2017

Internet-Based Lodging Study

PURSUANT TO SEC. J.1 OF ACT 157 OF 2016

SUBMITTED BY THE DEPARTMENTS OF TAXES, OF HEALTH, OF TOURISM AND MARKETING, OF FINANCIAL REGULATION, AND THE DIVISION OF FIRE SAFETY WITHIN THE DEPARTMENT OF PUBLIC SAFETY

Internet-Based Lodging

Sec. J.1. STUDY; INTERNET-BASED LODGING
On or before January 15, 2017, the Departments of Taxes, of Health, of Tourism and Marketing, of Financial Regulation, and the Division of Fire Safety within the Department of Public Safety, engaging interested stakeholders as necessary, shall:

> (1) review the provisions of law within their subject matter jurisdiction, and enforcement of those provisions if any, applicable to Internet-based lodging accommodations businesses; and
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> (2) report its findings, conclusions, and any recommendations for administrative action or legislative action, or both, to the House Committees on Commerce and Economic Development and on Ways and Means, and to the Senate Committees on Finance and on Economic Development, Housing and General Affairs.

With the proliferation of internet platforms offering short-term rental of property, many states and municipalities have started the work of evaluating how existing law and regulations apply to companies that offer alternatives to a traditional hotel rental. Act 157 of 2016 directed a variety of Vermont state government entities to report on laws within their jurisdiction, if any, that apply to internet-based lodging accommodations. Additionally, the report highlights next steps for departments and legislature to consider in the context of these lodging platforms.

Department of Taxes

Scope and Authority
In addition to income tax from rental income of properties, the main tax type impacted by the rental of lodging accommodations: meals and rooms tax.

The Vermont Meals and Rooms Tax applies to meals, alcohol served for immediate consumption, and the rental charges of rooms. The rate is 9% for meals and rooms, and 10% on alcohol for immediate consumption. Certain municipalities in Vermont have levied a local option tax of an additional 1%, in addition to the 9% and 10% state tax rates. This tax is collected by the business from their customers and remitted to the Department of Taxes either monthly or quarterly.

The regulations around the Vermont Meals and Rooms Tax clearly state that the rental of property offered to the public is subject to the meals and rooms tax, if the "rental of such accommodations totals fifteen (15) or more days in any one year." This includes private residential dwellings. Reg. § 1.9202(3)-2. If a rental is rented for less than fifteen total days in a calendar year, no rooms tax is due. However, as soon as it is rented on the fifteenth day, rooms tax becomes due back to day one of the calendar year. Long-term rentals are defined as those rented to a "permanent resident," or an occupant for at least thirty consecutive days. Reg. § 1.9202(7)-1(A). Rooms tax is due on the first thirty days of the rental.

Meals and Rooms Tax Collections – Sec. 21 of Act 134 of 2016
The 2016 legislature took up the topic of internet-based lodging accommodations in the miscellaneous tax bill, as well as the economic development bill. In addition to the language passed in Act 157 for the study, Section 21 of Act 134 of 2016 required the Department of Taxes to pursue negotiations to enter into contracts for the collection of remittance of meals and rooms tax with persons who provide an internet platform for the short-term rental of property for occupancy.

The Department contacted the two internet platforms with the greatest market share. A non-confidential agreement was executed with Airbnb, Inc, which is the most widely-used platform. The Department did not execute an agreement with the other platform, Homeaway, because that platform informed the Department that it does not handle transactions on its website. Guests and hosts arrange for transactions independently and off the platform.

The Department's agreement with Airbnb became effective on October 1, 2016. The company contractually assumed the collection responsibilities of third parties hosts without conceding that it has any legal liability to collect tax. The Department may audit Airbnb a maximum of once every three years. Before entering into the agreement, the Department and Joint Fiscal Office estimated that an agreement would result in an additional one million dollars in revenue per year.

Stakeholder Feedback
The Department has been operating a compliance program for hosts that rent property on internet-based platforms for a handful of years. Despite that effort, the Department continued to hear from the traditional inns and lodging establishments that the playing field was unfair due to the lack of consistent tax collection by the hosts of these platforms. Even when the host knew to collect the meals and rooms taxes (and local option tax where applicable), platforms, such as Airbnb, made it difficult by controlling all flow of money between the guest and the host.

As more states and large municipalities began to enter into agreements with Airbnb, the Department was contacted by many operators of traditional lodging establishments and hosts on the Airbnb platform encouraging the Department to seek a similar agreement. For these reasons, and for efficient and fair tax collection, the Department was pleased to announce that Airbnb would begin collecting and remitting meals and rooms tax in Vermont.

Conclusions and Recommendations
As the industry of internet-based lodging platforms continues to grow, the Department is committed to watching developments around platforms that would allow tax collection. While the Department has the tools to conduct compliance with individual hosts, it is most effective for the Department and the host to have the taxes collected by the platform at the time of booking; this prevents a host needing to go back to their guests to collect the taxes if they are audited by the Department in the future.

Furthermore, the Department will continue to review the law and regulations surrounding rental property and applicable taxes to ensure the two do not conflict.

