
Coates' Canons Blog: Occupancy Taxes and AirBnB

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North Carolina's booming short-term rental ("STR") industry presents both opportunities and challenges for local governments. The opportunities include more tourist spending and more tax revenue. The challenges include a loss of affordable housing and noise, trash, and traffic complaints as more residential properties are turned into "mini-hotels." Also worrisome is the adversarial approach some STR websites have adopted towards cities and counties. *WIRED* magazine describes AirBnB's strategy as "a city-by-city, block-by-block guerilla war against local governments" that involves secrecy, lawsuits, and heavy lobbying of state legislatures.

To help, my School of Government colleague Rebecca Badgett has blogged about STRs here and here, and she and I will soon publish a book on both the regulation and taxation of these rentals.

One important topic I cover in that forthcoming book is how local governments can best collect occupancy taxes on rentals made through third-parties such as AirBnB or traditional rental agents. The good news is that many STR websites and rental agents are sending monthly occupancy tax checks to North Carolina local governments. The bad news is that those checks are often lump-sum payments with no way to identify the rental properties to which they relate. This lack of detail makes it almost impossible to know if these third parties are satisfying their occupancy tax obligations. What's more, North Carolina law lets most property owners off the hook for unpaid occupancy taxes on rentals made through STR websites or rental agents.

I first addressed this troublesome issue here. I'll offer a detailed analysis in our STR book, but in the meantime here are a few observations.

1. STRs booked through websites and rental agents are subject to local occupancy taxes.

I cover the basics about occupancy taxes and exemptions here and here. Essentially all STRs are taxable unless they are extend longer than 90 consecutive days, are at a private residence rented for fewer than 15 days per year, or are part of a school, college or camp program. This is true regardless of whether the rental is a hotel room, an oceanfront mansion, or simply a spare bedroom and regardless of whether the rental is booked through a third-party such as a STR website or rental agent or directly with the property owner.

2. If a STR is booked through a third party, that third party is likely responsible for unpaid occupancy taxes instead of the property owner.

G.S. 105-164.4F, the statute that creates the rules for taxing STRs, shifts tax liability away from the property owners for most rentals made through third-parties.

One liability provision in G.S. 105-364.4F focuses on "facilitators" such as AirBnB and similar STR websites. A facilitator and not the property owner bears liability for unpaid occupancy taxes if that facilitator fails to collect all applicable taxes and remit those tax collections to the property owner.

This is not ideal from the perspective of North Carolina tax collectors, because it is obviously much easier to collect delinquent taxes from a local property owner than it is from San Francisco-based AirBnB or Seattle-based Expedia. Local property owners have local bank accounts to attach and local personal property to levy upon and sell. AirBnB and Expedia do not.

It's unclear why the General Assembly chose to make on-line facilitators rather than individual property owners responsible for sales and occupancy taxes. The legislature likely assumed that the large companies running those STR

websites have deeper pockets than do the property owners. It also may have also assumed that it is easier to deal with one taxpayer that is responsible for many tax payments rather than many individual taxpayers. While both of those assumptions sound reasonable, the end result is a bad one for local tax collectors who have almost zero leverage over well-financed companies located outside of North Carolina.

A property owner remains responsible for occupancy taxes if the facilitator collects occupancy taxes on a rental and remits them to that owner. This approach seems to be the exception and not the rule for the major travel websites. As a result, most property owners who use STR websites to rent their properties can escape liability for unpaid occupancy taxes.

G.S. 105-164.4F also shifts liability from property owners to rental agents for all properties listed with rental agents. This liability shift occurs regardless of whether the rental agent collects and remits taxes to the property owner. If, as is often the case, a rental agent advertises a property with a facilitator such as AirBnB, that rental agent remains liable for any unpaid occupancy taxes on that rental. Happily for tax collectors, rental agents are almost always local and are therefore much easier targets for enforced collections than AirBnB and Expedia.

3. AirBnB and a few other major STR websites are making monthly lump sum occupancy tax payments to North Carolina local governments.

In 2015, AirBnB signed an agreement with the North Carolina Department of Revenue to begin collecting state sales taxes on rentals in this state. As part of that agreement, AirBnB also promised to collect and pay local occupancy taxes in four large counties (Buncombe, Durham, Mecklenburg, and Wake).

It's unclear whether local officials were parties to that agreement or exactly what AirBnB promised to do with regard with local occupancy tax reporting, in large part because the Department of Revenue refuses (inappropriately, in my view) to release that agreement to the public. It does not appear that AirBnB has signed tax agreements with any other local governments in North Carolina.

Regardless, as of 2019 AirBnB claims that it collects local occupancy taxes on rentals in all 100 North Carolina Counties. Local tax collectors confirm that AirBnB is sending monthly tax payments but, as mentioned above, those payments do not identify the properties to which they relate. Some North Carolina tax collectors told me that AirBnB provides a single address for all of their hosts's properties in their towns, 888 Brannan Street. That's the address of AirBnB's corporate headquarters in San Francisco.

