LGA Spring 2010 Conference

Hyatt Regency, Reston, Virginia

Recapturing the Eroding Transient Occupancy Tax Base:

The Status of Current Law and Strategies for Closing an Unintended Loophole

May 1, 2010

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Disclaimer

This presentation is written from the point of view of a local tax official with an emphasis on the Transient Occupancy Tax. Many of the same issues presented here are also applicable to calculations of the amount of sales tax due as a result of the provision of travel accommodations. This discussion, however, focuses on local TOT taxes and does not attempt to deal in depth with related sales tax issues.

Moreover, due to time constraints, no attempt was made to survey the local ordinances of all Virginia localities that impose a Transient Occupancy Tax. Instead a representative sample of ordinances was examined from Arlington, James City and York counties as well as the cities of Alexandria, Richmond, Williamsburg and Norfolk. There may indeed be interesting variations in other local ordinances; and the author would be appreciative if such information is conveyed via email by those who discover any such relevant provisions.

Above All Else, Remember Two Phrases

*"...x% of the **amount of charge** for the occupancy of any room or space occupied", and*

*"...may levy a transient occupancy tax **on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms** rented out for continuous occupancy for fewer than 30 consecutive days."*

– Both from Code of Virginia § 58.1-3819

The Current Statutory Basis for Levying A Transit Occupancy Tax (TOT) in Virginia

The Transient Occupancy Tax (TOT) is a local tax levied by Virginia cities, towns and counties in accordance with specific legislative grants of authority. Cities and towns with general taxing authority are permitted under Code of Virginia § 58.1 -3840 to *"impose excise taxes on cigarettes, admissions, transient room rentals, meals, and travel campgrounds."* There are very few restrictions on the manner or amount of transient occupancy tax that cities and towns may impose.

As is often the case in Virginia, however, the authority of counties to levy a Transient Occupancy Tax is much more limited. Indeed, under Dillon's Rule, no authority exists for counties to levy such a tax without specific legislative authority. (Whether the cities and towns actually need the authority contained in § 58.1-3840, or could rely on the general taxing authority of their charters is debatable, but irrelevant, since specific authority has been given.)

As is also often the case in Virginia, the authority granted to counties to levy a Transient Occupancy Tax consists of a hodgepodge of rules applicable to certain counties, as well as a general grant of authority to all counties.

Code § 58.1-3819 allows any county to impose a tax of up to *"2% of the amount of charge for the occupancy of any room or space occupied"* by ordinance enacted by the local governing body. The same act, however, allows a number of counties to impose a tax of up to 5%, provided that the amount over 2% is dedicated to tourism promotion.

Section 58.1-3820 allows Arlington County to impose a tax of up to 5% *"of the amount of charge for the occupancy of any room or space occupied"* without requiring that 3% be used for tourism promotion.

Section 58.1-3821 is a specific grant of authority for Nelson and Franklin counties, while Section 58.1-3822 allows Arlington County to impose an <u>additional</u> ¼ percent tax for the purposes of tourism promotion.

Section 58.3823 contains specific grants of authority to various counties to promote local tourist facilities.

1) It allows Hanover, Chesterfield and Henrico counties to impose a four percent tax plus additional taxes (not to exceed 2% and 1%, respectively) to support convention and arts facilities in the City of Richmond. It also would allow any county with the county manager plan form of government (of which, Arlington is the sole current example) to levy an additional 2% tax for the construction of a county conference center. (As Arlington has not chosen to move forward with the construction of such a center, this provision is not currently used.)

2) The same section also allows James City County and York County to impose a flat $2 per night additional TOT to support promotion of tourism in the Williamsburg area.

Code § 58.1-3824 is a specific grant of authority to Fairfax County to levy an additional 2% TOT for tourism promotion.

Code § 58.1-3825 is a specific grant of authority to Rockbridge County and the cities of Lexington and Buena Vista to impose an additional 2% TOT to promote horse country related tourism.

Code § 58.1-3826 allows Bath County to impose an additional 2% TOT for tourism promotion and the construction and support of tourism promotion facilities.

Rappahannock County is authorized to impose a combined Transient Occupancy and Food and Beverage Tax on bed and breakfast facilities by Code § 58.1-3842.

Aside from the Rappahannock County ordinance (which uses the phrase *"the total amount charged for the occupancy of the room or space occupied."*) all of the county authorizations (excluding the flat $2 per room charge allowed in James City and York counties) generally use the rather opaque phrase "*x% "of the amount of charge for the occupancy of any room or space occupied"* to describe both the basis for calculating the tax and maximum amount of the tax that can be levied.

Another important phrase contained in § 58.1-3819 is the description of the TOT as being imposed *"on hotels, motels, boarding houses, travel campgrounds and other facilities offering guest rooms rented out for continuous occupancy for fewer than 30 consecutive days."* This specific description of the kind of facilities on which a TOT can be levied is not always repeated in the specific local acts but, absent some other wording, is considered to apply when an additional tax is authorized.[1]

The Nature of the Controversy Over How To Calculate and Collect TOT

The combination of the definition of the basis for the tax in the state enabling legislation for counties (*"the amount of charge for the occupancy of the room and space occupied)")* and the definition of the kinds of facilities on which the tax can be imposed, (generally "*hotels,*

[1] The specific authorization for a TOT in Nelson and Franklin counties allows the levy of the tax on *"condominiums, apartments, townhouses or like buildings (think Wintergreen) when rooms or units in such buildings are rented for occupancy for fewer than 30 days at a time."* The James City County and York County $2 extra tax applies to *"the use or possession of any overnight guest room"*.

motels, boarding houses, travel campgrounds and other facilities offering guest rooms rented out for continuous occupancy for fewer than 30 consecutive days,") sets the stage for current controversies concerning how the TOT is calculated, collected and remitted by third party online travel companies such as Expedia, Hotels.com, Orbitz and Travelocity.

In the pre Internet era the *"amount of charge for the occupancy of the room and space occupied"* was fairly straightforward. The transient was charged x dollars for a room and the proper percentage was utilized to calculate the TOT due as a result of the rental of the space. The addition of auxiliary optional charges such as in room movies raised some questions, but in Arlington, at least, officials have concluded that optional entertainment charges are not part of the room charge and not subject to the TOT. (They are, however, subject to sales tax. [See PD 06-139 "Rulings of The Tax Commissioner"]

Traditional travel agents were compensated in one of two ways. By far the more common method was for the hotel at which the booking was made to pay a "commission" to the booking agent at "no charge" to the transient. It was also possible for a traveler to pay the commission himself/herself, but that was rare. Either way, the quoted price of the room was not affected.