Department of Health

Department of Health Scope and Authority:

The Department of Health maintains the Food and Lodging Program within the Division of Environmental Health. This program, through the Board of Health and Commissioner of Health's authority, is responsible for the licensing,[1] inspection,[2] and regulation[3] of over 5,000 food and lodging establishments throughout the state. Specific to lodging establishments, the Department currently enforces the Vermont Health Regulations, Lodging Establishments[4], which was last promulgated in 1975. The Department has proposed an updated rule that seeks to define a lodging establishment as having three or more guest rooms or units and also

[1] 18 V.S.A. ch. 85, subchapter 2.
[2] 18 V.S.A. § 4306.
[3] 18 V.S.A. § 4308.
[4] Vermont Health Regulations Chapter 5, Subchapter 2A, Lodging Establishments, June 16, 1975, available at http://www.healthvermont.gov/regs/lodging_estab.pdf.

modernizes the sanitation requirements to incorporate current best practices. Legislators raised concerns about the scope of the proposed rule, understanding it was not a change of practice. The Department expects to work with the General Assembly on this issue during the 2017 session.

Under the proposed rule's definition, and the program's current practices, the exclusive advertisement of a lodging establishment on the internet is immaterial to whether it must hold a license from the Department. Instead, an establishment must meet the definition based on the number of available units – three or more – in order to require a license. This definition was proposed based on similar regulatory definitions in other states[5] and attempts to capture establishments who maintain lodging as a commercial enterprise as opposed to individual short-term rental arrangements.

Stakeholder Feedback:

The Department held two separate public hearings through the APA process during rulemaking for the proposed Lodging Rule. The first hearing was held on January 29, 2016 and the second hearing was held on July 18, 2016. During these hearings and the public comment period for the proposed rule the Department received a large number of comments regarding internet-based lodging. The largest concern raised was about the scope of the rule and the perceived unequal regulation between lodging establishments and short-term rentals. These comments, primarily from smaller Bed and Breakfast and Inn owners, requested that internet-based, short-term rentals such as Airbnb, HomeAway®, and FlipKey® fall under the regulatory authority of the Department.

Conclusions and Recommendations:

Historically, the Department has exclusively licensed and inspected traditional lodging establishments which fall into the categories listed in 18 V.S.A. § 4351 such as hotels and inns. The Department routinely inspects licensed establishments as well as responds to complaints, but does not currently, nor has it ever regulated short-term rental arrangements. In fact, complaints regarding these private home and vacation rentals are referred to the Consumer Protection Unit within the Office of the Attorney General. Licensing and regulating these entities would be a significant deviation from the Health Department's current activities.

[5] The state of Maine, which has similar types of lodging establishments to the state of Vermont, defines lodging places as having "four or more rooms or cottages." Maine Department of Human Services Bureau of Health Division of Health Engineering, Chapter 206, Rules Relating to Lodging Establishments, January 1, 2003, available at: http://www.maine.gov/sos/cec/rules/10/144/144c206.doc

Any attempt by Vermont to regulate short-term rentals for public health sanitation would be unprecedented in the United States. While some cities, such as San Francisco[6] and Tucson,[7] have passed ordinances and regulations regarding building codes and fire safety requirements for these types of rental operations, to date there has not been state-wide public health sanitation oversight. Because similar regulations and ordinances passed by other cities and states focus primarily on fire safety and building codes, analogous licensing or registration in Vermont would not fall under the Department's authority.

In fact, Arizona is the only state that has passed a state-wide law specifically regarding these types of rentals.[8] However, this newly-enacted law does not address public health but rather prevents local municipalities from enacting prohibitions on "vacation rentals or short-term rentals." to prevent local restrictions. Additionally, some cities have sought to limit the number of short-term rentals through regulation to prevent a negative impact on available affordable housing.[9]

While the advertisement of rooms or homes for rent on the internet is a relatively new occurrence, the short-term renting of private homes or condos to individuals is not. Regulation of these properties would be impractical for the Food and Lodging program and would require that the program double its current capacity.[10] It would also place inspectors in private homes, as some rentals on sites such as Airbnb rent spare bedrooms within an owner-occupied dwelling. Notably, this would require a level of oversight beyond what the state currently requires of long-term rental housing. It also has the potential to expand to home sharing sites such as couchsurfing.com[11] and homeexchange.com[12] where individuals can book accommodations for a low or no fee or by exchanging their own property with the host. This would greatly increase the amount of resources need to enforce any changes to the law.

The Legislature could require, among other things, the registration of short-term rentals, but not requiring licensing and inspection of such entities. In that case, the Department would recommend that short-term rentals be required to disclose and display that they are not licensed

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[6] San Francisco Administrative Code, Chapter 41A.5(g) available at http://library.amlegal.com/nxt/gateway.dll/California/administrative/chapter41aresidentialunitconversionandde?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$anc=JD_41A.5.

[7] Tucson, Arizona Charter and General Ordinances, Part II, Chapter 6, Sect. 6-15, available at http://library.amlegal.com/nxt/gateway.dll/Arizona/tucson_az/partiitucsoncode/chapter6buildingselectricityplumbingandm?f=templates$fn=default.htm$3.0$vid=amlegal:tucson_az$anc=JD_6-15

[8] Ariz. Rev. Stat. § 9-500.39 (January 1, 2017).

