Henrico County
Short-term Rental Tax:
A Case Study

Leo Marsh
Revenue Division
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Short-term Rental

- VA Code Reference §58.1-3510.4 - 3510.7
- Henrico Code §20-307-323
- Past Revenue:
  - 2017: **$85,225+** (49 accounts)
  - 2018: **$78,412+** (49 accounts)
- In Henrico, most are equipment rentals

Disclaimer – Henrico is a Director of finance jurisdiction that assess BPOL

Personal Property vs. Real Estate

- Do not confuse short-term rental personal property (i.e., equipment and material) with short-term rental real estate (i.e., Airbnb)
- This used to be called Daily Rental Tax

§ 58.1-3510.4. Short-term rental property; short-term rental businesses.

- “Short-term rental property shall constitute a classification of merchants' capital that is <u>separate from other classifications of merchants' capital</u>.”
- Localities may tax short-term rental property:

    (A) As <u>Merchant’s Capital</u> §58.1-3509;

    OR

    (B) Under the Rental Statute §58.1-3510.6

NOT BOTH

Short-term Rental Property

Short-term rental property is (1) All tangible personal property (2) held for rental and (3) owned by a person engaged in the short-term rental business, except:

- Trailers
- Motor Vehicles
- Boats
- Aircraft

HC Code §20-307

Short-term Rental Business

Short-term rental businesses:

(1) Non-heavy Equipment; or

(2) Heavy Equipment

HC Code §20-307

Short-term Rental Business: Non-heavy Equipment

A person is engaged in the short-term rental business if:

- 80% or more of the gross rental receipts, during the preceding year, arose from rentals of 92 consecutive days or less; **OR**

HC Code §20-307

Short-term Rental Business: Heavy Equipment

A person is engaged in the short-term rental business if:

- 60% or more of the gross rental receipts, during the preceding year, arose from rentals of heavy equipment property of 270 consecutive days or less

HC Code §20-307

Short-term Rental Business: Heavy Equipment

“Heavy equipment property" is defined by the 2002 North American Industry Classification System (NAICS):

1. NAICS 532412: Construction, Mining, Forestry, Drilling Equipment
2. NAICS 532490: Non-consumer Type Machinery, Manufacturing, Furniture, Metalworking, Telecommunications, Audio Visual, and Cleaning Equipment

HC Code §20-307

Gross Rental Receipts

- Gross rental receipts does not include charges to have someone operate the rented personal property
  - Exception: Delivery and installation of tangible personal property would not be considered an operation charge; thus, taxable.

HC Code §20-307

Application for Certificate of Registration

- Must file annually an application for a certificate of registration
- Applications shall be filed by either:
  - December 1 of the year preceding ; OR
  - Within 30 days of the beginning of a short-term rental business
- Must certify rental receipts to qualify

HC Code §20-310

Issuance of Certificate of Registration

- Upon approval of the application, a certificate of registration shall be issued
- This certificate shall be **conspicuously displayed** at all times at the place of business for which it is issued.
- The certificate is **not assignable** and shall be valid only for the person in whose name it is issued and the place of business designated.

HC Code §20-311

Short-term Rental Tax Rate Limits

- Heavy Equipment – 1.5% tax rate
- All Other Equipment – 1%
- Henrico uses the 1% rate for both

Collection and Remittance

- Rental business must collect the tax from the lessee of the short-term rental property at the time of the rental.
- Business **holds the tax in trust** until it is remitted to the locality quarterly (never belongs to taxpayer)
- Calendar Year Quarters End On: 3/31; 6/30; 9/30; and 12/31
- Tax is Due 15 Days After Quarter Ends: 4/15; 7/15; 10/15; 1/15

HC Code §20-312

Exemptions

No tax shall be collected or assessed on:

- Rentals to Federal Government; Virginia; and Virginia Localities
- Any rental of durable medical equipment - defined by Va Code §58.1-609.10
- Sales tax exemptions listed in Va Code §58.1-609.1-609.11
- Refer to Virginia Administrative Code (VAC) regulations and opinions for Sales and Use Exemption

HC Code §20-316

Penalties

- Same as Sales and Use tax

- The minimum penalty is $10

- When a business does not file a return and pay the full amount, then there is a penalty of 6% per month up to 30% (5 months)

HC Code §20-315

Penalties Continued…

- Interest – Determined by rate set forth in Va Tax Bulletins
- The business is liable for uncollected or unpaid taxes
- Similar to other Trust taxes, individual officer liability applies (Va Code 58.1 §3906)

HC Code §20-315

Collection Without Certificate of Registration Prohibited

- When a business loses certification, it can not collect the short-term rental tax
  - A Written Determination
  - The rental property would be subject to business personal property (BPP) tax for the year the certification is lost and subsequent years until certified

HC Code §20-317

Keep in Mind

- Prior to 2010 it was possible to tax short-term rental property as business personal property <u>if the owner did not collect and remit</u> the rental tax for the property

- Currently, qualified short-term rental property <u>can not be taxed as business personal property, unless it is decertified</u>

Falsely Issued Certification

- If the certification as obtained by knowingly making materially false statements on application, then the business is still liable for the prior year Business Personal Property taxes (minus amounts paid)
- Any such assessment or determination regarding a short-term rental business is subject to the Administrative appeals process - Va Code §58.1-3983.1

HC Code §20-307

Failure to File

- Registration – not allowed to collect tax from customer
  - Business is liable
- Quarterly Return – statutory assessment process specifically in Henrico County Code
  - Office summons (10 days Notice) to produce records
  - If not provided, use best information available

Thank you for your attention.

Questions?