


MEMORANDUM

May 5, 2015

TO: Government Operations and Fiscal Policy Committee
FROM: Jeffrey L. Zyontz,  Legislative Attorney
SUBJECT: **Worksession:** Expedited Bill 14-15, Taxation – Room Rental and Transient Tax

Expedited Bill 14-15, Taxation – Room Rental and Transient Tax sponsored by Council President Leventhal at the request of the County Executive, was introduced on April 14. A public hearing was held on May 5.

This Bill would expand the current tax law by treating dwelling units that are renting for any number of people, the same as a hotel. Currently the tax applies when compensation is paid for places that provide sleeping accommodations for 5 or more transient guests.

Background

There are now multiple avenues by which owners can advertise their dwelling unit or part of their dwelling unit for rent. Such internet sites as Airbnb, HomeAway, and Loft make it easy to connect potential renters with people providing places to rent. The duration of these rentals have more in common with hotels than with houses. Although these units may lack many of the amenities of hotels, they share the same essential attribute of being places for unrelated and unknown guests to reside for a very short term for a fee. Other jurisdictions, principally New York City and San Francisco responded to complaints about unfair competition from the hotel industry by taxing this activity. The District of Columbia will also be taxing short term residential rentals of dwelling units even though such rentals are not legal in their jurisdiction. Short term residential rentals (less than 30 days), except for hotels, and bed and breakfast establishments including country inns, are likewise illegal in Montgomery County. Not all activities proposed to be taxed are illegal. A rental of dwelling units for more than 30 day is allowed under the zoning ordinance.

All testimony at the May 5 public hearing favored approval.

Issues

Can the County tax an illegal activity?

Dwelling units that are rented for less than 30 days at a time are in violation of the zoning ordinance.¹ All transient lodging places that do have a license to operate are also in violation.² The Council could choose to make the transient lodging in household living arrangements legal before taxing it.³ In the alternative, it could ask the Executive to enforce this aspect of zoning and shut down any illegal use rather than tax the use. Those alternative are not before the Council at this time.

Although the morality of taxing an illegal activity may be debatable, the law would allow such a tax. The most notable example of a tax on an illegal use occurred some time ago. Al Capone went to jail for tax evasion because he did not declare or pay taxes on profits from his illegal bootlegging business. (In that instance there was also an active anti-bootlegging enforcement effort at the same time.) There is also no doubt that taxing illegal land uses is current practice.⁴

How does the proposed tax rate compare to the tax imposed on hotels and by Washington, D.C.?

The County taxes transient at 7% of the rental price. That is the same rate paid by hotels in the County. (In New York City and San Francisco, hotels object to paying their transient rental tax when other folk providing short term rental did not have to do so.) The District of Columbia taxes transient housing at the rate of 14.5%.

What revenues are assumed from this tax?

The Executive assumed \$228,725 in annual revenue without any increased administrative costs.⁵ The Conference and Visitor's Bureau would get 7% of this revenue (\$16,011) by operation of law.⁶ **The Executive assumed the passage of this Bill and the subsequent revenue in the budget he submitted to Council.** The absence of Council approval would result in a budget shortfall.

Staff has reason to believe that the Executive's revenue estimate is a high estimate (based on 450 Airbnb listings 50 days rental for each unit). A DPS look at Airbnb listings found less than 270 located in Montgomery County of the 450 listings identified on the Airbnb web site for Montgomery County. In addition, the number of rental days may be high.

¹ Chapter 59 Section 3.3.1; Household Living means the residential occupancy of a dwelling unit by a household on a monthly or longer basis.

² Chapter 54 Section 14 requires all places that rent to transient lodgers to be licensed. When a use requires a license from the State or County to operate or when a service provider is required to have a license, the use is allowed only when the license is in effect; ZTA 15-03.

³ ZTA 15-01 intended to do just that but due to the complications caused by the existing "Bed and Breakfast" land use a public hearing on that ZTA was postponed infinitely.

⁴ When there is a store that is not zoned for retail use, the State still requires sales tax. The State and the County would require property tax from that same illegal store.

⁵ Taxes would be collected directly from on-line market makers and not from individual hosts.

⁶ Section 52-16(j).

If “other lodging places that offer for compensation sleeping accommodations” are already covered by the transient housing tax, why would the Bill add “dwelling unit’ to the list of transient lodging places?

The transient tax currently only applies to places that accommodate 5 or more transients at one time. The Bill would delete the minimum number of transients that trigger the tax. Currently the tax would apply only to dwelling units with 3 or more bedrooms. As proposed the tax would apply to all dwelling units. The Executive wanted to make that clear in the code.

