830.CMR 64G.00: ROOM OCCUPANCY EXCISE

Section

64G.1.1: Massachusetts Room Occupancy Excise

(1) Statement of Purpose; Effective Date; Outline of Topics.

(a) Statement of Purpose. The purpose of 830 CMR 64G.1.1 is to explain the application of the state and local room occupancy excise imposed under M.G.L. c. 64G, to transfers of occupancy in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel. Additionally, 830 CMR 64G.1.1 provides rules that govern operators and intermediaries with regard to collecting, remitting and reporting the state and local room occupancy excises imposed on all types of taxable accommodations under M.G.L. c. 64G, §§ 3 and 3A respectively and, where applicable, the Convention Center Financing Fee, Cape Cod and Islands Water Protection Fund Fee, and the Community Impact Fee imposed under M.G.L. c. 64G, §§ 3B, 3C and 3D, respectively.

(b) Effective Date. 830 CMR 64G.1.1 is effective for transfers of occupancies in bed and breakfast establishments, hotels, lodging houses and motels beginning on or after July 1, 2019. 830 CMR 64G.1.1 is effective for transfers of occupancies in short-term rentals that commence on or after July 1, 2019 and for which contracts with occupants were entered into on or after January 1, 2019.

(c) Outline of Topics. 830 CMR 64G.1.1 is organized as follows:

1. Statement of Purpose, Effective Date, Outline of Topics;
2. Definitions;
3. Accommodations Subject to Tax;
4. Exemptions;
5. Rent and Occupancy;
6. Intermediary Responsibilities and Requirements;
7. Local Room Occupancy Excise;
8. Convention Center Financing Fee;
9. Cape Cod and Islands Water Protection Fund Fee;
10. Community Impact Fee;
11. Room Occupancy Excise Returns and Payments; and
12. Recordkeeping.

(2) Definitions. For the purpose of 830 CMR 64G.1.1, the following terms shall have the following meanings:

Bed and Breakfast Establishment. A private owner-occupied house where not less than four rooms are let and a breakfast is included in the rent, and all accommodations are reserved in advance.

Bed and Breakfast Home. A private owner-occupied house where not more than three rooms are let and a breakfast is included in the rent, and all accommodations are reserved in advance.

Commissioner. The Commissioner of Revenue or the Commissioner's duly authorized representative.

Hosting Platform. Services through digital platforms, third-party websites, software, online-enabled applications, mobile phone applications or other, similar electronic processes that allow:

(a) an operator to advertise, list, or offer the use of an accommodation subject to the excise under M.G.L. c. 64G in exchange for rent;

(b) an operator to collect the payment of rent on an accommodation; and

(c) a person to arrange, book, reserve or rent an accommodation.

Hotel. A building used for the feeding and lodging of guests licensed or required to be licensed under M.G.L. c. 140, § 6.

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Intermediary. A person or entity, other than an operator, that facilitates the sale, use or possession of an occupancy to the general public and charges a room charge; provided, however, that the term "facilitates" shall include a person or entity that brokers, coordinates or in any other way arranges for the purchase, sale, use or possession of occupancies by the general public; provided further that Intermediary shall include a hosting platform and operator's agent.

Local Excise. The local room occupancy excise imposed by M.G.L. c. 64G, § 3A.

Local Fee. Each of the Convention Center Financing Fee, as provided in 830 CMR 64G.1.1(8); the Cape Cod and the Islands Water Protection Fund Fee, as provided in 830 CMR 64G.1.1(9); and the Community Impact Fee, as provided in 830 CMR 64G.1.1(10).

Lodging House. A house licensed or required to be licensed under M.G.L. c. 140, § 23 and where lodgings are rented to not less than four people who are not within the second degree of kindred to the owner or operator of such lodging house.

Motel. A building or portion of a building in which a person is lodged for hire with or without meals and that is licensed or required to be licensed under M.G.L. c. 140, § 32B; provided, however, that a Motel shall not include a hotel or lodging house.

Occupancy. Occupancy as provided in 830 CMR 64G.1.1(5)(c).

Occupant. A person who uses, possesses or has a right to use or possess a room in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel for rent under a lease, concession, permit, right of access, license or agreement.

Operator. A person operating a bed and breakfast establishment, hotel, lodging house, short-term rental or motel in the commonwealth including, but not limited to, the owner or proprietor of such premises, the lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such bed and breakfast establishment, hotel, lodging house, short-term rental or motel.

Operator's Agent. A person who, on behalf of an operator of a bed and breakfast establishment, hotel, motel, short-term rental or lodging house:

(a) manages the operation or upkeep of a property offered for rent; or

(b) books reservations at a property offered for rent; provided, however, that an Operator's Agent shall include, but not be limited to, a property manager, property management company or real estate agent.

Person. An individual, partnership, trust or association, with or without transferable shares, joint-stock company, corporation, society, club, organization, institution, estate, receiver, trustee, assignee or referee and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, or any combination of individuals acting as a unit.

Professionally-managed Unit. One of two or more short-term rental units that is located in the same city or town, operated by the same operator and are not located within a single-family, two-family or three-family dwelling that includes the operator's primary residence.

Rent. Rent as provided in 830 CMR 64G.1.1(5)(a).

