

To: House Revenue Committee

From: Wendy Johnson, League of Oregon Cities

Date: February 6, 2018

Re: Voluntary Collection Agreements

Attached are two examples of voluntary collection agreements. The first is one that was executed by Washington County and Airbnb in June 2016. The second is one that was proposed by Airbnb for Cannon Beach, Oregon in January 2017 but that was rejected by the city council.

Airbnb agreements entered into by cities and counties over the past two years are very similar throughout the state, and these are representative agreements.

Paragraphs C, E, and F of both agreements require aggregate reporting and prohibit information regarding any Host. That is, these paragraphs have been applied to not permit disclosure of addresses of places of transient lodging that are rented out using the Airbnb site.

These agreement provisions treat these intermediaries differently than other tax payers and create a tax fairness problem.

It is these issues that HB 4120 would address so that proper tax auditing and enforcement can be done.

VOLUNTARY COLLECTION AGREEMENT

THIS VOLUNTARY COLLECTION AGREEMENT (the “**Agreement**”) is dated June 7, 2016 and is between **AIRBNB, INC.**, a Delaware corporation (“**Airbnb**”) and **WASHINGTON COUNTY, OREGON** (the “**County**”). Each party may be referred to individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS:

WHEREAS, Airbnb represents that it provides an Internet-based platform (the “**Platform**”) through which third parties offering accommodations (“**Hosts**”) and third parties booking such accommodations (“**Guests**”) may communicate, negotiate and consummate a direct booking transaction for accommodations to which Airbnb is not a party (“**Booking Transaction**”);

WHEREAS, the County and Airbnb enter into this Agreement voluntarily in order to facilitate the reporting, collection and remittance of alleged applicable transient lodging taxes (“**County TLT**”) imposed under applicable Washington County law (the applicable “**Code**”) and any transient lodging taxes that are imposed by a city (or other local jurisdiction) located within the County (a “**City**”) and administered by the County on behalf of the City pursuant to a valid agreement between the County and such City (“**City TLT**”) and set forth at “**Attachment A**” hereto (hereinafter, County TLT and City TLT collectively referred to as “**TLT**”), for Booking Transactions completed by Hosts and Guests on the Platform for accommodations located in the County (the “**Taxable Booking Transactions**”);

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND AGREEMENTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

(A) Solely pursuant to the terms and conditions of this Agreement, including only for periods in which this Agreement is effective (defined below), and solely for Taxable Booking Transactions completed on the Platform, Airbnb agrees contractually to assume the duties of a TLT collector as described in the Code (hereinafter referred to as a “**Collector**”). A list of Cities for which the County administers City TLT, and for which Airbnb agrees to collect and remit City TLT pursuant to the terms of this Agreement, is attached hereto as “**Attachment A**”. Any modification to add a City to the list provided at **Attachment A** shall be made in writing and

signed by both Parties. Airbnb shall have sixty (60) days from the signed date of any modification to **Attachment A** to begin collecting any additional City TLT.

(B) Starting on July 1, 2016 (the “**Effective Date**”), Airbnb agrees to commence collecting and remitting TLT, pursuant to the terms of this Agreement, at the applicable rate, on Taxable Booking Transactions. Except as set forth in Paragraph (L) below, Airbnb shall not assume any obligation or liability to collect TLT for any period or for any transaction prior to the Effective Date or termination of this Agreement.

REMITTANCE OF TLT

(C) Airbnb agrees reasonably to report aggregate information on the tax return form prescribed by the County, including all TLT that is subject to the provisions of this Agreement, and it shall remit all TLT collected from Guests in accordance with this Agreement and Airbnb’s Terms of Service (www.airbnb.com) (the “**TOS**”) in the time and manner described in the Code or as otherwise agreed to in writing.

AIRBNB LIABILITY

(D) Pursuant to the terms of this Agreement, Airbnb agrees contractually to assume liability for any failure to report, collect and/or remit the correct amount of TLT, including, but not limited to, penalties and interest, lawfully and properly imposed in compliance with the Code. Nothing contained herein nor any action taken pursuant to this Agreement shall impair, restrict or prevent Airbnb from asserting that any TLT and/or penalties, interest, fines or other amounts assessed against it were not due, are the subject of a claim for refund under applicable law or otherwise bar it from enforcing any rights accorded by law.