[9] BJH Advisors LLC, Short Changing New York City, The impact of Airbnb on New York City's housing market, June 2016, available at: http://www.mfy.org/wp-content/uploads/Short-Changing-New-York-City.pdf.

[10] The Department estimates that there are over 4,000 rental units currently advertised online in Vermont that may fall into this category.

[11] Couchsufing.com, About Us, Accessed January 8, 2017, available at: http://www.couchsurfing.com/about/about-us/

[12] Homeexchange.com, About, Accessed January 8, 2017, available at: https://www.homeexchange.com/en/about/

and inspected by the Department of Health to eliminate any potential misconception and to ensure that consumers are making an informed choice regarding their own health and safety.

If Vermont were to attempt to create a registry or licensing requirement for short-term rental units, one model could be the City of Denver.[13] As of December 31, 2016, the city has implemented licensing requirements for short-term rentals, provided they are the owner's primary residence. Their licensing requirements include public safety requirements, tax ID registration, and proof of adequate insurance coverage. This licensing occurs through the Business Licensing Center, which is most analogous to Vermont's Secretary of State Business Service Center. Notably though, there is no requirement for a public health and sanitation inspection.

Department of Tourism and Marketing

Scope and Authority:
The Vermont Department of Tourism and Marketing resides within the Vermont Agency of Commerce and Community Development and is responsible for promoting the State as a travel destination to nonresidents. The Vermont Department of Tourism and Marketing does not have any regulatory authority.

The Vermont Department of Tourism and Marketing had received significant feedback from Vermont lodging accommodation businesses over the last several years regarding the challenges of competing with Airbnb due to a lack of tax collection for the rental of those room nights. The Vermont Department of Tourism and Marketing worked collaboratively with the Vermont Department of Taxes to establish an agreement with Airbnb, Inc, for collection of rooms and meals tax from Airbnb hosts.

Conclusions and Recommendations:
The Tourism industry continues to utilize technology and internet based platforms to provide travelers with simplified options to book rooms, book airline tickets, rent cars or create travel itineraries. The Vermont Department of Tourism and Marketing is committed to working with the Vermont Department of Taxes and Vermont tourism business stakeholders to find the most logical and fair solutions to new challenges that will face this industry.

With the creation of a non-confidential agreement the Vermont Department of Tourism and Marketing is satisfied that Airbnb hosts are now paying rooms and meals tax for room nights booked through their platform. The Department feels that the implementation of regulation for short term rental arrangements in Vermont will adversely impact Vermont's tourism industry.

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[13] Denver Business Licensing Center, Stay Legit Denver, Accessed December 29, 2016, available at: https://www.denvergov.org/content/denvergov/en/denver-business-licensing-center/business-licenses/short-term-rentals.html

Throughout Vermont's history short term rentals have played a significant role in the tourism economy by providing a lodging option for those who require accommodations for large families or gatherings that cannot typically be provided within a traditional Inn or B&B.

Also, we agree with feedback from the Department of Health and the Division of Fire Safety, Department of Public Safety, that the state does not possess the resources to commit to additional inspections or regulation of Airbnb properties due to the sheer volume of houses being rented on the internet. From our view, state inspections to validate health and safety compliance in advance of renting on Airbnb is not feasible.

Department of Financial Regulation

The only area within the Department of Financial Regulation's (DFR) jurisdiction potentially implicated by Internet-based lodging accommodation is insurance. Currently, no provisions of Vermont insurance law are specifically applicable to Internet-based lodging. Based on our review and evaluation, we do not believe any new laws are necessary.

Generally, there are no Vermont laws that require Vermont consumers to purchase homeowners insurance, though it is required by lenders when a mortgage exists on the property. Homeowners insurance policies generally have coverage limitations for regularly occurring short-term rental arrangements on the part of the homeowner. The homeowners insurance may provide coverage for an occasional short-term property rental but not for an ongoing or intermittent basis. Additionally, the homeowner insurance policy has exclusions for home-based businesses unless done on an occasional basis and under a certain income threshold (typically $2,000/yr). Since the term "occasional" is generally not defined in the contract, insurers have begun to add home-sharing exclusions to the core homeowner insurance contract.

The insurance marketplace has begun to respond to the insurance demands of home-sharing arrangements by introducing a variety of home-sharing host activity coverage endorsements that provide property and liability coverage. Other coverage endorsements have been or are being introduced that provide home-sharing renters coverage for potential property damage that may occur when they rent a property under an Internet-based lodging arrangement.

Division of Fire Safety, Department of Public Safety

Scope and Authority:
The Department of Public Safety, Division of Fire Safety under the authority of 20 V.S.A. Chapter 173 § 2731 is authorized to adopt rules regarding the construction of buildings, maintenance, and operation of premises, and prevention of fires and removal of fire hazards, and to prescribe standards necessary to protect the public, employees, and property against harm arising out of or likely to arise out of fire.

Under the provisions of 20 V.S.A. Chapter 173 "Prevention and Investigations of Fires" § 2730, Definitions, "Public Buildings" include a building which people rent accommodations whether short term or long term.

