

HOUSE BILL 679

By Swann

AN ACT to amend Tennessee Code Annotated, Title 7, Chapter 4; Title 67, Chapter 6 and Title 67, Chapter 4, relative to the taxation of certain transactions involving accommodations in hotels and similar establishments.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 7-4-101, is amended by adding the following language as new, appropriately designated subdivisions:

( ) "Accommodations fee" means any fee, by whatever name called, charged by the intermediary to the purchaser of the accommodation for facilitating the sale, use, or possession of an accommodation and is a portion of the consideration charged to the public. "Accommodations fee" does not include any commission paid by an operator to a person or entity for facilitating the sale, use, or possession of an accommodation;

( ) "Discount room charge" means the amount charged by the operator to the intermediary for an accommodation excluding any applicable tax;

( ) "Intermediary" means any person, other than an operator, that offers and facilitates the sale or lease of any room, lodgings or accommodations for occupancy in a hotel, and charges consideration to the public for the occupancy;

SECTION 2. Tennessee Code Annotated, Section 7-4-102, is amended by deleting the words "charged by the operator" wherever they appear in subsection (a) and by substituting instead the words "charged to the public".

SECTION 3. Tennessee Code Annotated, Section 7-4-103, is amended by deleting the section in its entirety and by substituting instead the following:

7-4-103. The tax shall be added by each and every operator or intermediary for the occupancy of a room or space within a hotel. An invoice shall be given directly or transmitted to

the transient, and the tax shall be collected by the operator in the case of a direct transaction, or by the intermediary in the case of an intermediary facilitated transaction, and thereafter remitted to the tax collection official, as follows:

(1) The intermediary shall remit to the county having a metropolitan form of government the tax due and collected on the intermediary's accommodations fee.

(2) The intermediary shall remit to the operator the tax due on the discount room charge.

(3) An operator shall collect and remit to the county having a metropolitan form of government the tax due on the discount room charge.

SECTION 4. Tennessee Code Annotated, Section 7-4-104, is amended by deleting the section in its entirety, and by substituting instead the following:

7-4-104.

(a) The tax levied by this chapter shall be remitted by all operators or intermediaries who lease, rent, or charge for any rooms or space to the metropolitan department of finance not later than the twentieth day of each month next following collection from the transient. The operator or intermediary is required to collect the tax from the transient at the time of the presentation of the invoice for the occupancy, whether prior to the occupancy or not, as may be the custom of the operator or intermediary; the obligation to the metropolitan government entitled to the tax shall be that of the operator or intermediary who presents the invoice to the transient.

(b) For the purpose of compensating the operator or intermediary in accounting for and remitting the tax levied by this chapter, the operator or intermediary shall be allowed two percent (2%) of the amount of tax due and accounted for and remitted to the tax collection official in the form of a deduction in submitting the operator's or intermediary's report and paying the amount due by the operator or intermediary; provided, that the amount due was not delinquent at the time of payment.

SECTION 5. Tennessee Code Annotated, Section 7-4-105, is amended by deleting the section in its entirety and by substituting instead the following:

7-4-105. No operator of a hotel or intermediary shall advertise or state in any manner, whether directly or indirectly, that the tax or any part of the tax will be assumed or absorbed by the operator or intermediary, or that it will be added to the rent, or that, if added, any part will be refunded.

SECTION 6. Tennessee Code Annotated, Section 7-4-106, is amended by inserting the words "or intermediary" after the word "operator" wherever it appears in the section.

SECTION 7. Tennessee Code Annotated, Section 7-4-107, is amended by inserting the words "or intermediary" immediately after the word "operator".

SECTION 8. Tennessee Code Annotated, Title 7, Chapter 4, is amended by adding the following as a new, appropriately designated section:

7-4-\_\_\_\_. No assessment shall be made against an operator for any tax due on the accommodations fee charged by the intermediary to the transient. An assessment for unpaid tax associated with the intermediary's accommodations fee may only be pursued against an intermediary. No assessment shall be made against an intermediary for any tax due on the discount room charge if the intermediary collected the tax and remitted it to the operator. An assessment for unpaid tax associated with the discount room charge paid to an operator may only be pursued against an operator.

SECTION 9. Tennessee Code Annotated, Section 67-4-1401, is amended by adding the following language as new, appropriately designated subdivisions:

( ) "Accommodations fee" means any fee, by whatever name called, charged by the intermediary to the purchaser of the accommodation for facilitating the sale, use, or possession of an accommodation and is a portion of the consideration charged to the public. "Accommodations fee" does not include any commission paid by an operator to a person or entity for facilitating the sale, use, or possession of an accommodation;

( ) “Discount room charge” means the amount charged by the operator to the intermediary for an accommodation excluding any applicable tax;

( ) “Intermediary” means any person, other than an operator, that offers and facilitates the sale or lease of any room, lodgings or accommodations for occupancy in a hotel, and charges consideration to the public for the occupancy;

SECTION 10. Tennessee Code Annotated, Section 67-4-1402(a), is amended by deleting the language “consideration charged by the operator” and by substituting instead the language “consideration charged to the public”.

SECTION 11. Tennessee Code Annotated, Section 67-4-1402, is further amended by adding the following as a new subsection:

(c)

(1) The tax authorized in the ordinance, enacted or modified by a municipality prior to, or on and after, July 1, 2013, shall be based on the amount of the consideration charged to the public.

(2) To the extent there is a conflict between this act and any ordinance which imposes an occupancy tax, this act shall govern. Any municipality is authorized to modify the provisions of any ordinance enacted prior to July 1, 2013 that conflict with this act.

