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Williamson DAILY NEWS

Airbnb begins collecting WV sales tax

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June 14, 2019, HD Media

CHARLESTON - Airbnb, the world's leading community-driven hospitality company, started collecting West Virginia's 6% sales tax on behalf of its affiliated hosts in the state, the company said in a news release.

Airbnb said in the release that it has partnered with over 400 local governments throughout the U.S. to collect and remit taxes, making the process seamless and easy for hosts to pay their fair share while contributing new revenue for local governments.

West Virginia passed HB2813 earlier this year and it was signed into law by Gov. Jim Justice. It authorizes platforms like Airbnb to collect the state's sales tax. Airbnb will deliver the revenue to the West Virginia State Tax Department.

"We are eager to get the word out about this tax collection so that hosts who are already collecting the sales and use tax know that this responsibility will now be handled by Airbnb on their behalf," Tom Martinelli, Airbnb's regional policy director, said in the release. "West Virginia is leading the way on embracing the economic benefits of the sharing economy. The home-sharing protection law Gov. Justice earlier signed into law will support increased tourism to the state, and our ability to collect state taxes will bring new revenue."

This tax revenue component comes on the heels of Justice earlier this year signing a bill into law that protects the rights of West Virginia homeowners to share their homes as vacation rentals or short-term rentals. Senate Bill 4, which made the Municipal Home Rule Pilot Program permanent, states that cities participating in the program cannot pass laws that "prohibit or limit the rental of a property" or "regulate the duration, frequency or location of such rental."

Airbnb also announced that its West Virginia host community earned a combined \$10 million in supplemental income in 2018 while welcoming 90,000 guest arrivals to the state.

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REFERENCE ADDED, blue links are connected to the WV Legislature's website
House Bill 2813 Effective Ninety Days from Passage - (June 6, 2019)
Attention: WV §31E

FISCAL NOTE SUMMARY

Effect this measure will have on costs and revenues of state government.

The stated purpose of this bill is to require out-of-state retailers that do not have a physical presence in this state and who have not voluntarily agreed to collect West Virginia use tax but have economic nexus with this State, as defined in this bill, to begin collecting West Virginia state and municipal sales and use taxes on sales to consumers in this State.

Marketplace facilitators are treated as out of state retailers and are subjected to the tax collection and remittance requirements of the provision. A marketplace facilitator in essence contracts with third party sellers to promote their sale of physical property, digital goods, and services through the marketplace.

According to the provisions of this bill, marketplace facilitators or referrers will be considered agents of any marketplace seller (i.e. third-party retailers) making retail sales through the marketplace facilitator's marketplace. The bill also states that marketplace facilitators have a duty to collect sales and use tax, including sales made by third-party retailers in their marketplace. Marketplace facilitators, referrers or retailers who do not have a physical presence in the state are required to collect sales and use tax if they meet the conditions of having an economic nexus in the state. **Conditions of meeting an economic nexus are gross revenue from West Virginia sales equal to or in excess of \$100,000 or West Virginia sales in 200 or more separate transactions.**

Other states including New Jersey, Pennsylvania, Washington and several others have enacted similar legislation that require marketplace facilitators to collect and remit sales and use taxes on behalf of third-party retailers who make sales in their marketplace. This bill and the similar legislation enacted in other states will reduce the number of entities the state collects sales tax from and will increase overall compliance.

According to our interpretation, the passage of the bill would increase General Revenue Fund collections by roughly \$6.3 million in FY2020. Local municipalities collecting sales and use tax would increase their collections by roughly \$200,000 in FY2020. The increase in collections are due to the higher compliance rate resulting from marketplace facilitators collecting and remitting sales tax on behalf of the third-party retailers that utilize their marketplace.

Additional administrative costs incurred by the State Tax Department would be \$5,000 in FY2019 and \$5,000 in FY2020.

WEST VIRGINIA CODE - CHAPTER 11. TAXATION.

ARTICLE 15A. USE TAX.

§11-15A-1. Definitions.

(a) General. — When used in this article and article fifteen of this chapter, terms defined in subsection (b) of this section have the meanings ascribed to them in this section, except in those instances where a different meaning is provided in this article or the context in which the word is used clearly indicates that a different meaning is intended by the Legislature:

(b)(1) "Business" means any activity engaged in by any person, or caused to be engaged in by any person, with the object of direct or indirect economic gain, benefit or advantage, and includes any purposeful revenue generating activity in this state;