Applicable Standards

The Division of Fire Safety through the rule making process adopts nationally recognized consensus safety standards widely used throughout the country. We amend the standards to better address issues specific to Vermont. The Division of Fire Safety adopts the National Fire Protection Association Standards (NFPA-1, Fire Code), (NFPA 101, Life Safety Code) and the IBC (International Building Code). These standards are designed to provide a reasonable level of life safety in new construction and existing buildings. The NFPA 101, Life Safety Code and NFPA 1 standard in conjunction with our Vermont Fire and Building Safety Code Rules, apply to all existing residential rental property. The building owner(s) are responsible for complying with the standards. The model codes (NFPA 1 and NFPA 101) and our Vermont Fire and Building Safety Code Rules) reference other NFPA Standards like NFPA 54, National Fuel Gas Code, NFPA 31 Oil Burning Equipment).

Applying the Rules and Standards to Internet-Based Lodging:

A homeowner who rents his/her property either on a season basis or permanent basis is responsible for ensuring the structure complies with minimum safety standards. In some circumstances a **change of use permit** may be required prior to use and occupancy and if there are renovations, alterations or new construction a construction permit application and fee may be required. The Division of Fire Safety has limited resources and with the sheer volume of houses being rented on the internet we cannot conduct inspections to validate compliance in advance of renting. There are 4 general types of **residential occupancy classifications** in the scope of the standards with varying levels of code requirements. For the purpose of this report, I will focus on 2 types; (1) one and two family dwellings (2) rooming and lodging facilities.

- **One and Two Family Dwelling:** A structure where the individual structure or individual dwelling unit sleeps 8 or fewer persons. Example; summer or winter camp or a free standing dwelling unit, a duplex and or bed and breakfast.
- **Rooming and Lodging:** A building providing sleeping accommodations for 9 -16 occupants on a transient or permanent basis without personal care, with or without meals, without separate cooking facilities for individual occupants. Rooming and Lodging facilities have more restrictive code requirements than a single family rental.

Inspection and Permitting – Internet-Based Lodging:

There are several circumstances when the division of fire safety is likely to exert jurisdiction over internet based rentals.

- **Complaint:** We frequently receive complaints alleging unsafe conditions. In response to a complaint we contact the owner and schedule an inspection.
- **Fatality Investigations:** We assist the Vermont State Police in conducting Fire Investigations.
- **Permitting (Change of Use):** Renting a free standing **single family home** to 8 or fewer persons or to a single family does not necessarily require a permit from the Division of Fire Safety as there is no official change of use by definition. The owner is responsible however, for meeting

the minimum life safety code requirements. Constructing a single family home after October 10, 2016, for the sole purpose of renting would require a construction permit application and plans. A final inspection would be required prior to occupancy. A new rooming and lodging use introduced into an existing structure after October 10, 2016, requires a change of use permit and authorization to occupy.

- **New Construction:** A new rooming and lodging facility or new 1 & 2 family dwelling constructed after October 10, 2016 requires a building permit prior to construction and a certificate of occupancy must be issued prior to use. Existing public buildings require a construction permit prior to constructing an addition or renovating, modifying or altering the structure.

Public Hearing Feedback:
The general public in attendance at the public hearing on December 20, 2016 provided some feedback. The public felt all rental properties should be inspected for compliance with the safety codes prior to being rented. The public felt there is authority to conduct the inspections and validation of compliance prior to occupancy provides a more level playing field. The business community felt the rules were not being applied fairly across the board because the internet rentals are not being inspected.
Several comments/ suggestions on how to validate compliance were presented including third party inspections.

A rental housing registry was discussed in general terms and the Tax Dept indicated the information they receive is deemed confidential.

Conclusions and Recommendations:
The Division of Fire Safety has authority over all rental properties and in some circumstances permits and inspections are required prior to occupancy. In the scope of seasonal rentals, we do not have the resources to engage in mandated inspections due to staffing. There are several thousand rental properties listed and we could not possibly inspect even a fraction of these. It is a known fact, we have thousands of rental properties in Vermont that have never been inspected and many lack the most basic fire protection features including smoke and co alarms and pose risks to the motoring public. The notion of third party inspections would require extensive study and a comprehensive review of business process, inspection protocol, training, criminal background checks, document management and inspector qualification.

The Division of Fire Safety also recognizes we do not have valuable information to accurately substantiate how many properties are being rented, although we do understand the tax department may have some sense. There has been discussion in the past regarding the creation of a rental housing registry program. This has never gained a lot of momentum but some organizations may find it useful. There was some discussion of having other entities conduct these inspections but this would require an extensive amount of study and collaboration and likely major statutory revision with a large price tag attached.

Next Steps by Department

Department of Taxes
As the industry of internet-based lodging platforms continues to grow, the Department is committed to watching developments around platforms that would allow tax collection. While the Department has the tools to conduct compliance with individual hosts, it is most effective for the Department and the host to have the taxes collected by the platform at the time of booking; this prevents a host needing to go back to their guests to collect the taxes if they are audited by the Department in the future.

Furthermore, the Department will continue to review the law and regulations surrounding rental property and applicable taxes to ensure the two do not conflict.

