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# SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Robert M. Hertzberg, Chair  
2015 - 2016 Regular

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**Bill No:** SB 1102  
**Author:** McGuire  
**Version:** 4/6/16  
**Consultant:** Weinberger

**Hearing Date:** 4/13/16  
**Tax Levy:** No  
**Fiscal:** Yes

## *LOCAL GOVERNMENT: CITIES, COUNTIES, AND OTHER AGENCIES*

*Creates an alternative method for collecting transient occupancy taxes on some rental transactions for residential units that are offered for short-term rental through an online platform.*

### **Background**

State law allows the legislative body of a city or county to levy a tax on the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home, motel or other lodging unless the occupancy is for a period of more than 30 days. The tax is typically collected from consumers by lodging providers. Revenues raised through local transient occupancy taxes (TOTs) are most commonly deposited in local general funds for general use. More than 400 cities and 55 counties levy a TOT. According to data from the State Controller's Office, in the 2011-12 fiscal year, TOTs generated more than \$1.5 billion in local government revenues, of which more than \$1.2 billion was for general use.

In recent years, Internet-based hosting platforms, like Airbnb, HomeAway and FlipKey have facilitated increasing numbers of short-term rentals of homes and rooms within residences. Although platforms use various business models, in general, a platform facilitates a rental transactions in which an "operator," who owns, holds a lease for, or manages property, makes the property available for short-term occupancy in exchange for compensation by a "guest." The rapid growth in short-term rentals of residential properties has generated concerns that these short-term residential rentals may increase housing costs, negatively affect surrounding residential neighborhoods, and increase demands on public services while generating insufficient local tax revenue to offset the costs of those services. Under the online short-term rental platforms' business model, individual operators, who cannot be easily identified by a local tax collector, must remit the appropriate amount of TOT revenues due on their rental transactions to a city or county. Many city and county officials suspect that some operators' failure to comply with local TOT laws results in substantial revenues losses due to under-collection of the tax.

To improve their ability to enforce the collection of taxes levied pursuant to local TOT ordinances on transaction facilitated by platforms, some large charter cities have individually negotiated tax collection agreements with companies that operate the platforms. These agreements establish terms under which the platforms, on behalf of the operator who makes a unit available for rent through the platform, collect and remit to local governments taxes that are due on those rental transactions. However, negotiating individual agreements in each California jurisdiction that imposes a TOT generates unnecessary administrative costs for both public agencies and private companies. Individual agreements also may result in a patchwork of

inconsistent TOT collection practices throughout the state. To reduce administrative costs and bring greater uniformity to the collection of taxes on transactions that are facilitated through online platforms, some stakeholders want the Legislature to establish an alternative, statewide framework under which platforms can choose to collect and remit transient occupancy tax revenues levied by local governments.

### **Proposed Law**

Senate Bill 1102 establishes a program in which a platform that elects to participate (referred to as a “collecting platform”) collects and remits TOT revenues that are due on specified rental transactions that the platform facilitates in any city or county exception for a city or county that elects not to participate in the program (referred to as a “collecting jurisdiction”). Specifically, SB 1102’s provisions:

- I. Establish statutory requirements for a collecting platform to collect and remit TOT revenues to cities and counties under specified conditions.
- II. Establish the process by which platforms can elect to participate and local governments can elect not to participate in the program.
- III. Require collecting platforms to be subject to an annual audit or review conducted by the State Controller.
- IV. Provide for the continued implementation and enforcement of some existing tax collection agreements between platforms and cities.
- V. Declare that its provisions do not limit existing local regulatory authority.
- VI. Define several key terms used throughout the bill.

I. Transient occupancy tax collection. Senate Bill 1102 requires that every collecting platform must collect, on behalf of an operator, the amount of any tax levied pursuant to state laws authorizing local transient occupancy taxes on every rental transaction that is facilitated by a collecting platform for a residential unit that is offered for occupancy for tourist or transient use for compensation to the operator. This collection obligation begins on July 1, 2017. A collecting platform is not required to collect tax if a unit is located within a collecting jurisdiction. SB 1102 requires a collecting platform to remit the amount to the city, county, or city and county that levied the tax pursuant to applicable requirements of local ordinances governing the tax.

II. Platform and local government participation. Senate Bill 1102 requires that the State Controller, on or before March 1, 2017, must develop and publicly notice:

- Procedures that a platform must use to notify the Controller if the platform elects to become a collecting platform.
- Procedures that a city, county, or city and county must use to notify the Controller if the city, county, or city and county elects to become a collecting jurisdiction.