- (2) "Consumer" means any person purchasing tangible personal property, custom software or a taxable service from a retailer as defined in paragraph (7) of this subsection or from a seller as defined in section two, article fifteen-b of this chapter;
- (3) "Lease" includes rental, hire and license;
- (4) "Person" includes any individual, firm, partnership, joint venture, joint stock company, association, public or private corporation, limited liability company, limited liability partnership, cooperative, estate, trust, business trust, receiver, executor, administrator, any other fiduciary, any representative appointed by order of any court or otherwise acting on behalf of others, or any other group or combination acting as a unit, and the plural as well as the singular number;
- (5) "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration;
- (6) "Purchase price" means the measure subject to the tax imposed by this article and has the same meaning as sales price;
- (7) "Retailer" means and includes every person engaging in the business of selling, leasing or renting tangible personal property or custom software or furnishing a taxable service for use within the meaning of this article, or in the business of selling, at auction, tangible personal property or custom software owned by the person or others for use in this state: Provided, That when in the opinion of the Tax Commissioner it is necessary for the efficient administration of this article to regard any salespersons, representatives, truckers, peddlers or canvassers as the agents of the dealers, distributors, supervisors, employees or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of the dealers, distributors, supervisors, employers or persons, the Tax Commissioner may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this article;
- (8) "Retailer engaging in business in this state" or any like term, unless otherwise limited by federal statute, means and includes, but is not limited to:
- (A) Any retailer having or maintaining, occupying or using, within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent (by whatever name called) operating within this state under the authority of the retailer or its subsidiary, irrespective of whether the place of business or agent is located here permanently or temporarily, or whether the retailer or subsidiary is admitted to do business within this state pursuant to article fifteen, chapter thirty-one-d of this code or article fourteen, chapter thirty-one-e of this code; or
- (B) On and after January 1, 2014, any retailer that is related to, or part of a unitary business with, a person, entity or business that, without regard to whether the retailer is admitted to do business in this state pursuant to article fifteen, chapter thirty-one-d of this code or article fourteen, chapter thirty-one-e of this code, is a subsidiary of the retailer, or is related to, or unitary with, the retailer as a related entity, a related member or part of a unitary business, all as defined in article twenty four, section three-a of this chapter;
- (i) That, pursuant to an agreement with or in cooperation with the related retailer, maintains an office, distribution house, sales house, warehouse or other place of business in this state;
- (ii) That performs services in this state in connection with tangible personal property or services sold by the retailer, or any related entity, related member or part of the unitary business;

(iii) That, by any agent, or representative (by whatever name called), or employee, performs services in this state in connection with tangible personal property or services sold by the retailer, or any related entity, related member or part of the unitary business; or

(iv) That directly, or through or by an agent, representative or employee located in, or present in, this state, solicits business in this state for or on behalf of the retailer, or any related entity, related member or part of the unitary business.

(C) For purposes of paragraph (B) of this subdivision, the term "service" means and includes, but is not limited to, customer support services, help desk services, call center services, repair services, engineering services, installation service, assembly service, delivery service by means other than common carrier or the United States Postal Service, technical assistance services, the service of investigating, handling or otherwise assisting in resolving customer issues or complaints while in this state, the service of operating a mail order business or telephone, Internet or other remote order business from facilities located within this state, the service of operating a website or Internet-based business from a location within the state, or any other service.

(9) "Sale" means any transaction resulting in the purchase or lease of tangible personal property, custom software or a taxable service from a retailer;

(10) "Seller" means a retailer, and includes every person selling or leasing tangible personal property or custom software or furnishing a taxable service in a transaction that is subject to the tax imposed by this article;

(11) "Streamlined sales and use tax agreement" or "agreement," when used in this article, has the same meaning as when used in article fifteen-b of this chapter, except when the context in which the word agreement is used clearly indicates that a different meaning is intended by the Legislature;

(12) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any manner perceptible to the senses. "Tangible personal property" includes, but is not limited to, electricity, water, gas, and prewritten computer software;

(13) "Tax commissioner" or "commissioner" means the State Tax Commissioner, or his or her delegate. The term "delegate" in the phrase "or his or her delegate," when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Division duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated for this article;

(14) "Taxpayer" includes any person within the meaning of this section, who is subject to a tax imposed by this article, whether acting for himself or herself or as a fiduciary; and

(15) "Use" means and includes:

(A) The exercise by any person of any right or power over tangible personal property or custom software incident to the ownership, possession or enjoyment of the property, or by any transaction in which possession of or the exercise of any right or power over tangible personal property, custom software or the result of a taxable service is acquired for a consideration, including any lease, rental or conditional sale of tangible personal property or custom software; or

(B) The use or enjoyment in this state of the result of a taxable service. As used in this subdivision, "enjoyment" includes a purchaser's right to direct the disposition of the property or the use of the taxable service, whether or not the purchaser has possession of the property.

The term "use" does not include the keeping, retaining or exercising any right or power over tangible personal property, custom software or the result of a taxable service for the purpose of subsequently transporting it outside the state for use thereafter solely outside this state.

(c) Additional definitions. — Other terms used in this article are defined in articles fifteen and fifteen-b of this chapter, which definitions are incorporated by reference into article fifteen-a. Additionally, other sections of this article may define terms primarily used in the section in which the term is defined.

Legislative Session:

2019(RS)

LAST ACTION: *Effective Ninety Days from Passage - (June 6, 2019)*

SUMMARY: Relating generally to collection of use tax

LEAD SPONSOR: [Householder](#)

SPONSORS: [Criss](#)

BILL TEXT: Enrolled Committee Substitute - [html](#) | [pdf](#) |
[Bill Definitions ?](#) Committee Substitute - [html](#) | [pdf](#) |
Introduced Version - [html](#) | [pdf](#) |

CODE AFFECTED: [§11 - 15 A- 1](#) (Amended Code)
[§11 - 15 A- 6 b](#) (New Code)

FISCAL NOTES: [Tax & Revenue Department, WV State](#)

FLOOR AMENDMENTS: [HB2813 HFAT SUMMERS 3-9.htm](#)
[Floor Amend. Definitions ?](#) [HB2813 HFA SUMMERS 3-9.htm](#)
[HB2813 SFAT _1 BLAIR 3-2 adopted.htm](#)
[HB2813 SFAT _1 BLAIR 3-2.htm](#)
[HB2813 SFA _1 BLAIR 3-1 adopted.htm](#)
[HB2813 SFA _1 BLAIR 3-1.htm](#)

COM. AMENDMENTS: [HB2813 S FIN AM _1 2-23 adopted.htm](#)
[Com. Amend. Definitions?](#) [HB2813 S FIN AM _1 2-23.htm](#)
[HB2813 Sub1 S FIN AM _1 2-23.htm](#)

SIMILAR TO: [SB477](#)

SUBJECT(S): [Taxation](#)