



Room Occupancy Tax Changes 1

SECTION 36. [Chapter 64G](#) of the General Laws is hereby amended by striking out sections 1 to 12, inclusive, as appearing in the 2014 Official Edition, and inserting in place thereof the following 11 sections:-

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

(a) "Bed and breakfast establishment", a private owner-occupied house where 4 or more rooms or units are let and a breakfast is included in the rent, and all accommodations are reserved in advance.

(b) "Bed and breakfast home", a private owner-occupied house where 3 or fewer rooms or units are let and a breakfast is included in the rent, and all accommodations are reserved in advance.

(c) "Commissioner", the commissioner of revenue.

(d) "Hosting Platform", a service through any third-party website, software, online-enabled application, mobile phone application or some other similar electronic process that allows: (i) an operator to advertise, list or offer the use of any accommodation subject to the excise under this chapter in exchange for rent; (ii) an operator to collect the payment of rent on any accommodation; and (iii) a person to arrange, book, reserve or rent an accommodation.

(e) "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](#). For purposes of this chapter, (i) a "hotel" shall also include an owner-occupied or a tenant-occupied property where 1 or more rooms or units is let to an occupant or sub-occupant, all accommodations are reserved in advance, and where the owner or tenant has let, cumulatively, any room or rooms or other rental unit or units owned by such owner or tenant, for a total of 150 days or more during the previous calendar year, and (ii) a private owner-occupied house shall be considered a single unit if leased or rented as such.

(f) "Intermediary", any person or entity, other than an operator, that facilitates the sale, use or possession of an occupancy and charges a room charge to the general public. For purposes of this definition, the term "facilitates" means brokers, coordinates or in any other way arranges for the purchase, sale, use or possession of occupancies by the general public. The term "intermediary" shall also include a hosting platform and operator's agent.

(g) "Lodging house", a house where lodgings are let to 4 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](#).

(h) "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 23 B of chapter 140](#), or is a private club.

(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 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 90 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 or motel under any lease, concession, permit, right of access, license or agreement.

(k) "Operator", any person operating a bed and breakfast establishment, hotel, lodging house 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 or motel.

(l) "Operator's agent", a person including, but not limited to, a property manager, property management company or real estate agent who on behalf of an operator of a bed and breakfast establishment or lodging house: (i) manages the operation or upkeep of a property offered for rent; or (ii) books reservations at a property offered for rent.

(m) "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.

(n) "Rent", the total consideration paid by or on behalf of an occupant to (i) an operator or (ii) an intermediary collecting and remitting the excise on behalf of an operator under section 10, 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.

Section 2. The provisions of this chapter shall not be construed to include (a) lodging accommodations at federal, state or municipal institutions; (b) lodging accommodations, including dormitories, at religious, charitable, educational and philanthropic institutions; provided, however, that this exemption shall not apply to accommodations provided by any such institution at a hotel or motel generally open to the public and operated by the institution; (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 eighteen years of age or under or developmentally disabled individuals; provided, however, that such summer camp which offers its facilities off-season to individuals sixty years of age or over for a period not to exceed 30 days in any calendar year shall not lose its exemption hereunder; and (f) a bed and breakfast home.

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

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

Section 4. Except as provided in section 10, reimbursement for the excise hereby imposed shall be paid by the occupant of such room or rooms to the operator and each operator in this commonwealth shall add to the rent and shall collect from the occupant the full amount of the excise imposed by this chapter, or an amount equal as nearly as possible or practical to the average equivalent thereof; and such excise shall be a debt from the occupant to the operator, when so added to the rent, and shall be recoverable at law in the same manner as other debts.

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 or motel in this commonwealth unless a certificate of registration has been issued to him in accordance with [section 67 of chapter 62C](#).

Section 7. 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 15 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 8. 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.

An operator who misrepresents to an intermediary that the transfer of occupancy of the operator's property is exempt from the excise imposed under section 3 and section 3A shall be liable for any unpaid excise under these sections and shall have committed an unfair trade practice under [chapter 93A](#) in making such a misrepresentation to the intermediary.

Section 9. No excise shall be imposed, pursuant to this chapter, upon the transfer of occupancy of any room or rooms in a hotel, lodging house 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 10. (a) An operator may elect to allow an intermediary to collect rent or facilitate the collection or payment of rent on their behalf through a written agreement on an accommodation subject to the excise under this chapter. An intermediary 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 an 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, 3A, 5, 7, 8 and 9. The certificate of registration obtained from the commissioner under this subsection shall identify and be in the name of the individual operator, not the intermediary.

(b) An intermediary collecting and remitting the excise on behalf of an operator shall provide notification within a reasonable time to the operator that the excise has been collected and remitted to the commissioner under section 3. The notification may be delivered in-hand or by mail or conveyed by electronic message, mobile or smart phone application or some other similar electronic process, digital media or communication portal. An operator shall not be responsible for collecting and remitting the excise on any transaction for which it has received notification from an intermediary that the excise has been collected and remitted to the commissioner on their behalf.

(c) The commissioner may enter into a voluntary collection agreement with an intermediary required to remit the excise under subsection (a) who is willing to assume liability for the collection and remittance of the excise imposed under this chapter on behalf of the operators that the intermediary represents. The intermediary shall not be liable for any faults in collecting or remitting the excise caused by the hosting platform's or operator's agent's reasonable reliance on representations made to it by the operator about the nature of the property being rented, the duration of the occupancy or other similar misrepresentations made by the operator to the hosting platform or operator's agent. The operator shall be liable for any unpaid excise resulting from any such misrepresentations. An intermediary shall not be liable for any over collection of the excise if the excise collected was remitted to the commissioner and if the over collection resulted from the intermediary's reasonable reliance on 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.

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

Summary:

This collection of proposed amendments to Chapter 64G will level the playing field in the accommodations industry by obligating those individuals or businesses who are, in effect, running hotel-like businesses to collect and remit the room occupancy tax. The existing occupancy tax (state level of 5.7%) will be applied to any provider of transient accommodations who provides 150 days or more of accommodation in a given calendar year. That property operator would be required to register with DOR, and to collect and remit occupancy tax in the following calendar year. The amendments would also authorize an intermediary to collect and remit the occupancy tax on behalf of an operator under an agreement with the Commissioner of Revenue. In addition, under a separate section, the Commissioner of Revenue would be authorized to enter into agreements with

intermediaries serving the transient accommodation market, for the collection of occupancy tax on behalf of all property owners the intermediary may represent.

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