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To: Uniformity Sales and Use Tax Subcommittee
From: Roxanne Bland, Counsel
Date: July 17, 2008
Subject: Accommodations Intermediaries Project

At its March 2008 meeting, the subcommittee directed the drafting group to develop a fourth draft model statute for this project clarifying an accommodations intermediary's existing obligation to collect all taxes on a customer's purchase of accommodations to include definitions for "tour operator" and "travel agent" as well as the "dual track" remittance system.

After much discussion, the drafting group decided to delete the reference to "tour operators" in the definitions section as it believed that, for purposes of this project, there is no meaningful way to distinguish between the two.

A second issue identified by the drafting group concerns the safe harbor provision. Section 3(b) holds an accommodations provider harmless if the intermediary remits the incorrect amount of tax. The drafting group has clarified this section so that the safe harbor is available only in those situations where the provider and the intermediary are unrelated entities. The current draft includes a definition of "unrelated accommodations intermediary" which is defined as an accommodations intermediary "that is not part of a controlled group of corporations, as defined in I.R.C. §1563(a), that includes the accommodations provider."

The third question for the subcommittee concerns centralized administration and can be divided into three parts. In the early stages of this project, industry representatives requested that the applicable tax be collected and administered by the state. The original "gross receipts" draft included such a provision. The current draft assumes that tax(es) already imposed will not change. Does the committee want to include a provision for centralized administration? Is it practicable to do so? Finally, if the subcommittee opts for centralization, should it draft detailed provisions describing such?

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

DRAFT—FOR DISCUSSION PURPOSES ONLY

1. Definitions.—

(a) “Accommodations” means a building or structure containing one or more individual sleeping rooms or suites for transient overnight lodging.

(b) “Accommodations provider” means any person or entity that furnishes accommodations for periods of less than thirty days 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” means 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 customer, but does not include a travel agent.

(d) “Accommodations fee” means 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” means the full retail price charged to the customer for the use of the accommodations, including any accommodations fee.

(f) “Discount room charge” means the amount paid by the accommodations intermediary to the accommodations provider in furnishing accommodations to the customer.

(g) “Travel agent” means a person engaged in the activity of arranging accommodations which are purchased by the customer and where the travel agent receives only a commission from the accommodations provider for arranging the service.

(h) “Unrelated accommodations intermediary” means an accommodations intermediary that is not part of a controlled group of corporations, as defined in I.R.C. §1563(a), that includes the accommodations provider.

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 but shall not required to separately state on the invoice the specific amount of taxes collected.

(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 or local agency] the tax(es) collected on the accommodations fee.

(d) An accommodations provider shall collect and remit to the [state tax agency] the tax(es) imposed on the discount room charge.

3. Safe Harbor.—

(a) No assessment shall be made against an accommodations intermediary on the basis of an incorrect remittance of tax on the room charge if the tax rate applied to the room charge by an accommodations intermediary in collecting and remitting such tax is identical to the rate applied to the discount room charge by the accommodations provider.

(b) No assessment shall be made against an accommodations provider on the basis of an incorrect remittance of tax on the accommodations fee by an unrelated accommodations intermediary.

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