(E) During any period for which Airbnb is not in breach of its obligations under this Agreement, the County agrees to audit Airbnb on the basis of TLT returns and supporting documentation, and agrees not to directly or indirectly audit any individual Guest or Host relating to Taxable Booking Transactions unless and until an audit of Airbnb by the County has been exhausted with the matter unresolved.

(F) The County agrees to audit Airbnb on an anonymous numbered account basis for Taxable Booking Transactions. Except as otherwise agreed herein, Airbnb shall not be required to produce any personally identifiable information relating to any Host or Guest or relating to any Booking Transaction without binding legal process served only after completion of an audit by the County of Airbnb with respect to such users. The County agrees that it will not audit or

issue an assessment against Airbnb more than once per any consecutive thirty-six month period and that such audit or assessment will be limited to a consecutive twelve-month period within the thirty-six month period.

(G) Airbnb, Inc. agrees to register as a Collector for the reporting, collection and remittance of TLT under this Agreement and will be the registered Collector on behalf of any affiliate or subsidiary collecting TLT.

GUEST AND HOST LIABILITY

(H) During any period in which this Agreement is effective relating to Taxable Booking Transactions, Hosts shall be permitted but not required to register individually with the County to collect, remit and/or report TLT, provided Airbnb is in compliance with its obligations herein. Nothing in this Agreement shall relieve Guests or Hosts from any responsibilities with respect to TLT for transactions completed other than on the Platform, or restrict the County from investigating or enforcing any provision of applicable law against such users for such transactions.

WAIVER OF LOOK-BACK

(I) The County expressly releases, acquits, waives and forever discharges Airbnb, its current or past affiliated parent or subsidiary companies, directors, shareholders investors, employees and other agents, and/or Hosts or Guests from any and all actions, causes of action, indebtedness, suits, damages or claims arising out of or relating to payment of and/or collection of TLT or other tax indebtedness, including but not limited to penalties, fines, interest or other payments relating to TLT on any Taxable Booking Transactions prior to the Effective Date. Nothing contained in this Paragraph of this Agreement will constitute a release or waiver of any claim, cause of action or indebtedness that the County may have or claim to have against any Host or Guest unrelated to Taxable Booking Transactions under this Agreement.

NOTIFICATION TO GUESTS AND HOSTS

(J) Airbnb agrees, for the purposes of facilitating this Agreement, and as required by its TOS, that it will notify (i) Hosts that TLT will be collected and remitted to the County as of the Effective Date pursuant to the terms of this Agreement; and (ii) Guests and Hosts of the amount of TLT collected and remitted on each Taxable Booking Transaction.

LIMITATION OF APPLICATION

(K) This Agreement is solely for the purpose of facilitating the administration and collection of the TLT with respect to Taxable Booking Transactions and, except with respect to the rights and liabilities set forth herein, the execution of or actions taken under this Agreement shall not be considered an admission of law or fact or constitute evidence thereof under the Code or any other provisions of the laws of the United States of America, of any State or subdivision or municipality thereof. Neither Party waives, and expressly preserves, any and all arguments, contentions, claims, causes of action, defenses or assertions relating to the validity or interpretation or applicability of the Code, regulations or application of law.

DURATION/TERMINATION

(L) This Agreement may be terminated by Airbnb or the County for convenience on 30 days written notification to the other Party. Any termination under this Paragraph shall not affect the duty of Airbnb to remit to the County any TLT collected from Guests up through and including the effective date of termination of this Agreement, even if not remitted by Airbnb to the County as of the date of termination.

MISCELLANEOUS

(M) CHOICE OF LAW. This Agreement, its construction and any and all disputes arising out of or relating to it, shall be interpreted in accordance with the substantive laws of the State of Oregon without regard to its conflict of law principles.

(N) MODIFICATION. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both Parties.

(O) MERGER AND INTEGRATION. This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings with respect thereto.

(P) COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. The Agreement shall become effective when a counterpart has been signed by each Party and delivered to the other Party, in its original form or by electronic mail, facsimile or other electronic means. The Parties hereby consent to the use of electronic signatures in connection with the execution of this Agreement, and further agree that

electronic signatures to this Agreement shall be legally binding with the same force and effect as manually executed signatures.

