



# Ohio Legislative Service Commission

## Bill Analysis

Mackenzie Damon

### **S.B. 160**

131st General Assembly  
(As Introduced)

**Sens.** Hughes and Patton, Gardner, Eklund, Beagle, LaRose

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## **BILL SUMMARY**

- Requires a "hotel intermediary" – i.e., a person, other than a hotel or a commissioned agent selling or arranging for lodging – to collect and remit sales and use and lodging taxes based on the full price paid to the intermediary.
- Absolves a hotel of liability for a hotel intermediary's failure to collect or remit sales and use tax.
- Requires a hotel intermediary to collect Ohio use tax if the intermediary arranges lodging at Ohio hotels.
- Imposes personal liability on a person required to remit or collect local lodging taxes that fails to do so.
- Requires a hotel intermediary to supply customers with itemized tax invoices before the end of their hotel stay.

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## **CONTENT AND OPERATION**

### **Hotel intermediary sales and use tax**

Under continuing law, state, county, and transit authority sales and use taxes apply to hotel stays of less than 30 consecutive days. For the purposes of those taxes, a hotel includes any place having at least five rooms available for sleeping accommodations. Generally, the taxes are collected from a customer at the time the customer pays for the room and are remitted to the state by the hotelier. The bill prescribes a method by which sales and use taxes are collected and remitted when the customer arranges for the hotel stay through a "hotel intermediary." A hotel intermediary is defined as a person that enters into arrangements to sell hotel

reservations. "Hotel intermediary" does not include a hotel or a person receiving a commission from a hotel to arrange a reservation (e.g., travel agent).<sup>1</sup>

The bill requires a hotel intermediary to collect sales or use taxes from a customer based on the full advertised price paid by the customer to the intermediary.<sup>2</sup> In contrast, under current law, the tax is based on the portion of that price that represents amounts paid for the hotel stay. The full price charged by an intermediary may include charges other than for the stay – e.g., a charge for the intermediary's services in arranging for the stay. If the intermediary fails to collect or remit the taxes on the basis of this full price, the bill absolves the hotel of personal liability for the unpaid part of the tax.<sup>3</sup>

### **"Substantial nexus" standard – hotel intermediaries**

The bill requires a hotel intermediary that furnishes lodging in Ohio hotels to register with the Tax Commissioner to collect and remit use tax by specifying that such an intermediary is presumed to have "substantial nexus" with Ohio. Under continuing law, use tax applies to sales of tangible personal property or taxable services made outside Ohio when the property or service is used in Ohio and sales tax was not collected. Under U.S. Supreme Court precedent, a state may not compel a seller to collect and remit the state's sales or use tax unless the seller has a physical presence in the state.<sup>4</sup> In instances where use tax is not collected by the seller, continuing Ohio law requires the customer to remit use tax directly to the state.

Continuing law codifies the physical presence requirement by requiring sellers with a "substantial nexus" with Ohio to collect and remit use tax from Ohio customers and provides several explicit examples of circumstances under which an out-of-state seller has a substantial nexus with Ohio. By adding hotel intermediaries that furnish lodging in Ohio hotels to this list of examples, the bill requires those intermediaries to register with the Commissioner to collect and remit use tax when applicable.<sup>5</sup>

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<sup>1</sup> R.C. 5739.01(RRR).

<sup>2</sup> R.C. 5739.01(B)(2) and (H)(5).

<sup>3</sup> R.C. 5739.13 and 5741.13.

<sup>4</sup> *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) (catalog seller that delivered products to North Dakota customers by an out-of-state common carrier outside the state did not have a physical presence with North Dakota and was not required to collect and remit the state's sales tax).

<sup>5</sup> R.C. 5741.01.



## **Local lodging taxes**

The bill modifies the liability for and collection of lodging taxes levied by local subdivisions. Under continuing law, counties, townships, municipal corporations, convention facilities authorities, and lake facilities authorities have limited authority to levy "lodging" or "bed" taxes on hotel stays. The local lodging taxes apply to the same hotel transactions the state, county, and transit authority sales and use taxes apply to, except that a county lodging tax can be applied to hotels with fewer than five rooms and to separate cabin-type accommodations spread among several structures. Subdivisions may adopt regulations as necessary to administer a lodging tax.

### **Lodging tax liability**

The bill expressly imposes personal liability for uncollected or unremitted lodging tax on the person required to collect or remit that tax. The bill explicitly authorizes the subdivision levying the lodging tax to assess such a person for uncollected or unremitted lodging tax.<sup>6</sup> Current law does not explicitly impose such liability, instead allowing each subdivision to regulate how to allocate liability for unpaid lodging tax. Some or all subdivisions, through their own regulations, may already impose personal liability for unpaid lodging tax on persons required to collect or remit the tax.

### **Collection from hotel intermediaries**

Similar to the bill's change to sales and use taxes on lodging, the bill requires a hotel intermediary to collect lodging taxes from a customer on the basis of the advertised price paid by the customer to the intermediary.<sup>7</sup> As with sales and use tax, current law bases the calculation of lodging tax on the portion of that price paid by the customer for lodging.<sup>8</sup>

### **Hotel intermediary tax invoice**

The bill requires a hotel intermediary to provide an invoice to a customer showing the price on which sales or use and lodging taxes are based (see above) and the amount of such taxes collected by the intermediary. The intermediary must deliver this invoice to the customer before the completion of the customer's hotel stay.<sup>9</sup>

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<sup>6</sup> R.C. 351.021, 353.06, 5739.081(B) and (C), and 5739.09.

<sup>7</sup> R.C. 351.021, 353.06, 5739.081(A), and 5739.09.

<sup>8</sup> See *City of Columbus v. Hotels.Com, L.P.*, 693 F.3d 642, 650-51 (6th Cir. 2012).

<sup>9</sup> R.C. 5739.081(D), 5739.12, and 5741.12.



## Application date

The bill states that its changes apply on and after October 1, 2015.<sup>10</sup>

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## HISTORY

ACTION	DATE
Introduced	05-12-15

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<sup>10</sup> Section 3.

