

State Fiscal Note for Bill Number: 2017-H-5078

Date of State Budget Office Approval: Friday, April 14, 2017

Date Requested: Monday, February 20, 2017

Date Due: Thursday, March 02, 2017

Impact on Expenditures

FY 2017 n/a
FY 2018 n/a
FY 2019 n/a

Impact on Revenues

FY 2017 n/a
FY 2018 See below
FY 2019 See below

**Explanation by State
Budget Office:**

This bill would amend Rhode Island General Law Chapter 42-63.1 entitled "Tourism and Development" by reducing to six, the number of consecutive days that a "house, condominium, or residential dwelling" must be rented to be exempt from the definition of occupancy contained in Rhode Island General Law Section 42-63.1-2(6) titled "Definitions – Occupancy".

Under current law, a house, condominium, or residential dwelling must be rented for a period of more than 30 consecutive days to be excluded from the definition of occupancy contained in Rhode Island General Law Section 42-63.1-2(6).

**Comments on
Sources of Funds:**

All state hotel taxes and all local hotel taxes are considered to be pass-through revenues.

**Summary of Facts
and Assumptions:**

The bill takes effect upon passage but the assumed implementation date is July 1, 2017.

Rhode Island General Law Section 44-18-36.1(a) entitled "Hotel Tax" levies a 5.0 percent tax "upon the total consideration charged for occupancy of any space furnished by any hotel, travel packages, or room reseller or reseller as defined in § 44-18-7.3(b)(4) in this state." Rhode Island General Law Section 44-18-36.1(a) goes on to note that "[A] house, condominium, or other resident dwelling shall be exempt from the five percent (5%) hotel tax under this subsection if the house, condominium, or other resident dwelling is rented in its entirety."

Rhode Island General Law Section 44-18-36.1(b) levies a local hotel tax of 1.0 percent "... upon the total consideration charged for occupancy of any space furnished by any hotel in this state." A house, condominium, or other residential dwelling that is rented in its entirety is not exempt from the 1.0 percent local hotel tax.

Since a house, condominium, or other residential dwelling that is rented in its entirety is exempt from the state hotel tax of 5.0 percent, the change in the definition of occupancy contained in the bill affects only those houses, condominiums, or other residential dwellings that are not rented in their entirety when it comes to the applicability of the 5.0 percent state hotel tax. So, with respect to the 5.0 percent state hotel tax, the only rentals that would be impacted by the bill would be those in which less than the entirety of a house, condominium, or other residential dwelling are rented for a period of seven or more consecutive days.

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In the case of the local 1.0 percent hotel tax, however, houses, condominiums, or other residential dwellings rented in their entirety are not exempt from this tax. Thus, with respect to the local 1.0 percent hotel tax, the rentals impacted by the bill would include a house, condominium, or other residential dwelling that are rented in their entirety for a period of seven or more consecutive days and a house, condominium, or other residential dwelling not rented in their entirety for a period of seven or more consecutive days.

The Department of Revenue's Division of Taxation is of the opinion that the reduction in the number of consecutive days that a house, condominium or other residential dwelling must be rented to be exempt from the local 1.0 percent hotel tax does not extend the exemption to the state's sales and use tax as found in Rhode Island General Law Chapter 44-18 entitled "Sales and Use Taxes – Liability and Computation." First, the application of the sales and use tax to the rental of lodging is covered in the definition of a sale contained in Rhode Island General Law Section 44-18-7(11) titled "Sales and Use Taxes – Liability and Computation – Sales defined" and the definitions of a hotel, living quarters, rooming house, and tourist camp as defined in Rhode Island General Law Section 44-18-7.1(n)(i)-(iii) titled "Sales and Use Taxes – Liability and Computation – Additional definitions – Hotel" none of which reference the definition of occupancy contained in Rhode Island General Law section 42-63.1-2(6).

Second, the imposition of the sales tax on transient lodging rentals predated the enactment of the hotel tax by nearly 20 years. Rhode Island Public Law 1967, Chapter. 179, Article 2, Section 1 amended Rhode Island General Law Section 44-18-7 to make rentals of living quarters a sale for tax purposes while Rhode Island Public Law 1967 Chapter 179, Section 5 imposed the sales tax on such rentals. The establishment of the hotel tax and its imposition on the occupancy of transient lodging rentals was contained in Rhode Island Public Law 1986, Chapter 506.

