Bill Number: S.B. 1350

Lesko Floor Amendment

Reference to: FINANCE Committee amendment

Amendment drafted by: Bill Ritz

FLOOR AMENDMENT EXPLANATION

Preempts local governments for banning short term rentals.

Reinserts current statute requiring property owners to obtain TPT licenses even if they are exclusively operating on an online homesharing site (at the request of the League).

Adds clarifying language regarding the classification of property used for online lodging transactions, per DOR.

Clarifies, per DOR, that the commercial lease tax is not applicable to Host transactions.

Makes clarifying changes to definitions at the request of the League and DOR.

Makes other technical and conforming changes.

Amendment explanation prepared by Bill Ritz

3/7/2016

LESKO FLOOR AMENDMENT

SENATE AMENDMENTS TO S.B. 1350

(Reference to FINANCE Committee amendment)

Page 1, between lines 1 and 2, insert:

"Section 1. Title 9, chapter 4, article 8, Arizona Revised Statutes, is amended by adding section 9-500.38, to read:

9-500.38. Limitations on regulation of vacation rentals; state preemption; definitions

A. A CITY OR TOWN MAY NOT PROHIBIT VACATION RENTALS OR SHORT-TERM RENTALS, RESTRICT THE USE OF VACATION RENTALS OR SHORT-TERM RENTALS OR REGULATE VACATION RENTALS OR SHORT-TERM RENTALS BASED SOLELY ON THEIR CLASSIFICATION, USE OR OCCUPANCY.

B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, A CITY OR TOWN MAY REGULATE VACATION RENTALS IF THE REGULATION IS NARROWLY TAILORED TO PROTECT THE PUBLIC HEALTH AND SAFETY AND IS FOR THE FOLLOWING PURPOSES:

1. PROTECTION OF THE PUBLIC'S HEALTH AND SAFETY, AS DEFINED IN TITLE 12, CHAPTER 8, ARTICLE 2.1, INCLUDING RULES AND REGULATIONS RELATED TO FIRE AND BUILDING CODES, HEALTH AND SANITATION, TRANSPORTATION OR TRAFFIC CONTROL, SOLID OR HAZARDOUS WASTE AND POLLUTION CONTROL.

2. LIMITING OR PROHIBITING THE USE OF A VACATION RENTAL FOR THE PURPOSES OF HOUSING SEX OFFENDERS, SELLING ILLEGAL DRUGS, LIQUOR CONTROL OR PORNOGRAPHY, OBSCENITY, NUDE OR TOPLESS DANCING AND OTHER ADULT-ORIENTED BUSINESSES.

C. FOR THE PURPOSES OF THIS SECTION, "VACATION RENTAL" OR "SHORT-TERM RENTAL" MEANS ANY INDIVIDUALLY OR COLLECTIVELY OWNED SINGLE-FAMILY OR ONE-TO-FOUR-FAMILY HOUSE OR DWELLING UNIT OR ANY UNIT OR GROUP OF UNITS IN A CONDOMINIUM, COOPERATIVE OR TIMESHARE, THAT IS ALSO A TRANSIENT PUBLIC LODGING ESTABLISHMENT.

Sec. 2. Title 11, chapter 2, article 4, Arizona Revised Statutes, is amended by adding section 11-269.15, to read:

