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To: Uniformity Sales and Use Tax Subcommittee
From: Roxanne Bland, Counsel
Date: February 29, 2008
Subject: Accommodations Intermediaries Project

At its November 2007 meeting, the subcommittee directed the drafting group to develop a third draft model statute for this project clarifying an accommodations intermediary's existing obligation to collect all taxes on a customer's purchase of accommodations. As in earlier proposals, the current proposal contains a definitional section, a collection and remittance section, and safe harbors. The proposal is derived from statutory language from earlier draft proposals considered by subcommittee as well as from the states of Montana, Massachusetts and Florida. In crafting this proposal, the drafting group identified two issues—one definitional, the other operational—for discussion by the subcommittee. These issues are detailed below.

Section 1. Definitions

Subsection 1(c): Accommodations intermediary; travel agents and tour operators. Early on in this project, the subcommittee decided that traditional travel agents and tour operators should be excluded from the definition because they provide a different service than an accommodations intermediary. For example, traditional travel agents are paid by commission by the hotel, airline, etc. that the agent chooses for or on which she books her clients. Subsequent research revealed that these terms are not defined in many state statutes (although a recent proposal from Massachusetts, for example, exempts "tour operator" from its scope, but that term is undefined in the proposal). The subcommittee may wish to consider inserting definitions for purposes of this proposal. The following suggestions for defining these terms are derived from the Washington (State) Administrative Code:

WAC 458-20-258 (Rule 258)(2)(c) "Tour operator business" means a business activity of providing directly or through third party providers, transportation, lodging, meals, and other associated services where the tour operator purchases or itself provides any or all of the services offered, and is itself liable for the services purchased.

WAC 458-20-258 (Rule 258)(2)(d) "Travel agent business" means the business activity of arranging transportation, lodging, meals, or other similar services which are purchased by the customer and where the travel agent or agency merely receives a commission for arranging the service.

Sections 2 and 3—Single vs. Dual-Track Remittance Models

While the subcommittee has expressed a preference for a single-track remittance model as it was believed that the dual-track model was too cumbersome. After discussion, the drafting group decided these objections might be overcome if the dual-track model could be simplified. Therefore, both models are presented for the subcommittee's consideration.

**MODEL STATUTE CLARIFYING THE TAX COLLECTION
RESPONSIBILITIES OF ACCOMMODATIONS INTERMEDIARIES**

DRAFT—FOR DISCUSSION PURPOSES ONLY

1. Definitions.—

(a) “Accommodations” is defined as a building or structure containing one or more individual sleeping rooms or suites that provides transient overnight lodging facilities for periods of less than thirty days to the general public for compensation.

(b) “Accommodations provider” is defined as any person or entity that furnishes accommodations to the general public for compensation. The term “furnishes” includes the sale of use or possession, or the sale of the right to use or possess.

(c) “Accommodations intermediary” is defined as any person or entity other than an accommodations provider that facilitates the sale of 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 the right to use accommodations by a purchaser, **but does not include a**

travel agent or a tour operator. **DO THE TERMS “TRAVEL AGENT” AND
“TOUR OPERATOR” REQUIRE DEFINITION?**

(d) “Accommodations fee” is defined as the room charge less the discount room charge, provided that for purposes of this Act the amount shall not be less than the discount room charge.

(e) “Room charge” is defined as the full retail price charged to the purchaser for the use of the accommodations.

(f) “Discount room charge” is defined as the amount paid by the accommodations intermediary to the accommodations provider in furnishing accommodations.

OPTION 1: SINGLE TRACK COLLECTION AND REMITTANCE

2. Collection and Remittance.—

(a) An accommodations intermediary shall be responsible for the collection and remittance of tax imposed by [cite to applicable code section(s)] on the room charge. The failure of an accommodations intermediary to collect such tax(es) shall not relieve such person to remit the tax(es) it should have collected.

(b) The amount of tax collected by the accommodations intermediary shall be separately stated from the room charge on an invoice or any other record issued to the purchaser. The accommodations intermediary also shall not advertise, hold out or state to the public or any purchaser that the tax(es) collected will be absorbed or refunded. The accommodations intermediary shall further represent to the purchaser that the separately stated tax(es) charged by the accommodations intermediary includes tax(es) charged by the accommodations provider.

3. Safe Harbor.—

Notwithstanding Section 2(a), no additional assessment of tax shall be made against an accommodations intermediary on the basis of [an] incorrect tax rate(es) charged to the purchaser if such rate(es) is (are) equal to the tax rate(es) charged to the intermediary by the accommodations provider on the discount room charge.

OPTION 2: DUAL COLLECTION AND REMITTANCE TRACK

2. Collection and Remittance.—

(a) An accommodations intermediary shall be responsible for the collection of tax imposed by [cite to applicable code section(s)] on the room charge.

(b) An accommodations intermediary shall remit to the accommodations provider the tax collected on the discount room charge.

(c) An accommodations intermediary shall remit to the [state tax agency] the tax(es) collected on the accommodations fee.

(d) An accommodations provider shall remit to the [state tax agency] the tax(es) paid to the provider by the accommodations intermediary on the discount room charge.

3. Safe Harbor.—

(a) No assessment shall be made against an accommodations intermediary on the basis of an incorrect tax rate collected on the room charge if the tax rate charged to the purchaser is identical to the rate reflected on the discount room charge by the accommodations provider.

(b) No assessment shall be made against an accommodations provider on the basis of an under-collection of tax by an unrelated accommodations intermediary on the room charge.