

House Bill 4120

Sponsored by Representative MARSH; Representatives GOMBERG, NOSSE, SMITH DB, VIAL, Senators DEBOER, JOHNSON (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Expands definition of "transient lodging intermediary" to include person that collects consideration for occupancy of transient lodging and person that receives fee or commission and requires transient lodging provider to use specified third-party entity to collect consideration for occupancy of transient lodging.

Provides joint and several liability for state transient lodging tax for each and every owner of transient lodging.

Provides rules governing filing of local transient lodging tax returns. Authorizes unit of local government to subpoena and examine witnesses, administer oaths and order production of evidence in hands of any person as necessary and proper in prosecution of inquiries related to local transient lodging tax.

Takes effect on later of 91st day following adjournment sine die or July 1, 2018.

A BILL FOR AN ACT

1
2 Relating to transient lodging taxes; creating new provisions; amending ORS 320.300, 320.305, 320.325
3 and 320.350; and prescribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 320.300 is amended to read:

6 320.300. As used in ORS 320.300 to 320.350:

7 (1) "Collection reimbursement charge" means the amount a transient lodging tax collector may
8 retain as reimbursement for the costs incurred by the transient lodging tax collector in collecting
9 and reporting a transient lodging tax and in maintaining transient lodging tax records.

10 (2) "Conference center" means a facility that:

11 (a) Is owned or partially owned by a unit of local government, a governmental agency or a
12 nonprofit organization; and

13 (b) Meets the current membership criteria of the International Association of Conference Cen-
14 ters.

15 (3) "Convention center" means a new or improved facility that:

16 (a) Is capable of attracting and accommodating conventions and trade shows from international,
17 national and regional markets requiring exhibition space, ballroom space, meeting rooms and any
18 other associated space, including without limitation banquet facilities, loading areas and lobby and
19 registration areas;

20 (b) Has a total meeting room and ballroom space between one-third and one-half of the total size
21 of the center's exhibition space;

22 (c) Generates a majority of its business income from tourists;

23 (d) Has a room-block relationship with the local lodging industry; and

24 (e) Is owned by a unit of local government, a governmental agency or a nonprofit organization.

25 (4) "Local transient lodging tax" means a tax imposed by a unit of local government on the sale,

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

- 1 service or furnishing of transient lodging.
- 2 (5) “State transient lodging tax” means the tax imposed under ORS 320.305.
- 3 (6) “Tourism” means economic activity resulting from tourists.
- 4 (7) “Tourism promotion” means any of the following activities:
- 5 (a) Advertising, publicizing or distributing information for the purpose of attracting and wel-
- 6 coming tourists;
- 7 (b) Conducting strategic planning and research necessary to stimulate future tourism develop-
- 8 ment;
- 9 (c) Operating tourism promotion agencies; and
- 10 (d) Marketing special events and festivals designed to attract tourists.
- 11 (8) “Tourism promotion agency” includes:
- 12 (a) An incorporated nonprofit organization or governmental unit that is responsible for the
- 13 tourism promotion of a destination on a year-round basis.
- 14 (b) A nonprofit entity that manages tourism-related economic development plans, programs and
- 15 projects.
- 16 (c) A regional or statewide association that represents entities that rely on tourism-related
- 17 business for more than 50 percent of their total income.
- 18 (9) “Tourism-related facility” means:
- 19 (a) A conference center, convention center or visitor information center; and
- 20 (b) Other improved real property that has a useful life of 10 or more years and has a substantial
- 21 purpose of supporting tourism or accommodating tourist activities.
- 22 (10) “Tourist” means a person who, for business, pleasure, recreation or participation in events
- 23 related to the arts, heritage or culture, travels from the community in which that person is a resi-
- 24 dent to a different community that is separate, distinct from and unrelated to the person’s commu-
- 25 nity of residence, and that trip:
- 26 (a) Requires the person to travel more than 50 miles from the community of residence; or
- 27 (b) Includes an overnight stay.
- 28 (11) “Transient lodging” means:
- 29 (a) Hotel, motel and inn dwelling units that are used for temporary overnight human occupancy;
- 30 (b) Spaces used for parking recreational vehicles or erecting tents during periods of human oc-
- 31 cupancy; or
- 32 (c) Houses, cabins, condominiums, apartment units or other dwelling units, or portions of any
- 33 of these dwelling units, that are used for temporary human occupancy.
- 34 (12) “Transient lodging intermediary” means a person other than a transient lodging provider
- 35 that facilitates the retail sale of transient lodging and:
- 36 (a) Charges for occupancy of the transient lodging[.];
- 37 (b) **Collects the consideration charged for occupancy of the transient lodging; or**
- 38 (c) **Receives a fee or commission and requires the transient lodging provider to use a**
- 39 **specified third-party entity to collect the consideration charged for occupancy of the tran-**
- 40 **sient lodging.**
- 41 (13) “Transient lodging provider” means a person that furnishes transient lodging.
- 42 (14) “Transient lodging tax collector” means a transient lodging provider or a transient lodging
- 43 intermediary.
- 44 (15) “Unit of local government” has the meaning given that term in ORS 190.003.
- 45 (16) “Visitor information center” means a building, or a portion of a building, the main purpose

1 of which is to distribute or disseminate information to tourists.