Third, the revenues generated by the sales and use tax and the state hotel tax are routed differently. Hotel tax revenues are restricted receipt revenues which are distributed, in accordance with Rhode Island General Law Section 42-63.1-3 titled "Tourism and Development – Distribution of tax". Sales tax revenues, on the other hand, are general revenues that are deposited in the general fund for unrestricted use subject to appropriations made by the General Assembly.

Finally, when the hotel tax was enacted in 1986, the enacting legislation specifically stated that "the hotel tax is in addition to any sales tax imposed." This statutory language survives today. Thus, regardless of what the bill's sponsors may believe, Rhode Island General Law unequivocally states that the hotel tax is not in lieu of the sales tax but rather is in addition to it.

Notwithstanding these arguments that the sales tax and the hotel tax are two separate and distinct taxes, the proposed changes in the bill could set up ambiguities and doubts regarding the application of sales tax under Rhode Island General Law Chapters 18 and 19 to rentals of transient lodgings. The Division of Taxation believes there are at least two potential pitfalls.

One potential pitfall is that between 2009 and 2012 the definition of a retailer under Rhode Island General Law Section 44-18-15(a)(5) titled "Sales and Use Taxes – Liability and Computation – "Retailer" defined" was amended. Prior to 2009, the statute read "[R]etailer includes...every person engaged in the business of renting any living quarters in any hotel, rooming house or tourist camp." This same statute now reads: "[R]etailer includes...every person engaged in the business of renting any living quarters in any hotel as defined in §42-63.1-2, rooming house or tourist camp." (Emphasis added). This leaves the door open for the adroit argument that a person who rents lodgings only for one week or two weeks during the summer is not making taxable rentals of living quarters in a hotel under Rhode Island General Law Section 42-63.1-2 ergo that person is not a retailer under Rhode Island General Law 44-18-15(a)(5) required to charge and collect the sales tax on those rentals. Based on the Rules of Statutory Construction, any doubts and ambiguities regarding the imposition of tax are resolved against the State.

The other potential pitfall is that the existing hotel tax exemptions provided for in Rhode Island General Law Section 42-63.1-2 titled "Tourism and Development – Definitions" are for a 30 day continuous stay or a 12 month lease and are clearly patterned after similar earlier provisions in Rhode Island General Law Section 44-18-8 titled "Sales and Use Taxes – Liability and Computation – Retail sale or sale at retail defined" and the sales tax and the hotel tax cross-reference each other in several other sections of the General Laws such as Rhode Island General Law Section 44-18-36.1 titled "Sales and Use Taxes – Liability and Computation – Hotel tax" and Rhode Island General Law Section 44-18-15(a). As a result, the argument could be advanced that although the two statutes, Rhode Island General Law Section 42-63.-2 and Section 44-18-8, ostensibly conflict as to the scope of exemption and thus, the broader seven day continuous stay exemption contained in the bill must likewise apply to the sales tax under Rhode Island General Law section 44-18-8 pursuant to the doctrine of *pari materia* and the Rule of Statutory Construction that states, if two statutes conflict, the most recently enacted statute prevails over the previously enacted statute.

In spite of these pitfalls, the Division of Taxation maintains that either of these arguments is of questionable merit and can be refuted by counterarguments. The potential challenges along these lines, however, are out there and someone could eventually seize upon them to exempt the rental of a house, condominium or other residential dwelling that is rented for more than six consecutive days from both the local 1.0 percent hotel tax and the 7.0 percent sales and use tax.

ORA assumed that the types of rentals that would be impacted by the bill would only be vacation rentals and not room rentals executed via a hosting platform. Implicitly, ORA assumed that room rentals executed via a hosting platform would be of a duration of less than seven consecutive days and thus still be subject to the 5.0 percent state hotel tax and the 1.0 percent local hotel tax.

FY 2017 through January local 1.0 percent hotel tax collections generated by vacation rentals for all municipalities except the City of Newport were \$223,787. In order to project full-year FY 2017 collections, ORA first calculated the percentage

of revenues received from vacation rentals in the first six months of FY 2016 from all municipalities other than the City of Newport to be 54.6150 percent. Based on the report from the Division of Taxation, ORA was unable to ascertain the total amount of local hotel tax revenues for only the first six months of the fiscal year. For simplicity, ORA assumed the six month percentage calculated from FY 2016 revenues also applied to the revenues received through January of FY 2017. Applying this percentage to the FY 2017 through January local hotel tax revenues generated by vacation rentals for all municipalities other than the City of Newport yields estimated full-year FY 2017 local 1.0 hotel tax collections from these rentals of \$409,754 (i.e., $\$223,787 / 0.546150$).

