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Airbnb's Proposed Tax Agreements With Cities Raise More Questions Than Answers

Deanna Ting, Skift – Apr 18, 2016 7:30 am
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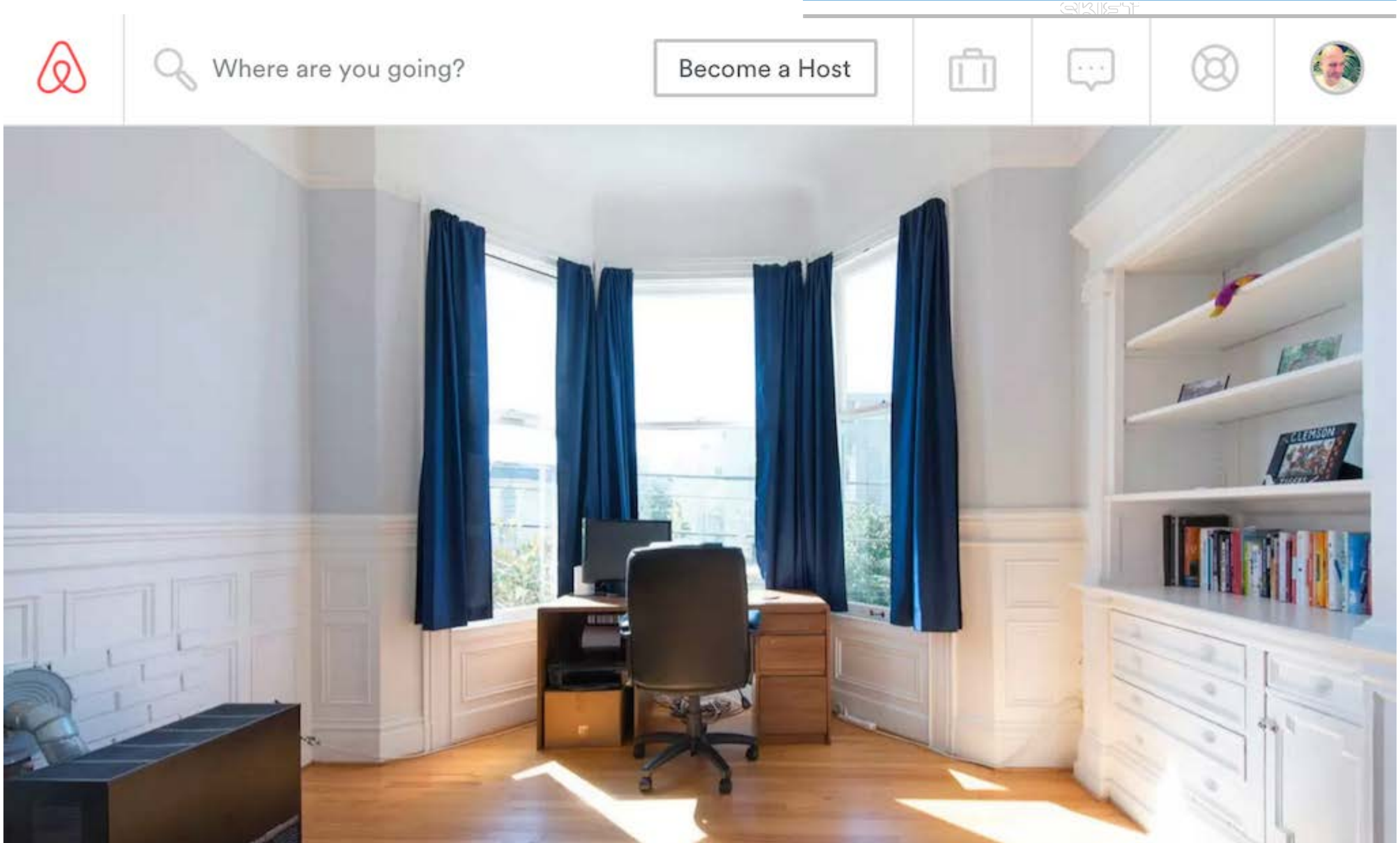

An Airbnb listing in San Francisco. Airbnb

SKIFT TAKE

Airbnb is doing all it can to become legalized in cities like New York and Los Angeles by saying it'll pay occupancy taxes, just like hotels do. But if you look at the math and the overall economic impact, is that money really enough to have a positive net impact on those cities?

— *Deanna Ting*

Of the only two certainties in life — death and taxes — Airbnb is hoping that the latter will help them stay alive and legally thrive in cities around the world.