With the advent of third party Internet booking agencies, the situation has changed. A typical agreement between a third party Online Travel Company (OTC) and a hotelier will provide that the OTC may sell a specific number of rooms and the hotel will charge the OTC a set price for the room. The OTCs then market the rooms at a marked up price to the public, though the price is still often less than the advertised rate for booking directly from the hotel.

From the point of view of the hotel (or similar establishment) a certain price is received for the room – the price for which it agreed to accept payment from the OTC. Generally speaking, the hotel operator does not know what the OTC actually charged the customer for the room, though in many cases the asking price is listed on the OTC website. In some cases, such as the "auction" option in Priceline, the ultimate price paid by the consumer is not publicized at all and is known only to the OTC and the consumer.

When a booking obtained through an Online Travel Company is completed the hotel invoices the OTC for the amount of the room charge that the OTC had agreed to pay in advance (without the markup to the consumer) and the amount of TOT based on the amount actually received by the hotel. The hotel then remits the TOT collected to the locality.

In other parts of the country the difference between the TOT (or similar tax) that would be remitted based on the amount actually charged to the customer as the price of the room, as opposed to the amount remitted based on the amount the OTC pays the hotelier for the room, has resulted in extensive litigation.

Rather than recount all of the national litigation in detail (as will be done in other presentations) this analysis will focus on the current state of Virginia law, proposed changes to state enabling acts, and the potential courses of action local revenue officials may be able to take under current law. Reference to ongoing national litigation will be made where necessary, but it should be understood that such litigation is ongoing and changing daily.

Most of the cases filed thus far across the country are in the pre-trial stage. To the extent they offer guidance, such guidance has come from published orders granting or denying motions to dismiss. Only in San Antonio, Texas has a case gone so far as to result in a jury verdict. In that case the jury found that a number of OTCs did indeed "control" hotels as defined under Texas law and that the OTCs had improperly withheld tax revenue from local officials. The jury declined, however, to affix tort liability for conversion or similar tort causes of action.[2]

A general survey of national litigation does reveal certain trends.

1. The OTCs almost always seek to remove cases to federal court based on diversity jurisdiction. Therefore, while applying and interpreting state law, the vast majority of cases involve United States District Courts, not state courts. In a few cases District Court motion rulings have been appealed and we now have a few United States Court of Appeals decisions construing state law for the limited purpose of applying the standard of review for a motion to dismiss.

2. The OTCs almost never argue that they are immune from collecting or remitting a TOT based on the Commerce Clause of the United States constitution.

> In Quill Corp. v. North Dakota , 504 U.S. 298 (1992) the United States Supreme Court reiterated that for Commerce Clause purposes (but not necessarily for minimum contacts purposes under the Due Process clause) that a company selling products or serviced via the Internet must have some physical presence in

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[2] City of San Antonio, Texas v. Hotels.Com, et al,, United States District Court for the Western District of Texas, San Antonio Division, Case No SA-06-CA-381-OG (2009).

a state in order to be subject to state taxation or collection requirements. Thus far, however, cases involving OTCs and local taxing authorities have been argued on grounds other than an assertion of immunity from state or local taxation, with one exception.

In a case involving Columbus, Georgia a number of OTCs did attempt to assert a constitutional challenge to the local ordinance. The local law, however, imposed the tax on the transient, not on the OTC companies directly. Therefore the Georgia Supreme Court sidestepped the issue of whether the companies could be taxed directly. Expedia, Inc. v. City of Columbus, 285 Ga. 684 (2009).

The lack of assertions of Constitutional immunity from local taxation in the vast majority of cases leads one to believe that the OTC attorneys do not find such arguments to be a fruitful line of defense. Instead the defendants have generally focused on the exact wording of local ordinances and attempted to show that such ordinances do not apply to them.

3. When OTCs win it is almost always because the courts determine that the ordinance does not cover them because they are not a party subject to taxation or a collection responsibility under local ordinances or state enabling legislation. When the OTCs lose (at least in the preliminary motion stage) it is because the courts determine that either:

1) The OTCs are within the class of entities that may be taxed or charged with the duty to collect or remit a tax (sometimes by very broadly reading the language of the enabling statutes), or

2) The OTCs have voluntarily undertaken to collect the tax and can be required to collect and remit the proper amount according to local law.

At the current time there are no known pending legal actions in Virginia seeking to collect TOT or state sales tax based on a percentage of the price actually charged to a customer for a room by an OTC (instead of the amount actually received by the hotel.) Nor are there known audits or administrative enforcement actions against the OTCs or Virginia hotels to collect taxes based on the actual price charged to the consumer instead of the amount actually received by the hotel from the OTCs.

In light of local and state budget shortfalls, and the large share of rooms now booked via the Internet, the question arises whether such action are possible under current law, and if not, what changes would be necessary under the law allow for the collection of taxes based on a percentage of the price quoted to (and paid by) the consumer rather than a percentage of the amount paid over to the hotel.

On the surface, Virginia's enabling statutes for counties would seem to present an obstacle to requiring OTCs to collect and remit TOT. Code § 58.1-3919 (the general county authority to enact a tax), for example says: "...any county, by duly adopted ordinance, may levy a transient occupancy tax *on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for continuous occupancy for fewer than 30 consecutive days."*

In October of 2006 the Virginia Department of Taxation (TAX) issued an opinion that similar language in the state sales tax code excluded sales made by OTCs from state sales tax collection. The relevant *SALES TAX* statute is:

> § 58.1-602 Definitions/ "Retail Sale:....*The terms retail sale and sale at retail shall specifically include the following (i) the sale or charges for any room or rooms, lodging or accommodations furnished by transients for less than 90 continuous days by any hotel, motel, inn, tourist camp, cabin, camping grounds, club or other place in which rooms, lodging, space or accommodations are regularly furnished to transients for consideration."* [Emphasis added].