Short-term Rental. An owner-occupied, tenant-occupied or non-owner occupied property including, but not limited to, an apartment, house, cottage, condominium or a furnished accommodation that is not a hotel, motel, lodging house or bed and breakfast establishment, where:

(a) at least one room or unit is rented to an occupant or sub-occupant; and

(b) all accommodations are reserved in advance; provided, however, that a private owner-occupied property shall be considered a single unit if leased or rented as such.

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State Excise. The state room occupancy excise imposed by M.G.L. c. 64G, § 3.

(3) Accommodations Subject To Tax.

(a) Bed and Breakfast Establishments, Hotels, Lodging Houses and Motels. A state room occupancy excise is imposed pursuant to M.G.L. c. 64G, § 3 upon the transfer of occupancy for a period of 90 consecutive days or less of any room or rooms in a bed and breakfast establishment, hotel, lodging house or motel in Massachusetts, unless the transfer is otherwise exempt as provided under 830 CMR 64G.1.1(4). A local room occupancy excise also applies to transfers of occupancies in these types of accommodations if a city or town has adopted a local excise pursuant to the provisions of M.G.L. c. 64G, § 3A. Where the duration of occupancy in these types of accommodations exceeds 90 consecutive days, no excise is imposed on any portion of the stay, including the first 90 consecutive days. Neither the state nor local room occupancy excise is imposed if the total amount of the rent charged is less than $15 per day. Generally, the state and local room occupancy excise and any applicable local fees is collected by the operator from the occupant and the operator then remits the excise to the Commissioner at the rate prescribed by the applicable provisions of M.G.L. c. 64G. However, separate rules apply to transfers of occupancy in accommodations described in 830 CMR 64G.1.1(3)(a) when the transfer is facilitated by an intermediary. *See* 830 CMR 64G.1.1(6) for the rules applicable to intermediaries.

(b) Short-term Rentals.

1. General rules. The state room occupancy excise is imposed pursuant to M.G.L. c. 64G, § 3 upon the transfer of occupancy for a period of 31 consecutive days or less of any room or rooms in a short-term rental in Massachusetts, unless the transfer is otherwise exempt as provided under 830 CMR 64G.1.1(3)(b)2. and 830 CMR 64G.1.1(4). A local room occupancy excise also applies to transfers of occupancies in a short-term rental if a city or town has adopted a local excise pursuant to M.G.L. c. 64G, § 3A. Where the duration of occupancy in a short-term rental exceeds 31 consecutive days, no excise is imposed on any portion of the stay, including the first 31 calendar days. Neither the state nor local room occupancy excise is imposed if the total amount of the rent charged is less than $15 per day. Generally, the state and local room occupancy excise and any applicable local fees are collected by the operator from the occupant and the operator then remits the excise to the Commissioner at the rate prescribed by the applicable provisions of M.G.L. c. 64G. However, separate rules apply to transfers of occupancy in short-term rentals described in 830 CMR 64G.1.1(3)(b) when the transfer is facilitated by an intermediary. *See* 830 CMR 64G.1.1(6) for the rules applicable to intermediaries.

2. 14-Day Exemption. No excise is imposed upon the transfer of occupancy of a short-term rental for a total of not more than 14 days in a calendar year, provided that the operator has first:

a. registered with the Commissioner; and

b. filed a declaration with the Commissioner setting forth the intention to transfer occupancy in the short-term rental for a total of not more than 14 days in a calendar year, in accordance with the procedures set forth in 830 CMR 64G.1.1(11). Where an operator operates multiple short-term rental properties, eligibility for the 14-day exemption shall be determined separately for each property. The 14-day exemption is determined on a per-property basis every calendar year. If an operator registers with the Commissioner and files a declaration under 830 CMR 64G.1.1(3)(b)2.b. but in fact operates a short-term rental for more than 14 days in the calendar year, the 14-day exemption under 830 CMR 64G.1.1(5)(b)2. shall not apply, and such operator will be responsible for paying the state and local excise and any applicable local fees for all transfers of occupancy during the calendar year where the excise is not collected by an intermediary on behalf of the operator, including those occurring during the first 14 days. If an operator enters into an agreement with an intermediary to facilitate the rental of their property, as provided under 830 CMR 64G.1.1(6), the operator is responsible for informing the intermediary whether their property qualifies for the 14-day exemption each calendar year. If an operator informs an intermediary that their property qualifies for the 14-day exemption but the operator continues to rent it through the intermediary for more than 14 days, such operator will be responsible for paying the state and local excise and any applicable local fees due on rentals occurring during the first 14 days through that intermediary. If an operator uses more than one intermediary to facilitate the rental of their property, the rules in 830 CMR 64G.1.1(3)(b)2. and (6) apply to each listing with each intermediary.

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(c) Examples. The following examples illustrate the provisions of 830 CMR 64G.1.1(3)(b).

Example 1: Mrs. Smith owns two adjoining short-term rentals (Property 1 and Property 2). Mrs. Smith has registered as an operator and filed a declaration of her intention to transfer occupancy in Property 1 for a total of not more than 14 days in a calendar year. From August 1st through August 10th inclusive, she rents out Property 1 to an occupant. This rental is not subject to the excise on short-term rentals, because it is for less than 14 days in the calendar year, provided that Mrs. Smith does not rent Property 1 for more than four additional days in the calendar year. If Mrs. Smith does rent Property 1 for more than four additional days in the calendar year, then all subsequent rentals of Property 1, as well as the rental from August 1st through August 10th are subject to the applicable state and local excises and any local fees.

