

Airbnb and Taxes: What Other States are Doing and How Much Revenue Might Be Raised in Massachusetts

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In the last three years, in the face of very rapid growth of Airbnb and similar companies, several state and local governments have changed the tax rules for short-term accommodations. In doing so, they have cited a need to create clarity for a rapidly changing industry, to level the playing field between new and more traditional accommodations, and to recapture lost public revenue.¹ Others have opposed these measures as extensions of the scope of taxation, or because they seek more comprehensive health, safety, and zoning regulations applied to these rentals along with taxation.

Taxes on hotel stays were created long before the Internet or Airbnb, and it has taken states time to catch up to the rapid change in this industry. In the past, people might rent a room to someone they knew, or allow people to rent by the month or at will; and state and local governments did not attempt to apply room occupancy taxes to these arrangements. Large-scale renting of short-term residential accommodations wasn't practical before the advent of integrated online booking, reputation, and payment systems.

This month the Massachusetts Senate approved economic development legislation that would revise the state's Room Occupancy Tax to end the current exemption for an owner-occupied "bed and breakfast home" that rents out three or fewer rooms. The new legislation would eliminate this category. It instead creates a new legal category of taxable "transient accommodations," which includes any vacation, leisure, or short-term accommodation offered in exchange for rent that wouldn't qualify as a hotel, motel, lodging house, or bed and breakfast establishment (categories that are already taxed under the law). If enacted, Massachusetts would join 20 other states where statewide or local rules have extended short-term rental taxes to booking arrangements like Airbnb.²

The current system of taxing hotel and other lodging

In Massachusetts, hotels, motels, lodging houses, and bed and breakfasts that rent four or more rooms pay a 5.7 percent tax on short-term (90-day or less) rentals.³ State law also allows cities and towns to levy an additional occupancy tax of up to 6 percent (6.5 percent in Boston) if they so choose. The Commonwealth levies an additional 2.75 percent excise tax on such rentals in Boston, Cambridge, Chicopee, Springfield, West Springfield, and Worcester for construction and renovation of convention centers, which typically draw overnight guests to these localities.⁴

Room occupancy taxes support a small fraction of the Commonwealth's nearly \$40 billion budget. While full Fiscal Year (FY) 2016 data are not yet available, the Department of Revenue reports that in FY 2015, the state collected \$230.2 million in room occupancy taxes, and \$15.7 million in accommodations taxes for convention centers. Localities collected an additional \$185.3 million.⁵ Monthly data for FY 2016 suggest final collections will surpass FY 2015 levels.

How room-occupancy tax rules fit with new types of short-term rentals

The rapid growth of short-term rentals through Airbnb and similar companies has led to increased competition for business with hotels, bed and breakfasts, and other traditional short-term rentals. While most Airbnb operators may just occasionally rent their room, apartment, or house when it is vacant, other operations resemble a full-time business.

The New York Attorney General's office, using data subpoenaed from Airbnb, found over a hundred Airbnb hosts in New York City that offered 10 or more listings, collectively earning \$59.4 million between 2010 and 2014.⁶ Looking at listings for rooms, apartments or homes (but excluding rooms shared with a host who would be present), the study found that the six percent of hosts who offered three or more listings accounted for 36 percent of rentals. Similarly, they found that hosts who offered their listing for at least half the year accounted for 38 percent of all revenue that hosts received during this period. Similarly, a Pennsylvania State University study examined Airbnb in 14 major metro areas, and looked at short-term rentals (and excluded listings of a room where the host was present). The study found that 26.0 percent of revenues from these rentals (22.9 percent in metro Boston) came from hosts who offered their accommodations year-round, as opposed to periodic or seasonal listings.⁷ The study found these full-time Airbnb hosts generated an annual average of \$125,353 for each operator. It also found that operators with two or more Airbnb listings account for 39.3 percent of revenue in these large cities (44.6 percent in metro Boston). The study found that across these cities, the larger-scale, and full-time operations grew as a portion of the Airbnb market over the 12-month study.

