



MULTISTATE TAX COMMISSION

*Working together since 1967 to preserve federalism and tax fairness*

To:	Sales and Use Tax Subcommittee
From:	Roxanne Bland, MTC Counsel
Date:	September 30, 2011
Subject:	Accommodations Intermediaries Project

At its July 2011 meeting, the subcommittee directed the drafting team to develop a model containing an election for states to choose between the single and dual remittance models.

The drafting team met three times. Attached is a draft model statute for the subcommittee's consideration.



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**MODEL STATUTE ON OPTIONS FOR THE COLLECTION AND REMITTANCE OF  
LODGING TAXES IMPOSED WITH RESPECT TO ACCOMMODATIONS  
FACILITATED BY INTERMEDIARIES**

**10/11/11 Draft**

**MTC Sales and Use Tax Subcommittee  
For Discussion Purposes Only**

**Option 1: Remittance to the State or Local Tax Agency by the Accommodations Provider**

1. Definitions.—

(a) “Accommodation” means a hotel room, a motel room, a residence, a cottage or similar transient lodging facility for occupancy [insert your state’s statutory time period].

(b) “Accommodations fee” means any fee, by whatever name called, charged by an accommodations intermediary to the purchaser of the accommodation for facilitating the sale, use or possession of an accommodation and is a portion of the room charge. It does not include any commission paid by an accommodations provider to a person for facilitating the sale, use or possession of an accommodation.

(c) “Accommodations intermediary” means any person, other than an accommodations provider, that facilitates the sale, use or possession of an accommodation, and charges a room charge to the general public. For purposes of this definition, the term “facilitates the sale, use or possession” means brokering, coordinating or in any other way arranging for the purchase of the sale, use possession of accommodations by the general public.

(d) “Accommodations provider” means any person that owns, operates or manages accommodations, and makes them available for sale, use or possession to the general public for compensation.

(e) “Discount room charge” means the amount charged by the accommodations provider to the accommodations intermediary for an accommodation.

(f) “Room charge” means the full retail price charged for the sale, use or possession of an accommodation, including any accommodation fee, before taxes.

(g) A “travel package” means an accommodation bundled with one or more separate components such as air transportation, car rental or similar items and charged for a single retail price.

## 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 and shall be required to separately state on the invoice to the purchaser of the accommodation the specific amount of taxes collected.

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

(c) An accommodations provider shall collect and remit to the [state or local tax agency] the tax due on the room charge.

(d) A room charge that is part of a travel package may be determined by the accommodations intermediary by reasonable and verifiable standards from the accommodations intermediary's books and records that are kept in the regular course of business including, but not limited to, non-tax purposes.

### 3. Safe Harbor.—

(a) A state or local tax agency [may/shall] waive penalty and interest, if it would be otherwise applicable under law, if an [accommodations intermediary or

accommodations provider] applies an incorrect tax rate to the room charge. This waiver only applies for [30/60] days after any tax rate change.

(b) No assessment shall be made against an accommodations provider for any tax due on the difference between the room charge and the discounted room charge that is not properly remitted to the accommodations provider by the accommodations intermediary. An assessment for unpaid tax associated with the intermediary's accommodation fee may only be pursued against an accommodations intermediary. If the accommodations intermediary provides sufficient evidence that tax due was properly remitted to the accommodations provider, the accommodations provider shall be held liable for the tax due but not remitted.

#### 4. No Inference.—

This model statute imposes no tax liability and is only intended to provide guidance relating to the proper tax collection and remittance responsibilities of accommodations intermediaries. As such, no inference shall be drawn relating to the tax liability of any purchaser of accommodations under applicable law.

Optional example:

Accommodations Provider (Provider) furnishes a one-night accommodation to a purchaser who booked the accommodations through Accommodations Intermediary (Intermediary). The Provider bills the Intermediary for a discount room charge of \$80.00. The room charge is \$100.00, which includes a \$20.00 accommodations fee. A 5% tax applied to the discount room charge is \$4.00 and applied to the accommodations fee is \$1.00. The total price charged to the purchaser, including tax, is \$105.00, which is the sum of the discount room charge, the accommodations fee and the \$5.00 tax ( $\$100 \text{ room charge} + [5\% \text{ tax rate} \times \$100.00 \text{ room charge}] = \$105.00$  price to purchaser).

Intermediary remits \$5.00 tax to the Provider ( $5\% \text{ tax rate} \times \$80.00 \text{ discount room charge} = \$4.00 \text{ tax plus } 5\% \text{ tax rate} \times \$20.00 \text{ accommodations fee} = \$1.00 \text{ tax}$ ). Provider remits the \$5.00 tax to the [state or local tax agency].