Example 2: In August, Mrs. Smith rents out Property 2 for an original term of ten days. Mrs. Smith has registered as an operator, but did not file any declaration of an intention to transfer occupancy in Property 2 for a total of not more than 14 days in a calendar year. Although the transfer of occupancy in a short-term rental for a total of not more than a total of 14 days in a calendar year is generally not subject to the excise on short term rentals, the requirements of 830 CMR 64G.1.1(3)(b)2. are not met here. The entire ten-day rental period of Property 2 is subject to the applicable state and local excise and any local fees.

Example 3. Mr. Johnson owns a short-term rental property. Mr. Johnson has registered as an operator, but did not file a declaration of an intention to transfer occupancy in his property for a total of not more than 14 days in a calendar year. He rents out his property to an occupant without using an intermediary for the period October 1st through October 10th. Mr. Johnson also arranges four one-week rentals of his property in November and December through two different intermediaries. Mr. Johnson's short-term rental property has been rented out for more than 14 days, and each rental is subject to the excise on short-term rentals. Mr. Johnson is responsible for collecting and remitting state and local excises and any local fees for the rental from October 1st through October 10th. Each intermediary that rents out Mr. Johnson's property during the months of November and December is responsible for collecting and remitting state and local excises and any local fees on those rentals. Any further rentals of Mr. Johnson's property either directly or through an intermediary occurring during the remainder of the calendar year will be subject to the excise on short-term rentals.

(4) Exemptions.

(a) Exempt Accommodations. The following types of accommodations are exempt from the state and local room occupancy excise and local fees:

1. lodging accommodations at a federal, state or municipal institution.
2. lodging accommodations, including dormitories, at religious, charitable, educational and philanthropic institutions. The exemption in 830 CMR 64G.1.1(4)(a)2. does not apply to lodging accommodations provided by a religious, charitable, educational or philanthropic institution at a hotel or motel that is generally open to the public and operated by the institution.
3. privately-owned and operated convalescent homes or homes for the aged, infirm, indigent or chronically ill.
4. religious or charitable homes for the aged, infirm, indigent or chronically ill.
5. summer camps for children up to 18 years of age or developmentally disabled individuals as defined in M.G.L. c. 64G, § 2. A summer camp that offers its facilities offseason to individuals 60 years of age or older for a period of not more than 30 days in a calendar year will retain the exemption under 830 CMR 64G.1.1(4)(a)5.
6. bed and breakfast homes.
7. lodging accommodations provided to seasonal employees by employers.
8. alcohol and drug free housing certified by M.G.L. c. 17, § 18A.
9. tenancies at will or month-to-month leases.
10. time-shares, as defined in M.G.L. c. 183B, § 2.

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11. occupancy of a room or rooms in any accommodation subject to 830 CMR 64G.1.1 if the occupant is an employee of the United States Military traveling on official United States orders that encompass the date of such occupancy. An operator or intermediary shall maintain such records as the Commissioner requires to substantiate exemptions claimed under 830 CMR 64G.1.1(4)(a)11. *See* 830 CMR 64G.1.1(12).

12. occupancy of a room or rooms in a short-term rental of not more than a total of 14 days in a calendar year, provided that the operator has first:

a. registered with the Commissioner; and

b. filed a declaration with the Commissioner setting forth the intention to transfer the short-term rental for not more than a total of 14 days in a calendar year, in accordance with the procedures set forth in 830 CMR 64G.1.1(11).

(b) Occupancy by State Government Representatives. The transfer of occupancy of a room or rooms in any accommodation subject to 830 CMR 64G.1.1 to employees of any state, its agencies or political subdivisions, and charitable organizations that are not exempt from state room occupancy taxes under federal laws are subject to the state and local room occupancy excise, as well as any applicable local fees, whether or not such employees are on official business and whether such employees or their employers pay for the occupancy.

(5) Rent and Occupancy.

(a) Rent.

1. In General. For purposes of 830 CMR 64G.1.1, rent is the total consideration paid by or on behalf of an occupant, including payment for any service, cleaning or other charge, to an operator or an intermediary associated with occupancy, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature. Rent includes, but is not limited to, booking fees and other service charges paid to operators or intermediaries. Rent does not include:

a. *bona fide* refundable security deposits;

b. any amount paid by an occupant that is included in the taxable gross receipts of the operator under M.G.L. c. 64H or 64I where the operator is a vendor for purposes of M.G.L. c. 64H or 64I; or

c. amounts paid by an occupant to an operator for services offered by the operator on similar terms to non-occupants in the regular course of the operator's business.

2. Amenities and Extras. Consideration allocated to amenities provided by an operator to all guests, whether or not used and whether or not separately stated by the operator, is rent subject to the applicable state and local room occupancy excise and any local fees. Examples might include free shuttle service provided by a hotel, or a beach parking sticker provided to all occupants by the operator of a short-term rental. Separately stated, optional charges for services provided by an operator, such as the charge for a rollaway bed, are included as rent unless otherwise excluded under 830 CMR 64G.1.1(5)(a)1. Rent does not include optional, separately stated charges for services provided by another vendor not related to occupancy. Examples of such charges might include charges for airline tickets, a whale watch cruise, or ferry tickets, if optional.