In cities across the U.S., especially, Airbnb's strategy toward the path of legalization is to pay taxes, or help its hosts pay the appropriate taxes owed to local city, county, and state governments.

This seems like a simple, straightforward enough approach. Airbnb seems to be saying to local cities, "We want to pay taxes; we want to give back to the local communities and pay our taxes, just like hotels do."

And if you're a city, why wouldn't you want that additional tax revenue? Every little bit helps, doesn't it?

This is why Airbnb sent Chris Lehane, its global head of public policy, to meet with hundreds of American mayors in January at the U.S. Conference of Mayors. There, Lehane made his plea to mayors, saying that if the 50 biggest cities in the U.S. were to team up with Airbnb to collect taxes, they could have collectively received an estimated $200 million in taxes from Airbnb last year.

Airbnb has seen some success with this strategy, in cities that include San Francisco and Portland, Oregon, both of whom have agreed to partner with Airbnb to collect and remit hotel, occupancy, and tourist taxes. To date, Airbnb has brokered these Voluntary Collection Agreements (VCA) in more than 100 cities around the world. On April 12, Newark, New Jersey's largest city, became the latest municipality to sign a tax agreement with Airbnb.

But other cities, notably New York City and Los Angeles — two of Airbnb's biggest markets according to a January 2016 CBRE report — have not yet committed to these types of agreements.

Why don't these cities just take the tax money from Airbnb and leave it at that? Well, that's a much more complicated issue and it isn't just about the money. It's about Airbnb's potential impact on local communities and businesses, and how the platform is enabling "Super Hosts," or commercial operators, to profit from its platform by listing multiple units or listing a unit or units full time. That right there is at the heart of a brewing battle between Airbnb and local city governments (New York especially) and hotel industry associations like the American Hotel & Lodging Association (AH&LA).

If you were to ask Airbnb the primary reasons for some city mayors' resistance to legalizing Airbnb, the company would appoint the hotel industry as the main culprit. Here's what Chip Conley, Airbnb's head of global hospitality and strategy and a hotelier himself, had to say at the World Travel & Tourism Council's (WTTC) Global Summit in

Dallas on April 7 about opposition to sharing economy businesses like Airbnb:

"We want to be regulated. Tax us with occupancy taxes. We've got 160 cities or municipalities around the world now where we're actually paying occupancy taxes, and we would like that to be a lot more. The hotel industry generally — and I'm a hotelier — but the hotel industry is stopping us from allowing our guests to pay occupancy tax. Ask the American Hotel & Lodging Association about that. Make sure our data is accessible. Amanda Hite from Smith Travel Research asked to look at our Manhattan data in New York to see what impact we were having on the New York hotel industry. She saw that we were having virtually no impact at all. And then finally, in those cases where cities have an affordable housing crisis, we need to work with the city to say, create regulations in those cities that are even more aggressive toward how you limit short-term rentals so you don't have illegal hotels popping up."

Outside of taxes, Airbnb is being regulated in many cities in the U.S. But it is ignoring those regulations and not cooperating with local or state governments.

In response to a letter sent to AH&LA on April 5 by Airbnb's Chris Lehane, echoing Conley's plea for tax regulation, Vanessa Sinders, senior vice president of government affairs said, "Our position has always been that all lodging businesses should play by the same rules, and taxes are just one part of that. The commercial operators that Airbnb and other short term rental platforms facilitate ought to play by the same rules as the tens of thousands of lodging properties — including small bed and breakfasts, independent properties, resorts, and brand name hotels — that we represent all across the country, each of which pay their fair share of taxes, obey zoning and licensing laws and abide by strict health and safety regulations that protect communities and the traveling public. In contrast to Airbnb, these properties do not pick and choose which laws they follow or when they pay taxes or how much they are willing to pay."

The truth is, hotels in major cities like New York and Los Angeles are always going to contribute more money to those cities, whether in the form of local occupancy and sales taxes, not to mention taxes related to property, payroll, real estate, and so much more. This isn't counting the number of jobs that hotels and lodging businesses provide in those cities for local residents, as well as benefits. Money is as money does and when it comes to tax revenue, hotels are paying a whole lot more than Airbnb is, or ever would for the foreseeable future.

As the San Francisco-based company, valued at approximately $25 billion, continues to grow, however, its ability to pay its own fair share of taxes is also coming under scrutiny. A recent article from Bloomberg found that the company, which is rumored to turn a profit for the first time this year, possesses a network of some 40 different offshore financial subsidiaries. By spreading out its finances among all these different tax havens, a much smaller portion of Airbnb's revenue actually winds up getting taxed by the U.S. and other federal governments.