SECTION 12. Tennessee Code Annotated, Section 67-4-1404, is amended by deleting the section in its entirety and by substituting instead the following:

67-4-1404.

(a) The tax shall be added by each and every operator or intermediary for the occupancy of any room or space within a hotel. An invoice shall be given directly or transmitted to the transient, and the tax shall be collected by the operator in the case of a direct transaction, or by the intermediary in the case of an intermediary facilitated

transaction, and thereafter remitted to such officer as may by the ordinance be charged with the duty of collection of that tax, as follows:

(1) The intermediary shall remit to the municipality the tax due and collected on the intermediary's accommodations fee.

(2) The intermediary shall remit to the operator the tax due on the discount room charge.

(3) An operator shall collect and remit to the municipality the tax due on the discount room charge.

(b) When a person has maintained occupancy for thirty (30) continuous days, that person shall receive from the operator or intermediary a refund or credit for the tax previously collected from or charged to that person, and the operator or intermediary shall receive credit for the amount of such tax if previously paid or reported to the municipality.

SECTION 13. Tennessee Code Annotated, Section 67-4-1405, is amended by deleting the section in its entirety, and by substituting instead the following:

67-4-1405.

(a) The tax levied shall be remitted by all operators or intermediaries who lease, rent, or charge for rooms or spaces in hotels within the municipality, to such officer as may by the ordinance be charged with the duty of collection of that tax, the tax to be remitted to such officer not later than the twentieth day of each month for the preceding month. The operator or intermediary is required to collect the tax from the transient at the time of the presentation of the invoice for occupancy, whether prior to the occupancy or not, as may be the custom of the operator or intermediary; the obligation to the municipality entitled to such tax shall be that of the operator or intermediary who presents the invoice to the transient, and if credit is granted by the operator or

intermediary to the transient, then the obligation to the municipality entitled to such tax shall also be that of the operator or intermediary who presents the invoice to the transient.

(b) For the purpose of compensating the operator or intermediary in accounting for and remitting the tax levied pursuant to this part, the operator or intermediary shall be allowed two percent (2%) of the amount of tax due and accounted for and remitted to the officer in the form of a deduction in submitting the operator's or intermediary's report and paying the amount due by the operator or intermediary; provided, that the amount due was not delinquent at the time of payment.

(c) No assessment shall be made against an operator for any tax due on the accommodations fee charged by the intermediary to the transient. An assessment for unpaid tax associated with the intermediary's accommodations fee may only be pursued against an intermediary. No assessment shall be made against an intermediary for any tax due on the discount room charge if the intermediary collected the tax and remitted it to the operator. An assessment for unpaid tax associated with the discount room charge paid to an operator may only be pursued against an operator.

SECTION 14. Tennessee Code Annotated, Section 67-4-1406, is amended by inserting the words "or intermediary" immediately after the word "operator" wherever it appears in the section.

SECTION 15. Tennessee Code Annotated, Section 67-4-1407, is amended by deleting the section in its entirety and by substituting instead the following:

67-4-1407. No operator of a hotel or intermediary shall advertise or state in any manner, whether directly or indirectly, that the tax or any part of the tax will be assumed or absorbed by the operator or intermediary or that it will not be added to the rent, or that if added, any part will be refunded.

SECTION 16. Tennessee Code Annotated, Section 67-4-1408, is amended by inserting the words "or intermediary" immediately after the word "operator" wherever it appears in the section.

SECTION 17. Tennessee Code Annotated, Section 67-4-1409, is amended by inserting the words "or intermediary" immediately after the word "operator" wherever it appears in the section.

SECTION 18. Tennessee Code Annotated, Section 67-4-1425, is amended by deleting the words "consideration charged by the operator" wherever it appears and by substituting instead the words "consideration charged to the public".

SECTION 19. Tennessee Code Annotated, Title 67, Chapter 4, Part 14, is amended by adding the following as a new section:

67-4-1426.

(a) This section shall apply to any city, town, or county in this state, excluding any municipality as defined in § 67-4-1401 and any county with a metropolitan form of government.

(b) Any tax authorized to be levied by any city, town or county on the privilege of occupancy of a hotel pursuant to any ordinance, resolution or private act, enacted or modified prior to, or on and after, July 1, 2013, shall be based on the amount of the consideration charged to the public.

(c) The tax shall be added by each and every operator or intermediary for the occupancy of a room or space within a hotel. An invoice shall be given directly or transmitted to the transient, and the tax shall be collected by the operator in the case of a direct transaction, or by the intermediary in the case of an intermediary facilitated transaction, and thereafter remitted to the tax collection official, as follows:

(1) The intermediary shall remit to the city, town or county the tax due and collected on the intermediary's accommodations fee.

(2) The intermediary shall remit to the operator the tax due on the discount room charge.

(3) An operator shall collect and remit to the city, town or county the tax due on the discount room charge.

(d) To the extent there is a conflict between this act and any private act, resolution or ordinance which imposes an occupancy tax, this act shall govern. The legislative body of any city or town, by ordinance, or county, by resolution, is authorized to modify the provisions of any ordinance, resolution or private act enacted prior to July 1, 2013 that conflict with this act.

(e) No assessment shall be made against an operator for any tax due on the accommodations fee charged by the intermediary to the transient. An assessment for unpaid tax associated with the intermediary's accommodations fee may only be pursued against an intermediary. No assessment shall be made against an intermediary for any tax due on the discount room charge if the intermediary collected the tax and remitted it to the operator. An assessment for unpaid tax associated with the discount room charge paid to an operator may only be pursued against an operator.

SECTION 20. This act shall take effect July 1, 2013, the public welfare requiring it.