SB 1102 directs that:

- A platform may elect to become a collecting platform by using the procedures developed by the Controller to notify the Controller of the platform’s election no later than April 30, 2017.
- A city, county, or city and county may elect to become a collecting jurisdiction by using the procedures developed by the Controller to notify the Controller of the city’s, county’s, or city and county’s election no later than April 30, 2017. The city council or

board of supervisors of the city, county, or city and county must approve the notice in a public hearing before submitting the notice to the Controller.

SB 1102 requires the Controller, no later than May 31, 2017, to publicly identify, by posting on the Controller's Internet Web site, each platform and each city, county, or city and county that has provided a notice to the Controller.

SB 1102 requires that a platform that elects to become a collecting platform, or a local government that elects to become a collecting jurisdiction, may discontinue being a collecting platform or collecting jurisdiction effective July 1, 2020 if it provides notice to the State Controller one year in advance, pursuant to procedures that the Controller must develop and publicly notice.

SB 1102 allows a platform that did not elect to become a collecting platform on July 1, 2017 to elect to become a collecting platform by using the procedures developed by the State Controller to notify the Controller of the platform's election, subject to specified conditions.

SB 1102 establishes an ongoing series of deadlines by which a platform or local government may either become a collecting platform or jurisdiction or discontinue being a collecting platform or jurisdiction.

III. Controller's audits or reviews. Senate Bill 1102 requires, commencing on January 1, 2017, and by December 31 of each year thereafter, the Controller to review or audit a collecting platform's collection and remittance of tax revenue. For each collecting platform reviewed or audited, the Controller must submit a report to each city, county, or city and county in which the collecting platform collected and remitted taxes. The report must contain a description of the review or audit finding and identify any errors in the collection and remittance of tax revenues within each city, county, or city and county that were determined as a result of the review or audit. The audit or review must not reveal any personally identifiable taxpayer information, including a taxpayer's name and property address.

SB 1102 makes it unlawful for the Controller or other person who obtains access to information contained in, or derived from, any audit or review, report, or other records of the Controller, to make known in any manner the business affairs, operations, or any other information pertaining to any platform or any other person required to provide information subject to audit or review to the Controller or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any such information provided to the Controller, or to permit any audit or review or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person.

SB 1102 requires the Controller, when requested by a city, county, or city and county that is not a collecting jurisdiction, to permit any duly authorized officer or employee of that city, county, or city and county to examine the records of the Controller pertaining to the audit or review of collections by a platform within that city, county, or city and county. The bill specifies that it must not be construed to allow any officer or employee of that city, county, or city and county to examine any records of any platform. Information obtained by examination of Controller records must be used only for purposes related to the collection of local transient occupancy tax.

SB 1102 directs that, if the Controller believes that any information obtained pursuant to specified provisions has been disclosed to any person or has been used for purposes not

permitted by the bill, the Controller may impose conditions on access to the Controller's records that the Controller considers reasonable in order to protect the confidentiality of those records.

SB 1102 allows a platform, city, county, or city and county to appeal any audit findings identified in a review or audit reported by providing a notice of appeal to the Controller's General Counsel and specifies the manner in which the appeal process must be conducted.

SB 1102 allows the Controller to recover the reasonable costs, measured by the Controller's standard rate, of an audit from the audited or reviewed collecting platform.

The bill declares that a collecting platform that complies with review or audit parameters established by the Controller must not be required to provide to any local jurisdiction, including a collecting jurisdiction, personally identifiable information relating to operators using the collecting platform, or concerning transactions facilitated in the local jurisdiction by the collecting platform.

IV. Existing agreements. Unless a platform and a city, county, or city and county mutually agree to terminate the agreement, all of the following shall apply to a platform and a city, county, or city and county that, on or before June 1, 2016, have entered into a binding legal agreement relating to the collection of any tax levied pursuant to this chapter:

- The platform and the city, county, or city and county will continue to be bound by the agreement and any election made by the platform or the city, county, or city and county pursuant to this section will not be effective as to any other party to the agreement.
- The platform and the city, county, or city and county must notify the Controller of the agreement.
- The platforms' collection or remitting of taxes levied pursuant to this chapter pursuant to the agreement will not be subject to review or audit by the Controller.

V. Local regulation. The bill declares that its provisions do not limit the existing authority of a local jurisdiction to regulate operators, including any local regulation that requires operators to provide information concerning transactions conducted in the jurisdiction, provided that the requirements do not discriminate against transactions facilitated through a platform.