The City of Newport reported local 1.0 percent hotel tax collections generated from vacation rentals for FY 2016 through December of \$4,667. Total FY 2016 reported local 1.0 percent hotel collections for the City of Newport were \$35,005. Thus, 13.3329 percent of the total FY 2016 local 1.0 percent hotel tax revenues from vacation rentals for the City of Newport were collected in the first half of the fiscal year. ORA assumed the six-month percentage calculated for FY 2016 also applied to FY 2017. For FY 2017, the local 1.0 hotel tax revenues from vacation rentals were reported to be \$13,399. The City of Newport did not report local 1.0 hotel tax revenues from vacation rentals for the period of July through September 2016. Thus, the reported figure for the first six months of FY 2017 is likely understated. Applying the 13.3329 percent noted above results in estimated full-year FY 2017 local 1.0 percent hotel tax revenues from vacation rentals for the City of Newport of \$100,493 (i.e., $\$13,399 / 0.133329$).

In total, for all municipalities, estimated FY 2017 local 1.0 percent hotel tax revenues generated by vacation rentals are \$510,246 (i.e., $\$409,754 + \$100,493$). The projected FY 2017 revenues are distributed across the state's 39 cities and towns. Based on the distribution of these revenues in FY 2016, the top five recipients of revenues from vacation rentals are expected to be New Shoreham (42.9 percent), Newport (19.0 percent), Narragansett (8.9 percent), Westerly (8.1 percent), and Providence (5.6 percent).

According to IHS, the growth rates for leisure and hospitality services for FY 2018 and FY 2019 are 0.5578 percent and 0.3345 percent, respectively. Applying the FY 2018 growth rate to FY 2017 estimated local 1.0 percent hotel tax revenues from vacation rentals yields an estimated FY 2018 local 1.0 percent hotel tax pass-through revenues loss from the passage of this bill of \$513,092 (i.e., $\$510,246 * (1 + 0.005578)$). Using the same methodology, the estimated FY 2019 local 1.0 percent hotel tax pass-through revenues loss from the passage of this bill is \$514,809 (i.e., $\$513,092 * (1 + 0.003345)$).



For informational purposes, ORA calculated the estimated loss in general revenues from sales and uses taxes if vacation rentals were to be determined to be exempt under this bill. Scaling the estimated local 1.0 percent revenues loss to the 7.0 percent sales and use tax yields an estimated general revenues loss of \$3,591,647 (i.e., $\$513,092 * 7$) and \$3,603,662 (i.e., $\$514,809 * 7$) for FY 2018 and FY 2019, respectively.



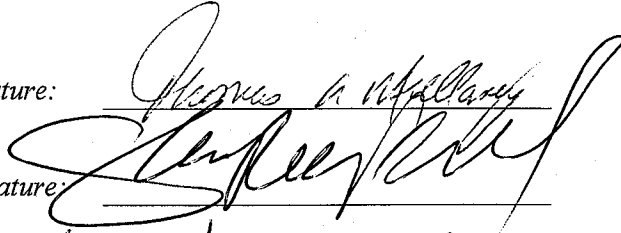
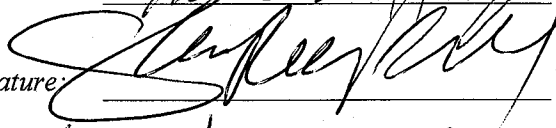
The Governor's FY 2018 Recommended Budget projects a closing surplus of \$78.0 million in FY 2017 and an ending balance of \$654,736 in FY 2018. Passage of this bill would have no impact on either the FY 2017 closing surplus or the FY 2018 ending balance.

Summary of Fiscal Impact:

FY 2017: Not applicable given the assumed implementation date.

FY 2018: A loss in local 1.0 percent hotel tax pass-through revenues of \$513,092 is forecast.

FY 2019: A loss in local 1.0 percent hotel tax pass-through revenues of \$514,809 is forecast.

Budget Office Signature: 
Fiscal Advisor Signature: 

* see pg 4, Last paragraph

