

Mississippi Secretary of State
700 North Street P. O. Box 136, Jackson, MS 39205-0136

ADMINISTRATIVE PROCEDURES NOTICE FILING

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|--|-----------------------|---|----------------------------------|--------------|
| AGENCY NAME Mississippi Department of Revenue | | CONTACT PERSON Stephanie Rogers | TELEPHONE NUMBER 601-923-7441 | |
| ADDRESS PO Box 22828 | | CITY Jackson | STATE MS | ZIP 39225 |
| EMAIL stephanie.rogers@dor.ms.gov | SUBMIT DATE 7/7/17 | Name or number of rule(s): Title 35, Part IV, Subpart 5, Chapter 01 Hotels, Motels, Mobile Home and Trailer Parks. Concise summary of economic impact statement regarding system number 22585 proposed on 3/24/17. | | |

Short explanation of rule/amendment/repeal and reason(s) for proposing rule/amendment/repeal: This amended rule is intended to provide guidance concerning issues related to accommodations provided by non-traditional hosts like Air BNB. **The rule was filed on March 24, 2017.**

Accompanying this notice is the Concise Summary of Economic Impact Statement for said rule.

Specific legal authority authorizing the promulgation of rule: Miss. Code Ann. Section 27-65-93, "(1) 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."

List all rules repealed, amended, or suspended by the proposed rule: Miss. Admin Rule 35.IV.5.01 Hotels, Motels, Mobile Homes and Trailer Parks.

ORAL PROCEEDING:

- An oral proceeding is scheduled for this rule on Date: _____ Time: _____ Place: _____
- Presently, an oral proceeding is not scheduled on this rule.

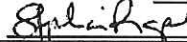
If an oral proceeding is not scheduled, an oral proceeding must be held if a written request for an oral proceeding is submitted by a political subdivision, an agency or ten (10) or more persons. The written request should be submitted to the agency contact person at the above address within twenty (20) days after the filing of this notice of proposed rule adoption and should include the name, address, email address, and telephone number of the person(s) making the request; and, if you are an agent or attorney, the name, address, email address, and telephone number of the party or parties you represent. At any time within the twenty-five (25) day public comment period, written submissions including arguments, data, and views on the proposed rule/amendment/repeal may be submitted to the filing agency.

ECONOMIC IMPACT STATEMENT:

- Economic impact statement not required for this rule. Concise summary of economic impact statement attached.

| TEMPORARY RULES | PROPOSED ACTION ON RULES | FINAL ACTION ON RULES |
|--|---|--|
| _____ Original filing _____ Renewal of effectiveness To be in effect in _____ days Effective date: _____ Immediately upon filing _____ Other (specify): _____ | Action proposed: _____ New rule(s) _____ Amendment to existing rule(s) _____ Repeal of existing rule(s) _____ Adoption by reference Proposed final effective date: _____ 30 days after filing _____ Other (specify): _____ | Date Proposed Rule Filed: _____ Action taken: _____ Adopted with no changes in text _____ Adopted with changes _____ Adopted by reference _____ Withdrawn _____ Repeal adopted as proposed Effective date: _____ 30 days after filing _____ Other (specify): _____ |

Printed name and Title of person authorized to file rules: Stephanie Rogers, Office Director, Tax Policy

Signature of person authorized to file rules: 

| | | |
|---|---|---|
| OFFICIAL FILING STAMP  | DO NOT WRITE BELOW THIS LINE OFFICIAL FILING STAMP  | OFFICIAL FILING STAMP  |
| Accepted for filing by _____ | Accepted for filing by  | Accepted for filing by _____ |

#22847

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The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.



DELBERT HOSEMANN
Secretary of State

CONCISE SUMMARY OF ECONOMIC IMPACT STATEMENT

An Economic Impact Statement is required for this proposed rule by Section 25-43-3.105 of the Administrative Procedures Act. This is a Concise Summary of the Economic Impact Statement which must be filed with the Secretary of State's Office.

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|--|--|-------------|----------------------------------|
| AGENCY NAME Mississippi Department of Revenue | CONTACT PERSON Stephanie Rogers | | TELEPHONE NUMBER 601-923-7441 |
| ADDRESS 500 Clinton Center Dr. | CITY Clinton | STATE MS | ZIP 39056 |
| EMAIL stephanie.rogers@dor.ms.gov | DESCRIPTIVE TITLE OF PROPOSED RULE Hotels, Motels and Trailer Parks | | |
| Specific Legal Authority Authorizing the promulgation of Rule: Miss. Code Ann. Sections 27-3-31, 27-65-93 | Reference to Rules repealed, amended or suspended by the Proposed Rule: 35 Miss. Admin. Code Pt. IV, R. 5.01 - Hotels, Motels and Trailer Parks | | |

A. Estimated Costs and Benefits

1. Briefly summarize the benefits that may result from this regulation and who will benefit:

The benefits that may result from the proposed amendment to this regulation include providing greater clarity and guidance regarding what types of facilities are included in the definition of a hotel found in Miss. Code Ann. § 41-49-3, the gross income of which is subject to tax under Miss. Code Ann. § 27-65-23. The benefits also include the promotion of voluntary compliance by persons or entities subject to tax.