1 11-269.15. Limitations on regulation of vacation rentals; state
2 preemption; definitions
3 A. A COUNTY MAY NOT PROHIBIT VACATION RENTALS OR SHORT-TERM RENTALS,
4 RESTRICT THE USE OF VACATION RENTALS OR SHORT-TERM RENTALS OR REGULATE
5 VACATION RENTALS OR SHORT-TERM RENTALS BASED SOLELY ON THEIR CLASSIFICATION,
6 USE OR OCCUPANCY.
7 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, A COUNTY MAY REGULATE
8 VACATION RENTALS IF THE REGULATION IS NARROWLY TAILORED TO PROTECT THE PUBLIC
9 HEALTH AND SAFETY AND IS FOR THE FOLLOWING PURPOSES:
10 1. PROTECTION OF THE PUBLIC'S HEALTH AND SAFETY, AS DEFINED IN TITLE
11 12, CHAPTER 8, ARTICLE 2.1 INCLUDING RULES AND REGULATIONS RELATED TO FIRE
12 AND BUILDING CODES, HEALTH AND SANITATION, TRANSPORTATION OR TRAFFIC CONTROL,
13 SOLID OR HAZARDOUS WASTE AND POLLUTION CONTROL.
14 2. LIMITING OR PROHIBITING THE USE OF A VACATION RENTAL FOR THE
15 PURPOSES OF HOUSING SEX OFFENDERS, SELLING ILLEGAL DRUGS, LIQUOR CONTROL OR
16 PORNOGRAPHY, OBSCENITY, NUDE OR TOPLESS DANCING AND OTHER ADULT-ORIENTED
17 BUSINESSES.
18 C. FOR THE PURPOSES OF THIS SECTION, "VACATION RENTAL" OR "SHORT-TERM
19 RENTAL" MEANS ANY INDIVIDUALLY OR COLLECTIVELY OWNED SINGLE-FAMILY OR ONE-TO-
20 FOUR-FAMILY HOUSE OR DWELLING UNIT OR ANY UNIT OR GROUP OF UNITS IN A
21 CONDOMINIUM, COOPERATIVE OR TIMESHARE, THAT IS ALSO A TRANSIENT PUBLIC
22 LODGING ESTABLISHMENT."
23 Page 2, line 16, strike "ARE" insert "SHALL BE"; strike "ONLY"; strike "AT"
24 Line 17, strike "ITS SOLE DISCRETION"
25 Line 25, after the period insert "THE DEPARTMENT SHALL ISSUE ALL AUDIT
26 ASSESSMENTS ON BEHALF OF ALL TAXING JURISDICTIONS IN A SINGLE NOTICE TO THE
27 ONLINE LODGING MARKETPLACE. APPEALS OF AUDIT ASSESSMENTS SHALL BE DIRECTED TO
28 THE DEPARTMENT AND SHALL BE ADMINISTERED PURSUANT TO ARTICLE 6 OF THIS
29 CHAPTER."
30 Page 12, between lines 30 and 31 insert:
31 "8. "LODGING ACCOMMODATIONS" MEANS ANY SPACE OFFERED TO THE PUBLIC FOR
32 LODGING, INCLUDING ANY HOTEL, MOTEL, INN, TOURIST HOME OR HOUSE, DUDE RANCH,

1 RESORT, CAMPGROUND, STUDIO OR BACHELOR HOTEL, LODGING HOUSE, ROOMING HOUSE,
2 RESIDENTIAL HOME, APARTMENT HOUSE, DORMITORY, PUBLIC OR PRIVATE CLUB, MOBILE
3 HOME OR HOUSE TRAILER AT A FIXED LOCATION OR OTHER SIMILAR STRUCTURE OR
4 SPACE."
5 Renumber to conform
6 Page 12, line 32, strike "A" insert "AN UNAFFILIATED"
7 Page 13, line 7, strike "A TRANSACTION IN WHICH THERE IS"
8 Page 16, between lines 5 and 6, insert:
9 "23. "UNAFFILIATED THIRD PARTY" MEANS A PERSON THAT IS NOT OWNED OR
10 CONTROLLED, DIRECTLY OR INDIRECTLY, BY THE SAME INTERESTS."
11 Renumber to conform
12 Lines 12 and 19, strike "EXCEPT AS PROVIDED BY SUBSECTION L OF THIS SECTION,"
13 Page 18, line 27, after the period strike the remainder of line
14 Strike lines 28 through 29
15 Page 19, between lines 12 and 13, insert:
16 "Sec. 7. Section 42-5009, Arizona Revised Statutes, is amended to
17 read:
18 42-5009. Certificates establishing deductions; liability for
19 making false certificate
20 A. A person who conducts any business classified under article 2 of
21 this chapter may establish entitlement to the allowable deductions from the
22 tax base of that business by both:
23 1. Marking the invoice for the transaction to indicate that the gross
24 proceeds of sales or gross income derived from the transaction was deducted
25 from the tax base.
26 2. Obtaining a certificate executed by the purchaser indicating the
27 name and address of the purchaser, the precise nature of the business of the
28 purchaser, the purpose for which the purchase was made, the necessary facts
29 to establish the appropriate deduction and the tax license number of the
30 purchaser to the extent the deduction depends on the purchaser conducting
31 business classified under article 2 of this chapter and a certification that
32 the person executing the certificate is authorized to do so on behalf of the

purchaser. The certificate may be disregarded if the seller has reason to believe that the information contained in the certificate is not accurate or complete.

B. A person who does not comply with subsection A of this section may establish entitlement to the deduction by presenting facts necessary to support the entitlement, but the burden of proof is on that person.

C. The department may prescribe a form for the certificate described in subsection A of this section. Under such rules as it may prescribe, the department may also describe transactions with respect to which a person is not entitled to rely solely on the information contained in the certificate provided for in subsection A of this section but must instead obtain such additional information as required by the rules in order to be entitled to the deduction.

