



# Collecting Room Taxes from Airbnb and other Short-term Rentals

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Despite recent changes made to the room tax law designed to help municipalities receive room taxes from short-term rental properties advertising on Airbnb and other online services, the reality is that little has changed in Wisconsin. Municipalities must continue to use whatever tools are available to collect room taxes directly from the owners of short-term rental properties using Airbnb and similar online services. Options for collecting room taxes include, contracting with Airbnb directly for room tax collections, hiring a short-term rental compliance firm, or using municipal employees to locate short-term rentals within the community and informing the owners of the need to comply with the community's room tax ordinance.

The 2017-2019 state budget (2017 Act 59) added language to the room tax law allowing a municipality to collect room taxes from "lodging marketplaces" (i.e., businesses such as Airbnb, HomeAway, or VRBO, which provide an online platform for persons to offer the short-term rental of a residential dwelling).

The state budget also created Wis. Stat. sec. 66.0615(5), which requires lodging marketplaces to register with the Department of Revenue (DOR) for a license to collect state sales taxes on short-term rentals and to collect room taxes imposed by a municipality.

Under the state budget language, after receiving a license from DOR, a lodging marketplace must do the following if a short-term rental is rented through the lodging marketplace: (a) collect sales

tax from the occupant and forward it to DOR; (b) if the rental property is located in a municipality imposing a room tax, collect the room tax from the occupant and forward it to the municipality; and (c) notify the owner of the rental property that the lodging marketplace has collected and forwarded the sales and room taxes. A municipality is prohibited from collecting a room tax from the owner of a short-term rental if the municipality has already received room taxes on the short-term rental from a lodging marketplace. These provisions took effect on September 23, 2017.

DOR maintains a list on its website of all marketplace lodging licenses that the department has issued. The list is updated monthly.

<https://www.revenue.wi.gov/DOR%20Publications/list-of-active-licenses.pdf>

As of March 1, 2018, only 11 active lodging marketplace licenses are listed. Noticeably absent from the list are Airbnb, VRBO, or other national marketplace lodging organizations.

According to DOR staff, Airbnb and other well-known lodging marketplaces assert that they don't have the "nexus" with Wisconsin that is necessary for the state to require them to collect and remit state sales taxes from Wisconsin-based online transactions. Indeed, DOR's lodging marketplace license FAQ web page acknowledges that only if the lodging marketplace has nexus with Wisconsin, must the lodging marketplace obtain a license and collect sales tax. According to DOR, nexus means having

a connection with the state, such as a physical presence in Wisconsin, like an office building, or delivering products into Wisconsin in company-owned vehicles.

Since Airbnb is currently not licensed as a lodging marketplace in Wisconsin, it need not comply with the requirement that license holders collect room taxes from the occupants of short-term rentals rented through the lodging marketplace and forward those amounts to the municipality.

Consequently, nothing has changed in this state yet regarding the challenge of how a municipality collects room taxes from short-term rentals that are arranged and paid for through Airbnb and VRBO or other national lodging marketplaces. A few Wisconsin municipalities, such as Madison and Green Bay, have entered into room tax collection agreements directly with Airbnb. Under these agreements, Airbnb agrees to pay municipalities 100% of the room tax owed, including amounts collected from properties a municipality may be unaware are being used as short-term rentals. However, Airbnb typically refuses to reveal to municipalities which property owners in the community are renting their properties through Airbnb and for how many nights.

Because of this lack of transparency, some communities have declined to enter into room tax collection agreements with Airbnb. Communities are concerned about not being able to confirm whether Airbnb is accurately

collecting and remitting room taxes from all of the short-term rental properties within the community advertising through Airbnb. Also, communities need to know, for a variety of reasons, where and how many short-term rental properties are in the community.

Most communities in Wisconsin continue to attempt to collect room taxes directly from the owners of short-term rental properties. Some communities require short-term rental property owners to register or obtain a license from the municipality. The challenge for the municipality is how to locate non-compliant owners of short-term rentals offered online through Airbnb and similar services. Some communities, like Madison, have hired short-term rental compliance firms or invested in software, such as Host Compliance (<https://hostcompliance.com/>) or STR Helper (<https://strhelper.com/>), to locate non-compliant short-term rental properties and inform them of

the need to obtain a license and collect room taxes. Some communities have used room tax revenues earmarked for tourism promotion and development to pay for short-term rental compliance enforcement services.

### Sample Room Tax Collection Forms and Resources

<https://www.revenue.wi.gov/Pages/FAQS/Lodging-Marketplace-License.aspx>

<https://www.cityofmadison.com/mayor/programs/short-term-rentals>

<http://www.publichealthmdc.com/documents/ShortTermRentalHandout.pdf> (In Madison, the joint city-county Public Health Dept. has taken the lead on short-term rental licensing, because of the health licensing aspect.)

A sample letter informing a property owner suspected of operating a short-term rental of the need to obtain a license from the municipality can be

found at <http://www.lwm-info.org/DocumentCenter/View/1917>

Madison's February 2018 Short-Term Rental Compliance Report is at <http://www.lwm-info.org/DocumentCenter/View/1918>

### Taxation 1053

About the author:

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