

Comments
on
Model Statute on the Tax Collection Responsibilities of
Accommodations Intermediaries
August 6, 2009

Thank you for the opportunity to present oral testimony on July 21st on the “Model Statute on the Tax Collection Responsibilities of Accommodations Intermediaries.” We wish to supplement our remarks during the hearing and the written materials we provided before the hearing. The Ad Hoc Coalition for Fair Hotel Tax Collections is composed of members that seek to preserve and effectuate the authority of state and local governments to collect hotel taxes.

We want to compliment you and the Multistate Tax Commission (MTC) for developing fundamentally sound policy positions in the draft Model Statute. We hope our comments will provide useful information in finalizing the basic principals reflected in the current draft. We believe a finalized version of these principals will significantly benefit states and local governments in developing hotel tax statutes and ordinances.

Basic Policy Positions

Calculation of Tax Basis. We believe the MTC calculation of the basis of the hotel tax in the Model Statute is correct and administrable. The full retail price of the hotel room, including all service and processing charges, along with rental charges should be added together to calculate the basis for determining the amount of hotel taxes due. The basis of the tax at the city and state level is the amount paid by the occupant for renting the hotel room. Including all charges with the hotel room rental creates a system that can be easily audited by local and state tax authorities and accurately reflects the fundamental nature of the consumption taxes being imposed.

Remittance of Taxes. We support the structure of the tax remittance framework in the Model Statute. Having the Travel Company (TC) (see Terminology comment below) collect all hotel taxes due on the retail rental price of the room from the occupant is the correct first step to take in the Model Statute. Having the TC pay over to the hotel the taxes due on the wholesale rental price of the room is a sound second step in the administrative procedure, which reflects the realities of the transaction. Finally, having the TC remit the remaining portion of the tax due that is not paid over to the hotel to the local and/or state tax authorities on the difference between the retail and wholesale rental prices further reflects the realities of the transaction. In addition, all TCs should be required to register in all taxing

jurisdictions in which they do business so that the jurisdictions will know if the TCs are complying with the remittance requirements.

The structure of the tax collection responsibilities provides the TC with more than sufficient time and opportunity to determine the amount of tax that will be due before transactions with occupants are entered into. The TC will be aware of its tax collection and remittance obligations when it contracts with the hotel and, as a result, the amount that must be paid on the difference between the retail and wholesale price to tax authorities. The hotel is not placed in a position where it will have to determine the retail price of the hotel room, which it does not know because the TC charges and collects the higher retail price from the occupant.

Suggested Modifications

Terminology. We suggest that the term “Accommodations Intermediary” be replaced with “Travel Company” (TC). A travel company would be a company that controls the rental of hotel rooms and receives or controls the receipt of payments from occupants. The rental of hotel rooms controlled by a TC covered by the Model Statute could be rented in any fashion, e.g., on line, by phone, or fax. In this form of business the TC is not an intermediary between a hotel and an occupant. The TC is in fact renting a room in which it has a property right and a TC designation is a better reflection of the economic substance of the party's role than accommodations intermediary.

Application of the Model Statute. During the hearing witnesses raised an issue about the identity of the entity that is subject to the Model Statute's tax collection and remittance responsibilities. While we believe the Model Statute is reasonably structured, it may be possible to improve the statutory language by incorporating a description of responsibilities of the parties subject to its provisions.

The description of responsibilities should include a specific registration requirement in those jurisdictions where rooms are rented by the TCs. This is a requirement for businesses leasing hotel rooms in local jurisdictions. The registration assists tax authorities in assuring that there is compliance with local and state laws on hotel room rentals.

The Merchant Model used in the industry provides the structure for the types of transactions in which tax collection problems have occurred. In this model the TC is the party who controls, furnishes, or and rents rooms to occupants. This is referred to as the Merchant of Record, i.e., the party has the right to rent hotel rooms to occupants. The Merchant of Record collects room rental fees from the occupant and has general authority to set the price of the room rental rates. This is the party that should be required to collect all hotel taxes based on the full retail price of the room.

A tax collection system based on the Merchant Model can be easily audited if the entity that receives room rental charges from occupants is responsible for collecting the hotel room taxes associated with the hotel room rental, as contemplated in the Model Statute. This is the fundamental aspect of the transaction on which tax

collection should be based. Using this type of rule eliminates possible manipulations of the tax collection system that can be created. We also believe this structure in the Model Statute would eliminate attempts at strained interpretations such as a claim that the tax collection and remittance obligation falls on credit card companies that provide credit to occupants entering into hotel rental transactions.

Conformance with State/Local Tax Laws. We respectfully suggest that the Model Statute be revised to require the tax to be separately stated, consistent with current state law and local tax ordinances. Having the tax separately stated will also help tax authorities audit TCs' compliance.

We believe separate line entries for taxes and fees are essential for an accurate portrayal of the transaction. Taxes should never be included in a cost entry for any other type of charge, which is now allowed in the Model Statute. The other charges are part of the cost basis for determining the amount of tax that an occupant is responsible for paying.

Below are typical examples requirements for reporting taxes separately:

Anaheim:

"The amount of the rent and the tax thereon shall be separately stated from all other amounts on all receipts and books of record of the hotel, and each transient shall be tendered a receipt for payment from the operator with rent and tax separately stated thereon."
ANAHEIM, CALIF., MUN. CODE, Tit. 2, Ch. 2.12, § 2.12.020.010.

Florida:

"A dealer shall, as far as practicable, add the amount of the tax imposed under this chapter to the sale price, and the amount of **the tax shall be separately stated** as Florida tax on any charge ticket, sales slip, invoice, or other tangible evidence of sale." FLA. STAT. ANN §212.07(2).

New York City:

"If the customer is given any sales slip, invoice, receipt or other statement or memorandum of the price, charge or rent paid or payable, **the tax shall be stated, charged and shown separately** on the first of such documents given to him or her." NYC ADMIN. CODE § 11-2015(a).

When hotel occupants know the amount of tax that is being collected from them there is a much greater assurance that the tax collected will be paid over to tax authorities rather than diverted to the party collecting taxes. The current number of administrative collection actions by state and local tax authorities and pending litigation involving TCs more than attest to the need of having an easily auditable

system with clear and accurate accounting rules. Without clear rules and specific entries of charges there are too many interpretation arguments that can arise.

We find no merit to the TCs complaint that accurate accounting rules will harm them. Hotel taxes under the Model Statute will be calculated under the retail price of the hotel room rental. TCs are not required to disclose the wholesale price of the room. Their confidential business information is kept private. Hotels today can determine room charges by making sample reservations through the TCs.

We also find no merit in the assertion that TCs cannot account for hotel room rental rates when rooms are rented as part of a package of items, e.g., hotel rent and auto rentals, along with airline tickets. When the disclosure of the tax due on the hotel room rental price of packaged tourist programs are required, there have been no administrative problems generated. For Example, the City of Anaheim currently requires that a TC identify and itemize for the City the values of all travel package components, including rent and tax, before the package is offered to consumers (See Anaheim Municipal Code 2.12.020.011). Traditionally, TCs who sell packages in Anaheim have complied with this requirement without difficulty. TCs should have no difficulty complying with this requirement in other jurisdictions.

Safe Harbors. We oppose the provision of any special safe harbor(s) for the TCs. TCs operating under the Merchant Model already are responsible for accurate tax collections and are already collecting taxes from hotel occupants. They should be responsible for complying with tax laws in the same fashion as all merchants of record.

Again, thank you for the opportunity to testify and submit comments on this important subject.

Sincerely,



Martin S. Morris