D. If a seller is entitled to a deduction by complying with subsection A of this section, the department may require the purchaser that caused the execution of the certificate to establish the accuracy and completeness of the information required to be contained in the certificate that would entitle the seller to the deduction. If the purchaser cannot establish the accuracy and completeness of the information, the purchaser is liable in an amount equal to any tax, penalty and interest that the seller would have been required to pay under this article if the seller had not complied with subsection A of this section. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter. The amount shall be treated as tax revenues collected from the seller in order to designate the distribution base for purposes of section 42-5029.

E. If a seller is entitled to a deduction by complying with subsection B of this section, the department may require the purchaser to establish the accuracy and completeness of the information provided to the seller that entitled the seller to the deduction. If the purchaser cannot establish the accuracy and completeness of the information, the purchaser is liable in an amount equal to any tax, penalty and interest that the seller would have been

required to pay under this article if the seller had not complied with subsection B of this section. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter. The amount shall be treated as tax revenues collected from the seller in order to designate the distribution base for purposes of section 42-5029.

F. The department may prescribe a form for a certificate used to establish entitlement to the deductions described in section 42-5061, subsection A, paragraph 46 and section 42-5063, subsection B, paragraph 3. Under rules the department may prescribe, the department may also require additional information for the seller to be entitled to the deduction. If a seller is entitled to the deductions described in section 42-5061, subsection A, paragraph 46 and section 42-5063, subsection B, paragraph 3, the department may require the purchaser who executed the certificate to establish the accuracy and completeness of the information contained in the certificate that would entitle the seller to the deduction. If the purchaser cannot establish the accuracy and completeness of the information, the purchaser is liable in an amount equal to any tax, penalty and interest that the seller would have been required to pay under this article. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter. The amount shall be treated as tax revenues collected from the seller in order to designate the distribution base for purposes of section 42-5029.

G. If a seller claims a deduction under section 42-5061, subsection A, paragraph 25 and establishes entitlement to the deduction with an exemption letter that the purchaser received from the department and the exemption letter was based on a contingent event, the department may require the purchaser that received the exemption letter to establish the satisfaction of the contingent event within a reasonable time. If the purchaser cannot establish the satisfaction of the event, the purchaser is liable in an amount equal to any tax, penalty and interest that the seller would have been required to pay under this article if the seller had not been furnished the

exemption letter. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter. The amount shall be treated as tax revenues collected from the seller in order to designate the distribution base for purposes of section 42-5029. For the purposes of this subsection, "reasonable time" means a time limitation that the department determines and that does not exceed the time limitations pursuant to section 42-1104.

H. The department shall prescribe forms for certificates used to establish the satisfaction of the criteria necessary to qualify the sale of a motor vehicle for the deductions described in section 42-5061, subsection A, paragraph 14, paragraph 28, subdivision (a) and paragraph 44 and subsection U. Except as provided in subsection J of this section, to establish entitlement to these deductions, a motor vehicle dealer shall retain:

1. A valid certificate as prescribed by this subsection completed by the purchaser and obtained prior to the issuance of the nonresident registration permit authorized by section 28-2154.

2. A copy of the nonresident registration permit authorized by section 28-2154.

3. A legible copy of a current valid driver license issued to the purchaser by another state or foreign country that indicates an address outside of this state. For the sale of a motor vehicle to a nonresident entity, the entity's representative must have a current valid driver license issued by the same jurisdiction as that in which the entity is located.

4. For the purposes of the deduction provided by section 42-5061, subsection A, paragraph 14, a certificate documenting the delivery of the motor vehicle to an out-of-state location.

I. Notwithstanding subsection A, paragraph 2 of this section, if a motor vehicle dealer has established entitlement to a deduction by complying with subsection H of this section, the department may require the purchaser who executed the certificate to establish the accuracy and completeness of the information contained in the certificate that entitled the motor vehicle dealer to the deduction. If the purchaser cannot establish the accuracy and

completeness of the information, the purchaser is liable in an amount equal to any tax, penalty and interest that the motor vehicle dealer would have been required to pay under this article and under articles IV and V of the model city tax code as defined in section 42-6051. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter and any tax imposed under article VI of the model city tax code as defined in section 42-6051. The amount shall be treated as tax revenues collected from the motor vehicle dealer in order to designate the distribution base for purposes of section 42-5029.

J. To establish entitlement to the deduction described in section 42-5061, subsection A, paragraph 44, a public consignment auction dealer as defined in section 28-4301 shall submit the valid certificate prescribed by subsection H of this section to the department and retain a copy for its records.