Insofar as people who would otherwise use traditional accommodations such as hotels instead book through platforms like Airbnb for short-term rentals, the result will be a shift from taxable transactions to tax-exempt transactions, with a resulting reduction in room-occupancy tax revenue. A study by three researchers at Boston University found that the impact of Airbnb's entrance into the Austin, Texas market was a 8-10 percent reduction in hotel revenue, which was especially evident during large music festivals.⁸ If Airbnb and similar companies continue to expand market share across the country – and particularly among business travelers which provide the mainstay for major hotels⁹ – the loss of public revenues from taxable short-term rents will also grow.

Existing tax systems are not designed to collect from these types of business transactions. In New York City, where laws officially require operators of short-term rentals to individually pay hotel taxes directly to the City and companies like Airbnb do not collect and remit those taxes, the Attorney General found that these taxes go almost completely unpaid, with a resulting loss to the city of \$33.5 million in taxes between 2010 to mid-2014.¹⁰ The amount of room-occupancy taxes that were legally owed to the city and were overwhelmingly unpaid, doubled or tripled in each of the first four of these five years.

While some cities or towns might want to extend their local room-occupancy tax to accommodations such as Airbnb, they are not able to do so under current state laws.

States and localities across the U.S. respond

In 2013, Oregon became the first state to pass laws requiring short-term residential rentals such as those booked through Airbnb to pay room-occupancy taxes and similar fees, and other states are following suit. Airbnb has been supportive of these arrangements, which provide certainty for Airbnb and relieves hosts of the administrative burden of calculating, collecting and remitting these taxes. The

company issued a statement in 2015 declaring that it would, “help ensure our community pays its fair share of hotel and tourist taxes.”¹¹ As of July 1, 2016, the company is legally obligated to collect and remit taxes statewide in 11 states: Alabama, Connecticut, Florida, Illinois, Louisiana, North Carolina, Oregon, Pennsylvania, Rhode Island, South Carolina, and Washington.¹² The company will also collect and remit taxes in Washington, D.C. and select cities or counties in nine additional states.¹³

In places where Airbnb collects and remits room occupancy taxes the levy is included in the price paid by guests and subtracted from the payout to hosts along with the other service fees that Airbnb already deducts.¹⁴

The current Senate bill would extend the Room Occupancy Tax to short-term residential rentals

In July 2016, the Massachusetts Senate approved legislation that would eliminate the category of home bed and breakfasts, which was exempt from the room occupancy tax. The legislation creates a new category of “transient accommodations” including private homes or rooms (including through services such as Airbnb) that would be subject to the same tax as hotels and motels. The legislation also clears the way for voluntary agreements between the Commonwealth and a rental operator’s agent or a hosting platform (such as Airbnb) to collect the tax and remit it to the commissioner of revenue.¹⁵

The legislation would still exempt dormitories at religious, charitable or educational institutions, as well as accommodations at summer camps or convalescent homes, lodging for state, federal or municipal employees, tenancy at will, or month-to-month leases. Airbnb and similar companies that provide hosting platforms for rentals – which would collect and remit most of these taxes – have voiced support for the bill. The Massachusetts Association of Realtors has expressed concern that some homeowners (presumably those who aren’t using these platforms) would be discouraged from renting out a room or would be subject to penalties for mistakes in collecting the tax.¹⁶

The Massachusetts Department of Revenue estimates that currently there are \$294 million in annual sales for transient accommodations that are currently exempt from the room occupancy tax in Massachusetts. They estimate that including these rooms under the tax would generate between \$13.4 million and \$20.1 million in additional annual revenues for the state room-occupancy tax, between \$3.4 million and \$5.1 million for the convention centers, and between \$13.5 million and \$20.3 million for localities.¹⁷ Due to data limitations they stress that uncertainty may be high and these estimates should be used with caution. Although not examined in their analysis, if the revenue collected through Airbnb and similar companies continue to grow, so too would the state and local revenue.