VI. Definitions. Senate Bill 1102 defines the following terms:

- "Collecting platform" means a platform that elects to assume the responsibility for collecting and remitting to a city, county, or city and county on behalf of an operator, the amount of any tax levied pursuant to an ordinance adopted pursuant to state laws governing transient occupancy taxes on a rental transaction that is facilitated by the platform for a unit that is offered for occupancy for tourist or transient use for compensation to the operator.
- "Collecting jurisdiction" means a city, county, or city and county that elects to retain the responsibility for collecting a tax levied pursuant to an ordinance adopted pursuant to state laws governing transient occupancy taxes directly from operators, rather than having a collecting platform collect and remit the tax on an operator's behalf.
- "Operator" means a person offering, through a platform, to make a unit available for tourist or transient use.
- "Platform" means a marketplace that is created for the primary purpose of facilitating the rental of a unit offered for occupancy for tourist or transient use for compensation to the

operator of that unit, and the owner of the marketplace derives revenues, including booking fees or advertising revenues, from providing or maintaining that marketplace.

- “Facilitating” includes, but is not limited to, the act of allowing the operator of the unit to offer or advertise the unit on the Internet Web site provided or maintained by the owner of the platform.

### **State Revenue Impact**

No estimate.

### **Comments**

1. Purpose of the bill. Recent growth in short-term rentals of residential units, which has been made possible by online hosting platforms, is having powerful effects in communities throughout California. Increased and undisclosed tourist traffic alters neighborhood character, creating additional demands on local public service providers. The increase in short-term vacation rentals reduces the availability of already scarce affordable housing in many communities. In many communities, neither the operators who make residences available for occupancy for fewer than 30 days nor the platforms collect and remit applicable transient occupancy taxes. SB 1102 will help some local governments collect transient occupancy taxes. The additional revenues recovered pursuant to the bill’s provisions will be vital for local governments’ efforts to respond to and mitigate short-term vacation rentals’ local impacts. Additionally, by increasing TOT compliance, SB 1102 will help enforce a level playing field in the vacation rental marketplace, ensuring that platforms don’t gain unfair pricing advantages as a result of operators’ nonpayment of taxes.

2. Which transactions? SB 1102 requires a collecting platform to collect and remit applicable TOT revenues on every transaction that the platform facilitates. It is unclear how this requirement should apply in the context of some platforms’ business models. For example, in the case of a platform that facilitates the rental of rooms in a hotel or inn that also rents rooms to customers who contact it directly, it may make sense for the hotel or inn to collect and remit TOT revenues instead of the platform. Unlike single family homeowners or apartment leaseholders who make rooms available through platforms, hotel or inn operators are already in the practice of collecting and remitting TOT revenues and are easily subject to local governments’ collection and audit procedures. The Committee may wish to consider amending SB 1102 to apply the alternative TOT collection process to those operators who make units available only through online platforms. Alternatively, the bill could provide for platforms to disclose some additional information to local governments to identify transactions that are facilitated by a platform involving an operator who also remits TOT directly to local governments.

3. Local discretion. If a platform elects to become “electing platform,” SB 1102 requires a local government to take an action, approved by a vote of its governing board, if it simply wants to maintain its existing authority under state law to seek payment of TOT revenues directly from the responsible taxpayers. Some local officials may object to this requirement, which appears to make a local government’s ability to continue collecting taxes in the same manner that it does under current law conditional on a private company’s decision about whether or not it wishes to assume tax collection on behalf of operators who make units available through a platform. The Committee may wish to preserve local governments’ existing tax collection authority by

amending SB 1236 to allow local governments to opt-in to the bills' alternative tax collection program, rather than requiring them to opt-out.

4. Charter cities. The California Constitution allows cities that adopt charters to control their own "municipal affairs." In all other matters, charter cities must follow the general, statewide laws. Because the Constitution doesn't define "municipal affairs," the courts determine whether a topic is a municipal affair or whether it's an issue of statewide concern. SB 1102 says that it applies to all cities, including charter cities. To support this assertion, the bill includes a legislative finding and declaration that the bill's provisions are a matter of statewide concern because, by providing short-term rental online platforms with uniform transient occupancy tax administration requirements, the bill will establish a level playing field among all providers and decrease the cost of complying with statutory collection and remittance requirements.

5. Mandate. The California Constitution requires the state to reimburse local governments for the costs of new or expanded state mandated local programs. Because SB 1102 imposes new duties on local government officials, Legislative Counsel says that it imposes a new state mandate. SB 1102 requires the state to reimburse local agencies if the Commission on State Mandates determines that the bill imposes a reimbursable mandate.

#### **Support and Opposition** (4/7/16)

Support: Unknown.

Opposition: California Hotel and Lodging Association.

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