ASK LOC

Q: After reading last month's cover story in *Local Focus* on the "sharing economy," our city is considering updating the transient lodging tax ordinances. What things should our city council update?

A: That's a good question and an important one for cities to address in this time of changing technologies and business models as well as tourism growth. Approximately 85 cities and 15 counties have transient lodging taxes (TLTs)—each with its own set of rules and procedures. Some cities have had TLTs since the 1930s, and while many have kept up well with changes in the law, technology, and business practices, others have not.

The state first began imposing a lodging tax in 2003. Significant changes followed in 2005 (provider coverage expansion), 2013 (expansion to cover persons that facilitate the sale of transient lodging, including online companies), and 2016 (state tax increase from 1 percent to 1.8 percent and state tax distribution changes).

Cities can improve tax compliance by updating forms, ordinance rules and definitions. While cities have home rule authority and can set much of their own lodging tax policy, they are encouraged to make sure their ordinances and procedures follow the state terms as much as possible. Doing so will help compliance, but will also prepare cities for two opportunities.

First, the League is seeking legislation authorizing the Oregon Department of Revenue (ODOR) to collect, enforce and audit lodging taxes for cities that enter into an intergovernmental agreement with the state. Cities have asked for this authority as an efficiency and cost-savings measure and to improve compliance. A city's tax coverage needs to be in sync with the state's coverage for this option to be possible.

Second, Airbnb is now working with cities and the League to facilitate voluntary collection agreements (VCAs). While legislation in 2013 was intended to require intermediaries, including Expedia, Airbnb, VRBO, Priceline, etc. to pay lodging taxes directly to taxing jurisdictions (rather than by the hotel operator or home owner), questions on the legal requirements remain. Having updated ordinances and forms will facilitate such agreements and expedited payment of taxes going forward. (Note: some cities prohibit or regulate short-term residential rentals and that issue should be clearly addressed in a tax update as well.)

Here are some key issues to consider and address:

Make sure your list of taxable lodging providers is updated.

For uniformity, the preferred list would track with the state's taxable list, which includes the following providers if used for overnight stays: (See ORS 320.300(11); DOR form 150-604-401).

- Hotels and motels
- Bed and breakfast facilities
- RV sites in RV parks or campgrounds
- Resorts and inns
- Lodges and guest ranches
- Cabins
- Condominiums
- Short-term rental apartments and duplexes
- Vacation rental houses
- Tent sites and yurts in private and public campgrounds
- Any other dwelling unit, or portion of a dwelling unit

Make sure the tax exemptions are updated and clear.

This list tracks with the state's exemptions. Exemptions should be tracked on tax forms, too. (See ORS 320.308; DOR form 150-604-401).

Exempt Facilities:

- Health care facilities, including hospitals and long care facilities
- Drug/alcohol abuse treatment facilities
- Mental health treatment facilities
- Emergency temporary shelters funded by the government
- Nonprofit youth & church camps, conference centers and other qualifying nonprofit facilities

Exempt Persons:

- Lodgers who spend more than 30 days at the same facilities
- Federal employees on federal business

Update the de minimis provision.

Most cities do not require lodging providers to collect or pay taxes if they have a minimal number of rentals per year. Such exceptions were written to cover an infrequently used hunter's cabin, etc. Less than 30 days of rentals in a year is a common de minimis threshold, but some cities use 15 days or another number. The paperwork for tracking such accounts isn't cost efficient. However, these provisions were written before the internet age and before the use of intermediaries. Cities should consider using 30 days to provide uniformity with the state. In addition, providing that intermediaries shall collect and pay the tax without a de minimis exception would be helpful for industry as it can't track the number of days well as it isn't the provider.

Specifically address transient lodging intermediaries, including online travel companies.

Intermediaries are statutorily defined as persons other than the transient lodging provider that facilitate the retail sale of transient lodging and charge for occupancy of the transient lodging. In 2013, the Legislature amended Oregon law to require transient lodging intermediaries to collect and pay the lodging tax on their retail transactions (and not the lodging provider). That is, the entity that collects the payment from the customer is the entity required to collect and remit the tax. Some city ordinances do not specifically address intermediaries or have conflicting provisions. Both ordinances and tax forms should be updated to address collection and remittance by intermediaries.

Other issues to consider in an update include: confidentiality of tax records, auditing requirements, homeless exemptions, provision of online filing, requirements in the tax form, and frequency of payment and filings.

For more information on this and other transient lodging issues, consult these League resources online:

- **A-Z Index:** Lodging Tax
  - An online repository of information including background on the various legislative changes, sample ordinances, reports with revenue data and FAQs.
  - To access, click on the blue "A-Z Index" button on the League homepage (*www.orcities.org*) and then on "L" for Lodging Tax.
- ***Local Focus*:** July 2016 issue
  - The issue focuses on sharing economy issues and includes articles on lodging taxes and short-term rentals.
  - To access, click on Publications tab on the League homepage (*www.orcities.org*), then select Local Focus.
- **LOC-Data:**
  - An online transient lodging tax dataset of information from the 2015 Dean Runyan & Associates Report, including annual revenues from 2003 to 2014 and city tax rates.
  - To access, click on the blue "LOC-Data" button on the League homepage, then click on the blue "City Finance" button. Scroll down to and click on the dataset entitled "Transient Lodging Tax."
- **Oregon Revised Statutes: ORS 320.300 to 320.350**
  - This series of law comprises the state regulation of the state and local transient lodging taxes. Key definitions include "transient lodging intermediary," "transient lodging provider" and "transient lodging collector" that are defined in ORS 320.300.
  - To access the ORS, go to *www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx*

Small Cities **Meetings** Schedule

The Small Cities Network is a League program for cities with a population of 5,000 or less, with quarterly meetings to network and discuss common issues and solutions.

All meetings start at 11:00 a.m. RSVP to loc@orcities.org.

On the Web: www.orcities.org/smallcities

Upcoming Meetings

North Coast (Region 1)
Yachats – August 5

Portland Metro (Region 2)
King City – September 15

Willamette Valley (Region 3)
Salem – August 12

South Coast (Region 4)
Myrtle Point – August 17

Southern Valley (Region 5)
Myrtle Creek – September 8

Central Oregon (Region 6)
Culver – September 15

Northeast Oregon (Region 7)
TBD - October 19

Eastern Oregon (Region 8)
TBD – October 20