Department of Health
The Department of Health agrees that this industry has grown in the last several years and could benefit from greater outreach and education. The Department could partner with the Department of Public Safety, Division of Fire Safety to create web-based educational materials that outline health and safety recommendations for short-term rentals owners.

Department of Tourism and Marketing
The Tourism industry continues to utilize technology and internet based platforms to provide travelers with simplified options to book rooms, book airline tickets, rent cars or create travel itineraries. The Vermont Department of Tourism and Marketing is committed to working with the Vermont Department of Taxes and Vermont tourism business stakeholders to find the most logical and fair solutions to new challenges that will face this industry.

Department of Financial Regulation
The insurance marketplace has and continues to respond to the demands of Internet-based lodging arrangements. DFR does not believe any legislative or formal administrative action is necessary to address the insurance issues. That said, DFR believes it would be helpful to enhance consumer awareness for both hosts and renters of current insurance coverage limitations that exist and the availability of coverage solutions in the marketplace. To that end, DFR will undertake public awareness campaign, including a Consumer Alert or similar public notice, to raise consumer awareness in this area.

Division of Fire Safety, Department of Public Safety
The Division of Fire Safety recommends the following for next steps in addressing the properties involved in internet-based lodging accommodations:

- Enhance public education in regards to owner responsibility for renting homes including a self-inspection checklist.
- Conduct random inspections to identify common problems so we can better focus our educational resources.

- Public Service Announcements focusing on the awareness there are safety code requirements should you rent your property.

Appendix I

Public Comments

In addition to offering an email channel for public comments, the departments named in this report held a public hearing on December 20, 2016. Representatives from the Departments of Taxes, of Tourism and Marketing, and of the Division of Fire Safety in the Department of Public Safety were there to listen to public comment. Three members of the public spoke, including Tim Piper, President of the VT Inns and Bed and Breakfast Association.

The public comments that were submitted through email are included here.

Business or Organization: Chimney Hill Owners Association
Comment: I believe the larger problem is with owners renting through multiple web based programs and not collecting (or paying to the state) the required taxes on short term rentals. Could be an education process or just taking their chances on getting caught. We operate a short-term rental business and collect and pay takes on all short term rentals while others do not. We also require all of our homes to be inspected by Vermont Fire and Safety and brought up to code if they are not in compliance. I am aware of many of the rental agencies and real estate agencies who rent do not do this and have been told by Fire and Safety that some do not allow them access to the homes.

I think more has to be done to regulate this business and make sure that we are all paying our fair share in taxes and assuring a safe rental environment for our guests. We also do not take on line bookings and any renter must contact us by phone to confirm any rentals. I have noticed in many of the web based rental ads (by private owners) they are indicating the tax amount (rooms and meals) but not local taxes in our area, i.e. 9 % rooms and meals and 1% local.

Business or Organization: Chipman Inn
Comment: I relocated to Vermont in 2012 to become the innkeeper at the Chipman Inn.
The inn is located in Ripton, VT, 8 miles east of Middlebury. The inn has 9 guest rooms, a small 4-stool bar and taproom, and a 25-seat dining room. I possess 30 years of experience in lodging finance and accounting. I previously was employed as Director of Finance for Marriott International for 18 years and Hilton Worldwide for 8. I worked in 15 different hotels in 12 different cities including Boston, Denver, Baltimore and New York City. The hotels that I oversaw had as few as 250 rooms and as many as 1,200.

I relocated to Vermont for a lifestyle enhancement and change. It is not my goal to make money; my goal is to pay my bills and live in an area with a strong sense of community and that is esthetically pleasing.

Unfortunately, internet-based booking agents such as Airbnb have made it increasingly difficult to meet debt obligations. My lodging establishment is competing against companies such as Airbnb that specialize in home-based room rentals. Home-based rentals have an unfair advantage in that they are not regulated by the state. They are not licensed, not inspected, do not adhere to fire safety rules and regulations, or pay commercial property liability insurance. The property taxes I remit to the town of Ripton are higher because the Chipman Inn is a commercial property. As a result, the Airbnb-type guest

rooms are often less expensive giving private homeowners a competitive advantage. Competition from non-licensed internet based guest rooms has hurt my business.

I recommend that ALL lodging establishments be held to the highest standard as overseen by the State of Vermont or its qualified agent.

Business or Organization: Dutch Realty Holdings & Sun & Ski Inn and Suites. Stowe Vermont
Comment: As I suggested a few years back to Rep Scheuermann , for Airbnb to start collecting the taxes is a good start. As an Hotel owner in Stowe I believe Air BNB" lodging" establishments /hosts should be regulated in the same fashion as hotels in terms of permitted use, fire safety and health regulations. I believe residential properties used for nightly room rental should be registered, permitted, there should be no objection from neighbors, should be inspected by state fire safety inspectors (fire egress, emergency exits smoke and co2 detectors should be at the same level as Hotel lodging facilities are required to have).

Business or Organization: Route 100 Lodging Corp
Comment: If the Airbnb property owners are indeed making money from renting rooms and possibly providing breakfast then surely they should also be responsible for obtaining the correct licenses to do so and also be inspected regularly as all of us larger properties have to.