Based on a set of hypothetical facts submitted by an industry representative, the Tax Commissioner stated that "*while the Company is providing a service in connection with taxable transient accommodations and is charging a Fee for such service; the Company is not providing the accommodations. Because the Company is not providing the transient accommodations, the Company is not liable to collect and remit tax on the services provided in connection with the rental of the transient accommodations.*" [Emphasis added] PD 06-139

The Tax Commissioner did state that taxes based on the rate charged by the hotel to the OTC should be collected and remitted ("*Clearly, any amount included in the Rental Amount collected by the Company and remitted to the Property Owner should be included in the amount subject to tax by the Property Owner.*") But, for sales tax purposes, she declined to find any authority to tax the portion of the sale not actually received by the Virginia hotel.

With regard to counties, the plain wording of the state law would appear to raise a similar issue with imposing liability to collect and remit the TOT on OTCs. Certainly, such language has been the basis for most of the OTC victories in other jurisdictions.

In Pitt County v. Hotels.Com, LP, et al., 553 F.3d 309 (4th Cir. 2009) the Fourth Circuit held that a North Carolina local government ordinance imposing at TOT on "operators of hotels, motels, tourist homes, tourist camps and similar types of businesses" did not include online travel companies. (*"We therefore conclude that, under the plain meaning of §105.164.4(a)(3), an online travel company is not a retailer because it is not a business of the type similar to a hotel, motel or tourist home or camp. As a result, an online travel company is not subject to the Pitt County occupancy tax."*)

As recently as December 22, 2009 the Sixth Circuit reached a similar result in Louisville/Jefferson County Metro Government v. Hotels.Com, LP No. 08-6302 (6th Cir. 2009). The court ruled that the OTCs were not entities "doing business as motor courts, motels, hotels, inns or like or similar accommodations businesses."

On the other hand, the United States District Court for the Southern District of Florida denied a motion to dismiss brought by Monroe County (county seat, Key West) against Princeline.Com and other defendants because the statutory language applies to every person "who rents rooms for consideration." The Court found that to be a much broader definition than language contained in either the Pitt County or Louisville ordinances. County of Monroe v. Priceline.Com, Inc. et al., Case No. 09-10004-Moore/Simonton, (US District Court for the Southern District of Florida, 2009).

Unfortunately for Virginia counties, the language of enabling statutes for counties closely parallels the Pitt County and Louisville ordinances instead of the broader Monroe County ordinance. At first glance it would appear that the OTCs would probably prevail on a motion to dismiss based on current language in our state Code. But there is a glimmer of another point of view.

Virginia case law indicates that § 58.1-3819 allows for a tax on either the hotel or the consumer. While the first paragraph of the enabling statute clearly appears to contemplate a tax on hotels and similar facilities, section D of the statute (allowing for a discount to businesses that collect the tax) speaks of "a local tax imposed on the consumer."

The Arlington County ordinance, notwithstanding the language of § 58.1-3819, purports to tax the consumer instead of the hotel and the Virginia Supreme Court upheld the ordinance in Delta Air Lines, Inc. et al. v. County Board of Arlington County 242 Va. 209, 409 S.E.2d 130, (1991). [3]

Moreover, because they are not fettered by the restrictive language of § 58.1-3819, cities and towns appear to have broad authority to levy a tax directly on consumers. Indeed, Alexandria, Williamsburg, Norfolk and Richmond do so.[4]

In cases where the tax is on the consumer, instead of the hotel, the Pitt County and Louisville cases - and the prior opinion from the Department of Taxation regarding the applicability of the retail sales tax to hotel sales - may not be fatal to requiring OTCs to collect and remit the "proper" amount of Transient Occupancy Tax. In such cases the tax becomes a custodial tax like sales and meals taxes and the collector is merely deemed to hold it for the taxing authority. The question then turns to a) what is the proper amount of TOT to be collected and b) can OTCs and/or local hotels be required to collect and remit the TOT based on the full ultimate price quoted to the consumer?

Unfortunately, if even if state law is not an insurmountable obstacle, most local ordinances are.

The state enabling statute for counties limits the tax to a specific percentage of *"the amount of charge for the occupancy of any room or space occupied."* The meaning of that particular phrase does not appear to have been fully litigated. The General Assembly has clarified that it was intended to cover only "dwelling, lodging, or sleeping purposes" (to prevent application to renting a banquet room, for example) [Code § 58.1-3826]. Also, in Arlington, at least, the Commissioner of Revenue does not attempt to impose the TOT on auxiliary rentals of movies and other services separately stated on the hotel bill.

But nobody seems to have litigated the point about whether or not *the amount of charge for the occupancy of any room or space occupied* means the amount the hotel receives from the OTC or the amount the consumer was "charged." A county's position that the TOT should be calculated on the full price paid by the consumer is bolstered by the way the OTCs

[3] James City County and York County also purport to tax the transient, not the hotel or other establishment.
[4] Examples: Alexandria Code Chapter 2, Article K, sec. 3-2-142 "there is hereby imposed and levied on each and very transient, (1) a tax...". The Richmond City Code, Article VIII, section 98-447: "There is hereby imposed and levied by the city on each transient a lodging tax in the amount of eight percent..." .

characterize the charge for the room in their Internet advertisements and on the receipts that customers receive.

Attached are two actual receipts for rooms rented from OTCs. One is from Norfolk and one from Richmond. In both cases the receipt lists a "price per room, per night" charge. Each receipt also lists a separate line for "taxes and fees" or ""tax recovery charges & service fees."

Despite the fact that the customer was quoted a "price per night" of $50.00 in Richmond and $82.80 in Norfolk, neither city likely received a TOT payment based on those quoted room rates. Instead, as indicated by internal industry documents and the OTC industry's own lobbying materials, the OTC would have negotiated a lower fee with the hotel in advance. Once the room was occupied the hotel would bill the OTC for the prior agreed rate, plus occupancy tax based on the rate the hotel actually received. Any markup by the OTC would not be used to calculate the tax. [See the attached letter dated January 13, 2010 from "The NetChoice Coalition", an industry trade association, to the Streamlined Sales Tax Governing Board.]

Under the theory advanced by the OTCs, the quoted price for the room actually contains two undisclosed separate items – a charge for the room and a "convenience fee" (or markup) charged by the OTC. Tax is due (in their view) only on the portion of the "price per night" turned over to the hotel.

The localities' counter argument is obvious. The OTCs' own receipts do not list separate room rates and service fees in the "rate per room per night" line item.

Also, Virginia cases involving statutory construction are fairly consistent in saying that when words have an obvious and well understood meaning, that meaning will be used to construe legislative intent. It seems logical that in writing the words "*the amount of charge for the occupancy of any room or space occupied*" the legislature intended to refer to the stated room rate, not merely some portion of the otherwise uncategorized room rate.