2 **SECTION 2.** ORS 320.325 is amended to read:

3 320.325. (1) Every transient lodging tax collector is deemed to hold the amount of state transient
4 lodging taxes collected in trust for the State of Oregon and for payment to the Department of Re-
5 venue in the manner and at the time provided under ORS 320.315.

6 (2) At any time **that** the transient lodging tax collector fails to remit any amount of state
7 transient lodging taxes deemed to be held in trust for the State of Oregon, the department may en-
8 force collection by the issuance of a distraint warrant for the collection of the delinquent amount
9 and all penalties, interest and collection charges accrued on the delinquent amount. The warrant
10 shall be issued, docketed and proceeded upon in the same manner and shall have the same force and
11 effect as warrants for the collection of delinquent income taxes.

12 **(3) Notwithstanding ORS 320.305, if the transient lodging is owned by more than one**
13 **person, each and every owner may be held jointly and severally liable for any tax imposed**
14 **under ORS 320.305 with respect to a transient lodging transaction.**

15 **SECTION 3.** ORS 320.350 is amended to read:

16 320.350. (1) A unit of local government that did not impose a local transient lodging tax on July
17 1, 2003, may not impose a local transient lodging tax on or after July 2, 2003, unless the imposition
18 of the local transient lodging tax was approved on or before July 1, 2003.

19 (2) A unit of local government that imposed a local transient lodging tax on July 1, 2003, may
20 not increase the rate of the local transient lodging tax on or after July 2, 2003, to a rate that is
21 greater than the rate in effect on July 1, 2003, unless the increase was approved on or before July
22 1, 2003.

23 (3) A unit of local government that imposed a local transient lodging tax on July 1, 2003, may
24 not decrease the percentage of total local transient lodging tax revenues that are actually expended
25 to fund tourism promotion or tourism-related facilities on or after July 2, 2003. A unit of local gov-
26 ernment that agreed, on or before July 1, 2003, to increase the percentage of total local transient
27 lodging tax revenues that are to be expended to fund tourism promotion or tourism-related facilities,
28 must increase the percentage as agreed.

29 (4) Notwithstanding subsections (1) and (2) of this section, a unit of local government that is fi-
30 nancing debt with local transient lodging tax revenues on November 26, 2003, must continue to fi-
31 nance the debt until the retirement of the debt, including any refinancing of that debt. If the tax is
32 not otherwise permitted under subsection (1) or (2) of this section, at the time of the debt retirement:

33 (a) The local transient lodging tax revenue that financed the debt shall be used as provided in
34 subsection (5) of this section; or

35 (b) The unit of local government shall thereafter eliminate the new tax or increase in tax oth-
36 erwise described in subsection (1) or (2) of this section.

37 (5) Subsections (1) and (2) of this section do not apply to a new or increased local transient
38 lodging tax if all of the net revenue from the new or increased tax, following reductions attributed
39 to collection reimbursement charges, is used consistently with subsection (6) of this section to:

40 (a) Fund tourism promotion or tourism-related facilities;

41 (b) Fund city or county services; or

42 (c) Finance or refinance the debt of tourism-related facilities and pay reasonable administrative
43 costs incurred in financing or refinancing that debt, provided that:

44 (A) The net revenue may be used for administrative costs only if the unit of local government
45 provides a collection reimbursement charge; and

1 (B) Upon retirement of the debt, the unit of local government reduces the tax by the amount
2 by which the tax was increased to finance or refinance the debt.

3 (6) At least 70 percent of net revenue from a new or increased local transient lodging tax shall
4 be used for the purposes described in subsection (5)(a) or (c) of this section. No more than 30 percent
5 of net revenue from a new or increased local transient lodging tax may be used for the purpose
6 described in subsection (5)(b) of this section.