(Q) RELATIONSHIP OF THE PARTIES. The Parties are independent contractors. This Agreement does not create nor is it intended to create a partnership, franchise, joint venture, agency, or employment relationship between the Parties. There are no third-party beneficiaries to this Agreement.

(R) WAIVER AND CUMULATIVE REMEDIES. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right or any other right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

(S) FORCE MAJEURE. Neither Party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) for causes beyond that Party's reasonable control and occurring without that Party's fault or negligence, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving Airbnb employees), computer attacks or malicious acts, such as attacks on or through the Internet, any Internet service provider, telecommunications or hosting facility. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

(T) ASSIGNMENT. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, Airbnb may assign this Agreement in its entirety without consent of the other Party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

(U) MISCELLANEOUS. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

NOTICES

(V) All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the third business day after first class mailing postage

prepaid; or (iii) the second business day after sending by overnight mail or by facsimile with telephonic confirmation of receipt. Notices shall be addressed to the attention of the following persons, provided each Party may modify the authorized recipients by providing written notice to the other Party:

To Airbnb:

Airbnb, Inc.
Attn: General Counsel
888 Brannan Street, 4th Fl.
SF, CA 94103
legal@airbnb.com

Airbnb, Inc.
Global Head of Tax
888 Brannan Street, 4th Fl.
SF, CA 94103
tax@airbnb.com

To the County:
Washington County
Finance Department
155 N., First Avenue
Suite 270, MS 25
Hillsboro, OR 97124
Fax: (503) 846-4464
roger_dawes@co.washington.or.us

IN WITNESS WHEREOF, Airbnb and the County have executed this Agreement effective on the date set forth in the introductory clause.

AIRBNB, INC., a Delaware corporation

By: _____
Signature of Authorized Representative

Beth Adair, Global Tax Director

Name and Title of Authorized Representative

WASHINGTON COUNTY, OREGON

By: _____
Signature

Don Bohn, Assistant County Administrator
Name and Title

**ATTACHMENT A
TO
VOLUNTARY COLLECTION AGREEMENT dated June 7, 2016, between AIRBNB,
INC., a Delaware corporation and WASHINGTON COUNTY, OREGON**

List of cities for which Washington County administers City TLT, and for which Airbnb, Inc. agrees to collect and remit City TLT pursuant to the terms of this Agreement:

1. None

AIRBNB, INC., a Delaware corporation

By: _____
Signature of Authorized Representative

Beth Adair, Global Tax Director

Name and Title of Authorized Representative

Date: June 7, 2016

WASHINGTON COUNTY, OREGON

By: _____
Signature

Don Bohn, Assistant County Administrator
Name and Title

Date: June 7, 2016

**Voluntary Collection Agreement
For City of Cannon Beach Oregon
Transient Room Tax**

**VOLUNTARY COLLECTION AGREEMENT
FOR
CITY OF CANNON BEACH OREGON TRANSIENT ROOM TAX**

THIS VOLUNTARY COLLECTION AGREEMENT (the “**Agreement**”) is dated _____, 2017 and is between **AIRBNE, INC.**, a Delaware corporation (“**Airbnb**”) and the City of Cannon Beach, Oregon (the “**Taxing Jurisdiction**”). Each party may be referred to individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS:

WHEREAS, Airbnb represents that it provides an Internet-based platform (the “**Platform**”) through which third parties offering accommodations (“**Hosts**”) and third parties booking such accommodations (“**Guests**”) may communicate, negotiate and consummate a direct booking transaction for accommodations to which Airbnb is not a party (“**Booking Transaction**”);

WHEREAS, the Taxing Jurisdiction and Airbnb enter into this Agreement voluntarily in order to facilitate the reporting, collection and remittance of applicable transient room taxes (“**TRT**”) imposed under applicable City of Cannon Beach law (the applicable “**Code**”), on behalf of Hosts for Booking Transactions completed by Hosts and Guests on the Platform for accommodations located in City of Cannon Beach (the “**Taxable Booking Transactions**”); NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND AGREEMENTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

(A) Solely pursuant to the terms and conditions of this Agreement, including only for periods in which this Agreement is effective (defined below), and solely for Taxable Booking Transactions completed on the Platform, Airbnb agrees contractually to assume the duties of a TRT collector as described in the Code solely for the collection and remittance of TRT (hereinafter referred to as a “**Collector**”). The assumption of such duties shall not trigger any other registration requirements to which Airbnb is not otherwise subject.