If the OTCs' logic is allowed to prevail, there isn't anything to prevent erosion of the TOT tax base even without OTC involvement. Room rates always include more than the physical provision of four walls, plumbing and a bed. They also cover advertising, booking and logistical costs. If an OTC can separate out its marketing and booking costs - and declare such not to be part of the "amount of charge for the occupancy." - why can't a brick and mortar hotel do likewise?

Most chains now offer their own Internet booking option. Hilton could make the same argument that its rates include an actual charge for the room and an amount to defray the costs of marketing and booking the room. The chain could then collect and remit a TOT based solely on the room rate LESS the alleged marketing and booking charges, even though the booking, advertising and marketing charges are not separately stated. That tactic would be as legally sound as what the OTCs are doing now.

Legislation was introduced in the 2010 General Assembly to clarify that the TOT taxes in counties (and sales taxes) are to be calculated on the "*total price paid by the ultimate consumer for the use or possession of any room or space occupied in a retail sale.*" Senate Bill 452 passed the Senate unanimously and is currently being held over until the 2011 session in the House Finance Committee.

The introduction of the legislation complicates the picture a bit, as it offers the OTCs an opportunity to argue that current law is not clear, or even contrary to the language of the Senate bill. But counties could equally argue that the legislature is merely clarifying existing law and/or standardizing way taxes are calculated in various local jurisdictions.

And current local ordinance do vary in how they describes the basis for calculating the TOT, generally (and unnecessarily) to the benefit of the OTCs. Ordinances in Arlington, Alexandria and Norfolk, for example, include unnecessary words limiting the tax to a percentage of the rate paid to the hotel. James City County, York County and the City of Williamsburg do the same. [5]

When the plain language of the local ordinance limits the tax to a percentage of the funds <u>paid to a hotel</u> it is hard to argue that the full amount that the consumer paid should be the basis for calculating the tax.

An argument could be made that the hotel is the beneficial recipient of the entire quoted rate paid to the OTC. In essence the end result of the transaction is the same as if the hotel <u>did</u> get

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[5] **Arlington:** "...five and one quarter (5 1/4) percent of the total amount paid for room rental by or for such transient <u>to any hotel."</u> **Alexandria:** "...six and one-half percent of the total amount paid for room rental by or for such transient <u>to a hotel</u>." **Norfolk:** "...eight (8) percent of the total amount paid for lodging by or for any such transient <u>to any hotel</u>." **James City County:** "...five percent of the total amount paid for lodging by or for any such transient <u>to any hotel</u>." **Williamsburg:** "...five percent of the amount paid for lodging by or for any such transient <u>to any hotel</u>. **York County:** "...five (5) percent of the total amount paid for room rental by any such transient <u>to any hotel.</u>

the entire fee and returned part as a commission to the OTC. But such an argument would be strained at best and probably not worth the use of office paper to write down.

By their own local ordinances the above localities appear to have inadvertently given the OTCs a legal basis to limit the "amount of charge" for the occupancy of a hotel room to the amount the hotel receives, even though it is far from clear that state law requires such a limited basis for calculating the tax.

The city of Richmond, on the other hand, appears to have a nice clean ordinance, levying "on each transient a lodging tax in the amount of eight percent of the charge made for each room rented to such transient <u>in a hotel</u> (not <u>to a hotel</u>)." The Richmond ordinance further states that the tax is to be collected by "every person receiving payment for lodging with respect to which a tax is levied".

Ordinances drafted in the Richmond mode might provide a basis for asserting that the TOT should be collected based on the entire quoted room rate. There is certainly nothing in the broad grant of power to cities saying that the ordinance has to reference the amount received by the hotel. And the words *"x% of the <u>amount of charge</u> for the occupancy of any room or space occupied"* in the counties' enabling act does not itself require that the tax be calculated only on what the hotel receives.

If the local ordinance clearly states that the TOT is to be charged to the transient and based on the quoted charge for the room, the next issue becomes who is to be held accountable for the collection and remission of the tax.

Clearly the local hotel can be held responsible and clearly the locality has jurisdiction over the hotel. But there are problems with making a local hotel responsible for calculating and collecting the Transient Occupancy Tax based on the amount for which the OTC marketed the room.

Hotels often do not know the price for which the room was ultimately sold. While the OTC rates are often posted on the Internet, the rates change. Moreover, in the Priceline "name your own price" model, the "auction" price is not disclosed to the general public at all.

Because of the administrative burden and potential liability for miscalculation, local hotels would resist being required to collect and remit the TOT based on a percentage of a price they did not set and may now know. Given the often symbiotic relationship between local governments and the hospitality industry in promoting tourism, and the clout of the industry in local affairs, such an enforcement tactic would also appear to be both politically untenable and unjust to local industry.

But could the OTC also be held accountable under current state law?

The Richmond ordinance would seem to provide a vehicle to find out. It imposes the tax on the transient, appears to make clear that the amount of the tax is a percentage of "the charge made for each room" and commands "every person receiving payment for the lodging" to collect and remit the tax. With such a proper statutory framework in place, the next step would be for a locality to seek to assess an OTC as the party "receiving payment for the lodging" for TOT due on the rental of a room.

The first problem the locality will encounter in attempting to assess an OTC is that there is no information from which to base the assessment. OTCs are not currently filing TOT returns and are unlikely to share revenue information with local assessors voluntarily.

Generally in such cases, the Commissioner of Revenue or tax assessor would "summon" the non-reporting taxpayer to provide information about its gross receipts. The usual authority for issuing such a summons is said to be Code of Virginia § 58.1-3109 (6). But that section actually refers only to property and license taxes. So, for a custodial tax, the local tax assessor would have to rely on inherent authority to enforce the local tax law. To bolster that authority the local ordinance should state that the assessor has enforcement authority. Again, helpfully, the Richmond city ordinance specifically states that the Director of Finance (the local assessing official in the city) is to enforce the TOT ordinance.

The OTC will almost surely refuse to provide information and that creates the opportunity, should a locality be willing, for legal action to be commenced. It would seem that the process might best be accomplished by seeking enforcement of an information request in a civil action in the Circuit Court. That will allow the OTC's almost certain arguments that they are not covered under state enabling legislation and/or the local ordinance to be litigated in a proper civil setting.

