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D.C. Government

D.C. could be losing hotel taxes to online companies

Washington Business Journal - by [Jonathan O'Connell](#) Staff Reporter

Dozens of cash-strapped states and cities nationwide have sued Expedia Inc., Travelocity and other online travel booking services for taxes on hotel rooms they believe they are owed.

D.C., as one of the nation's top tourist destinations, could be owed more than \$100 million in back taxes and penalties but — despite an anticipated budget deficit of \$967 million in fiscal 2011 — it has yet to join the fray.

D.C. hotels pay a 14.5 percent tax on every room they book, but when online companies receive rooms at wholesale rates and offer them to the public, they pay taxes on the wholesale prices, not the marked-up ones. If, for example, Expedia buys a room night for \$100 and rents it for \$150, D.C. does not receive the 14.5 percent tax — about \$7.25 — on the \$50 difference.

That has led Anaheim, Calif., Chicago, Philadelphia, San Francisco and other destinations to sue the online travel companies for unpaid taxes. Steven Wolens, a principal at the Dallas-based law firm McKool Smith who represents cities in some of the cases, said the travel firms control the price, cancellation rules and other contract details just as hotels do and in most places should be paying the same taxes. “The online travel company does everything except provide the bed, the key, the turndown service and the mint on your pillow,” Wolens said.

Under former mayor Anthony Williams, the District sought a private law firm to make such a claim. More recently, officials in the D.C. Office of Tax and Revenue, under Chief Financial Officer Natwar Gandhi, have raised the idea with Attorney General Peter Nickles.

Nickles, however, said he is monitoring cases in other jurisdictions but would not take any action until a court delivers a “definitive decision.” Until then, he said, action is a waste of time. “This litigation is going to go on a very long time,” he said. “When it becomes clear there is a case we will decide whether to take action.” He said city rules barred the hiring of firms on a contingency basis.

Southlake, Texas-based Travelocity and Bellevue, Wash.-based Expedia, which owns Hotels.com and Hotwire.com, referred questions to Art Sackler, executive director of the Interactive Travel Services Association, who said they are fully compliant with tax laws. “The online travel companies are not hotel operators,” Sackler said. “They don't buy, sell, resell, rent, reserve blocks of hotel rooms. What they do is serve as a travel intermediary that enables consumers to book their own hotel rooms online. They facilitate travel.”

Elizabeth Herrington, a partner at McDermott Will & Emory who represents Chicago-based Orbitz, says bricks-and-mortar travel agents never paid hotel taxes for the same reason. “The only difference is that the online companies are doing it on a much bigger scale,” she said.

But with jurisdictions in sore need of tax revenue and trial lawyers trawling the country for cases, the suits aren’t likely to go away, particularly after Atlanta’s case reached the Georgia Supreme Court last September. The court hasn’t issued a decision yet.

D.C. took in \$204 million from its hotel tax in fiscal 2008 and anticipates taking in \$212 million this year. How much it could pursue is difficult to ascertain because estimates on what portion of rooms the hotels book vary, but Wolens guessed that D.C. is owed roughly \$125 million going back to 1999 in unpaid taxes, interest and penalties from the online companies. An attorney from the Georgia case, Neal Pope, a senior partner in Columbus, Ga.-based Wade Tomlinson, Pope, McGlamry, Kilpatrick, Morrison & Norwood LLP said, “You’re looking at, I think conservatively, in excess of \$100 million in taxes that have not been paid to D.C.”

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