(b) Examples. The following examples illustrate the application of 830 CMR 64G.1.1(5)(a).

Example 1: Hotel in City A rents rooms to occupants for a two night stay at the rate of $500.00 per night. It also charges its occupants for linen services totaling $100 for the two-night stay. The linen services are included in the rent subject to the state and local excise. Hotel also charges its occupants for spa services, including facials and massage services. These services are offered only to occupants of Hotel. Because these services are not offered to non-occupants, the charges for these services are included in the rent subject to the applicable state and local excise and any local fees. In this example, rent includes the nightly room rate, charges for linen services, and any charges for spa service, whether or not such charges are separately stated.

Example 2: Same facts as Example 1, except that Hotel also offers the same spa services to non-occupants on similar terms offered to occupants. Charges for the spa services are not included in the rent subject to the applicable state and local room occupancy excise and any local fees.

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Example 3: Hotel's amenities include various recreational facilities, including a swimming pool, tennis court, and exercise center. Use of these amenities is available only to occupants of Hotel. Hotel imposes a separate charge to occupants for these amenities. Charges for the amenities are included in the rent subject to the applicable state and local excise and any local fees, whether Hotel's occupants use the amenities or not. The value of the recreational facilities in comparison to the value of rooms offered for occupancy is irrelevant.

Example 4: Intermediary accepts a booking for Hotel on July 1, 2019 for a three-night stay starting on July 14, 2019. The charge for the room is $100 per night before taxes and fees. Intermediary charges a $25 fee for booking the transaction. The local excise in City A is 6%, for a total excise of 11.7%. The charges for the booking are as follows:

Room Charge	$300.00
Booking Fee	$25.00
Total Rent	$325.00
Tax 11.7%	$38.03
Total Amount Due	$363.03

Example 5: Through an intermediary, Mr. Jones rents out two separate units located in Town B as short-term rentals. These units are not located within a single-family, two-family or three-family dwelling that includes Mr. Jones primary residence. They are professionally-managed units as defined in 830 CMR 64G.1.1(2). Each unit is rented for 15 days. The charge for each rental is $2,500 per unit. Intermediary charges a booking fee of $25.00 for each rental. Town B adopted a 4% local excise. Town B has also voted to impose a Community Impact Fee of 3% of the rent on each transfer of occupancy of these professionally managed units. In addition, Town B is a member of the Cape Cod and the Islands Water Protection Fund.

The charges for each booking to be collected by Intermediary are as follows:

Unit Rental Charge:	$2,500.00
Unit Booking Fee:	$25.00
Total Rent:	$2,525.00
Tax: 15.45%	$390.11
(5.7% State excise plus 4% Local excise plus 3% Community Impact Fee plus 2.75% Cape Cod and the Islands Water Protection Fund Fee)	
Total Amount Due:	$2,915.11

Example 6: Hotel also operates a restaurant on its property. The restaurant charges sales tax on meals purchased by occupants of Hotel. Rent does not include amounts subject to sales tax where the hotel operator is acting as a vendor with respect to its taxable sales. If an occupant purchases a meal at the restaurant and pays sales tax on it, the amount paid for the meal would not be included in the rent subject to the applicable state and local room occupancy excise and any local fees, even if the purchase was charged to the occupant's room, because the hotel is operating the restaurant as a vendor and collecting sales tax on the meal.

Example 7: Seaside Cottage is a short-term rental operated by Ms. Smith on Martha's Vineyard. As a courtesy to her guests, Ms. Smith includes linens and ferry tickets at no extra charge. Whether or not Ms. Smith separately states the cost of those items, the amount of consideration allocated to them is included in rent subject to the applicable state and local room occupancy excise and any local fees.

Example 8: Same facts as example 7, except that Ms. Smith provides linens to her guests for an additional fee, and purchases ferry tickets on their behalf at their request. The linen fee is a separately stated, optional charge provided by the operator, and therefore is included in rent subject to the applicable state and local room occupancy excise and any local fees. The charge for the ferry tickets is an optional, separately stated, charge for a service provided by another vendor not related to occupancy. It is not included in the rent.

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(c) Occupancy. For purposes of 830 CMR 64G.1.1, occupancy is the use or possession or the right to the use or possession of a room in a bed and breakfast establishment, hotel, lodging house or motel designed and normally used for sleeping and living purposes for a period of not more than 90 consecutive calendar days, regardless of whether such use and possession is as a lessee, tenant, guest or licensee, or the use or possession or the right to the use or possession of a room in a short term rental normally used for sleeping and living purposes for a period of not more than 31 consecutive calendar days, regardless of whether such use and possession is as a lessee, tenant, guest or licensee. Occupancy includes the right to the use or possession of the furnishings or the services and accommodations, including breakfast in a bed and breakfast establishment, accompanying the use and possession of such a room.