The Richmond ordinance, as do almost all other local ordinances, also provides for criminal penalties for not remitting the taxes due. Bringing charges against an OTC would be an emotionally satisfying route, but not a very practical legal one. The locality could probably prove that the OTC "received payment for lodging". The existence of one example - such as the Priceline.Com receipt attached - would be enough to support the "failure to remit" element of a criminal charge. But proving the necessary criminal intent to avoid paying the taxes would be almost impossible given that localities have not traditionally looked to OTCs for payment. And nobody wants to argue a civil issue in a setting with a criminal burden of proof.

So, in summary, under current law it appears that a city or town with general taxing authority COULD write its ordinance to levy the TOT on transients, not hotels and COULD require the person receiving payment for the lodging to collect and remit the tax as Richmond has done.

To the extent that localities other than Richmond cannot currently seek payment from OTCs, the problem does not appear to be in the United States Constitution or the state enabling acts. Instead, the problem is that local ordinances define the amount of the tax as a percentage of the amount paid to a hotel. Most localities are already getting that revenue from the hotels themselves. If they want to go after the revenue derived from the full price paid by the consumer they need to change their local ordinances in the Richmond model.

So the first step for cities and towns seeking to collect a TOT based on the full room price of a room would be to revise their ordinances along the lines of the Richmond ordinance, or better yet, using the language in SB 452 – *"total price paid by the ultimate consumer for the use or possession of any room or space occupied."*

For counties the situation is, as usual, a good deal more complicated due to Dillon's Rule. While the Delta Air Lines case did affirm the validity of the Arlington County TOT ordinance that purports to tax the transient rather than the list of providers described in Code § 58.1-3819, the court did so because the county ordinance still looked to one of the named entities listed in § 58.1-3819 - *" hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms"* – to collect and remit the tax. It is highly unlikely that a Virginia court, in accordance with Dillion's Rule, would allow a county to impose primary liability on an entity not named in § 58.1-3819 to collect and remit a Transient Occupancy Tax.

Thus, counties probably do not have legal standing under current state enabling laws to enact ordinances that would require OTCs to collect or remit the local TOT. But that does not mean that there is not a legal theory under which the online travel companies might yet be liable for remission of the full tax to localities, even under current law.

The first necessary step for counties is to clarify, as has been done in the Richmond ordinance (or the language of Senate Bill 452) that the tax is to be calculated on the actual stated price for the room, not merely on the amount received by the hotel. The current state enabling statute does not require that the tax be levied only on the amount actually retained by the hotel. It says the tax is to be calculated on "*the amount of charge for the occupancy of any room or space occupied.*"

There is a solid argument that such language is broad enough to encompass the amount quoted as the "room rate" to a consumer, regardless of how the hotel and OTC choose to split the proceeds. Current county ordinance legislation that restricts the tax to the amount charged or received "by the hotel" appears to be overly restrictive.

If local ordinances are modified and it becomes clear that the basis for the tax is the actual price the ultimate consumer paid by the consumer, counties *may* (with a strong emphasis on MAY) have a legal avenue to pursue collection and remission by the OTCs.

In City of Gallup v. Hotels.Com, Case No. 06-0549-JC (January 30, 2007) the Federal District Court for the District of New Mexico determined (in an order addressing a motion for summary judgment) that OTCs were not vendors under New Mexico law and could not be required to collect or remit Transient Occupancy Taxes. The Court further concluded, however, that the city could proceed against the OTCs for the remission of the full tax due because the OTCs had allegedly actually collected the tax:

> "*Nonetheless, if Defendants are collecting a lodging tax from the vendees on behalf of the City and acting as trustees of said money, the Defendants could be liable to the City, regardless of whether or not they are vendors as provided in the Ordinance.*"

The Federal District Court for the Northern District of Ohio, Western Division, reached a similar conclusion in two different orders entered in City of Findlay, et al. v. Hotels.Com, et al. (cases no. 3:05 CV 7443 and 3:07 CV 2117). The Court found that the defendants were not "directly obligated" to pay the various plaintiff localities hotel taxes, but that the localities did have "*a viable legal theory by which they may pursue money collected by the Defendants as taxes but not remitted to the Plaintiffs.*"

It is clear that Online Travel Companies are already collecting at least a portion of the TOT from customers and remitting at least a portion of the taxes to local hotels for remission to the proper localities. They admit as much in their lobbying documents and the receipts they provide to customers lists a charge for "taxes and fees" or "tax recovery charges & service fees."

If any county is brave enough to go after an OTC under the current state enabling legislation, the legal theory will need to be based upon the voluntary collection of the tax, not on a direct requirement that the tax be collected.

If a purported tax is collected from a citizen of the Commonwealth - or perhaps even a citizen of another jurisdiction based on a tax due to a Commonwealth locality - it is arguable that the entity collecting the tax holds it in trust for the locality. It is further arguable that an entity purporting to collect the local tax is required to collect and remit the proper amount of the tax in accordance with the local ordinance. So long as the OTCs purport to collect local taxes, they may indeed be reachable by local authorities, even in the case of counties, which probably cannot make them undertake the duty to collect involuntarily.

In summary, it appears that cities and towns may be able to craft ordinances under the current state enabling statutes that require the entity receiving payment for a room to collect and remit the TOT due based on the full price for the room paid by the consumer. It further appears that cities and towns may be able to assert direct liability on the OTCs for such collection and remission.

Counties, on the other hand, if they are to seek funds from OTCs at all, probably must rely on the OTCs own voluntary collection of the TOT. But to the extent that OTCs are purporting to collect and hold what would be a custodial tax (if imposed on the transient), even counties may have a viable legal case for requiring remission of the tax to local authorities in the full amount specified by local ordinance.

In the case of both counties and their municipal cousins, the local ordinance needs to clearly state that the tax is to be based on the total room rate quoted to the ultimate consumer, not merely what the hotel receives. The ordinance should also tax the transient, not the lodging entity.

Senate Bill 452

During the 2010 regular session of the Virginia General Assembly, Sen. Mary Margaret Whipple (D-31) of Arlington introduced Senate Bill 452 to clarify the reach of both the TOT and the state sales tax on the sale of hotel services. After passing the state Senate unanimously and a Finance subcommittee in the House, the bill ran into a storm of last minute opposition aroused by OTC industry lobbyists. It currently is being held in the House Finance Committee until the 2011 legislative session.

Localities and their allies are currently working to answer the concerns of opponents of the bill. Because the bill is still technically alive and appears to enjoy some bi-partisan support, a summary of it provisions and potential impact is also in order.