(B) Starting on _____ (the “**Effective Date**”), Airbnb agrees to commence collecting and remitting TRT on behalf of Hosts, pursuant to the terms of this Agreement, at the applicable rate, on Taxable Booking Transactions. Except as set forth in Paragraph (L) below, Airbnb shall not assume any obligation or liability to collect TRT for any period or for any transaction prior to the Effective Date or termination of this Agreement.

REMITTANCE OF TRT

(C) Airbnb agrees reasonably to report aggregate information on the tax return form prescribed by the Taxing Jurisdiction, including an aggregate of gross receipts, exemptions and adjustments, and taxable receipts of all TRT that is subject to the provisions of this Agreement. Airbnb shall remit all TRT collected from Guests in accordance with this Agreement and Airbnb's Terms of Service (www.airbnb.com) (the "TOS") in the time and manner described in the Code or as otherwise agreed to in writing.

AIRBNB LIABILITY

(D) Pursuant to the terms of this Agreement, Airbnb agrees contractually to assume liability for any failure to report, collect and/or remit the correct amount of TRT, including, but not limited to, penalties and interest, lawfully and properly imposed in compliance with the Code. Nothing contained herein nor any action taken pursuant to this Agreement shall impair, restrict or prevent Airbnb from asserting that any TRT and/or penalties, interest, fines or other amounts assessed against it were not due, are the subject of a claim for refund under applicable law or otherwise bar it from enforcing any rights accorded by law.

(E) During any period for which Airbnb is not in breach of its obligations under this Agreement, the Taxing Jurisdiction agrees to audit Airbnb on the basis of TRT returns and supporting documentation, and agrees not to directly or indirectly audit any individual Guest or Host relating to Taxable Booking Transactions unless and until an audit of Airbnb by the Taxing Jurisdiction has been exhausted with the matter unresolved. The Taxing Jurisdiction reserves the right to audit any individual Airbnb Host for activity that has been brought to the attention of the Taxing Jurisdiction in the form of a complaint or other means independent of this Agreement or independent of data or information provided pursuant to this Agreement.

(F) The Taxing Jurisdiction agrees to audit Airbnb on an anonymized transaction basis for Taxable Booking Transactions. Except as otherwise agreed herein, Airbnb shall not be required to produce any personally identifiable information relating to any Host or Guest or relating to any Booking Transaction without binding legal process served only after completion of an audit by the Taxing Jurisdiction of Airbnb with respect to such users. The Taxing Jurisdiction agrees that it will not audit or issue an assessment against Airbnb more than once per

any consecutive forty-eight month period and that such audit or assessment will be limited to a consecutive twelve-month period within the forty-eight month period.

(G) Airbnb, Inc. agrees to register as a Collector for the sole purpose of reporting, collection and remittance of TRT under this Agreement and will be the registered Collector on behalf of any affiliate or subsidiary collecting TRT.

GUEST AND HOST LIABILITY

(H) During any period in which this Agreement is effective relating to Taxable Booking Transactions, provided Airbnb is in compliance with its obligations herein, Hosts shall be relieved of any obligation to collect and remit TRT on Taxable Booking Transactions, and shall be permitted but not required to register individually with the Taxing Jurisdiction to collect, remit and/or report TRT. Nothing in this Agreement shall relieve Guests or Hosts from any responsibilities with respect to TRT for transactions completed other than on the Platform, or restrict the Taxing Jurisdiction from investigating or enforcing any provision of applicable law against such users for such transactions.

WAIVER OF LOOK-BACK

(I) The Jurisdiction expressly releases, acquits, waives and forever discharges Airbnb, its current or past affiliated parent or subsidiary companies, directors, shareholders investors, employees and other agents, and/or Hosts or Guests from any and all actions, causes of action, indebtedness, suits, damages or claims arising out of or relating to payment of and/or collection of TRT or other tax indebtedness, including but not limited to penalties, fines, interest or other payments relating to TRT on any Taxable Booking Transactions prior to the Effective Date. Nothing contained in this Paragraph of this Agreement will constitute a release or waiver of any claim, cause of action or indebtedness that the Jurisdiction may have or claim to have against any Host or Guest unrelated to Taxable Booking Transactions under this Agreement.

