a city or town accepting the provisions of this section by a majority vote of the city
111 council with the approval of the mayor, in the case of a city with a Plan A, Plan B, or Plan F
112 charter; by a majority vote of the city council, in the case of a city with a Plan C, Plan D, or Plan
113 E charter; by a majority vote of the annual town meeting or a special meeting called for the
114 purpose, in the case of a municipality with a town meeting form of government; or by a majority
115 vote of the town council, in the case of a municipality with a town council form of government.
116 The provisions of this section shall take effect on the first day of the calendar quarter following
117 30 days after such acceptance, or on the first day of such later calendar quarter as the city or
118 town may designate. The city or town, in accepting the provisions of this section, may not revoke
119 or otherwise amend the applicable local tax rate more often than once in any 12 month period.

120 The commissioner shall make available to any city or town requesting such information
121 the total amount of room occupancy tax collected in the preceding fiscal year in the city or town
122 requesting the information.

123 Section 4. Reimbursement for the excise hereby imposed shall be paid by the occupant of
124 such room or rooms to the operator and each operator in this commonwealth shall add to the rent
125 and shall collect from the occupant the full amount of the excise imposed by this chapter, or an
126 amount equal as nearly as possible or practical to the average equivalent thereof; and such excise
127 shall be a debt from the occupant to the operator, when so added to the rent, and shall be
128 recoverable at law in the same manner as other debts.

129 Section 4A. The commissioner may enter into a voluntary collection agreement with any
130 hosting platform or any operator's agent required to remit the excise under section 13 who is
131 willing to assume liability for the collection and remittance of the excise imposed under this
132 chapter on behalf of the operators that hosting platform or operator's agent represents. The
133 hosting platform or operator's agent shall not be liable for any faults in collecting or remitting
134 the excise caused by the hosting platform's or operator's agent's reasonable reliance on
135 representations made to it by the operator about the nature of the property being rented, the
136 duration of the occupancy, or other similar misrepresentations made by the operator to the
137 hosting platform or operator's agent. The operator shall be liable for any unpaid excise resulting
138 from any such misrepresentations. A hosting platform or operator's agent shall not be liable for
139 any over collection of excise if the excise collected was remitted to the commissioner, and if said
140 over collection resulted from the hosting platform's or operator's agent's reasonable reliance on
141 the operator's representations about the nature of the property being rented, about the nature of

the occupancy or whether such property was exempt from the excise. The operator shall be liable for any monetary damages to the occupant resulting from any such misrepresentations.

Section 5. The amount of the excise collected by the operator from the occupant under the provisions of this chapter shall be stated and charged separately from the rent and shown separately on any record thereof at the time the transfer of occupancy is made, or on any evidence of such transfer issued or used by the operator.

Section 6. No person shall operate a bed and breakfast establishment, hotel, lodging house, transient accommodation or motel in this commonwealth unless a certificate of registration has been issued to him in accordance with section 67 of chapter 62C.

Section 7A. Any operator who has paid to the commissioner an excise under section 3 upon an account later determined to be worthless shall be entitled to an abatement of the excise paid on such worthless account. Such claim for abatement shall be filed on or before April the fifteenth of each year, covering the amount of the excise on such accounts determined to be worthless in the prior calendar year.

Any operator who shall recover an excise on an account previously determined to be worthless, for which an application for abatement has been filed, shall report and include the same in his monthly return at the time of recovery.

Section 7B. Every operator who fails to pay to the commissioner any sums required to be paid by this chapter shall be personally and individually liable therefor to the commonwealth. The term “operator”, as used in this section, includes an officer or employee of a corporation, or a member or employee of a partnership or a limited liability company, who as such officer, employee or member is under a duty to pay over the taxes imposed by this chapter.

Any operator who misrepresents to a hosting platform or operator's agent required to remit the excise under section 13, that his or her property is exempt from the excise imposed under section 3 shall be liable for any unpaid excise under this section, and shall have committed an unfair trade practice under chapter 93A in making such a misrepresentation to the hosting platform or operator's agent.

Section 12. No excise shall be imposed, pursuant to this chapter, upon the transfer of occupancy of any room or rooms in a hotel, lodging house, transient accommodation or motel if the occupant is an employee of the United States military traveling on official United States military orders which encompass the date of said occupancy. Each operator shall maintain such records as the commissioner shall require to substantiate exemptions claimed under this section.

Section 13. The operator may elect to allow a hosting platform or any operator's agent to collect rent or facilitate the collection or payment of rent on their behalf through a written agreement on any accommodation subject to the excise under this chapter. Any hosting platform or operator's agent that enters into a written agreement with the operator to collect rent or facilitate the collection or payment of rent on behalf of the operator on any accommodation subject to the excise under this chapter shall: (i) apply for and obtain a certificate of registration from the commissioner in accordance with section 67 of chapter 62C on behalf of the operator; and (ii) assess, collect, report, and remit the excise to the commissioner as described for operators in sections 3, 4, 5, 6 and 7A. Said certificate of registration obtained from the commissioner under this subsection shall identify and be in the name of the individual operator not the hosting platform or operator's agent.

185 Any hosting platform or operator's agent collecting and remitting the excise on behalf of
186 the operator shall provide notification within a reasonable time to said operator that the excise
187 has been collected and remitted to the commissioner under section 3. The notification may be
188 delivered in-hand or by mail, or conveyed by electronic message, mobile or smart phone
189 application or some other similar electronic process, digital media or communication portal. An
190 operator shall not be responsible for collecting and remitting the excise on any transaction for
191 which it has received notification from a hosting platform or operator's agent that the excise has
192 been collected and remitted to the commissioner on their behalf.

193 The commissioner may promulgate rules or regulations for the assessing, reporting,
194 collecting, remitting and enforcement of the room occupancy excise under this section.

195 SECTION 2. The commissioner may promulgate rules and regulations to implement and
196 operate voluntary collection agreements under section 4A of chapter 64G of the general laws
197 within 6 months of the enactment date of this act; provided, that said regulations shall contain
198 minimum standards for a hosting platform and an operator's agent to be eligible to enter into a
199 voluntary collection agreement with the commissioner.

200 SECTION 3. This Act shall take effect 14 months from its enactment.