This packet contains:

| | <u>Circle #</u> |
|--------------------------------------|-----------------|
| Expedited Bill 14-15 | 1 |
| Legislative Request Report | 3 |
| Executive Transmittal Memorandum | 4 |
| Fiscal and Economic Impact statement | 5 |

F:\LAWBILLS\1514 Taxation - Room Rental And Transient Tax\GO Memo.Docx

Expedited Bill No. 14-15
Concerning: Taxation – Room Rental
and Transient Tax
Revised: 3/3/15 Draft No. 1
Introduced: April 14, 2015
Expires: October 14, 2016
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Council President at the Request of the County Executive

AN EXPEDITED ACT to:

- (1) amend the definition of Hotel or Motel to reduce the number of transients required.

By amending

Montgomery County Code
Chapter 52, Taxation
Section 52-16(b)

| | |
|------------------------------|--|
| Boldface | <i>Heading or defined term.</i> |
| <u>Underlining</u> | <i>Added to existing law by original bill.</i> |
| [Single boldface brackets] | <i>Deleted from existing law by original bill.</i> |
| <u>Double underlining</u> | <i>Added by amendment.</i> |
| [[Double boldface brackets]] | <i>Deleted from existing law or the bill by amendment.</i> |
| * * * | <i>Existing law unaffected by bill.</i> |

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Chapter 52 (Sections 52-16(b)) is amended as follows:

(b) The following words and phrases, when used in this Section, have the following meanings:

* * *

Hotel or motel:

(1) Any hotel, inn, hostelry, tourist home or house, motel, apartment hotel, rooming house, dwelling unit or other lodging place that offers for compensation sleeping accommodations in the County [to 5 or more transients at any one time].

(2) A hotel or motel does not include:

(A) a hospital, medical clinic, nursing home, rest home, convalescent home, assisted living facility, or home for elderly individuals; or

(B) a facility owned or leased by an organization that is exempt from taxation under section 501 (c)(3) of the Internal Revenue Code if the primary use of the facility is other than housing overnight guests.

* * *

Sec. 2. Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law.

Approved:

George Leventhal, President, County Council

Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 14-15
Taxation – Room Rental and Transient Tax

- DESCRIPTION:** This bill amends the definition of hotel or motel under the County’s room rental and transient tax statute. The amendment removes the requirement that a hotel or motel accommodate 5 or more transients and adds “dwelling unit” to the definition of “hotel or motel”.
- PROBLEM:** The purpose of the amendment is to be able to apply the County tax to various businesses that rent, or facilitate the rental of, single rooms or homes within the County. Typically these types of rentals would not have sleeping accommodations for 5 or more transients at one time and therefore, the County tax would not apply. These rentals compete with hotels, motels, and other lodging places to whom the tax does apply.
- GOALS AND OBJECTIVES:** The goal and objective is to be able to apply the County room rental and transient tax to these various rentals of rooms and or homes within the County.
- COORDINATION:** Department of Finance; Visit Montgomery.
- FISCAL IMPACT:** To be provided by OMB.
- ECONOMIC IMPACT:** To be provided by Finance Department.
- EVALUATION:** To be requested.
- EXPERIENCE ELSEWHERE:** Other jurisdictions including Washington, D.C. have either implemented a similar law or are also exploring various options to apply their hotel and transient tax to these types of businesses as well.
- SOURCE OF INFORMATION:** Scott Foncannon, Associate County Attorney, 240-777-8973
- APPLICATION WITHIN MUNICIPALITIES:** This law applies within municipalities in the County.
- PENALTIES:** N/A




OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

March 23, 2015

TO: George Leventhal, Council President

FROM: Isiah Leggett, County Executive 

SUBJECT: Expedited Bill XX-15: Taxation – Room Rental and Transient Tax

I am attaching for Council introduction an Expedited Bill to amend the definition of Hotel or Motel under the County's room rental and transient tax statute. The amendment removes from the definition that a hotel or motel accommodate 5 or more transients and adds "dwelling unit" to the definition of "hotel or motel."

The purpose of the amendment is to be able to apply the County transient tax to various businesses that rent, or facilitate the rental of, single rooms or homes within the County. Typically, these types of rentals do not have sleeping accommodations for 5 or more transients at one time and therefore, the County tax would not apply. These rentals compete with hotels, motels, and other lodging places to which the tax does apply.

My Recommended FY16 Operating Budget anticipates approval of this legislation which we estimate will produce annual revenues of approximately \$228,000. I urge the Council to approve this legislation.