\$80.00		Discount room charge
\$20.00		Accommodations Fee
	\$100.00	Room Charge
\$4.00		Tax on Discount Room Charge remitted by Intermediary to Provider = $(5\% \times \$80.00)$
\$1.00		Tax on accommodations fee remitted by Intermediary to Provider = $(5\% \times \$20.00)$
	\$5.00	Total tax on room charge remitted by Provider to [state or local tax agency]
\$105.00		Price of accommodations to purchaser including tax charged by Provider and Intermediary

## **Option 2: Remittance to the State or Local Tax Agency by the Accommodations Provider and the Intermediary**

### 1. Definitions.—

(a) “Accommodation” means a hotel room, a motel room, a residence, a cottage or similar transient lodging facility for occupancy [insert your state’s statutory time period].

(b) “Accommodations fee” means any fee, by whatever name called, charged by an accommodations intermediary to the purchaser of the accommodation for facilitating the sale, use or possession of an accommodation and is a portion of the room charge. It does not include any commission paid by an accommodations provider to a person for facilitating the sale, use or possession of an accommodation.

(c) “Accommodations intermediary means any person, other than an accommodations provider, that facilitates the sale, use or possession of an accommodation, and charges a room charge to the general public. For purposes of this definition, the term “facilitates the sale, use or possession” means brokering, coordinating or in any other way arranging for the purchase of the sale, use possession of accommodations by the general public.

(d) “Accommodations provider means any person that owns, operates or manages accommodations, and makes them available for sale, use or possession to the general public for compensation.

(e) “Discount room charge” means the amount charged by the accommodations provider to the accommodations intermediary for an accommodation.

(f) “Room charge” means the full retail price charged for the sale, use or possession of an accommodation, including any accommodation fee, before taxes.

(g) A “travel package” means an accommodation bundled with one or more separate components such as air transportation, car rental or similar items and charged for a single retail price.

## 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 and shall be required to separately state on the invoice to the purchaser of the accommodation the specific amount of taxes collected.

(b) An accommodations intermediary shall remit to the [state or local tax agency] the tax due and collected on the accommodations fee.

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

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

(e) The room charge that is part of a travel package may be determined by the accommodations intermediary by reasonable and verifiable standards from the accommodations intermediary's books and records that are kept in the regular course of business including, but not limited to, non-tax purposes.

### 3. Safe Harbor.—

(a) A state or local tax agency [may/shall] waive penalty and interest, if it would be otherwise applicable under law, if an [accommodations intermediary or accommodations provider] applies an incorrect tax rate to the room charge. This waiver only applies for [30/60] days after any tax rate change.

(b) No assessment shall be made against an accommodations provider for any tax due on the difference between the room charge and the discounted room charge. An assessment for unpaid tax associated with the intermediary's accommodation fee may only be pursued against an accommodations intermediary.

#### 4. No Inference.—

This model statute imposes no tax liability and is only intended to provide guidance relating to the proper tax collection and remittance responsibilities of accommodations intermediaries. As such, no inference shall be drawn relating to the tax liability of any purchaser of accommodations under applicable law.

#### Optional Example:

Accommodations Provider (Provider) furnishes a one night accommodation to purchaser, who booked the accommodations through an Accommodations Intermediary (Intermediary). The room charge is \$100.00, which includes a \$20.00 accommodations fee. The Provider bills the Intermediary a discount room charge of \$80.00. A 5% tax applied to the discount room charge is \$4.00 and applied to the accommodations fee is \$1.00. The total price charged to the purchaser, including tax, is \$105.00, which is the sum of the discount room charge, the accommodations fee and the \$5.00 tax ( $\$100.00 \text{ room charge} + [5\% \text{ tax rate} \times \$100.00 \text{ room charge}] = \$105.00 \text{ price to purchaser}$ ).

Intermediary remits \$4.00 tax ( $5\% \text{ tax rate} \times \$80.00 \text{ discount room charge}$ ) to the Provider and a \$1.00 tax ( $5\% \text{ tax rate} \times \$20.00 \text{ accommodations fee}$ ) to the [state or local tax agency]. Provider remits the \$4.00 tax to the [state or local tax agency].

\$80.00		Discount room charge
\$20.00		Accommodations fee
	\$100.00	Room charge
\$4.00		Tax on discount room charge remitted by Intermediary to Provider, and by Provider to [state or local tax agency] = (5% x \$80.00)
\$1.00		Tax on accommodations fee remitted by Intermediary to [state or local tax agency] = (5% x \$20.00)
	\$5.00	Total tax on room charge
\$105.00		Price to purchaser including tax charged by Provider and Intermediary