

NetChoice *Promoting Convenience, Choice, and Commerce on The Net*

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Mississippi Department of Revenue
500 Clinton Center Dr.
Clinton MS 39056
ATTN: Stephanie Rogers

July 26, 2017

RE: **Opposition to Rule "Title 35, Part IV, Chapter 01 Hotels, Motels, Mobile Home and Trailer Parks"**

We write in opposition to the Department of Revenue ("Department") proposed rule, "Title 35, Part IV, Chapter 01 Hotels, Motels, Mobile Home and Trailer Parks" ("Proposal").

[The Department exceeds its statutory authority by creating new tax laws](#)

The power to create new laws rests exclusively with the Mississippi legislature. While the Department has the power to create rules, the Proposal goes well beyond the making of a rule.

The Department correctly identifies¹ its rulemaking powers under § 27-65-93:

The commissioner shall, from time to time, promulgate rules and regulations, not inconsistent with the provisions of the sales tax law, for making returns and for the ascertainment, assessment and collection of the tax imposed by the sales tax law as he may deem necessary to enforce its provisions; and, upon request, he shall furnish any taxpayer with a copy of the rules and regulations.

However, in the Proposal, the Department ignores a key provision of its power, "*not inconsistent with the provisions of the sales tax law.*" Under the Proposal, the Department takes a position that is inconsistent with state law:

The Proposal implies that simply listing a room for rent during spring break on the Ole Miss Student Union bulletin board is enough to turn a student into a "hotel operator" for sales tax purposes. This is a broad departure from the current tax structure enacted by the legislature.

This departure from the language and intent of state law suggests that the Department is trying to adopt a rule in excess of its granted authority.

Moreover, it is likely that pursuant to the Proposal, other governmental agencies could foist unreasonably burdensome requirements onto these students and other Mississippi residents who want to earn a little, much-needed income through short-term rentals ("STRs").

¹ See Administrative Procedures Notice Filing by Mississippi Department of Revenue, *Title 35, Part IV, Chapter 01 Hotels, Motels, Mobile Home and Trailer Parks* (7/7/17).

The Department mistakenly says there are no “less intrusive methods for achieving the purpose of the proposed rule”²

The Department claims that the Proposal is necessary because some Mississippi residents don’t know the tax rules related to STRs. But rather than upending the tax code for college students who post on the Ole Miss Student Union bulletin board, the Department could simply do an informational campaign. Or the Department could add a line on the tax return specifically dedicated to short-term rentals.

These other alternatives are much more likely to achieve the educational goals of the Proposal than a new tax code rule change of which few residents will ever know. Since less intrusive methods are available, the Department should first explore them rather than go straight to rule-making.

The Proposal may dissuade Mississippi residents from seeking rental income

Short-term rental services provide necessary income to many of Mississippi’s homeowners. Over 52 percent of hosts nationwide live in low-to-moderate income households. More than 48 percent of the income hosts earn through certain short-term rental services is used to cover household expenses.

The option for short-term rental also brings new money into areas of Mississippi that are unserved or underserved by hotels. Since there are few hotels in many parts of Mississippi, travelers are not likely to stay in proximity to those localities’ businesses. Conversely, guests who stay in short-term rentals bring income to underserved areas as they visit local restaurants, grocery stores, and stores.

Unfortunately, this Proposal can depress Mississippi resident’s use of STRs for additional income.

Big hotel chains benefit most from the Proposal

Big hotel chains are backing measures to suppress short-term rentals, such as this Proposal. Presently, the hotel industry enjoys record occupancy and pricing levels. However, short-term rentals are seen by some in the industry as forcing hotels to keep prices lower. For instance, the LaSalle Hotel Properties CEO told investors that a law curtailing short-term rental services would allow hotels to boost their prices by eliminating competition.³

Lower hotel room prices mean that visitors to Mississippi have more money to spend with Mississippi businesses. Likewise, when Mississippi residents travel, short-term rental services help them find more reasonably priced accommodations.

It’s important to keep short-term rental services and a competitive market as a check on hotel price inflation, whereas the Proposal would dissuade state homeowners from exploring STR opportunities.

Rather than advance the Proposal, we instead encourage the Department to look to enforcement of its existing rules and regulations. The Department states that it already has the power to enforce these tax rules under current law. If that is the case, the Proposal is unnecessary. If it is not the case, then the Department is likely going beyond its statutory authority.

For the reasons above, we ask that you not advance the Proposal.

Sincerely,
Carl Szabo

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NetChoice is a trade association of e-Commerce and online businesses. www.netchoice.org

² *Id.*

³ Gaby Del Valle, *Hotel CEO: New Airbnb Regulations Should Allow A 'Big Boost' In Hotel Room Rates*, Gothamist (Oct. 27, 2016) (Passage of a law limiting short-term rental services “should be a big boost in the arm for the business, certainly in terms of the pricing.”)