7 [(7)(a)(A) *A local transient lodging tax must be computed on the total retail price, including all*
8 *charges other than taxes, paid by a person for occupancy of the transient lodging.*]

9 [(B) *The total retail price paid by a person for occupancy of transient lodging that is part of a*
10 *travel package may be determined by reasonable and verifiable standards from books and records kept*
11 *in the ordinary course of the transient lodging tax collector's business.*]

12 [(b) *The tax shall be collected by the transient lodging tax collector that receives the consideration*
13 *rendered for occupancy of the transient lodging.*]

14 **SECTION 4. Sections 5 and 6 of this 2018 Act are added to and made a part of ORS 320.300**
15 **to 320.350.**

16 **SECTION 5. (1) A local transient lodging tax must be computed on the total retail price,**
17 **including all charges other than taxes, paid by a person for occupancy of the transient**
18 **lodging.**

19 **(2) The total retail price paid by a person for occupancy of transient lodging that is part**
20 **of a travel package may be determined by reasonable and verifiable standards from books**
21 **and records kept in the ordinary course of the transient lodging tax collector's business.**

22 **SECTION 6. (1) The transient lodging provider or transient lodging intermediary that**
23 **collects the consideration charged for occupancy of transient lodging, or a transient lodging**
24 **intermediary described in ORS 320.300 (12)(c), as applicable, is responsible for collecting any**
25 **local transient lodging tax and shall file a return of the tax with the unit of local government**
26 **that imposes the tax, or with any tax administrator identified by the unit of local govern-**
27 **ment, reporting the amount of tax due during the reporting period to which the return re-**
28 **lates.**

29 **(2) Returns shall be filed on or before the deadline fixed by the unit of local government**
30 **for filing of returns and shall be made under penalties for false swearing.**

31 **(3) When a return is required under this section, the transient lodging tax collector re-**
32 **quired to file the return shall remit the taxes due to the unit of local government at the time**
33 **fixed for filing of returns.**

34 **(4) This section applies to a transient lodging tax collector unless a charter provision or**
35 **ordinance or resolution of the unit of local government, or an agreement entered into be-**
36 **tween the transient lodging tax collector and the unit of local government, provides other-**
37 **wise.**

38 **(5) A unit of local government that imposes a local transient lodging tax may, in con-**
39 **formity with the charter, ordinances, resolutions and administrative rules of the unit of local**
40 **government, subpoena and examine witnesses, administer oaths and order the production of**
41 **any books, papers, documents, correspondence or other evidence in the hands of any person,**
42 **whenever the unit of local government deems such action necessary and proper in the**
43 **prosecution of inquiries related to the local transient lodging tax.**

44 **SECTION 7. ORS 320.305 is amended to read:**

45 320.305. (1)(a) A tax of 1.8 percent is imposed on any consideration [*rendered*] **charged** for the

1 sale, service or furnishing of transient lodging.

2 (b)(A) The tax must be computed on the total retail price, including all charges other than taxes,
3 paid by a person for occupancy of the transient lodging.

4 (B) The total retail price paid by a person for occupancy of transient lodging that is part of a
5 travel package may be determined by reasonable and verifiable standards from books and records
6 kept in the ordinary course of the transient lodging tax collector's business.

7 (c) The tax shall be collected by the transient lodging [*tax collector that receives*] **provider or**
8 **transient lodging intermediary that collects** the consideration [*rendered*] **charged** for occupancy
9 of the transient lodging, **or a transient lodging intermediary described in ORS 320.300 (12)(c),**
10 **as applicable.**

11 (d) The tax imposed by this subsection is in addition to and not in lieu of any local transient
12 lodging tax.

13 (2) The transient lodging tax collector may withhold a collection reimbursement charge of five
14 percent of the amount collected under subsection (1) of this section.

15 **SECTION 8.** ORS 320.305, as amended by section 3, chapter 102, Oregon Laws 2016, is amended
16 to read:

17 320.305. (1)(a) A tax of 1.5 percent is imposed on any consideration [*rendered*] **charged** for the
18 sale, service or furnishing of transient lodging.

19 (b)(A) The tax must be computed on the total retail price, including all charges other than taxes,
20 paid by a person for occupancy of the transient lodging.

21 (B) The total retail price paid by a person for occupancy of transient lodging that is part of a
22 travel package may be determined by reasonable and verifiable standards from books and records
23 kept in the ordinary course of the transient lodging tax collector's business.

24 (c) The tax shall be collected by the transient lodging [*tax collector that receives*] **provider or**
25 **transient lodging intermediary that collects** the consideration [*rendered*] **charged** for occupancy
26 of the transient lodging, **or a transient lodging intermediary described in ORS 320.300 (12)(c),**
27 **as applicable.**

28 (d) The tax imposed by this subsection is in addition to and not in lieu of any local transient
29 lodging tax.

30 (2) The transient lodging tax collector may withhold a collection reimbursement charge of five
31 percent of the amount collected under subsection (1) of this section.

32 **SECTION 9. This 2018 Act takes effect on the later of the 91st day after the date on**
33 **which the 2018 regular session of the Seventy-ninth Legislative Assembly adjourns sine die**
34 **or July 1, 2018.**