Senate Bill 452 would make it clear that the basis for calculating both the TOT and the state sales tax on hotel room rentals should be *"the full retail price charged to the consumer by the accommodations intermediary for the us of the accommodations, including any accommodations fees before taxes"* (for sales tax purposes) and the *"total price paid by the ultimate consumer for the use or possession of any room or space occupied in a retail sale"* (in the case of the TOT).

The bill also adds several new definitions to existing tax law, including one for "accommodations intermediary" to cover OTCs. It also introduces the concept of a "discount charge" (being the amount of the room charge actually received by the hotel) and the "accommodations fee" (being the markup amount retained by the OTC.)

The bill bifurcates the responsibility for collecting and remitting TOT and Sales taxes. The local hotel would continue to remit based on the funds it actually receives (defined as the "*discount charge*"). The OTC would collect and remit based on the mark up it retains (the "*accommodations fee* portion that is not paid to the hotel). This is an important provision to the Virginia hospitality industry, whose public response to the bill was neutrality (since the bill would impose no additional duties on local hotel operators beyond what they are already doing.)

Should the bill become law, there is no doubt that OTCs would be directly liable for the collection and remission of both sales taxes and local TOTs. While litigation would be an almost certainty, the OTC attorneys would be in a weak position to argue that state law did not by its own terms specifically cover their clients or impose requirements on them.

Whether constitutional arguments will be raised is unclear. For reasons that remain mysterious to many local government attorneys, TAX continues to take the position (not aggressively pursued by the OTCs own attorneys in pending litigation elsewhere in the country) that the Commonwealth cannot force OTCs to collect and remit state and local taxes on Internet bookings. With all due respect to officials in the office of the Tax Commissioner, however, there are important differences between a transaction involving the rental of a room or space within the Commonwealth and the kind of Internet commerce discussed in the Quill decision.

Conceptually the OTCs argue that their markup is not part of the room sale. Instead they characterize it as a convenience fee and the provision of a service in no way connected with Virginia. (In other words, they argue that the consumer pays them to do research and physically arrange a booking.) But from the consumers point of view he/she is buying a room and the room is undeniably located within the bounds of the Commonwealth of Virginia. Furthermore, the interest conveyed is arguably in the form of a property interest in real estate – a very short term tenancy. There is, therefore, a good argument that companies selling rooms in Virginia have established sufficient nexus in this Commonwealth under the Commerce Clause to be subject to state tax laws.

Senate Bill 452 would also require OTCs to *"separately state the amount of the tax on the bill, invoice or similar documentation."* That would eliminate the current opaque reference to "taxes and fees" or "tax recovery charges & service fees" that actually provide no information as to the amount of TOT being collected. Indeed, it is arguable that that provision alone is valuable even if the rest of the bill were to be defeated, as it would document exactly how much in custodial taxes are being extracted from consumers and possibly not remitted to localities.

Other Possible Legislative Approaches

Senate Bill 452 seeks to create a standardized process for assessing and collecting Sales and Transient Occupancy Taxes, and for allocating responsibility for collecting the taxes between local hotels and OTCs. While having the virtue of dealing squarely with the issue, the approach (like comprehensive tax, immigration or health care reform on the national level) makes it hard to allay the fears of all potentially affected interest groups.

On the night before the House Finance Committee hearing on Senate Bill 452 in March, 2010, OTC lobbyists flooded travel agencies and local hoteliers with emails citing alleged "unintended consequences" from the bill and "new taxes". Such allegations were difficult to refute due to the comprehensive nature of the bill. The result was a room full of worried lobbyists for various travel and tourism organizations that would not be directly impacted by the bill, but who were unsure enough about its impact to express alarm.

Should Senate Bill 452 not survive, less ambitious legislative changes could strengthen the position of local authorities, particularly counties. The less ambitious changes, while lacking the unity and comprehensiveness of Senate Bill 452, might be easier to defend and less subject to broad based industry attack.

The requirement in the current SB 452 that OTC receipts show exactly what is being collected and remitted as "taxes" could be seen as a consumer protection measure and could be introduced as a stand alone bill. It most certainly would provide information that is now simply not available under current billing practices. From the point of view of local and state tax officials it would document the exact amount of lost revenue when the TOT and Sales taxes are calculated on anything other than the actual total price of the room paid by consumers.

State legislators could also strengthen the legal standing of county revenue officials to assess OTCs by simply striking the words *"may levy a transient occupancy tax on hotels, motels, boarding houses, travel campgrounds and other facilities"* from Code § 58.1-3819 and replacing it with the wording from the enabling act for cities and towns: *"may levy a tax on transient room rentals".* Such wording would allow counties to explicitly pass ordinances not limited to the named entities currently listed in §58.1-3819 and to pursue the OTCs in court on the same basis as cities can now conceivably do.

Legislators could also replace the words of the current statute describing the basis for the tax – *"shall not exceed x percent of the amount of charge for the occupancy of any room or space occupied"* with *"shall not exceed x percent of the total price paid by the ultimate consumer for the use or possession of the room or space occupied in a retail sale."* As previously discussed, the current wording in the state enabling act for counties is probably broad enough to cover the full retail price paid by consumers. Indeed, it is arguable that such was the original legislative intent. But a clarifying amendment would remove any latent ambiguity.

Making the above three simple changes to the existing law would not create the structured framework for allocating responsibility for collection and remission of the TOT that Senate Bill 452 contemplates. Nor would it ensure a single statewide system. But, by placing counties on the same footing as cities and towns, it would strengthen the ability of counties to craft ordinances that would restore taxation to the portion of room charges now retained by the OTCs and to seek to enforce such ordinances in court.

Because the above three changes would not introduce new concepts and definitions about "discount rates", etc. they might be politically easier to explain and defend than the comprehensive solution outlined in SB 452.

Other Legal Theories Used To Recover Tax Revenue From OTCs

Theoretically localities, and even the state, could also use tort law to seek possession of funds allegedly collected as taxes and not remitted to taxing authorities. Allegations of both conversion and unjust enrichment have survived dismissal in a number of cases nationwide.[6] These causes of action may exist even without the explicit power to compel collection of the TOT since the OTCs have undertaken to voluntarily collect a least a portion of the tax and, it could be argued, represent to the customer that they have collected the entire amount due.