Still, if we were to examine the overall economic scope of allowing Airbnb to legally operate, its proposed extra $200 million boost to the top 50 cities in the U.S. gets much fuzzier. Yes, those cities receive a slight boost in tax revenues, but there are true economic costs for regulating and legalizing short-term rentals.

In cities like New York and Los Angeles where affordable housing is becoming scarcer every day, shifting residential units from housing locals to housing tourists can be devastating for local communities and businesses. The more you consider those costs, the more difficult it becomes to know whether that additional tax revenue is really worth it. Can cities afford to welcome Airbnb at the expense of their own residents and budgets?

Reliability of the Numbers

Before we even begin to theoretically crunch the numbers it's worth noting this: The biggest problem with trying to understand what kind of an effect Airbnb is having or could have on cities is that there is no real, honest transparency in the data.

Airbnb's Conley, in his WTTC remarks, said Airbnb wants to "Make sure our data is accessible" and while Airbnb has made its data available to researchers and city governments, the problem with it is that it's not always the most reliable.

The biggest example of that involved New York City. In November 2015, Airbnb provided a public snapshot of its operations in New York but it was later revealed by Inside Airbnb, an independent, third-party researcher of Airbnb, that the company had scrubbed the released data to remove some 1,500 listings that may have been for illegal hotels or commercial operators.

Airbnb initially rejected Inside Airbnb's findings, but later accepted them as an accurate reflection of its actions in November.

Murray Cox, the creator of Inside Airbnb, uses webscrapes of Airbnb listings to gather his data, and he was also recently asked by the San Francisco Budget and Legislative Analyst's Office to provide information about Airbnb for a recent policy analysis report of short-term rental regulations. [Note: Cox's scrapes were inspired by and similar to Skift's scrape of New York City data in 2014. This data was used by the New York Attorney General to force some concessions from the company.]

"Why is the data they [Airbnb] are providing always showing something different? Their data is strategic data," Murray told Skift. "They are picking the data that matches their policy objectives."

In reality, everyone involved in this debate, from Airbnb to the AH&LA, has a specific angle or motive, and it's just not clear whether the numbers being presented by anyone are actually real, period.

We've asked Airbnb to verify and/or clarify a number of its various data estimates related to taxes and economic impact, and we have never received a definitive answer as to how they have calculated their numbers.

Murray says he's spoken with a number of city mayors about Airbnb and its tax agreement proposals, and that some mayors have "viewed that strategy as a Trojan horse issue." He said, "Once you start accepting taxes — and obviously any revenue is good for the city's budget — you have to start thinking about what strings are attached. Will the city get complacent and try to protect the tax revenue without looking at the industry entirely? What are the negative impacts? How are we going to regulate for that?"

The city of San Francisco, in particular, provides a poignant case study for what can happen when a big, urban metropolis legalizes Airbnb and attempts to regulate it.

San Francisco: A Cautionary Tale for Airbnb Acceptance

Airbnb's hometown has gone above and beyond most other cities in terms of accommodating and regulating short-term rentals. Since approving the so-called "Airbnb law" in October 2014, the city has faced a number of challenges in getting Airbnb's hosts — and Airbnb itself — to abide by the very laws with which the company worked with the city to put into law.

Here's how the law works: In February 2015, short-term residential rentals in San Francisco were legalized for permanent residents in their permanent residence (occupying a residential unit for at least 60 consecutive days). These residents can rent out their residences on a short-term basis, un-hosted (host is not present), for a maximum of 90 nights per year. There is no limit to the number of nights a resident can rent out a room or portion of their home for hosted stays (when the host is present). All short-term rental hosts, however, must obtain a business registration certificate prior to registering with the city's Office of Short-Term Rentals (OSTR), and they also have to maintain liability insurance and provide a quarterly report to the OSTR on the number of nights their unit is rented, among other obligations.

Last November, a proposition that would have enforced tighter restrictions on short-term rentals to 75 nights per year, as well as other enforcement tools, was on the ballot, but it was defeated and not implemented.

Recently, San Francisco's Office of the Assessor-Recorder and the Treasurer & Tax Collector launched an initiative requiring short-term rental hosts to pay business personal property taxes on all "furniture, appliances, supplies, equipment, and fixtures" used in their short-term rental units, which would amount to an approximate 1 percent value of these resources.

It's meant to match the taxes paid by business owners on their office equipment. Notices were sent to registered Airbnb hosts and they are required to file forms by May 7 without penalty. After May 7, the penalty amounts to 10 percent of the total assessed value of the business/personal property. If a host ignores the notice, the assessor's office will estimate the value of the property and leverage a 10 percent fine.

