

From Airbnb to Uber: Challenges and Opportunities in the Emerging Economy

“The Local Taxation Angle”

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Not All Disruptions Are Equal



- Uber and Airbnb both disrupt existing markets for existing providers, but they have vastly different impacts on the larger community.
- Uber vehicles drive just like other vehicles and obey the same traffic laws.
- Airbnb rentals change the character of neighborhoods dramatically.
- Likewise Uber presents few local tax issues, Airbnb, presents more.

Uber, Lyft and Car Sharing Companies



Few assessment issues since the General Assembly adopted Transportation Network (TNC) legislation. Properly registered vehicles are identified through DMV.

- TNC taxation is not too disruptive because situs and the amount of gross receipts are easily calculated and the target is easily identifiable.
- Importantly, tax assessments are still locally administered and the taxpayer deals directly with the local Commissioner of Revenue or Finance Officer.
- The situs of the business for BPOL purposes is the home of the driver unless she / he has an actual office.

Accessory Homestays (Airbnb), On the Other Hand.....



- Most localities do not allow the business under existing zoning and building codes. As a result very few self report or file for a business license.
- The online booking platforms are opaque and not helpful in locating properties being rented. So assessors must rely on tips from neighbors.
- BPOL revenues will not be large in any event because only a fee of \$50 or less can be imposed on gross receipts that do not exceed \$100,000 a year. Few, if any, will exceed that threshold

Transient Occupancy Tax Revenue Could be \$ Significant \$

- There are no floors nor limitations in most local TOT ordinances, so every dollar is taxed.
- Paid by visitors, not the local business or local property owners.
- Many localities, however, need to revise their Transient Occupancy Tax (TOT) ordinance to eliminate unnecessary language limiting the TOT to providers who rent to “four or more” persons at one time. **STATE LAW DOES NOT REQUIRE THIS limitation**, which has been copied by various localities.
- Even if state legislation moves the collection of TOT from the localities to centralized collection by the Department of Taxation, the providers will collect and remit whatever the local ordinance requires.

Example: Current Arlington County Ordinance

- “Hotel” means any public or private hotel, inn, apartment hotel, hostelry, tourist home or house, motel, rooming house or other lodging place within Arlington County offering lodging ~~for four (4) or more persons at any one time~~ and the owner and operator thereof, who for compensation, furnishes lodging to any transients as hereinafter defined.

The enabling legislation for the Transient Occupancy Tax is very broad regarding what is covered

- **58.1-3840** (the statute for cities and towns) simply allows the tax on “transient room rentals”.
- The general enabling statute for counties says: **58.1–3819** - *Any county, by duly adopted ordinance, may levy a transient occupancy tax on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for continuous occupancy for fewer than 30 consecutive days.*

This BPOL provision is NOT applicable!

- . § 58.1-3703. Counties, cities and towns may impose local license taxes and fees; limitation of authority.

No county, city, or town shall impose a license fee or levy any license tax:

B 7. Upon any person, firm or corporation for engaging in the business of renting, as the owner of such property, real property **other than** hotels, motels, motor lodges, auto courts, tourist courts, travel trailer parks, campgrounds, bed and breakfast establishments, **lodging houses, rooming houses, and boardinghouses**; however, any county, city or town imposing such a license tax on January 1, 1974, shall not be precluded from the levy of such tax by the provisions of this subdivision;

Providing Lodging is not the renting of property. It is providing short term lodging.

Please keep it local

- Local assessors (CORs and Finance Directors) are best equipped to audit and assess establishments in their own jurisdiction. The Department of Taxation (TAX) does not have the resources to audit the tens of thousands of Airbnb type providers in Virginia.
- Local Assessors have the manpower to actually deal with provider and community issues.
- The Uber/Lyft TNC legislation DID NOT change the local administration of taxes and that has worked well.



Other Emerging “GIG” Economy Issues

- **The BPOL law has not been thoroughly overhauled since 1996** – before the Internet age.



- Finding a “**Definite Place of Business**”, a foundational requirement to impose the tax, is often hard to pinpoint for shared economy businesses, businesses working off online platforms, office sharing situations and new “incubator” startups.
- Allocating gross receipts to various offices via “payroll apportionment” is often complicated by the newer trend to have contractors instead of employees.

Non “Gig” BPOL Issues need to be addressed

- Both localities and business groups are afraid to “open” the BPOL issue since the 1996 reform was so contentious. Localities fear they could lose one of their few non property tax sources of revenue. Time, however is stressing the law severely.



- Facebook, Uber, widespread office sharing, phone apps and Airbnb all arose since the 1996 reform. Many other innovations, unknown to us now, will as well at lightning speed.
- Concepts like “publishing” and “broadcasting” are in flux and do not fit the definitions set out in 1996

A Plea



- A ongoing working group of businesses and localities could proactively address concerns and problems and assure both sides.
- Suspicion would be reduced by meeting regularly to find consensus well before legislative sessions.
- New developments can be addressed with consensus fixes in something approaching real time.
- Localities CANNOT afford to wait until a negative Tax Commissioner or court decision shoots large holes in the BPOL tax base.
- Virginia's very short and fast paced legislative session is not the time to try for measured consensus.



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