

**HOTEL INTERMEDIARIES—LODGING TAX PROPOSAL**  
**DRAFT—FOR DISCUSSION PURPOSES ONLY**

1. Definitions
  - a. “Accommodations” includes any room, lodging site, campsite, or other location intended for overnight lodging accommodations for transients [or insert your state’s definition of accommodations].
  - b. “Accommodations provider” means any person that furnishes accommodations to another for a consideration. The term “furnishes” includes the sale of use or possession, or the sale of the right to use or possess.
  - c. “Accommodations intermediary” means any person other than an accommodations provider that facilitates the sale of accommodations for a price other than the intermediaries’ price paid for the accommodations. For purposes of this definition, the term “facilitates the sale” includes brokering, coordinating, or in any other way arranging for the purchase of or use or right to use accommodations by a purchaser from an accommodations provider. \*Note: Is this definition narrow enough so not to inadvertently include travel agents?
  - d. “Accommodations vendor” means any person selling, brokering, coordinating or in any other way arranging for the purchase of or use or right to use accommodations. Accommodations vendors include accommodations intermediaries and accommodations providers.
2. Tax imposed
  - a. Sales tax and [(insert other applicable taxes pursuant to your state’s law)] imposed on transient accommodations on the full retail price of all accommodations including that retained by the accommodations intermediary for arranging the accommodations. Every accommodations vendor shall collect such taxes from purchasers and shall remit to [insert appropriate state or local taxing agency]. Sales [other taxes (insert your state’s law)] tax charged pursuant to this paragraph shall be stated as a separate and distinct item on the customer’s invoice as required by [insert your state law].
  - b. An accommodations intermediary shall pay all applicable taxes on the price it paid to an accommodations provider. \*Note: Is this paragraph redundant in light of Paragraph 3?
  - c. Every accommodations vendor shall be liable and responsible for the collection of the tax imposed by paragraph (a) of this subsection. The failure of an accommodations vendor to collect such taxes shall not relieve the vendor of its liability to remit such taxes as it should have collected.\*Note: Is this paragraph redundant in light of Paragraph 3?
3. Remittance of tax
  - a. All tax collected or required to be collected under this section shall be remitted to the [appropriate state collecting agency] pursuant to [reference normal remittance section].
  - b. Notwithstanding paragraph (a) of this subsection (3), an accommodations intermediary may remit the tax it has collected

pursuant to paragraph (2)(a) for sales of accommodations at each accommodations provider directly to that accommodations provider.

- i. An accommodations intermediary may elect to remit all taxes it has collected for sales made for all accommodations providers that are subject to the same tax jurisdictions to a single accommodations provider **also(?)** subject to those tax jurisdictions. However, the records of the accommodations intermediary shall be sufficient to demonstrate that tax was collected and remitted appropriately and that all the accommodations providers that were so aggregated were subject to the same tax jurisdictions. The safe harbor provided by paragraph (a) of subsection (7) of this section shall not apply with respect to errors made in such aggregation.\* Note: Is this procedure workable? Can another means be crafted that reaches the same goal?)
    - ii. An accommodations provider must remit the tax paid over to it pursuant to this paragraph (b) to the [appropriate tax collecting agency] with its next regular remittance.
  - c. Timing of remittance - exemptions
    - i. Remittance of the tax shall be made as required pursuant to [reference normal remittance timing section] or as otherwise provided in this section.
    - ii. If an accommodations intermediary elects to remit tax directly to the accommodations provider as permitted in paragraph (b) of this subsection, the accommodations intermediary shall remit tax to the accommodations provider monthly. The accommodations intermediary shall remit such tax received during the reporting period by the last business day allowed for remittance of tax to [the state collection agency] for monthly filers [reference monthly due date section].
4. Credit provided - An accommodations intermediary may retain as a credit from the tax collected from its purchaser of accommodations an amount equal to the tax paid by the intermediary to the accommodations provider pursuant to subsection (2). Such credit shall not exceed the amount of tax paid by the intermediary on its own behalf on its purchase of the accommodations sold to its customer. The total of the tax paid and the tax remitted shall not be less than the tax collected from the ultimate customer.
5. Vendor's fee - An accommodations vendor may take a [vendor's fee] as allowed pursuant to [reference section allowing 'vendor's fee'].
  - a. An accommodations intermediary shall not take a vendor's fee for any amount of tax it collected for which it claims a credit pursuant to paragraph (a) of this subsection.
  - b. An accommodations provider shall not take a vendor's fee for any amount of tax remitted to it by an accommodations intermediary.
6. ~~Bundling~~ Aggregate Charges – Where charges for accommodations are aggregated with and not separately stated from other charges that may or may not be subject to sales/transient accommodations tax such as transportation, admission fees, etc. the accommodations intermediary shall collect and remit tax on the price of the accommodation charged to the accommodation intermediary plus the intermediaries' mark-up on the accommodation charged to the customer. An accommodation intermediary's mark-up is deemed to be equal to the sum of the aggregate charges,

less the total price charged to the accommodations intermediary by the accommodations provider, and divide the difference by the number of products included in the aggregate charge.\* Note: Does this resolve the bundling issues for SST and non-SST states?

7. Safe harbors

- a. For accommodations intermediaries, it shall be sufficient that the intermediary collected tax on the full retail price of accommodations sold at the rate of tax charged to it by the accommodations vendor. No assessment shall be made against an accommodations intermediary on the basis of an incorrect rate being charged if the intermediary charged tax at the rate charged to it by the accommodations vendor.
- b. For accommodations providers, it shall be sufficient that the provider remitted all tax collected from all accommodations intermediaries paid to the provider pursuant to subsection (3) of this section. No assessment shall be made against an accommodations provider on the basis of an under collection of tax by an unrelated accommodations intermediary .
- c. For accommodations providers, it shall be sufficient that the provider maintains such books and records as to demonstrate that all amounts paid to it by any accommodations intermediary was appropriately remitted to [the appropriate tax collecting agencies]. No accommodations provider shall be accountable to establish or maintain books and records regarding the payment on which the intermediary collected and remitted the tax to the provider.

OCTOBER 26, 2007