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The Buzz

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Documents released on online travel dispute show companies' tax avoidance plan



(Rep. Rick Kriseman, D- St. Petersburg, gives the thumbs down on the House floor, in Tallahassee. Kriseman sent House members documents showing Online travel providers attempted for years to skirt paying Florida's sales taxes. Scott Keeler, Times)

Online travel providers attempted for years to skirt paying Florida's sales taxes, even though their lawyers and accountants had advised them that they were obligated to pay, according to documents released Monday in an attempt to kill the industry's bill.

The recently-discovered documents, uncovered during pending litigation in Georgia, were sent to all 120 members of the Florida House of Representatives on Monday by Rep. **Rick Kriseman** prior to the House's debate on the bill. The bill would shield the online travel companies from paying taxes on the retail price of the hotel rooms they sell and allow them to continue to pay taxes based on the wholesale cost. (See documents here: [Download 2003 01 28 Memo to USA Interactive \(1\)](#) [Download 2003 01 31 Memo to Expedia](#) [Download 2003 07 28 MSB Occupancy Tax Analysis\[1\]](#))

The legislation is opposed by counties who say they are losing \$30 million to \$40 million a year in revenue, and large hotels chains, who see the tax break as an advantage for their online competitors. Proponents argue that the Internet companies provide a service and increasing their tax would be the equivalent of a services tax.

"A vote for this bill is condoning a brand new tax in the State of Florida and I don't want to create an environment where we're raising the cost of bringing people here at a time when we need them the most," said Rep. **Jimmy Patronis**, R-Panama City.

Despite the last-minute argument by Kriseman and a bi-partisan group of opponents, the House voted 77-38 to exempt Internet-based travel companies, such as Expedia, Hotels.com and Priceline, from paying taxes based on the retail rate of hotel rooms paid by customers.

According to the documents, the online resellers knew as early as 2003 "that they owed the taxes to the state, and have been purposefully and intentionally failing to pay the taxes, hoping that they wouldn't be sued before they could change state law," said Kriseman, a lawyer from St. Petersburg, in his letter to House members.

Kriseman argued that the documents show that the online resellers "purposefully and intentionally failing to pay the taxes" and engaged in an orchestrated lobbying effort to change the law to avoid paying the tax before they were sued.

A 2003 document labeled an "Expedia confidential attorney work product," the company's lawyers suggested: "...it appears that the stakes are high enough that we should resist, delay and make it as difficult as possible for any state to require us to collect occupancy tax."

The lawyers then suggested "that most tax regulators – even the most obstinate – will offer up some sort of settlement before threatening litigation." The lawyer noted that Florida's Department of Revenue had offered to "forgive all back taxes if we register as a tax collector going forward."

In another legal opinion from the Holland and Knight law firm dated Jan. 28, 2003, lawyers warned Expedia and Hotels.com that "it appears that the total price that customers pay to the companies for

hotel rooms is subject to taxation in most jurisdictions analyzed..." The opinion also indicated that of all the states, Expedia "has a high risk of exposure to state and local taxes in Florida."

Jennifer Green, lobbyist for Expedia, said the company would not comment on the documents but she suggested their last-minute appearance so late in the session was suspicious.

"This issue has come up and been fully vetted," she said. "It's the same argument from two to three years ago."

The lawyers also referred to an analysis from the accounting firm of Deloitte that determined that "it is very likely that the Department will determine, and courts would affirm, that the companies should collect and remit transient accommodations taxes on the full retail price charged for Florida hotel rooms."

The online-travel companies and their supporters argue that the difference between the amount they pay hotels and the amount they charge consumers is the service they provide to help consumers search for rooms, compare prices and make bookings.

The issue has been one of the most heavily lobbied issues of this legislative session, as the online-travel industry spars against industry giants such as Walt Disney World and Marriott International, county governments and local destination-marketing bureaus.

State and local governments across the country have sued the online companies to force them to remit taxes on the retail portion of their hotel rooms. The bill attempts to end that litigation in Florida and revenue estimators predict counties will forgo about \$28.7 million in revenue that is not now being collected.

Posted by Mary Ellen Klas