This mirrors AirBnB's approach across the country. The company has signed hundreds of "voluntary collection agreements" with states and local governments, almost all of which prevent those governments from learning the names or addresses of AirBnB's hosts. The company fights tooth and nail protect this "shield of secrecy," suing local governments that attempt to require host properties to be identified and altering the latitude and longitude of each property's geocode so it can't be accurately located on a map. It has spent millions of dollars lobbying state legislatures to pass laws limiting the ability of local governments to regulate and tax STRs.

Expedia and its many related STR websites (Orbitz, Hotels.com, and Travelocity, to name just a few) have adopted the same AirBnB modus operandi of lump sum payments without any supporting detail. The only difference is that none of these companies appear to have signed formal agreements with the state or any of our local governments.

Officials in a few towns report that Expedia recently began providing details about the properties covered by each monthly payment. Blowing Rock officials told me that this occurred soon after they were able to get an Expedia employee on the telephone and plea for additional detail to be provided along with Expedia's tax payments. If your local government has had similar success in convincing any of the STR websites to provide details behind their monthly payments, please share how you accomplished that in the comment section below.

Other STR websites including Homeaway, VRBO, and Priceline do not appear to be making monthly occupancy tax payments (If I'm wrong, let me know in the comment section.) The absence of tax payments from these companies may be explained by their varying approaches described below.

Homeaway and VRBO allow property owners the option of adding charges for occupancy taxes to the cost of their rentals. If the property owner does add taxes, then Homeaway/VRBO collects and remits those taxes to the property owner rather

than to the local government. The property owner remains liable for those occupancy taxes. But if no occupancy taxes are collected and remitted back to the property owner, then the STR website is liable for those taxes.

With respect to Priceline, it seems that many of its hotel reservations require the customer to pay directly at the hotel rather than on-line. If so, then the hotel and not Priceline remains responsible for any unpaid occupancy taxes. Priceline would be responsible for occupancy taxes on all bookings completed and paid for through its website.

4. **Deciding whether the property owner, a STR website, or a rental agent is liable for unpaid property taxes.**

Here's my best effort to simplify these convoluted liability rules:

a. The STR website is responsible for any unpaid occupancy taxes on a rental paid for on its website UNLESS that STR website collects the taxes and remits them to the property owner.

b. The rental agent is responsible for any unpaid occupancy taxes on properties he/she is under contract to list and rent. The rental agent remains responsible for the taxes even if the property is listed and/or rented through a STR website.

c. The property owner is responsible for any unpaid occupancy taxes on all other rentals (i.e., no rental agent involved, payment for a rental is made directly from the customer to the property owner, and/or a STR website collects occupancy taxes from the customer and remits them to the property owner).

5. **Tips for STR tax enforcement.**

Local occupancy tax collectors should put the burden on property owners to prove that they are either satisfying their occupancy tax obligations on their rentals or that they are not personally responsible for those taxes under the rules described above.

If the tax collector knows of properties being rented on-line but not paying occupancy taxes and polite requests for payment have failed, the tax collector could send estimated occupancy tax bills to the owners based on the rates listed for those properties on-line. The bills could explain that the local government will proceed with enforced collection efforts unless the taxpayers provide documentation to disprove the local government's estimates of liability. The best evidence that the taxpayer could produce would likely be the monthly reports that a property owner receives from their STR website. That report should detail the payments made by renters and any tax remittances to local governments (which shifts tax liability to the facilitator) or the property owner (in which case the owner is responsible for the taxes).

The task is easier for properties listed with rental agents, because those (usually local) third-parties are personally responsible for all occupancy taxes on all properties they list. Tax collectors not being paid the proper occupancy taxes could check the websites of these rental agents and send estimated occupancy tax bills to them based on the advertised rates for their properties.

Finally, a property tax note. Don't forget that any personal property made available with a rental property (furniture, appliances, grills, bikes, etc.) is taxable business personal property and should be listed and taxed as such.

Links

- ui.uncc.edu/airbnb-clt
- www.governing.com/columns/public-money/gov-airbnb-affordable-housing.html
- www.wired.co.uk/article/living-next-to-airbnb-sharing-economy-problems
- www.wired.com/story/inside-airbnbs-guerrilla-war-against-local-governments/
- www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-164.4F.pdf
- www.newsobserver.com/news/local/counties/wake-county/article21331905.html
- www.airbnb.com/help/article/2320/occupancy-tax-collection-and-remittance-by-airbnb-in-north-carolina



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 - www.scalawagmagazine.org/2018/04/nashvilles-struggle-to-reign-in-airbnb/