1. Occupancy Exceeding 90 Consecutive Calendar Days in a Bed and Breakfast Establishment, Hotel, Lodging House or Motel. In cases where the period of occupancy in a bed and breakfast establishment, hotel, lodging house or motel exceeds 90 consecutive calendar days the following rules apply:

a. When There Is an Agreement on the Duration of the Occupancy. When the duration of the occupancy has been agreed to in advance, will exceed 90 consecutive calendar days, and is evidenced by a written agreement, the occupancy is not subject to tax unless, despite the agreement, the rental terminates before the 90th day. In such a case, each day of occupancy is subject to tax.

b. When There Is No Agreement on the Duration of the Occupancy. When there is no agreement on the duration of the occupancy, each day of occupancy is subject to tax. After passage of the 90th consecutive calendar day, any tax collected must be returned or credited to the occupant.

c. Examples. The following examples illustrate the application of the rules set forth in 830 CMR 64G.1.1(5)(c). If a local excise or local fee applies under the rules set forth in 830 CMR 64G.1.1(7) through (10), the rules in the examples set forth in 830 CMR 64G.1.1(5)(c)1. also apply to the local excise and applicable local fee.

Example 1. A enters into an agreement in writing with B to occupy a room in B's hotel for a period of 100 days. No state or local excise is imposed, unless the agreement terminates before the 90th day.

Example 2. A occupies a room in B's motel on a day-to-day basis and without any written agreement for a period of 100 days. B must collect and pay over tax to the Department of Revenue on a monthly basis for the first 90 consecutive days. If the occupancy extends beyond 90 consecutive days, the tax must be returned to A. B may recover any tax paid in accordance with 830 CMR 64G.1.1(11)(b), as applicable.

Example 3. A corporation contracts with a hotel operator to reserve several rooms for use by its employees on a continuing basis. The corporation may cancel its reservations by 7:00 P.M. each evening without obligation; otherwise, the corporation is liable for the full rate for occupancy. The operator is required to collect the excise on fees for occupancy whenever the corporation is liable for room rental unless continuous occupancy exceeds 90 days. Exercise of the cancellation option constitutes a break in the occupancy by the corporation.

Example 4. An individual occupies the same room in the same hotel for 62 consecutive days, then moves to a different room in the same hotel. The operator is required to collect the excise on the rent for the new room until the occupancy exceeds 90 days. Moving from one room to another within the same hotel does not constitute a break in occupancy, regardless of whether the rates on the two rooms differ.

Example 5. An airline contracts with a motel operator for use by airline employees of eight rooms to be paid for by the airline (whether or not the rooms are actually used). The airline is considered the occupant for purposes of determining whether the occupancy exceeds 90 days. If it does so, the operator need not collect the excise on the rental charges to the airline.

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2. Occupancy Exceeding 31 Consecutive Calendar Days in a Short-term Rental. In cases where the period of occupancy in a short-term rental exceeds 31 consecutive calendar days, the occupancy is not subject to tax.

(d) Complimentary Rooms. Where the transfer of occupancy in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel to an occupant is provided on a complimentary or discounted basis, the following rules apply:

1. The state and local excise and any applicable local fees must be collected if there is consideration (in money or otherwise, including services) for the transfer valued at $15 or more.

2. When a bed and breakfast establishment, hotel, lodging house, short-term rental or motel receives a benefit, either direct or indirect, beyond the actual rent paid in money, the state and local excise and any applicable local fees are based on the fair market value of the room received. Examples of direct and indirect benefits include, but are not limited to, advertising services; exchange of goods and services; services by employees, and benefits to employees.

3. When a bed and breakfast establishment, hotel, lodging house, short-term rental or motel receives no benefit beyond the actual rent paid in money, the state and local excise and any applicable local fees are computed with respect to the amount actually paid for the occupancy.

(6) Intermediary Responsibilities and Requirements. An operator may enter into a written agreement with a person or entity under which the person or entity is responsible for collecting rent or facilitating the collection of rent directly from an occupant who is renting a room or rooms in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel offered for occupancy by the operator. Any person or entity that agrees to collect or facilitate the collection of rent from an occupant for occupancy in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel in Massachusetts is considered an intermediary under M.G.L. c. 64G and for purposes of 830 CMR 64G.1.1. An intermediary includes both an operator's agent that is working "on behalf of" an operator and a hosting platform that may not be an agent or otherwise function "on behalf of" the operator. An intermediary is subject to the requirements in 830 CMR 64G.1.1(6)(a).

(a) Requirements for Intermediaries. An intermediary is required to:

1. register with the Commissioner through MassTaxConnect.

2. assess, collect, report and remit the state and local excises and any applicable local fees to the Commissioner as required in 830 CMR 64G.1.1(11). Intermediaries must file returns in the manner prescribed by the Commissioner under 830 CMR 64G.1.1(11)(c).

3. maintain records of any excises collected that have been remitted to the Commissioner and provide those records to the Commissioner upon request in accordance with 830 CMR 64G.1.1(12).

4. ensure that the operator is registered with the Commissioner prior to the intermediary collecting any rent or facilitating the collection or payment of rent on behalf of an operator. In order to comply with the provisions of 830 CMR 64G.1.1(6)(a)4., an intermediary is required to confirm that the operator whose rent it is collecting is registered with the Commissioner by obtaining the operator's registration certificate number issued by the Commissioner from the operator. The operator's certificate number must be included on all returns filed by the intermediary where the intermediary is reporting and remitting tax collected for the operator in accordance with 830 CMR 64G.1.1(11). If an intermediary is not able to obtain a certificate number from an operator, the intermediary must instead obtain and include the operator's federal employer identification number or Social Security number or such other identifying information as the Commissioner may prescribe on all returns filed by the intermediary where the intermediary is reporting and remitting tax collected for the operator. If such certificate or other operator identification information is not included on its return, an intermediary will not be in compliance with the provisions of 830 CMR 64G.1.1(6)(a).