NOTIFICATION TO GUESTS AND HOSTS

(J) Airbnb agrees, for the purposes of facilitating this Agreement, and as required by its TOS, that it will notify (i) Hosts that TRT will be collected and remitted to the Taxing Jurisdiction as of the Effective Date pursuant to the terms of this Agreement; and (ii) Guests and Hosts of the amount of TRT collected and remitted on each Taxable Booking Transaction.

LIMITATION OF APPLICATION

(K) This Agreement is solely for the purpose of facilitating the administration and collection of the TRT with respect to Taxable Booking Transactions and, except with respect to the rights and liabilities set forth herein, the execution of or actions taken under this Agreement shall not be considered an admission of law or fact or constitute evidence thereof under the Code or any other provisions of the laws of the United States of America, of any State or subdivision or municipality thereof. Neither Party waives, and expressly preserves, any and all arguments, contentions, claims, causes of action, defenses or assertions relating to the validity or interpretation or applicability of the Code, regulations or application of law.

DURATION/TERMINATION

(L) This Agreement may be terminated by Airbnb or the Taxing Jurisdiction for convenience on 30 day written notification to the other Party. Such termination will be effective on the first day of the calendar month following the 30 day written notification to the other Party. Any termination under this Paragraph shall not affect the duty of Airbnb to remit to the Taxing Jurisdiction any TRT collected from Guests up through and including the effective date of termination of this Agreement, even if not remitted by Airbnb to the Taxing Jurisdiction as of the date of termination.

MISCELLANEOUS

(M) CHOICE OF LAW. This Agreement, its construction and any and all disputes arising out of or relating to it, shall be interpreted in accordance with the substantive laws of the State of Oregon without regard to its conflict of law principles.

(N) MODIFICATION. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both Parties.

(O) MERGER AND INTEGRATION. This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings with respect thereto.

(P) COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. The Agreement shall become effective when a counterpart has been signed by each Party and delivered to the other Party, in its original form or by electronic mail, facsimile or other electronic means. The Parties hereby consent to the use of electronic signatures in connection with the execution of this Agreement, and further agree that

electronic signatures to this Agreement shall be legally binding with the same force and effect as manually executed signatures.

(Q) RELATIONSHIP OF THE PARTIES. The Parties are entering into an arm's-length transaction and do not have any relationship, employment or otherwise. This Agreement does not create nor is it intended to create a partnership, franchise, joint venture, agency, or employment relationship between the Parties. There are no third-party beneficiaries to this Agreement.

(R) WAIVER AND CUMULATIVE REMEDIES. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right or any other right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

(S) FORCE MAJEURE. Neither Party shall be liable for any failure or delay in performance under this Agreement for causes beyond that Party's reasonable control and occurring without that Party's fault or negligence, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving Airbnb employees), computer attacks or malicious acts, such as attacks on or through the Internet, any Internet service provider, telecommunications or hosting facility. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

(T) ASSIGNMENT. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, Airbnb may assign this Agreement in its entirety without consent of the other Party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

(U) MISCELLANEOUS. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

NOTICES

(V) All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the third business day after first class mailing postage

prepaid; or (iii) the second business day after sending by overnight mail or by facsimile with telephonic confirmation of receipt. Notices shall be addressed to the attention of the following persons, provided each Party may modify the authorized recipients by providing written notice to the other Party:

To Airbnb:

Airbnb, Inc.
Attn: General Counsel
888 Brannan Street, 4th Fl.
SF, CA 94103
legal@airbnb.com

Airbnb, Inc.
Attn: Global Head of Tax
888 Brannan Street, 4th Fl.
SF, CA 94103
tax@airbnb.com

To the Taxing Jurisdiction:

Fax: _____
E-mail: _____

IN WITNESS WHEREOF, Airbnb and the Taxing Jurisdiction have executed this Agreement effective on the date set forth in the introductory clause.

AIRBNB, INC., a Delaware corporation

By: _____
Signature of Authorized Representative

Beth Adair, Global Tax Director

Name and Title of Authorized Representative

The City of Cannon Beach, Oregon

By: _____
Signature

Name and Title

DRAFT