But is the law really working? The latest report from the San Francisco Budget and Legislative Analyst Office, released on April 7, suggests it is not:

- Most short-term rental hosts are out of compliance and have not registered with the city's OSTR. As of November, the OSTR received 1,082 registration applications, but that suggests 4,296, or 79.9 percent of the 5,378 unique hosts listed on Airbnb for that month did not register and are not within compliance.
- Since February 2015, approximately 26.1 percent of entire home listings where the host is not present appear to have been rented for more than 90 nights a year between February and November 2015, a violation of the city's 90-night cap.
- The city can't determine how many unique listings there are in San Francisco for all the different home-sharing platforms, including VRBO, HomeAway, Flipkey, and Airbnb.
- The OSTR has pursued 322 enforcement cases, 79 of which resulted in violations and $680,000 in assessed penalties.
- 92.2 percent of those enforcement cases were driven by resident complaints.
- Hosting platforms like Airbnb aren't reporting bad actors, and they don't have to. They aren't reporting on hosts who have listings and don't have registration numbers from the city, or hosts who are renting their units un-hosted for more than 90 nights a year.

It's clear that San Francisco's Airbnb law isn't working as hoped.

"This report I commissioned reveals that Airbnb continues to blatantly flout our local short-term rental law — a law that Airbnb itself helped draft," said San Francisco Supervisor David Campos. "The findings make it clear that this company cannot regulate itself, contrary to its claims."

In response to the report, Airbnb said it is already working with the city to fight illegal hotels and commercial operators, and suggested that the city's registration process, as well as the property tax provision, "remains a challenge."

Going through the city's registration process for short-term rentals is something Airbnb CEO Brian Chesky also avoided for at least 11 months following the passage of the city's Airbnb-friendly law.

Let's Do the Math

A disclaimer: What follows are estimates based on available estimated data.

In data released by Airbnb on April 2, Airbnb said its San Francisco hosts paid $14.5 million in transient occupancy taxes. The Budget and Legislative Analyst Office's report estimates Airbnb's potential tax contributions for 2015 could be $15.1 million, but that's not including what's being paid by hosts on other platforms like VRBO, HomeAway, and Flipkey. By contrast, the city collected $394.3 million in lodging tax revenue only from hotels for the fiscal year ending on June 30, 2015.

The city carved out $880,106 to establish and run the Office of Short-Term Rentals. From February 2015 to March 2016, the city received 1,647 registration applications, each with a $50 application fee, adding $82,350 to its budget. The city also collected about $680,000 in violations.

According to Fred Brousseau, one of the authors of the latest policy analysis report, there's a definite shortfall in the city's collection of registration fees and business registration certificate fees. "Since we estimated over 4,000 hosts have not registered so far, the city is forgoing $200,000 in biannual registration fees and an unknown amount in business registration certificate fees since those range from $75 to $35,000 per year depending on the host's gross receipts," he told Skift. Brousseau's office has an annual $2 million contract with the city's Board of Supervisors to conduct this type of research, among other topics.

So, essentially, looking at just these estimates, San Francisco is collecting about $14.5 million in tax revenue and registration fees, and is spending and/or missing out on about $1 million (not counting the contract with Brousseau's firm) to regulate, investigate, and enforce short-term rental laws.

But what about the argument that Airbnb's hosts and guests contribute to the local economy? Or what about residential units being used converted to full-time short-term rentals, contributing to San Francisco's already dire housing crisis?

A May 2015 economic impact report compiled by San Francisco's chief economist, Ted Egan, tackled that very topic. Basically, Egan concluded that a lack of data makes it pretty much impossible to determine whether short-term rentals are being removed from the market and used for commercial purposes.

The report found that the total economic impact of daily spending at local businesses, including multiplier effects, by a short-term rental guest is $376 per day. But because there's no real data to confirm exactly how many guests stayed in a San Francisco Airbnb listing in 2015, it's not really possible to quantify that contribution.

If we go by numbers supplied by Airbnb from September 2015, its community generated approximately a total economic impact of $338 million to San Francisco, $105 million which was spent on lodging with Airbnb hosts and $233 million for all other expenditures.

To be honest, we don't really know how these numbers were generated so it's not clear if this is an accurate estimate. A 2012 report from the company said that Airbnb guests contributed a total of $56 million in local spending to the city. It's not easily explained how Airbnb's economic impact on the city jumped by a total of $282 million in just three years.

