Online Hotel Booking Tax

*Online Travel Companies like Expedia, Orbitz, and Travelocity charge customers the same retail price or more for rooms as hotels charge.*

*They should follow the law like hotels do by remitting tax on those retail rates rather than try to rig the system to create their own special loophole.*

**Background**

Many hotels contract with online travel companies (OTCs) in order to increase their occupancies. These OTCs include Expedia, Orbitz, Travelocity and others.

In some cases, a hotel enters a contract with an OTC to provide rooms to the OTC at a discounted rate (the "wholesale cost"). The OTC then advertises the rooms for sale at the hotel's retail price or a higher rate to consumers and includes unspecified taxes and fees in its final price that are equal to or greater than a hotel's final price. This is the center of the dispute.

**Direct Hotel Booking.** If a guest books a room directly through a hotel, the tax reflects the jurisdiction’s rate where the hotel is located. For example, assume John Q. Public books a room in Anytown, USA online through a hotel's own website. The room rate is $100 and Anytown, USA levies a 10% occupancy tax on rooms, so the amount charged Mr. Public is $110. If a traditional travel agent is involved, the hotel pays that agent out of the $100 room rate. The hotel then remits the $10 occupancy tax to Anytown.

**Online Travel Company Booking.** If John Q. Public instead books the room through an OTC, he sees the same room rate of $100 and is charged the same $110 amount (or more) that he would have paid had he booked the room directly through the hotel’s own website. This amount covers the room charge plus the OTC’s "taxes and fees."

However, instead of remitting $10 in hotel occupancy taxes, the OTC chooses to calculate the occupancy tax based its wholesale cost (in this example, $80 is what it pays the hotel) rather than the advertised rate it charged the customer. Thus, when a customer pays $110 for the room through an OTC, the OTC remits $80 to the hotel and keeping $20 as per the contract plus only $8 for the occupancy taxes. The OTC retains the remaining $2 from the transaction claiming it as a “fee.”

In each example, the hotel provides to the taxing jurisdiction the taxes it received for the room. In the OTC example above, the hotel passes through to the jurisdiction the $8 provided by the OTC—as opposed to the $10 the hotel would remit if the room was booked directly through its own website or through a traditional travel agent commission model transaction.

The OTCs claim that the resulting difference between their tax calculations based on their wholesale cost of the room and the final price charged to the customer (the $2 difference in the wholesale model example above) is part of their "service fee." As discussed below, OTCs are pressing for legislation to protect this controversial practice securing a special tax loophole.
Local tax authorities become involved

Many jurisdictions throughout the country have initiated lawsuits against OTCs. Jurisdictions claim that the OTCs charge retail prices and collect retail taxes but keep a portion of the tax collected as profit.

The City of Columbus, Georgia recently won a suit against Expedia in which the court found that Expedia should pay taxes to the city based on the advertised room rate, not the lower wholesale cost. The Supreme Court of South Carolina also found that the OTCs are liable for tax on the retail rate they advertise, charge and collect. A federal court issued a similar verdict in a case brought by 170 Texas cities against OTCs.

Subsequent to the Columbus, Georgia decision, Expedia, Orbitz, Travelocity, hotels.com, (and possibly others) delisted hotels in Columbus. In searches through these OTC websites for rooms in Columbus was performed, customers were directed to rooms in Phenix City, Alabama, and other jurisdictions. Orbitz subsequently came to an agreement with the city and can now be found on the Orbitz search engine. This delisting also has occurred in other jurisdictions.

In addition to litigation initiated by local and state tax authorities, many private consumer protection lawsuits have been filed against some online travel companies contending that consumers who booked rooms through these companies using the wholesale model were misled on charges (the amounts labeled as “taxes and fees”). Expedia was found by a Washington State court to have charged, collected and retained an inflated amount of taxes from consumers. The summary judgment against Expedia was the largest class action in Washington State history.

Several states and cities, such as New York City, North Carolina, Washington, DC, and New York State, have clarified their laws and ordinances to ensure that those written well before the creation of the Internet cannot be used to cloud the issue of whether taxes should be paid equally by those engaging in identical transactions.

Other jurisdictions are in the process of clarifying their laws and ordinances as well.

PROPOSED LEGISLATION TO CREATE A TAX PREFERENCE

Rather than follow the law by remitting taxes on the retail price as hotels do, online travel companies are aggressively pushing legislation that would provide them with a tax loophole by exempting them from remitting taxes on the retail rates they charge and collect from their customers. The legislation would also shield them from further lawsuits over this practice.

Hotels Subject to Tax Increases, Jobs Put At Risk

If cities and other jurisdictions are restricted by the OTC special interest legislation in exercising their tax authority, they would in all likelihood raise taxes on hotels to make up for the resulting budget shortfalls caused by that loophole.

Because local hotels would be subject to increased taxes due to special tax preferences obtained by out-of-state OTCs, local jobs would be put in jeopardy.

Hotels and their employees would in essence be punished for being diligent, following the law, and paying their taxes.

Local hotels should not be discriminated against. Online Travel Companies should be required to remit taxes on their retail rates just as hotels have always done.

Although hotels pay all the taxes they owe and have not had their actions questioned, they will be the ultimate victims of OTC tax loophole legislation.

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