

Thursday August 23, 2012

Critics Question Claim that Taxing Online Travel Companies Hurts Tourism Industry

By Tom Gilroy

LOS ANGELES—For the better part of a decade, online travel companies (OTCs) have tried to dissuade municipalities and states from taxing a contested portion of the price of rooms rented through OTC websites by claiming such a move would raise prices and harm the travel industries.

But two years after New York passed legislation to do just that—and a handful of other states and cities did so either through legislation or litigation—critics of the OTC business model claim there is little or no evidence of such an impact.

“It’s laughable on its face,” Shawn McBurney, executive vice president of governmental affairs at the American Hotel and Lodging Association, said of the OTC argument.

“They (OTCs) can’t pass the tax along because of competition, so the only effect is lower profits for the OTCs,” he added.

The trade group representing hotels supports having OTCs taxed on the rooms they sell because their own members are required to collect taxes and believe it is inequitable and discriminatory not to tax the OTCs.

The OTCs raise the issue simply to “muddle” the question of whether they should be paying relevant occupancy and sales taxes on the full price of rooms rented through their sites, just as hotels do, McBurney stated.

Cash-Strapped Governments

The issue is important because so many state and local governments, still trying to cope with the effects of the 2008-09 economic downturn, are desperate for revenue.

And there is a lot of money involved.

Michael Mazerov of the left-leaning Center for Budget Policies and Priorities, who has studied the issue, estimates that failure to tax the full retail price charged by OTCs is costing state and municipal governments between a quarter and a half billion dollars each year nationwide.

Moreover, OTCs use the argument to lobby state legislatures for bills that would effectively exempt their markups from the relevant taxes, and to thwart efforts in those states looking to capture taxes on the contested amounts.

At the heart of the dispute is the difference between what OTCs agree to pay hotel owners and operators to list rooms on their sites, and the larger amount they actually charge customers to book the rooms.

The companies claim the difference is a fee for a service—facilitating the transaction—and thus is not subject to occupancy and related sales taxes. Cities, counties, and a growing number of states argue their tax statutes—many of which were written decades before the advent of internet-based commerce—always intended to tax the full price of rooms rented by customers.

But when the jurisdictions try to do just that, either through legislation or litigation, the OTCs warn that the effort to tax their markups will be damaging to consumers, hotel bookings, and the local tourism industry.

No Detailed Analysis

No one on either side of the dispute appears to have done a detailed analysis of the impact of tax law changes on hotel bookings and tourism in the handful of locales where such change has occurred.

But Joseph Rubin, president of the Interactive Travel Services Association (ITSA), the OTCs' Washington, D.C.-based trade group, said this group has “anecdotal” evidence that forcing OTCs to pay taxes on the full retail price of rooms hurts the jurisdictions that impose such a requirement. He cited the example of Columbus, Ga., where OTCs de-listed area hotels from their sites after a state court ruled in 2008 that the tax was due on the retail price paid by consumers.

The state senator from the area, Joshua McKoon (R), told BNA he proposed a bill in the last session of the Georgia Legislature to exempt OTCs' “facilitation” fees from occupancy taxes after area hotels complained their business had been hurt by the de-listing. The bill did not pass.

In a letter to a Connecticut legislative committee that was considering a bill to require OTCs to pay the taxes earlier this year, Rubin also noted that Massachusetts, Virginia, Oregon, Florida, Maryland, Texas, and Utah had all rejected legislation that would have required OTCs to pay on the full retail rate, “citing concerns about jobs and tourism.”

And after New York City passed a similar law in 2010, 80 percent of tour operators surveyed said they planned to reduce their New York City bookings due to the new ordinance, Rubin added in the letter.

Opponents of the OTCs, however, claim that there is simply no evidence of harm to hotels, jobs, or tourism in the places where the online companies have been forced to pay taxes on the full retail rate of rooms.
Many Localities Show No Impact on Bookings

The New York State Hospitality & Tourism Association has not seen any indication of a fall-off in hotel bookings or tourism after the state Legislature in mid-2010 passed legislation calling for relevant taxes to be based on the full price of rooms, Jan Chesterton, the association president, told BNA Aug. 17 ([205 DTR K-1, 10/26/10](#)).

In fact, New York jurisdictions that were not covered by the 2010 legislation are now taking a look at changing their local statutes to also capture taxes on the full price, Chesterton added.

Similarly, since the South Carolina Supreme Court ruled in January 2011 that the OTCs' “facilitation” fee must be included in the calculation of taxes associated with room rentals, the state's hotel occupancy rate, average daily rate and “revenue per available room”—an industry profitability measure—have tracked steadily higher, Douglas O'Flaherty, director of operations at the South Carolina Hospitality Association, told BNA.

“That's been our experience as well,” Ron Fennel, executive director of the Council of Atlanta Hotels of the Georgia Hotel & Lodging Association, told BNA Aug. 22, adding that there was no evidence the Georgia Supreme Court's 2011 ruling that taxes were owed on the full price paid by consumers has had a negative effect on the city's hotel industry ([95 DTR K-1, 5/17/11](#)).

In North Carolina, sales revenue and related taxes on hotel and motel rentals rose significantly in fiscal year 2010-11 from the year earlier, despite legislation passed in mid-2010 requiring that taxes be paid on the full retail price of rooms, according to state Department of Revenue statistics ([05 DTR J-1, 1/7/11](#))

Hotels in Washington, D.C., which “clarified” its law at the end of 2010 to require OTCs to pay taxes on the full price paid by consumers, also expect no effect on occupancy, bookings, or tourism, Solomon Keene, president of the Hotel Association of Washington, D.C., told BNA Aug. 17.

“That’s probably their (OTCs’) weakest argument” against such taxes, Keene added.

ITSA's Rubin suggested that not enough time has passed to evaluate the impact of a change in hotel tax law, and noted that other factors—like an improving economy—could be at play in any increase in bookings and tourism revenue in those locales.

But OTC critics and hotel industry experts noted that competition in the industry is such that despite warnings of hotel price increases, OTCs cannot just add higher tax payments to room prices.

Moreover, it is one thing to de-list hotels in a smallish market like Columbus, Ga., but quite another to do so in major hotel markets like New York, Washington, D.C., Atlanta, or the state of Hawaii—which filed a lawsuit against major OTCs in March 2011 seeking \$170 million in allegedly unpaid occupancy taxes, they added.