Given the severe budget restraints under which attorneys for Virginia localities now operate, and the apparent reluctance of state authorities to pursue collection from OTCs, these tort actions are not examined in detail in this presentation because such claims are probably not the best grounds for an independent action. Such claims should be added, however, to any pleadings that seek remission pursuant to a properly crafted local tax ordinance.

Summary

- Under current state law cities and towns would appear to have the authority to impose a TOT directly on transients and to require that the person receiving money from the transient to collect and remit the TOT. The Richmond City ordinance is a good model in that regard. (While the ordinances in Norfolk, Williamsburg and Alexandria also purport to tax the transient, the ordinances also limit the tax to a percentage of the amount paid to the hotel.)

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[6] City of Findlay v. Hotels.Com, LP, et al., United States District Court for the Western Northern District of Ohio, Western Division, Case No: 3:05 CV 7443 (2006) ; City of Rome, Georgia, et al v. Hotels.Com, et al., United States District Court for the Northern District of Georgia, Case No. 4:05-CV-249 HLM (2006); County of Monroe, Florida, v. Priceline.Com, Inc., et al., United States District Court for the Southern District of Florida, Case No. 09-10004-Moore/Simonton (2009).

- Counties also have the authority to impose the tax on the transient pursuant to the Delta Air Lines, Inc. et al. v. County Board of Arlington County case. But even if nominally imposed on the transient, counties probably must look to the list of providers listed in Code § 58.1-3819 for collection and remission. Thus counties probably cannot directly require OTCs to collect and remit the TOT.

- Counties may, however, be able to maintain an action for the remission of taxes that OTCs voluntarily undertake to collect and *may* be able to assert a claim that when an entity voluntarily undertakes to collect a custodial tax it is required to collect and remit the proper amount. This case is strengthened if the county ordinance nominally taxes the transient (as does the current Arlington County ordinance) rather than the local provider (making the tax a custodial one instead of a direct one on the provider.)

- Before being able to maintain any action against an OTC, counties, cities and towns need to amend their TOT ordinances to delete unnecessary limitations on the basis for computing the tax, such as the amount actually received by a hotel. State law allows taxation on the "*the amount of charge for the occupancy of any room or space occupied*" and this broad authority should not be narrowed by the locality's own ordinance.

- Though the Virginia Department of Taxation has expressed the view that the Quill decision prohibits the state (and presumably localities) from requiring out of state OTCs to collect and remit taxes, the OTCs themselves have not pursued constitutional arguments except in one case nationally and have not prevailed with such an argument. There is a strong basis for differentiating the rental of a room in Virginia from the sale of good shipped into Virginia from out of state.

- Senate Bill 452, currently being reviewed by the House Finance Committee for the 2011 session (having already passed the Senate), would provide a comprehensive process for ensuring that TOT and state Sales taxes are computed on the full price paid by the ultimate consumer and would also set up a bifurcated process by which the local hotel and the OTC would each collect and remit a portion of such taxes. (Though, there is nothing to prohibit one or the other party from contracting with the other to fulfill the other party's legal duty.)

- Senate Bill 452 would also require for the first time that receipts and bills show exactly how much is being collected and remitted for Transient Occupancy Taxes.

- Should Senate Bill 452 fail, tweaks in the current enabling language for county TOTs would greatly strengthen the ability of counties to pursue OTCs even without a standardized statewide process for allocating collection and remission liability.

- Ancillary tort claims for conversion and unjust enrichment may lie against OTCs once the liability for the collection and/or remission of custodial taxes is established.

- With many lawsuits in the discovery and pre-trial stage across the country, the legal landscape in this area is changing daily and local government attorneys wishing to monitor the issue are advised to check for the latest rulings from other jurisdictions. ("Stay tuned. Details at 11:00 --- every day.")

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Statutes Cited

Code of Virginia § 58.1-3840 (grant of authority for cities and towns to levy a TOT)

Code of Virginia § 58.1-3819 (general grant of TOT authority to counties)

Code of Virginia § 58.1-3820 (Authority for Arlington County TOT ordinance)

Code of Virginia § 58.1-3821 (Nelson and Franklin County TOT enabling statute)

Code of Virginia § 58.1-3822 (Authority for additional TOT in Arlington County)

Code of Virginia § 58.1-3823 (Hanover, Chesterfield, Henrico, James City, York & "County Manager Plan" county" TOTs)

Code of Virginia § 58.1-3824 (Fairfax County TOT enabling act)

Code of Virginia § 58.1-3825 (Rockbridge Co., Lexington and Buena Vista TOT authorization)

Code of Virginia § 58.1-3826 (Rappahannock County TOT and Meals Tax authorization)

Code of Virginia § 58.1-602 (Sales tax definition of "retail sale" of hotel accommodations)

Code of Virginia § 58.1-3826 (Scope of TOT – sleeping rooms only)

Local TOT ordinances cited:

Arlington, James City and York counties

Alexandria, Richmond, Williamsburg and Norfolk (cities)

Cases Cited:

- Quill Corp. v. North Dakota , 504 U.S. 298 (1992)
- Expedia, Inc. v. City of Columbus, 285 Ga. 684 (2009)
- Pitt County v. Hotels.Com, LP, et al., 553 F.3d 309 (4th Cir. 2009)
- Louisville/Jefferson County Metro Government v. Hotels.Com, LP No. 08-6302 (6th Cir. 2009)
- County of Monroe v. Priceline.Com, Inc. et al., Case No. 09-10004-Moore/Simonton, (US District Court for the Southern District of Florida, 2009)
- Delta Air Lines, Inc. et al. v. County Board of Arlington County 242 Va. 209, 409 S.E.2d 130, (1991)
- City of Gallup v. Hotels.Com, Case No. 06-0549-JC, United States District Court for the District of New Mexico (January 30, 2007)
- City of Findlay, et al. v. Hotels.Com, et al. United States District Court for the Northern District of Ohio, Western Division, cases no. 3:05 CV 7443 and 3:07 CV 2117 (Orders dated 2007 and 2008)
- City of San Antonio, Texas v. Hotels.Com, et al., United States District Court for the Western District of Texas, San Antonio Division, Case No SA-06-CA-381-OG (2009)
- City of Rome, Georgia, et al v. Hotels.Com, et al., United States District Court for the Northern District of Georgia, Case No. 4:05-CV-249 HLM (2006)

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CODE OF VIRGINIA SECTIONS:

§ 58.1-3819. Transient occupancy tax. [for counties]