5. notify the operator of its responsibility to comply with all applicable municipal, state and federal laws including, but not limited to, the collection and remittance of required excises. Notification may be by hand or mail delivery or through any electronic process, such as electronic message, mobile or smart phone application, digital media or communications portal.

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6. provide notice to the operator that any excises due have been collected and remitted to the Commissioner. Such notice shall be in the form of a statement issued to the operator within 30 days of filing a return that includes an itemization of the date of each occupancy, the rent imposed on each occupancy, including any booking fees charged, as well as amounts of all state and local excises and any applicable local fees collected and remitted to the Commissioner on behalf of the operator. Notification may be by any means described in 830 CMR 64G.1.1(6)(a)5.

(b) Liability of Intermediaries. As provided in 830 CMR 64G.1.1(6)(a), an intermediary is required to collect the proper amount of state and local excises and local fees due and remit such amounts to the Commissioner. Notwithstanding the requirements of 830 CMR 64G.1.1(6)(a), an intermediary will not be liable for any state or local excises or local fees not properly collected and remitted as long as the intermediary's failure to properly collect and remit is due to the intermediary's reasonable reliance on information provided by the operator about the nature of the accommodation, including whether the operator qualifies for the 14-day exemption, the duration of the occupancy, or other similar representations affecting the determination of the proper tax due related only to those rentals offered by the intermediary. With respect to the 14-day exemption, the intermediary shall collect state and local excises and local fees with regard to a short term rental property starting with the first day of any such rental every year unless the operator represents to the intermediary that the property will be rented for a total of 14 days or fewer during that calendar year. If an operator informs an intermediary that their property will be rented for a total of not more than 14 days during a particular calendar year, the intermediary is not responsible for collecting and remitting state and local excises and local fees on rentals of that property for the first 14 days that property is rented by the intermediary during that year. However, if after receiving such a representation from the operator the intermediary rents that property for more than 14 days, the intermediary is responsible for collecting and remitting any state and local excises or fees for all subsequent short term rentals of that property occurring during that calendar year. Any state and local excises and local fees due on rentals occurring during the first 14 days is the responsibility of the operator. If any information provided by an operator and relied on by an intermediary was misrepresented, the operator will be liable for any unpaid state or local excise or local fees resulting from any such misrepresentation. Absent fraud or misrepresentation by an operator, an operator will not be liable for the failure of an intermediary to collect and remit the proper amount of tax due to the Commissioner.

(7) Local Room Occupancy Excise. In addition to the state room occupancy excise imposed under M.G.L. c. 64G, § 3, each Massachusetts city and town may impose a local room occupancy excise on the transfer of occupancy of a room or rooms in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel as provided by M.G.L. c. 64G, § 3A.

(a) Acceptance of Local Excise and Notification to Commissioner. In order for a city or town to impose the local room occupancy excise, the city or town must accept the provisions of M.G.L. c. 64G, § 3A in the manner specified in that section. The city or town must determine the rate of the local excise, and then must notify the Commissioner of its acceptance of the local excise, the rate at which the local excise is to be imposed, and the effective date of the local excise. This notification must be received by the Commissioner within 48 hours of the municipal vote taken in accordance with M.G.L. c. 64G, § 3A. Failure of a city or town to notify the Commissioner within this time period may impact the effective date of the local excise under 830 CMR 64G.1.1(7)(b).

(b) Effective Date of Local Room Occupancy Excise. The local excise takes effect on the first day of the first calendar quarter following 30 days after acceptance by a city or town, or on the first day of such later calendar quarter as the city or town may designate, when it accepts the provisions of M.G.L. c. 64G, § 3A as specified therein.

Example 1: Town C accepts the local excise on March 15, 2019. The local excise in Town A will take effect on July 1, 2019, unless Town C has designated a later effective date.

Example 2: City D accepts the local excise on January 30, and designates an effective date of October 1st of the same year. The local excise in City D will take effect on October 1st of the same year.

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(c) Public Listing of Local Option Excise Rates and Local Fees. The Commissioner intends to maintain a list of local option excise rates and local fees for every city and town on its website as part of the Municipal Databank.

(d) Collection of Local Excise. The local excise is collected together with the state excise and remitted in the same manner and at the same time as the state excise, as provided by 830 CMR 64G.1.1(11).

(e) Exemptions from Local Excise. The local excise exemptions are the same as the state excise exemptions. A local excise is not imposed if the total amount of rent is less than $15 per day or its equivalent, or if the accommodation is exempt under M.G.L. c. 64G, § 2. A local excise is not imposed upon the transfer of occupancy of a short-term rental if the unit is rented for a total of not more than 14 days during the full calendar year and the requirements of 830 CMR 64G.1.1(3)(b)2. are met. For municipalities that have adopted the local room occupancy excise in accordance with M.G.L. c. 64G, § 3A, the rules applicable to occupancy set forth in 830 CMR 64G.1.1(5)(b) also apply to the local excise.