¹ For an overview of these issues, see Frank Shafroth, “Sharing Economy Not Great at Sharing with States,” *State Tax Notes*, August 31, 2015; Shu-Yei Oei and Diane M. Ring, “[Can Sharing be Taxed?](#),” *Washington University Law Review* (forthcoming 2016); Robin Chase, *Peers, Inc: How People and Platforms Are Inventing the Collaborative Economy and Reinventing Capitalism* (Public Affairs, 2015); and Dean Baker, “[Don't buy the 'sharing economy' hype: Airbnb and Uber are facilitating rip-offs](#),” *The Guardian* (May 27, 2014).

² While Airbnb is by far the largest company in this industry and is often described in this paper as representative of the entire industry, there are other companies, such as VRBO (Vacation Rentals By Owner), Homeaway, and TurnKey which similarly use online platforms for rentals. Since its founding in 2008, Airbnb has expanded to include 1.5 million rooms worldwide, more than the biggest hotel chains such as Marriot or Hilton. The company reports that 30 percent of its revenue comes from the United States. See Reuters, “[Airbnb to double bookings to 80 million this year](#),” Sept. 28, 2015.

- ³ The regulations, [830 CMR 64G.3A.1 Local Option Room Occupancy Excise](#) were promulgated in 1985 and last amended in 1990. For the General Law, see also <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIX/Chapter64G/Section2>.
- ⁴ The Convention Center Financing Surcharges were last amended in 2005. See <http://www.mass.gov/dor/businesses/current-tax-info/guide-to-employer-tax-obligations/trustee-and-excise-taxes-requiring-registration/convention-center-financing-surcharges.html>.
- ⁵ Commonwealth of Massachusetts, Department of Revenue, [Monthly Report of Collections and Refunds \(June 2015, Table B\)](#).
- ⁶ New York State Attorney General Eric T. Schneiderman, "[Airbnb in the City](#)" (October 2014).
- ⁷ "[From Air Mattress to Unregulated Business: An Analysis of the Other Side of Airbnb](#)". Data based on an analysis of listings from October through September 2015. The study was funded by the American Hotel and Lodging Educational Foundation. Available at http://hhd.psu.edu/media/shm/Center-for-Hospitality-Real-Estate-Strategy/files/AHLA_Airbnb_Summary_2016_May_National.pdf
- ⁸ Georgios Zervas, John Byers, and Davide Proserpio, "[The Rise of the Sharing Economy: Estimating the Impact of Airbnb on the Hotel Industry](#)," Boston University (June 2016).
- ⁹ Brian Solomon, "[Airbnb Gets Business Friendly In Growth Push](#)," Forbes (June 8, 2016).
- ¹⁰ New York State Attorney General Eric T. Schneiderman, "[Airbnb in the City](#)" (October 2014).
- ¹¹ Airbnb, "[Airbnb at the U.S. Conference of Mayors Summer Meeting](#)," June 24, 2015.
- ¹² Airbnb, "[In What Areas is Occupancy Tax Collection and Remittance by Airbnb Available?](#)" accessed on July 19, 2016.
- ¹³ Those cities are in the states of Alaska, Arizona, California, Maryland, Nevada, New Jersey, New Mexico, New York as of August 1, 2016.
- ¹⁴ Airbnb "[How does Occupancy Tax Collection and Remittance by Airbnb work?](#)"
- ¹⁵ The legislation would also make the hosting platform or operator's agent responsible for mistakes in failing to remit proper taxes. It would furthermore reduce the time of taxable occupancy to a maximum of 31 days, from 90 days currently. It also makes clearer exemptions for religious and educational institutions, as well as for lodgings for seasonal workers, and monthly tenants or tenants at will. See "[Revenue Impact Analysis of Bill H. 2645](#)," (July 2016).
- ¹⁶ *CommonWealth*, "[Airbnb Follows Uber Playbook](#)," June 14, 2016; and *The Boston Globe*, "[Airbnb stays would be taxed like hotels under Mass. bill](#)," June 12, 2016.
- ¹⁷ Massachusetts Department of Revenue, "[Revenue Impact Analysis of Bill H. 2645](#)" (July 2016).