A. Any county, by duly adopted ordinance, may levy a transient occupancy tax on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for continuous occupancy for fewer than 30 consecutive days. Such tax shall be in such amount and on such terms as the governing body may, by ordinance, prescribe. Such tax shall not exceed two percent of the amount of charge for the occupancy of any room or space occupied; however, York County, Albemarle County, Nelson County, Mecklenburg County, Gloucester County, Spotsylvania County, Stafford County, Loudoun County, Bedford County, Cumberland County, Floyd County, King George County, Wise County, Botetourt County, Prince Edward County, Rockbridge County, Caroline County, Dinwiddie County, Page County, Wythe County, James City County, Franklin County, Tazewell County, Augusta

County, Prince William County, Craig County, Prince George County, Patrick County, Pulaski County, Halifax County, Montgomery County, Carroll County, Northampton County, Amherst County, Giles County, Smyth County, and Greene County may levy a transient occupancy tax not to exceed five percent, and any excess over two percent shall be designated and spent solely for tourism and travel, marketing of tourism or initiatives that, as determined after consultation with the local tourism industry organizations, including representatives of lodging properties located in the county, attract travelers to the locality, increase occupancy at lodging properties, and generate tourism revenues in the locality. If any locality has enacted an additional transient occupancy tax pursuant to subsection C of § 58.1-3823, then the governing body of the locality shall be deemed to have complied with the requirement that it consult with local tourism industry organizations, including lodging properties. If there are no local tourism industry organizations in the locality, the governing body shall hold a public hearing prior to making any determination relating to how to attract travelers to the locality and generate tourism revenues in the locality.

B. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days in hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms. In addition, that portion of any tax imposed hereunder in excess of two percent shall not apply to travel campgrounds in Stafford County.

C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town to levy such a transient occupancy tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax levied under this section, mutatis mutandis.

D. Any county, city or town which requires local hotel and motel businesses, or any class thereof, to collect, account for and remit to such locality a local tax imposed on the consumer, may allow such businesses a commission for such service in the form of a deduction from the tax remitted. Such commission shall be provided for by ordinance, which shall set the rate thereof, no less than three percent, not to exceed five percent of the amount of tax due and accounted for. No commission shall be allowed if the amount due was delinquent.

E. All transient occupancy tax collections shall be deemed to be held in trust for the county, city or town imposing the tax.

(Code 1950, § 76.1; 1970, c. 443; 1971, Ex. Sess., c. 214; 1973, c. 433; 1974, c. 614; 1983, c. 313; 1984, c. 675; 1985, c. 556; 1992, cc. 263, 834; 1996, c. 833; 1997, cc. 757, 764; 1998, cc. 729, 733; 1999, cc. 233, 234, 241, 253,260; 2000, c. 470; 2001, cc. 571, 585; 2003, c. 939; 2004, cc. 7, 610; 2005, cc. 76, 915; 2006, cc. 67, 376; 2007, cc.86, 596, 767; 2008, c. 230; 2009, cc. 13, 31, 116, 497, 513, 524.

§ 58.1-3840. Certain excise taxes permitted. [for cities and towns]

A. The provisions of Chapter 6 (§ 58.1-600 et seq.) of this title to the contrary notwithstanding, any city or town having general taxing powers established by charter pursuant to or consistent with the provisions of § 15.2-1104 may impose excise taxes on cigarettes, admissions, transient room rentals, meals, and travel campgrounds........

CODE OF THE CITY OF RICHMOND, VA

ARTICLE VIII. TRANSIENT LODGING TAX*

* **Charter References:** Authority of the city to levy taxes, § 2.02(a).
Cross References: Businesses and business regulations, ch. 18.
State Law References: Certain excise taxes permitted, Code of Virginia, § 3840.

Sec. 98-446. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Day means any 24-hour period or portion thereof for which a room rental charge is made.

Hotel means any public or private hotel, inn, hostelry, tourist home or house, motel, roominghouse or other lodging place containing ten or more bedrooms within the city offering lodging, as defined in this section, for compensation to any transient, as defined in this section.

Lodging means space or room furnished any transient.

Transient means any person who, for a period of not more than 90 consecutive days, either at the person's own expense or at the expense of another, lodges or obtains lodging at any hotel. However, this term shall be deemed not to include a person enrolled in and attending full time a school, college or university within the corporate city limits; nor shall it include a person who is in the city for the commercial production of a film or video and who commits in advance to lodging at a hotel and actually stays for a minimum of 30 consecutive days.

(Code 1993, § 27-226)

Cross References: Definitions generally, § 1-2.

Sec. 98-447. Levy.

There is hereby imposed and levied by the city on each transient a lodging tax in the amount of eight percent of the charge made for each room rented to such transient in a hotel. Such tax shall be collected from such transient at the time and in the manner provided in this article.

(Code 1993, § 27-227)

Sec. 98-448. Collection.

Every person receiving any payment for lodging with respect to which a tax is levied under this article shall collect the amount of such tax so imposed from the transient on whom such tax is levied or from the person paying for such lodging at the time payment for such lodging is made. The taxes required to be collected under this section shall be deemed to be held in escrow by the person required to collect such taxes until remitted to the city as required in this article.

(Code 1993, § 27-228)

Sec. 98-449. Violations.

(a) It is unlawful not to remit the tax due under this article.

(b) Each such violation or failure shall constitute a separate offense. Such conviction shall not relieve any such person from the payment, collection or remittance of such tax, penalties and interest, as provided in this article.

(c) The city reserves the right to prosecute violations of the city's tax laws under the applicable criminal provisions of state law.

(Code 1993, § 27-228)

Sec. 98-450. Reports required.

The person collecting any tax as provided in this article shall make out a report thereof upon such forms and setting forth such information as the director of finance may prescribe and require, showing the amount of lodging charges collected and the tax required to be collected, and shall sign and deliver such report to the collector with a remittance of such tax. Such report and remittance shall be made as required by the director of finance which shall be at least once in every 30-day period and not later than the 20th day of the month next following the month in which such tax was collected.

(Code 1993, § 27-229)

Sec. 98-451. Enforcement.

It shall be the duty of the director or designee to enforce this article.

(Code 1993, § 27-230)

Sec. 98-452. Effective date.

This article shall be in force and effect July 1, 1970, and shall continue to be in force and effect until otherwise provided by law or ordinance.

(Code 1993, § 27-231)

Secs. 98-453-98-485. Reserved.