K. Notwithstanding any other law, compliance with subsection H of this section by a motor vehicle dealer entitles the motor vehicle dealer to the exemption provided in section 42-6004, subsection A, paragraph 4.

L. The department shall prescribe a form for a certificate to be used by a person that is not subject to tax under section 42-5075 when the person is engaged by a contractor that is subject to tax under section 42-5075 for a project that is taxable under section 42-5075. The certificate permits the person purchasing tangible personal property to be incorporated or fabricated by the person into any real property, structure, project, development or improvement to provide documentation to a retailer that the sale of tangible personal property qualifies for the deduction under section 42-5061, subsection A, paragraph 27, subdivision (b). A prime contractor shall obtain the certificate from the department and shall provide a copy to any such person working on the project. The prime contractor shall obtain a new certificate for each project to which this subsection applies. For the purposes of this subsection, the following apply:

1. The person that is not subject to tax under section 42-5075 may use the certificate issued pursuant to this subsection only with respect to

1 tangible personal property that will be incorporated into a project for which
2 the gross receipts are subject to tax under section 42-5075.
3 2. The department shall issue the certificate to the prime contractor
4 on receiving sufficient documentation to establish that the prime contractor
5 meets the requirements of this subsection.
6 3. If any person uses the certificate provided under this subsection
7 to purchase tangible personal property to be used in a project that is not
8 subject to tax under section 42-5075, the person is liable in an amount equal
9 to any tax, penalty and interest that the seller would have been required to
10 pay under this article if the seller had not complied with subsection A of
11 this section. Payment of the amount under this section exempts the person
12 from liability for any tax imposed under article 4 of this chapter. The
13 amount shall be sourced under section 42-5040, subsection A, paragraph 2.
14 M. Notwithstanding any other law, compliance with subsection L of this
15 section by a person that is not subject to tax under section 42-5075 entitles
16 the person to the exemption allowed by section 465, subsection (k) of the
17 model city tax code when purchasing tangible personal property to be
18 incorporated or fabricated by the person into any real property, structure,
19 project, development or improvement.
20 N. NOTWITHSTANDING ANY OTHER LAW, AN ONLINE LODGING OPERATOR SHALL BE
21 ENTITLED TO AN EXCLUSION FROM ANY APPLICABLE TAXES FOR ANY ONLINE LODGING
22 TRANSACTION FACILITATED BY AN ONLINE LODGING MARKETPLACE FOR WHICH THE
23 ONLINE LODGING OPERATOR HAS OBTAINED FROM THE ONLINE LODGING MARKETPLACE
24 WRITTEN NOTICE THAT THE ONLINE LODGING MARKETPLACE IS REGISTERED WITH THE
25 DEPARTMENT TO COLLECT APPLICABLE TAXES FOR ALL ONLINE LODGING TRANSACTIONS
26 FACILITATED BY THE ONLINE LODGING MARKETPLACE, AND TRANSACTION HISTORY
27 DOCUMENTING TAX COLLECTED BY THE ONLINE LODGING MARKETPLACE."
28 Renumber to conform
29 Page 22, line 3, strike "IS" insert "SHALL"; after "NOT" insert "BE"
30 Page 23, strike lines 20 through 32
31 Strike pages 24 through 27
32 Page 28, strike lines 1 through 8

1 Renumber to conform
2 Page 29, line 5, strike "~~except that the~~"
3 Lines 6 and 7, strike "~~tax base does not include~~ BUT THE FOLLOWING SHALL BE
4 DEDUCTED FROM THE TAX BASE" insert "except that the tax base does not
5 include"
6 Line 15, strike "TRANSACTION OR"
7 Line 16, strike "WRITTEN NOTICE OR"
8 Line 17, after "MARKETPLACE" insert "PURSUANT TO SECTION 42-5009, SUBSECTION N,
9 THAT THE ONLINE,"; strike "IT" insert "THE ONLINE LODGING MARKETPLACE"
10 Line 18, strike "WITH RESPECT TO THOSE TRANSACTIONS"
11 Page 30, line 20, strike "CONSISTENT" insert "UNIFORM"
12 Page 31, line 27, strike "ONLINE LODGING"
13 Strike lines 28 and 29, insert "LEASE OR RENT TO LODGERS."
14 Page 33, strike line 30
15 Line 31, strike "OTHERWISE QUALIFY UNDER PARAGRAPH 1 OF THIS SUBSECTION" insert
16 "RESIDENTIAL PURPOSES, THAT ARE LEASED OR RENTED TO LODGERS,"
17 Amend title to conform

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