

# The New York Times

## Cities and States Press Travel Sites to Collect Hotel Taxes

By JONATHAN D. GLATER  
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There is a reason some online travel sites can offer cheap hotel rooms: State and local governments contend that the sites are not paying all of their taxes.

And faced with fast-shrinking budgets, those governments want the online travel services like Expedia Inc., Priceline, Orbitz and Travelocity to hand over what could amount to tens of millions of dollars.

The issue arises because the travel sites use a two-step process for billing and paying for hotel rooms. The site first bills the consumer for the cost of a hotel room, plus a service fee. Separately, the hotel pays taxes to local governments based on the price actually paid by the travel company — an amount less than the price the consumer pays.

Lawyers for the various governments argue that the travel companies owe hotel occupancy taxes based on the higher price consumers pay.

“That’s the insidious nature of this scam,” said Patrick O’Connell, a lawyer at Baron & Budd, a firm based in Dallas that represents municipalities seeking tax revenue. “The hotel pays tax on the amount that the hotel was paid. The city doesn’t have a clue that the transaction was actually conducted by the online travel company.”

Anaheim, Calif., is one of dozens of state and local governments trying to collect from the online travel services. This month, a city hearing officer concluded that travel companies owed Anaheim \$21.3 million in back taxes, interest and penalties.

“There is no reason why online travel companies should be paying a different amount of taxes than others who book the same hotel rooms,” Mayor Curt Pringle of Anaheim said in a statement.

The \$21.3 million decision would have been confidential, lawyers for Anaheim said, except that [Expedia](#), Travelocity and Orbitz, a unit of Orbitz Worldwide, have filed suits challenging it.

Disputes with online travel companies over hotel occupancy taxes began years ago, but in recent weeks and months local governments — including Anaheim — have completed tax assessments based on reviews of confidential data obtained from the companies. And the companies, in turn, are going to court to overturn those assessments.

“At its core, the argument is that it is a hotel tax, which necessarily means it is a tax on hotels,” said Brian S. Stagner, a lawyer in the Fort Worth office of Kelly Hart & Hallman, which represents Travelocity, a unit of the Sabre Holdings Corporation. “The ordinance defines that as being the operator or proprietor of the hotel.”

In a court filing last week, lawyers for Expedia argued that because it did not own or operate hotel rooms, it could not be subject to the tax. Lawyers for the online travel companies further argued that traditional agencies have used the same pricing methods for years without paying the tax.

“The city of Anaheim is discriminatorily targeting online travel companies,” said Darrel J. Hieber, a lawyer in the Los Angeles office of Skadden, Arps, Slate, Meagher & Flom, which is representing Priceline.

“The ordinance has been in place for more than 30 years, and the city has not tried to apply it to any business, including travel agents or tour operators, to apply to anything other than an actual hotel or lodging,” Mr. Hieber said. He added that other courts have decided similar disputes, involving similarly worded tax laws, in favor of the travel companies.

Representatives of the travel companies would not predict outright that, if local governments succeeded in their efforts, prices for hotel rooms offered through Web sites would rise. Brian Hoyt, a spokesman for Orbitz, said only that Anaheim’s “ruling is bad for the tourism industry.”

Expedia claimed in its complaint that Anaheim was pursuing the travel companies as a result of “undue influence being asserted by the city’s outside contingent fee legal counsel,” who stands to receive a percentage of money recovered by the city.

Mayor Pringle defended the contingent fee arrangement, saying that it saved the city money.

“We are looking to limit the cost to our taxpayers,” he said. “It is very wise in our opinion to have this action being taken under contingency.”