Attachment

cc: Timothy L. Firestine, Chief Administrative Officer
Jennifer Hughes, Director, Office of Management and Budget
Bonnie Kirkland, Assistant Chief Administrative Officer
Kelly Groff, President, Visit Montgomery



ROCKVILLE, MARYLAND

MEMORANDUM

April 28, 2015

TO: George Leventhal, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: FEIS for Bill 14-15E, Room Rental and Transient Tax

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
David Platt, Department of Finance
Jed Millard, Office of Management and Budget
Alex Espinosa, Office of Management and Budget
Naeem Mia, Office of Management and Budget

Fiscal Impact Statement
Expedited Bill 14-15, Room Rental and Transient Tax Amendment

1. Legislative Summary.

This expedited bill amends the definition of hotel or motel under the County's room rental and transient tax statute. The amendment removes the requirement that hotel or motel accommodate five or more transients and adds dwelling unit to the definition.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

The legislation is estimated to result in a net positive change in revenues for the County's room rental and transient tax of \$228,725 annually. There are no additional expenditures associated with collection of this amendment. However, under Section 52-16(j) of the County Code, 7 percent of the additional revenue (\$16,011) must be used for the Conference and Visitors Bureau. The methodology used to estimate the revenues from this amendment is based on an analysis of the AirBnB website and selecting residential dwellings in Montgomery County that are offered for short-term rental, the number of guests per unit, and the rental price per night provided on the website. Based on that analysis, there are an estimated 450 locations offering rental for one guest and 34 locations offering rentals for five guests. The fiscal impact is based on assuming an estimated 50 days of rentals annually for each dwelling in the County.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

The six-year additional revenue stream would be \$1,372,350 with no increase in expenditures for collections. However, as mentioned in paragraph 2 above, 7 percent of the additional revenue (\$96,066) must be used for the Conference and Visitor's Bureau.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not Applicable

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not Applicable

6. An estimate of the staff time needed to implement the bill.

The Department of Finance will absorb the new tax collection related responsibilities with existing staff.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

There will be no significant impact to existing staff in the Department of Finance by adding this responsibility to existing portfolios.

8. An estimate of costs when an additional appropriation is needed.

An additional appropriation of \$16,011 is needed in the Conference and Visitors Bureau Non-Departmental Account to comply with Section 52-16(j) of the County Code as noted in paragraph 2.

9. A description of any variable that could affect revenue and cost estimates.

The fiscal impact noted above is based on the number of residential dwellings currently offered for short-term rental. Since this is a growing market in many countries, the number of dwellings offered for rent in Montgomery County may increase over time although that may result in lower rental prices which could partially or fully offset the increase in rental dwellings.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

Reducing the number of days that such dwellings are rented at the provided rental price from 50 to 30, would reduce the annual fiscal impact from \$228,725 to \$137,235 while increasing the days to 75 would result in an annual fiscal impact of \$343,087.

11. If a bill is likely to have no fiscal impact, why that is the case.

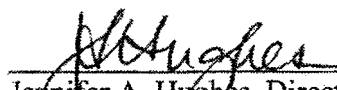
Not Applicable

12. Other fiscal impacts or comments.

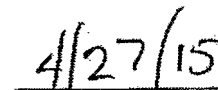
Not Applicable

13. The following contributed to and concurred with this analysis:

Michael Coveyou, David Platt, Robert Hagedoorn, Department of Finance
Alex Espinosa, Office of Management and Budget



Jennifer A. Hughes, Director
Office of Management and Budget



Date

Economic Impact Statement
Bill 14-15E, Room Rental and Transient Tax

Background:

This legislation would expand the current tax law by treating dwelling units that are renting to any number of people, the same as a hotel or motel. Under current law, the tax rate of seven percent, or occupancy tax, is applied to the room rental fee for places that provide sleeping accommodation with a total capacity for five or more transient guests. Bill 14-15E would expand the occupancy tax to include dwelling units that accommodate or rent out lodging to less than five transient guests.

1. The sources of information, assumptions, and methodologies used.

The Department of Finance assumes that:

- the occupancy tax rate will be included in the room rate similar to the current practice by hotels and motels in the County,
- guests are not residents of Montgomery County and therefore the tax imposed on those guests is a tax burden on non-residents, and
- the additional administrative costs incurred by the host will be included in the room rental fee and paid by the renter.

Since Washington, D.C. recently imposed a similar occupancy tax of 14.5 percent, which is slightly more than twice the rate in the County, it is assumed that the imposition of the occupancy tax in Montgomery County to include dwelling units that accommodate or rent out lodging to less than five transient guests would not discourage renters from seeking lodging in Montgomery County. In fact, the comparatively lower rate in the County may incentivize some transients to seek lodging in the County rather than in Washington, D.C.

2. A description of any variable that could affect the economic impact estimates.

Because the tax and administrative costs are included in the room rental fee which will be passed on the renter, there is no variable that could affect the economic impact estimates.

3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

Since the tax and administrative costs are assumed to be passed along to and paid by the non-resident guest, the owner is economically held harmless. Therefore, there is no economic impact on employment, spending, saving, investment, incomes, and property values in the County.

4. If a Bill is likely to have no economic impact, why is that the case?

See paragraph 3.

**Economic Impact Statement
Bill 14-15E, Room Rental and Transient Tax**

5. The following contributed to or concurred with this analysis: David Platt and Rob Hagedoorn, Finance.



Joseph F. Beach, Director
Department of Finance

4-29-15
Date