Business or Organization: October Country Inn
Comment: I submit this comment to add my voice to the many Vermont lodging establishment owners and operators that oppose the provision contained in proposed Health Department regulations to exempt from health department licensing lodging properties such as advertised on internet-based lodging businesses like AirBnB.com, and Homeaway.com.

The reason given for such exemption is particularly troubling: a lack of health department enforcement resources. In other words, the Vermont Department of Health is saying it is willing to allow public threat rather than take reasonable steps to avoid such threat. It doesn't take a lawyer to see the liability invited by such a health licensing exemption. It isn't a question of "if" a public health incident will occur, it's only a queston of "when," and a potential damage award could well exceed any projected departmental savings.

Apart from the above referenced disregard for public safety, the question of economic fairness to traditional lodging businesses under the law looms large. Traditional Vermont lodging establishments such as mine have shouldered great expense to insure that existing health, and fire and other public safety standards are met. I understand that the power and ease of internet marketing, and the businesses that profit by offering such services, have provided many second homeowners an income producing option that is hard to resist. In fact, this situation has resulted in an investment business model that encourages the purchase of residental property for the express purpose of internet-based rental. I understand how this situtuin places extra pressure on the state agencies in charge of enforcing public safety standards. It is a challenging problem to be sure, but the answer is not to pretend it doesn't exist.

Traditional lodging businesses have a responsibility to comply with public safety standards and regulations enacted for that purpose. Internet-based lodging businesses have that same responsibility, as do the busineses that advertise this service to the public. There is no reason to exempt these lodging

properties from any public safety standards that apply to traditional lodging properties. Public safety is at stake.

Business or Organization: Blue Gentian Lodge
Comment: I would like to share some thoughts and comments on the proposed updates to the VT Lodging Rules & Regulations. Since 1994, my husband and I have run the Blue Gentian Lodge, a small 13 room bed & breakfast in Londonderry, VT. We purchased a commercially zoned building for the purpose of renting rooms to the traveling public as well as serving food.

We have come to discover one of Vermont's dirty little secrets. There are more unlicensed tourist accommodations than licensed ones! With the advent of the internet, advertising for these type of accommodations is cheap and easy.

The traveling public does not know if the room he/she rents on-line through a booking service like AirBnB has been inspected and whether the facility has a lodging license. We congratulate you on negotiating with AirBnB to collect VT State Tax. Why not take this a step further and require all VT AirBnB type listing to have a lodging License number? Yes……you will need to hire more inspectors. Yes, you will collect more revenue. Hooray!

The traveling public deserves to be treated equally, each and every one of them. Safe lodging should not be a 'buyer beware' situation. When I ask myself: 'why are homeowners renting rooms?' The most obvious answer is: 'they need some extra money'. Having said that, one of my largest concerns is the water quality of some of these rural homes that are being rented. When was the last time they had a water test? And let's not forget about the wastewater disposal & fire & safety inspections.

These places are a small business and should be treated as such by the State of Vermont, even if they are only renting 1 or 2 rooms. They should be paying a portion of commercial tax for their electric, cable, phone, oil, internet and very importantly have commercial business insurance and be taxed by the town at a partial commercial rate.

It is truly embarrassing to discover it appears that the State of Vermont is planning to make renting up to 2 rooms exempt from the rules because they do not have enough inspectors. Really? Surely you can do better than that.

Business or Organization: Best Western Plus Waterbury Stowe
Comment: To Whom it May Concern: I wanted to take this opportunity to express my opinion regarding the taxing of Air B n B, I am pleased this legislature is moving forward. As the General Manager of a large hotel in Vermont, it has deeply troubled me that competitors such as those using Air B n B to increase there income by offering a room to rent in their home are not held to the same standards and tax code that we are. While I am in agreement of free enterprise, it is also of great concern that this avenue of revenue for homeowners alike has now become competition for a business like ours yet the standards are not the same. I fully support this taxation, and I would like to see it move forward that they are also held to the same safety and health regulations that we are. I have heard of the most unusual tactic with Air B n B, such as folks renting their backyards to people who want to tent there and come in and use the house bath. A larger concern I have is how this will be enforced? What is the department of taxes plan of action in enforcing this rule? We as a business owner, and large employer who's employees income depends on our operations are pleased that the taxation is coming forward and are in support of leveling the playing field in anyway.

We all struggle with completion and it is a free market for the consumer, however we should all be held to the same policies.

Business or Organization: Little Place Guest House
Comment: I would very much like it if the state/cities and airbnb could contract to collect the municipal tax currently collected by those cities that do not have the Local Option Tax (which airbnb is newly collecting along with the 9% state tax for some municipalities).

Business or Organization: Elmwood Guest House
Comment: I advertise on AirBnb as well as have my own web site and take reservations that way. In all cases, I collect and submit State and Local Rooms and Meals Taxes.