(f) Bed and Breakfast Establishment, Hotel, Lodging House, Short-term Rental or Motel Located within More than One City or Town. The following rules will apply to the collection of the local excise and any applicable local fees by an operator or intermediary of a bed and breakfast establishment, hotel, lodging house, short-term rental or motel which is located within more than one city or town:

1. When Only One of the Cities or Towns Has Imposed the Local Excise. The local excise and any applicable local fees is required to be collected upon every transfer of occupancy in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel which occurs on or after the effective date of the local excise. The amount of the local excise and any applicable local fees collected and paid to the Commissioner will be credited in full to the city or town which has imposed the local excise.

2. When Two or More of the Cities or Towns Have Imposed Local Excises. The local excise and any applicable local fees is required to be collected at the highest rate imposed by such cities or towns for every transfer of occupancy in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel which occurs on or after the effective date of the local excise. The amount of the local excise and any applicable local fees collected and paid to the Commissioner will be credited by the Commissioner to each city or town which has imposed the local excise in proportion to the number of rooms located in each city or town in which the transfer of occupancy occurs.

(g) Revocation or Amendment of Local Excise. A city or town cannot impose the local excise for a period shorter than 12 months. If a city or town wishes to revoke or amend its local excise, such revocation or amendment may not take effect until at least 12 months after the date the local excise was last imposed or amended. If a city or town wishes to impose a local excise after a local excise has been revoked, the imposition of the local excise may not take effect until at least 12 months after the date the local option excise was last revoked.

(8) Convention Center Financing Fee. In addition to the state and local room occupancy excises, a Convention Center Financing Fee is imposed on transfers of occupancy of a bed and breakfast establishment, hotel, lodging house, short-term rental or motel in Boston, Cambridge, Springfield, West Springfield, Chicopee or Worcester. The Convention Center Financing fee is collected together with the state and local option excise and remitted in the same manner and at the same time as these excises, as provided by 830 CMR 64G.1.1(11). A Convention Center Financing Fee is not imposed if the total amount of rent is less than $15 per day or its equivalent, or if the accommodation is exempt under M.G.L. c. 64G, § 2. A Convention Center Financing Fee is not imposed upon the transfer of occupancy of a short-term rental if the unit is rented for a total of not more than 14 days during the full calendar year and the requirements of 830 CMR 64G.1.1(3)(b)2. are met. For municipalities that have adopted the local room occupancy excise in accordance with M.G.L. c. 64G, § 3A, the rules applicable to occupancy set forth in 830 CMR 64G.1.1(5)(c) also apply to the Convention Center Financing Fee.

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(9) Cape Cod and Islands Water Protection Fund Fee. A local excise is imposed on transfers of occupancy in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel in every city and town in Massachusetts that is a member of the Cape Cod and Islands Water Protection Fund. *See* M.G.L. c. 64G, § 3C. As of the effective date of 830 CMR 64G.1.1, all Barnstable County cities and towns are members of the Cape Cod and Islands Water Protection Fund, but cities and towns in Nantucket and Dukes County are not members of the Cape Cod and Islands Water Protection Fund. Membership in the Cape Cod and Islands Water Protection Fund is administered by the Department of Environmental Protection. The transfer of occupancy of a room or rooms in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel in a municipality that becomes a member of the Cape Cod and Islands Water Protection Fund after June 1, 2019 shall be subject to the local excise under M.G.L. c. 64G, § 3C and 830 CMR 64G.1.1(7) on the first day of the calendar quarter following 30 days after the municipality has joined the Cape Cod and Islands Water Protection Fund or on the first day of a later calendar quarter as the municipality may designate. The Cape Cod and Islands Water Protection Fund Fee is collected together with the state and local option excise and remitted in the same manner and at the same time as these excises, as provided by 830 CMR 64G.1.1(11). A Cape Cod and Islands Water Protection Fund Fee is not imposed if the total amount of rent is less than $15 per day or its equivalent, or if the accommodation is exempt under M.G.L. c. 64G, § 2. A Cape Cod and Islands Water Protection Fund Fee is not imposed upon the transfer of occupancy of a short-term rental if the unit is rented for a total of not more than 14 days during the full calendar year and the requirements of 830 CMR 64G.1.1(3)(b)2. are met. For municipalities that have adopted the local room occupancy excise in accordance with M.G.L. c. 64G, § 3A, the rules applicable to occupancy set forth in 830 CMR 64G.1.1(5)(c) also apply to the Cape Cod and Islands Water Protection Fund Fee.

(10) Community Impact Fee.

(a) Professionally-managed Units. A city or town that adopts a local excise pursuant to the provisions of M.G.L. c. 64G, § 3A may, by a separate vote and in the same manner of acceptance as set forth in M.G.L. c. 64G, § 3A, impose a Community Impact Fee on the total amount of rent upon each transfer of occupancy of a professionally managed unit that is located within that city or town. M.G.L. c. 64G, § 3D.

(b) Two-family and Three-family Dwellings. A city or town that votes to impose a Community Impact Fee under 830 CMR 64G.1.1(10)(a) may, by a separate additional vote and in the same manner of acceptance as set forth in M.G.L. c. 64G, § 3A, also impose the Community Impact Fee at the same rate as imposed under 830 CMR 64G.1.1(10)(a) upon each transfer of occupancy of a short-term rental unit that is located within a two-family or three-family dwelling that includes the operator's primary residence. M.G.L. c. 64G, § 3D.