2. Briefly describe the need for the proposed rule:

In recent years, websites have been developed through which individuals may advertise rooms in their homes or other properties that are available to rent to the general public on a short term basis. Examples of such websites include airbnb.com and VRBO.com. Under Miss. Code Ann. § 41-49-3, a hotel is defined as

[A]ny entity or individual engaged in the business of furnishing or providing one or more rooms intended or designed for dwelling, lodging or sleeping purposes that at any one time will accommodate transient guests and that are known to the trade as such and includes every building or other structure kept, used, maintained or advertised as, or held out to the public to be, a place where sleeping accommodations are supplied for pay or other consideration to transient guests regardless of the number of rooms, units, suites or cabins available.

Based upon the plain language of Miss. Code Ann. § 41-49-3, the DOR has concluded that a room or home that is offered for rent to members of the general public through an advertisement on a website that is accessible to millions of people, and that is itself widely advertised through television, print and other media as a way to "shop" for short term rentals, meets the definition of a hotel. Because such accommodations meet the definition of a hotel, they are subject to sales tax under Miss. Code Ann. § 27-65-23. The DOR is concerned that many people who rent rooms through such means may not

understand that they are offering a taxable service and that they are failing to pay taxes that they owe. Therefore, the DOR determined that it should make clear in its Rule regarding hotels and like businesses that such persons do owe sales tax on their gross income from room rentals. These persons are subject to the sales tax regardless of the language contained in the rule. The amendment to the rule is intended to promote voluntary compliance by ensuring that such persons are aware that they are carrying on a taxable business.

3. Briefly describe the effect the proposed action will have on the public health, safety, and welfare:
None

4. Estimated Cost of implementing proposed action:

a. To the agency

Nothing Minimal Moderate Substantial Excessive

b. To other state or local government entities

Nothing Minimal Moderate Substantial Excessive

5. Estimated Cost and/or economic benefit to all persons directly affected by the proposed rule:

c. Cost:

Nothing Minimal Moderate Substantial Excessive

d. Economic Benefit:

Nothing Minimal Moderate Substantial Excessive

6. Estimated impact on small businesses:

Nothing Minimal Moderate Substantial Excessive

a. Estimate of the number of small businesses subject to the proposed regulation: 2,736

b. Projected costs for small businesses to comply: None

c. Statement of probable effect on impacted small businesses: None

7. The cost of adopting the rule compared to not adopting the rule or significantly amending the existing rule (check option):

substantially less than moderately less than minimally less than

the same as minimally more than moderately more than

substantially more than excessively more than

8. The benefit of adopting the rule compared to not adopting the rule or significantly amending the existing rule (check option):

substantially less than moderately less than minimally less than

the same as minimally more than moderately more than

substantially more than excessively more than

B. Reasonable Alternative Methods

1. Other than adopting this rule, are there less costly or less intrusive methods for achieving the purpose of the proposed rule?

yes no

2. If yes, please briefly describe available, reasonable alternative(s) and the reasons for rejecting those alternatives in favor of the proposed rule. (Please see §25-43-4.104 for factors you must consider.)

C. Data and Methodology

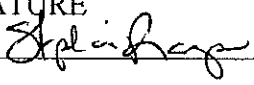
1. Please briefly describe the data and methodology you used in making the estimates required by this form.

The DOR determined the number of businesses subject to 35 Miss. Admin. Code Pt. IV, R. 5.01 by determining the number of taxpayers in this state using NAICS Code 72, which applies to motels, hotels, casino hotels, bed & breakfasts, motor hotels, cottages and cabins, and by counting the number of lodgings advertised for rent to transient guests online at vrbo.com and airbnb.com, two of the largest and best-known websites used for such purposes. Because the proposed amendment to the rule is simply intended to provide information regarding taxable hotel businesses, and does not impose any requirements, responsibilities or duties on anyone outside of those imposed contained in the Sales Tax Code, the Department determined that the rule does not impose added costs on the Department or other agencies, or on businesses subject to the rule or other small businesses.

D. Public Notice

1. Where, when, and how may someone present their views on the proposed rule and request an oral proceeding on the proposed rule if one is not already scheduled?

The proposed rule was filed on March 24, 2017, and a public hearing on the proposed rule was held on April 26, 2017, at 3:30 p.m. at the Department of Revenue, 500 Clinton Center Dr., Clinton, MS 39056. Anyone wishing to do so may present their views on the proposed rule in writing by emailing their views to stephanie.rogers@dor.ms.gov, or by mail to P.O. Box 22828, Jackson, MS 39225, or by mail or hand delivery to 500 Clinton Center Dr., Clinton, MS 39056, ATTN: Stephanie Rogers. Said written presentations must be submitted no later than 5:00 p.m. on July 27, 2017.

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| SIGNATURE  | TITLE Office Director – Tax Policy |
| DATE 7/7/17 | PROPOSED EFFECTIVE DATE OF RULE August 28, 2017 |