AirBnb has begun to collect and submit the 9% State room and meals tax on my behalf and this seems to be working well. My confusion comes with Burlington's local tax of 2%, however. Because Burlington is not part of the State's electronic local tax collection system, AirBnB seems unable to add this additional tax in its calculations, leaving me to have to add that amount into the daily rate I charge. This is confusing and somewhat messy when it comes to reporting. My suggestion is that Burlington (and possibly other similar towns in Vermont that are also not included in the State's electronic system) be included to make this accounting easier, or request that AirBnB add a field that provides for the local tax rate to be added so that it is separate from the daily rate that I am actually charging.

The other issue is that AirBnB is not the only electronic booking platform.
TripAdvisor also provides a platform that includes TripAdvisor, FlipKey, and several other booking platforms, etc. TripAdvisor does have a software option that allows me to add taxes to be collected. TripAdvisor passes these taxes to me to submit. I don't use other platforms, but there are many --- HomeAway, VRBO, for example, and I am unsure of how they handle state and local tax submissions. So, in general, it seems to me that the problem is greater than just AirBnb, although I realize this may seem like the largest platform.

People like me who provide short term stays provide an invaluable service and should not be penalized, providing we register their business with state, collect all taxes, have proper insurance, and are inspected by the Dept. of Health. It is clear that in Burlington, for example, there are not enough beds provided by local hotels to handle the tourist industry that brings tens of thousands of people to town. Also, the nightly rates at the downtown Burlington hotels are outrageous -- over $370/night in many cases -- especially in summer and fall months when tourism is at its highest. It is not usual for people in the Fall or when peak events occur (like UVM graduation) to have to seek accommodations outside Burlington – sometimes over an hour away. Small inns, bed and breakfasts, and guest houses add valuable and needed services to meet the demand of Vermont's thriving tourist industry.

Business or Organization: Airbnb
Comment: There is no mention of the 1% due Stowe by Airbnb or the State. Does Airbnb collect only the 9% for the State? Does Airbnb collect 10% to include the 1% for the town of Stowe? Thanks for a clarification. I may still owe Stowe 1%.

VERMONT INN AND BED AND BREAKFAST ASSOCIATION

Position on the Proposed Licensed Lodging Establishment Rule from the Vermont Department of Health

November 21, 2016- RE: 15 P-70 – Licensed Lodging Establishment Rule – Vermont Department of Health

&

J.1 Act 157 Joint Hearing Request

The Vermont Inn and Bed & Breakfast Association has the following concerns and comments:

1. We agree with the Vermont Department of Health that a there should be requirements for sanitation and licensing of lodging establishments to protect public health & safety.
2. We agree with the scope (3.0) that the rule applies to lodging establishments who maintain and rent units or cottages to the transient, traveling and vacationing public.
3. We take issue with the determination in Section 4.17 and in the definition of Lodging establishment …that a lodging license is required for any person or entity which rents out **three or more rooms**, units or cottages. New revision does say that term includes inns, B&B's **regardless of the number of rooms**, if prepared food is served. Please verify? Issues with pests, water safety & sewage/septic don't apply?

   When asked why the Vt Department of Health would exclude one & two bedroom lodging establishments, the answer was… "We don't have enough staff to enforce those properties."
   This creates the following concerns:
   a. Why would Health & Safety not be an issue with 1 & 2 bedroom properties?
   b. Would it not be **more risky** for the travelling public to stay in non-regulated vs regulated properties?
   c. **Regulation and enforcement are two separate issues.**
   d. **Once the State of Vermont** admits that there are non-regulated properties out there and publicly admit they **will not regulate them for health and safety reasons, however is now collecting Room & Meal Taxes from those same properties**, does that not put the State of Vermont at legal risk? Please explain… **Who would have jurisdiction for the 1 and 2 bedroom properties?**
   e. It is assumed that these small properties are not a significant amount of rentable properties in the State of Vermont. Burlington, VT **alone** has over 300 properties on Air B&B which would provide more rooms than all the hotels in Burlington except for the Sheraton Burlington… the largest hotel in Vermont!!
   f. **Finally, this continues to create an un-level playing field for all licensed lodging properties, willfully following health, fire & safety guidelines (at great expenses).** The non-regulated 1 & 2 bedroom lodging properties will have no incentive to create a healthy & safe environment for the Vermont Tourist. Without that additional expense, the non-regulated properties would have an unfair advantage in the marketplace while also providing the most risk for the health & safety for the touring public.
4. Having the State of Vermont departments not seeing this challenge collectively, puts the State in a tenuous position with insurance issues, legal issues, PR issues with the travel public, lodging community and the general public.

The Vermont Tax Department has finally realized the imbalances from "un-regulated lodging" from the tax perspective and has taken the lead to collect taxes from organizations such as Air bnb which will help to close the unfair gap for licensed lodging properties. The tax department as well had claimed they did not have enough staff to pursue this issue and have figured out a way to make it happen.

It is our position that the Vermont Department of Health (as well as all Vermont State Departments) should do its part to provide a safe and healthy environment for **ALL** Vermont tourists and lodging guests while providing a more level playing field for the regulated, responsible businesses that currently do business in this State. **Establishing regulations and enforcement are two separate issues.**

Recommendations:

1. Regulations should include ALL lodging establishments including 1 & 2 bedroom properties in the regulatory system to include all health & safety, taxing regulations as is required by 3 or more bedroom or unit properties.

