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Birmingham, 8 other cities sue Internet travel sites for lodging tax

By **Russell Hubbard** -- The Birmingham News

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Birmingham and eight other Alabama cities have sued the nation's top Internet travel companies, alleging that **Expedia.com** and similar firms owe millions in unpaid lodging taxes.

The windfall for Birmingham might amount to more than \$5 million, said **Jim Barger**, an attorney for the **Frohsin & Barger** law firm that was hired by the cities to file the suit.

The Jefferson County Circuit Court civil action, filed late Friday, alleges that the big four online reservation sites -- **Orbitz**, Expedia, **Travelocity** and **Priceline** -- have dodged lodging taxes, along with more than a half-dozen smaller firms. The companies, the suit says, rent rooms at a wholesale rate from hotels, paying local lodging tax on those bulk transactions.

The companies then mark up the rooms and rent them one at a time to retail customers who sign up via the Internet. The cities, the suit says, never see a penny of tax on the higher retail room rate, just the original tax paid by the travel companies on the wholesale purchases. Nevertheless, the suit says, retail customers who book online are charged full local retail lodging tax.

Collection attempts have been successful in other parts of the country. In October, San Antonio won a \$21.3 million judgment against the companies. This year, Anaheim, Calif., and San Francisco assessed the travel companies \$51 million for unpaid lodging taxes.

"I don't want to put an exact number on it, but it won't be anything to scoff at," said Barger, whose firm was retained by Birmingham and the other cities to handle the suit.

Attempts to reach officials with the travel companies were unsuccessful. Suing along with Birmingham are Huntsville, Decatur, Auburn, Madison, Anniston, Opelika, Fairhope and Gulf Shores. The Birmingham-Jefferson Civic Center Authority is also among those who brought the suit.

Barger said the travel companies don't lose every time the matter comes up. He said they recently prevailed in Virginia when they successfully argued that lodging taxes on the retail rentals don't apply to them because they are bulk aggregators of hotel rooms. The travel companies have never argued that they have paid the taxes, only that they don't apply, Barger said.

It will be some time before any of the cities collect any money. The Jefferson County lawsuit only asks a judge to rule if the lodging tax applies to the travel companies. If the ruling is yes, the cities will proceed with collection attempts, Barger said, for both back taxes and current ones.

"Cities and counties count on that money," Barger said. "The ongoing collections going forward will be invaluable."

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