

# Ledger-Enquirer

Tuesday, Jun. 16, 2009

## Columbus wins Expedia lawsuit

Georgia Supreme Court rules online travel service should pay lodging taxes

BY TIM CHITWOOD - tchitwood@ledger-enquirer.com

The Georgia Supreme Court gave Columbus a victory Monday in the city's battle against online travel services that charge customers a higher retail rate for booking a hotel room and then pay the local government a lodging tax based on a cheaper, wholesale room rate.

In the case of Columbus v. Expedia Inc., the court ruled 4-3 that the online travel service should pay lodging taxes based on the higher costs they charge customers, not on the lower wholesale room rate the hotels charge Expedia.

The high court's decisions are binding across Georgia, so the Columbus case could affect other suits filed by governments seeking to get as much revenue as they can from lodging taxes.

But the Expedia case is not the only one Columbus has before the state's highest court. The city also has filed suit against Hotels.com over the same issue. Attorneys expect the Georgia Supreme Court to rule on that case soon.

If the city wins again, then the lawsuits will come back to local courts, where lawyers will argue over how much money the online services owe in back taxes and penalties. Trip Tomlinson, an attorney with the Columbus firm of Pope, McGlamry, Kilpatrick, Morrison & Norwood, which represented the city, said no estimate of the money owed currently is available.

If other online services operating in the same manner paid the city back taxes and penalties along with Expedia and Hotels.com, the total likely would be hundreds of thousands of dollars, Tomlinson said. If the city prevails in these first two cases, it likely will seek compensation from other services it has not sued, he said, and if those companies don't concede, Columbus will have to decide whether to sue them, too.

While summarizing its decision, the court described how such online services operate:

"Like other online companies, Expedia contracts with hotels to obtain an allotment of rooms at a negotiated discount or 'wholesale rate.' It then offers the rooms for sale on its Web site at a marked up rate or 'room rate,' which includes its facilitation fee, although Expedia does not disclose to the public what portion goes to its fee. ... Following a customer's stay, the hotel sends Expedia an invoice for the wholesale rate and the occupancy taxes due."

Then Expedia pays the hotel, and the hotel pays the city lodging tax based on the wholesale room rate it charged Expedia, not on the rate Expedia charged the customer.

The court noted state law allows cities to impose a tax “on the lodging charges actually collected,” and Columbus’ law levies a 7-percent tax on “the charge to the public” for renting a room.

Columbus sued Expedia in 2006, claiming the online service should be paying lodging taxes based on its customer charges. A local judge in 2008 issued an injunction ordering Expedia to start paying lodging taxes based on those charges. Expedia claimed its fees were not subject to such taxation, and appealed to the state Supreme Court.

The court’s majority opinion issued Monday states in part: “Since Expedia has chosen to represent the room rate to the public as the price a customer must pay to secure his right to occupy the room, the city has no choice ... but to tax the customer for the published room rate demanded by Expedia.”

The court said Expedia has to pay up because it by contract agreed to collect the taxes. State law says whoever’s collecting the taxes must turn them over to the taxing authority.

Among those dissenting was presiding Justice Carol Hunstein, who wrote that city law “simply does not govern transactions between a non-innkeeper entity like Expedia and the users of the rooms, who occupy the rooms but do not pay the hotel and instead pay Expedia.” She wrote also that Expedia is paying the tax “based upon the properly calculated sum due under the ordinance,” as that is “the amount Expedia is charged for the rooms it obtains from the hotels.”

Tomlinson said the Expedia case could signal how other suits based on the same principles will play out, at least in Georgia.

“There are cases around the country,” he said. “My firm represents the city of Atlanta. That case has been to the Supreme Court and is back awaiting assignment to a trial judge there, to go forward. There’s a case up in Rome, Georgia, that’s filed in federal court.... And then there are cases literally in dozens of cities around the country.”

City laws regarding lodging taxes vary, but all must comport with state law, he said.

“So since the Supreme Court has said what the state statute means and how their (online services’) business model fits into that, then I think it’s certainly going to be very suggestive of what should happen in all these municipalities around the state,” Tomlinson said.

Staff writer Alan Riquelmy contributed to this report.

