

Senate Bill No. 416

(By Senators D. Hall, M. Hall, Prezioso, Boley, Woelfel, Plymale and Beach)

[Introduced February 5, 2015; referred to the Committee on Finance.]

**FISCAL
NOTE**

9 A BILL to repeal §7-18-5 of the Code of West Virginia, 1931, as amended; and to amend and
10 reenact §7-18-1 and §7-18-3 of said code, all relating to eliminating exemption from hotel
11 occupancy taxes on rental of hotel and motel rooms for thirty or more consecutive days;
12 redefining certain terms; exempting hotel rooms occupied by federal or state officials on
13 official business and complimentary hotel rooms provided without charge to guests from tax;
14 and retroactive application.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §7-18-5 of the Code of West Virginia, 1931, as amended, be repealed; and that §7-18-1
17 and §7-18-3 of said code be amended and reenacted, all to read as follows:

18 **ARTICLE 18. HOTEL OCCUPANCY TAX.**

19 **§7-18-1. Hotel occupancy tax.**

20 (a) *Authority to impose.* -- On and after July 1, 1985, any county or municipality may impose
21 and collect a privilege tax upon the occupancy of hotel rooms located within its taxing jurisdiction.

22 ~~Such~~ The tax shall be imposed and collected as provided in this article.

1 (b) *Municipal tax.* -- A municipal hotel tax shall be imposed by ordinance enacted by the
2 governing body of the municipality, in accordance with the provisions of article eleven, chapter eight
3 of this code. ~~Such~~ The tax shall be imposed uniformly throughout the municipality; and the tax shall
4 apply to all hotels located within the corporate limits of the municipality, including hotels owned by
5 the state or by any political subdivision of this state.

6 (c) *County tax.* -- A county hotel tax shall be imposed by order of the county commission
7 duly entered of record. ~~Such~~ The tax shall be imposed uniformly throughout the county: *Provided,*
8 That no county commission may impose its tax on hotels located within the corporate limits of any
9 municipality situated, in whole or in part, within the county: *Provided, however,* That the tax
10 collected by a hotel owned by a municipality but located outside the corporate limits of ~~such~~ the
11 municipality pursuant to this article shall be remitted to the municipality owning such hotel for
12 expenditure pursuant to the provisions of section fourteen of this article. The tax shall apply to all
13 hotels located outside the corporate limits of a municipality, including hotels owned by the state or
14 any political subdivision of this state.

15 (d) The tax shall be imposed on the consumer and shall be collected by the hotel operator as
16 part of the consideration paid for the occupancy of a hotel room: *Provided,* That the tax ~~shall~~ may
17 not be imposed on ~~any consumer occupying a hotel room for thirty or more consecutive days~~ federal
18 or state officials occupying a hotel room for official federal or state business or on complementary
19 hotel rooms provided by a hotel operator to guests without charge.

20 (e) The amendments to this section providing that the tax is not imposed on federal or state
21 officials occupying a hotel room for official federal or state business or on complementary hotel
22 rooms, is retroactive, and is effective for tax years beginning on or after January 1, 2007.

1 **§7-18-3. Definitions.**

2 For the purposes of this article:

3 (a) "Consideration paid" or "consideration" means the amount received in money, credits,
4 property or other consideration for or in exchange for the right to occupy a hotel room as herein
5 defined.

6 (b) "Consumer" means a person who pays the consideration for the use or occupancy of a
7 hotel room. The term "consumer" ~~shall~~ does not be construed to mean the government of the United
8 States of America, its agencies or instrumentalities, or the government of the State of West Virginia
9 or political subdivisions thereof.

10 (c) "Hotel" means any facility, building or buildings, publicly or privately owned (including
11 a facility located in a state, county or municipal park), in which the public may, for a consideration,
12 obtain sleeping accommodations. The term ~~shall include~~ includes, but is not be limited to, boarding
13 houses, hotels, motels, inns, courts, condominiums, lodges, cabins and tourist homes. The term
14 "hotel" ~~shall include~~ includes state, county and city parks offering accommodations as herein set
15 forth. The term "hotel" ~~shall not be construed to~~ does not mean any a hospital, sanitarium, extended
16 care facility, nursing home or university or college housing unit, or any facility providing fewer than
17 three in private homes, not exceeding a total of ten days in a calendar year, nor any tent, trailer or
18 camper campsites: *Provided*, That where a university or college housing unit provides sleeping
19 accommodations for the general nonstudent public for a consideration, the term "hotel" ~~shall~~ does,
20 if otherwise applicable, apply to ~~such~~ those accommodations for the purposes of this tax.

21 (d) "Hotel operator" means the person who is proprietor of a hotel, whether in the capacity
22 of owner, lessee, mortgagee in possession, licensee, trustee in possession, trustee in bankruptcy,

1 receiver, executor or in any other capacity. Where the hotel operator performs his or her functions
2 through a managing agent of any type or character other than an employee, the managing agent ~~shall~~
3 ~~also be deemed~~ is a hotel operator for the purposes of this article and ~~shall have~~ has the same duties
4 and liabilities as his or her principal. Compliance with the provisions of this article by either the
5 principal or the managing agent ~~shall~~ is, however, ~~be~~ considered to be compliance by both.

6 (e) "Hotel room" means any room or suite of rooms or other facility affording sleeping
7 accommodations to the general public and situated within a hotel. The term "hotel room" ~~shall not~~
8 ~~be construed to mean~~ does not include:

9 (1) A banquet room, meeting room or any other room not primarily used for, or in
10 conjunction with, sleeping accommodations;

11 (2) Sleeping accommodations rented on a month-to-month basis or other rental arrangement
12 for thirty days or longer at the inception at a boarding house, condominium, cabin, tourist home,
13 apartment or home.

14 (f) "Person" means any individual, firm, partnership, joint venture, association, syndicate,
15 social club, fraternal organization, joint stock company, receiver, corporation, guardian, trust,
16 business trust, trustee, committee, estate, executor, administrator or any other group or combination
17 acting as a unit.

18 (g) "State park" means any state-owned facility which is part of this state's park and
19 recreation system established pursuant to this code. For purposes of this article, any recreational
20 facility otherwise qualifying as a "hotel" and situated within a state park ~~shall be deemed~~ is
21 considered to be solely within the county in which the building or buildings comprising ~~said~~ the
22 facility are physically situated, notwithstanding the fact that the state park within which ~~said~~ the

1 facility is located may lie within the jurisdiction of more than one county.

2 (h) "Tax," "taxes" or "this tax" means the hotel occupancy tax authorized by this article.

3 (I) "Taxing authority" means a municipality or county levying or imposing the tax authorized
4 by this article.

5 (j) "Taxpayer" means any person liable for the tax authorized by this article.

NOTE: The purpose of this bill is to allow county commissions and municipalities to impose their hotel occupancy taxes on hotel and motel rooms regardless of the length of time for which the hotel or motel room is rented; provide that the tax is not imposed on rooms rented to federal or state officials on official business; and clarify that tax is not imposed on complimentary hotel rooms.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.