Respectfully Submitted,

VIBBA – Vermont Inn and Bed & Breakfast Association – Tim Piper, President

VERMONT CHAMBER of Commerce

December 19, 2016

Candace Morgan
Policy, Outreach, and Legislative Affairs
Vermont Department of Taxes
133 State Street | Montpelier, VT 05633-1401

Dear Ms. Morgan,

The Vermont Chamber of Commerce consists of 1,500 businesses representing more than 45,000 jobs across the state. Lodging establishments ranging from large resorts, branded hotels to small bed and breakfasts make up a large portion of the membership at the Chamber. The mission of the Chamber is to help each member grow their businesses and the Vermont economy.

The Vermont Chamber was extremely pleased by the decision of the Department of Taxes to enter into a contract with Airbnb to collect and remit the rooms tax from Airbnb properties starting on October 1, 2016. The taxes collected from this significant lodging sector will be a positive financial addition to the state's economy.

The Vermont Chamber agrees with the Vermont Department of Health that a there should be requirements for sanitation and licensing of lodging establishments to protect public health & safety. All lodging establishments whom maintain and rent units to the transient, traveling and vacationing public must have rules in regard to health and safety. The Vermont Chamber is recommending a leveling of the playing field and equal regulations for lodging establishments throughout the state.

Sincerely,

Ronda Berns
Vice President of Tourism
Vermont Chamber of Commerce

Robert Frost Mountain Cabins

December 20, 2016

Public Hearing on internet-based accommodation businesses

Thank you for the opportunity to provide input on the topic of internet sites for lodging rentals such as AirBnB, VRBO, Homeaway, etc.

My wife, Carol, and I have built and operate Robert Frost Mountain Cabins in Ripton, Vermont.

The internet constantly drives change across our society. With respect to the VT lodging industry. Its initial impact enabled Inns and B&B's to replace long leadtime and expensive print marketing / advertising with immediate, lower cost, internet based marketing to a growing, computer savvy segment of the population with computer skills. The time and entry costs to establish a lodging business shrank dramatically. As a result, the number of Inns and B&B's grew.

The second internet evolution occurred when exchanges such as AirBnB created an opportunity for property owners to promote their properties globally and process reservations **without any upfront investment**. In many cases, bookings are commission based. In the specific case of AirBnB, the Meals and Rooms Taxes are now filed and paid by AirBnB. The property owners role can be limited to just making the property available and collecting the rent.

As a result, the number of properties available for rent to the travelling public has skyrocketed across the country. The VT Dept of Health concedes that there are literally "thousands" of rooms for rent in Vermont. These are found in single family residences, vacation homes, and homes dedicated to short term rentals. They now represent a significant portion of the lodging industry in Vermont.

We are here today to discuss the regulatory challenge this latest evolution to the lodging industry presents. On one hand, we have hotels, motels, Inns, B&B's, and other properties that are licensed, regulated, taxed, inspected and insured. The latest proposed rule from the Dept of Health exceeds 30 pages of requirements. Our property, Robert Frost Mountain Cabins currently maintains permits for drinking water, storm water, waste disposal, Health Dept, fire safety, plumbing, electrical, general construction, ACT250, local zoning and occupancy both at the state and local levels. We are a registered business and pay Meals / Rooms taxes, income taxes, sales taxes, unemployment insurance, withholding taxes and file an annual report to the State. We pay employees who also pay taxes.

We understand our tax obligation and also recognize the State of Vermont's responsibility to protect the health and safety of the travelling public. The regulatory environment is a business reality we accept. You may be thinking that it sounds awfully complex to rent just five cabins. You would be right.

This morning, I searched for properties in Ripton, VT on the VRBO (Vacation Rental By Owner) website. The first listing is an "owner operated", 5 bedroom, 3.5 bath house that accommodates 17 people. This property is located on Route 125 less than two miles from the historic Chipman Inn which offers 9 rooms to the travelling public with a capacity of 19. The Chipman Inn maintains all of the required licenses and permits my wife and I do. I suspect this is not the case for the VRBO listing two miles up the road.

How is the travelling public's health and safety not an issue for properties listed on internet exchanges such as VRBO, AirBnB, and Homeaway? Why should these properties be regulated differently from other lodging properties by the State of Vermont?

Our position as Innkeepers in the lodging industry is that the internet makes it easy to list a property and collect rent. It does not insure that properties are clean, healthy or safe for the travelling public. All lodging properties should be regulated equally. The question becomes, "What is a lodging property?". We feel that anytime someone rents out a room or unit, it should be considered a lodging property. All such properties should be regulated to ensure the safety of the travelling public, regardless of where they choose to stay.

The unregulated properties in Vermont, in general, pose a risk to the travelling public. Owners through both willful noncompliance and unintentional ignorance place the public in danger. At some point, a tragedy will occur in a room above a garage that does not have a CO alarm, fire extinguisher, smoke detector, secondary egress, lighted stairs, etc. Perhaps it will be a vacation home with a contaminated well. The owners likely do not have a commercial policy covering guests. We'll see the story on TV or online. It will be shocking, but not surprising. It is a foreseeable consequence of the lack of regulation.

Respectfully,

Marty Kulczyk

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