Egan's economic impact report also concluded that the average number of days that a residential unit would need to be short-term rented, in order to create an incentive for the owner/host to withdraw it from the housing market, ranges from 123 to 241 days per year in different neighborhoods of the city. The most recent city report commissioned by Supervisor Campos estimates that 285 entire unit listings on Airbnb were rented more than 90 nights a year between February and November 2015.

And for every housing unit removed from the market to be used as a short-term rental instead of a permanent residence, the total negative economic impact on the city's economy is approximately $250,000 to $300,000 per year, per house, Egan's report shows. "This exceeds the annual total economic benefit from visitor spending, host income, and hotel tax, given prevailing short-term rental rates," the report's authors wrote.

The April 2 data from Airbnb identified 671 active listings managed by 288 hosts as of March 15 that Airbnb may consider removing from its platform because they may be operating illegal hotels or operating commercially. Airbnb said that even if all those listings are considered vacant, which may or may not be the case, they only represent 0.18 percent of all housing units and 2.1 percent of all 31,686 vacant housing units in the city, according to census data.

If we were to add up the potential negative economic impact on the city's economy for each of these 671 units being removed from the residential market, however, that would amount to a combined $167.75 million to $201.3 million each year that the local economy is losing.

Considering all of these factors combined, Airbnb is adding about $248 million to San Francisco's coffers in taxes ($14.5 million), registration fees ($82,350), violations ($680,000) and contributions to the local economy from guests ($233 million). The city is spending a little under $1 million regulate short-term rentals. But it's also missing out on an estimated $200,000 or more it's owed in OSTR registration fees and business certificate fees. It also still needs to collect its property taxes from registered hosts. And in the long term, the city is also losing anywhere from about $168 million to $201 million in terms of positive economic impact when its housing units become illegal hotels.

You could say San Francisco, is netting a profit of anywhere from $79 million to $46 million from short-term rentals, but the problem is we can't prove that definitively.

Why? Because the data we have either isn't accessible or transparent. In truth, it very well could be the other way around, and the city could be losing millions because it isn't properly regulating short-term rentals. We just can't be sure.

Can Short-Term Rental Regulation Actually Work to Benefit Cities?

The honest answer is we just don't know yet but, optimistically, that's the goal. Data has yet to be collected with regard to how short-term regulations are faring in cities across the U.S.

Some proponents of home-sharing suggest looking at Galveston, Texas, and Nashville as examples where short-term rental regulations are working effectively. A study by R Street Institute found Galveston and Savannah, Georgia to be "the most open to these innovative short-term-rental (STR) services." But it's hard to compare smaller, less urban cities like Galveston or Savannah to ones like San Francisco or New York, and just because a city makes it easy for short-term rentals to be regulated, that doesn't account for what the city may be losing in terms of overall economic impact to its local community.

It is important to note, however, that home-sharing platforms like Airbnb, HomeAway, and FlipKey do contribute to the incomes of hosts who are local residents and who are using these platforms to earn extra income, and thereby help boost local communities in that way. The problem that needs to be addressed, however, relates to the growing the number of hosts who are commercial operators and are using the sites to operate, essentially, illegal hotels.

If we look at Portland, Oregon, which has a similar regulation structure to San Francisco, compliance rates for registering short-term rentals was also very low. Five months after the city legalized Airbnb, less than 10 percent of all short-term rental hosts in the city had applied for permits.

In San Francisco's case, it's clear that a lot of work needs to be done, simply to get compliance rates up so that hosts are operating within the legal framework of the law.

The San Francisco Budget and Legislative Analyst Office's report also recommended changing the current laws to require hosting platforms to assist in compliance by providing more data to the OSTR. The OSTR doesn't have access to all of the names of the hosts and the locations of the short-term rental units they are regulating. They don't know who's advertising on Airbnb of HomeAway without having a registration number from the city. The platforms won't tell the OSTR who is advertising unhosted (host is not present during the guest's stay) bookings for more than 90 nights a year.

Clearly, there's still a lot of work to be done in San Francisco. But there's also a big lesson in legalizing short-term rentals that other major cities like New York and Los Angeles should pay attention to as they address the legalization of home sharing in their towns.

Paying occupancy taxes is just one part of the equation. To really know how legalizing short-term rentals will impact your bottom line, you have to look at the big picture. And you need to know that the data you're using to make that informed decision is correct.

That's why a newly proposed short-term rental law in Los Angeles is threatening to fine Airbnb and other home-sharing platforms for not disclosing information about who's staying where and with whom.

But until we know, for certain, that the data we're receiving from companies like Airbnb is accurate and not at all skewed, we can never really be sure how much we're really paying for the ability to, as Airbnb says, belong anywhere.

Tags: airbnb, politics, san francisco