(c) Collection and Remittance. The Community Impact Fee is collected together with the state and local option excise and remitted in the same manner and at the same time as these excises, as provided by 830 CMR 64G.1.1(11). A Community Impact Fee is not imposed if the total amount of rent is less than $15 per day or its equivalent, or if the accommodation is exempt under M.G.L. c. 64G, § 2. A Community Impact Fee is not imposed upon the transfer of occupancy of a short-term rental if the unit is rented for a total of not more than 14 days during the full calendar year and the requirements of 830 CMR 64G.1.1(3)(b)2. are met. For municipalities that have adopted the local room occupancy excise in accordance with M.G.L. c. 64G, § 3A, the rules applicable to stays of occupancy set forth in 830 CMR 64G.1.1(5)(c) also apply to the Community Impact Fee.

(11) Room Occupancy Excise Returns and Payments.

(a) Operator Registration with the Commissioner. All operators must register each property they offer for occupancy with the Commissioner on MassTaxConnect. Only one owner per-property is allowed to register as the operator for that property. Upon registration, operators should identify the months they offer accommodations for occupancy. Short-term rental operators are also required to file an annual declaration with the Commissioner on MassTaxConnect indicating their intention to offer their short-term rental for occupancy for a total of not more than 14 days in a calendar year in order to claim the 14 day exemption as described in 830 CMR 64G.1.1(3)(b)2. Failure to file an annual declaration will subject the operator to the state and local excises and applicable local fees for all short-term rentals in the calendar year.

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(b) Consistent Accounting Method. For purposes of reporting rent and any state and local excises and local fees to the Commissioner on its return, an operator or intermediary may report and remit such amounts collected from occupants using any reasonable method of accounting, so long as the same method is used consistently for each monthly return required to be filed. In the event that an operator or intermediary changes its accounting method, the operator or intermediary must make adjustments on any return filed that uses such different method to prevent any double counting or omission of rents.

(c) Returns and Payments. Every operator or intermediary collecting rent must file a room occupancy excise return electronically through MassTaxConnect on or before the 20th day of the month following the calendar month indicated on the return. This return must report the following information:

1. operator certificate registration number or other operator identification information as the Commissioner may prescribe;
2. total rent charges for occupancies during the calendar month itemized by each operator; and
3. total taxable rent charges for occupancies during the calendar month itemized by each operator.

All taxes related to taxable rent charges reported on the return are due and must be paid at the time the return is filed.

If an operator enters into an agreement with an intermediary to collect or facilitate the collection of rent from an occupant as provided in 830 CMR 64G.1.1(6), the intermediary, rather than the operator, is required to collect and remit the tax due with respect to occupancies arranged through that intermediary. All state and local excises and applicable local fees are to be reported on and remitted with the return. An intermediary that does not report rent charges and remit the tax due in accordance with 830 CMR 64G.1.1(11)(c)1. through 3., shall not be in compliance with 830 CMR 64G.1.1(6).

Notwithstanding the requirements set forth in 830 CMR 64G.1.1(11), an operator or intermediary is required to file a return only for any month when tax is due. If no tax is due, no return is required to be filed. Any changes made to a return that has been filed with the Commissioner must be made by filing an amended return electronically through MassTaxConnect in accordance with the rules in 830 CMR 62C.26.2, Amended Returns.

(d) Interest. Any portion of the state and room occupancy excise and any applicable local fees that is not paid on or before the due date of the room occupancy excise return will have interest added to it from the due date of the return to the date the tax is paid, at a rate prescribed by M.G.L. c. 62C, § 32.

(e) Penalties. Any operator or intermediary collecting rent that fails to timely file a return, pay the excise and any applicable local fees, or fail to file a return and or pay the required excise in the format required by Commissioner may be subject to penalties under M.G.L. c. 62C. *See* 830 CMR 62C.33.1: *Interest, Penalties, and Application of Payments*.

(f) Notification Requirements to Occupants. Every occupant's bill must separately state the charges associated with rent, the dollar amount and rate of the state excise, the name of any city or town imposing a local excise, the dollar amount and rate of the local excise, and the dollar amount and rate of any applicable Convention Center Financing Fee, Cape Code and Islands Water Protection Fund Fee and Community Impact Fee.

(g) Returns and Payments during COVID-19 Pandemic. Notwithstanding 830 CMR 64G.1.1(11)(a) through (f), with respect to operators whose cumulative liability in the 12-month period ending February 29, 2020 for returns required to be filed under M.G.L. c. 62C, § 16(g) is less than $150,000, returns and payments otherwise due during the period beginning March 20, 2020 and ending June 1, 2021 shall be suspended. All such returns and payments, including any local option amounts, shall be due on October 30, 2021. This suspension does not apply to intermediaries. Intermediaries shall continue to file returns and make payments in accordance with the rules set forth in 830 CMR 64G.1.1(11)(a) through (f).

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(12) Recordkeeping. Operators and intermediaries collecting rent must keep records sufficient to determine whether the proper amount of tax has been paid, as well as records substantiating repayment of previously paid taxes to occupants whose rentals exceed 90 days in length. These records must be kept for the amount of time specified in 830 CMR 62C.25.1: *Record Retention*, and must be produced for review by the Commissioner in the course of an audit of the operator or intermediary.

REGULATORY AUTHORITY

830 CMR 64G.00: M.G.L. c. 14, § 6(1); M.G.L. c. 62C; § 3 and M.G.L. c. 64G.

NON-TEXT PAGE