



# Does the Roaming Gnome Owe Florida More in Taxes?

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Florida lawmakers are trying to get in front of federal attempts to prohibit taxes on Internet travel companies while also bolstering a lawsuit filed by Attorney General Bill McCollum against industry leaders.

A flurry of legislation has been filed recently that would revamp the state's tax system to make it clear that online bookers must pay tax to local governments on the full price of rooms they reserve for customers.

McCollum filed suit last month against Expedia and Orbitz, claiming the companies have been able to skim excess profit by not charging tax on the higher, retail rate they charge customers for rooms they secure at reduced, wholesale prices from hotels.

The difference is costing tens of millions of dollars in tourist-tax revenue for counties struggling with recession-linked budget woes, McCollum said. Several big Florida tourist counties – Orange, Pinellas, Polk, Duval, Leon, Escambia and Broward – have filed their own lawsuit against the companies, seeking to capture the extra tax money.

But McCollum, and Florida lawmakers who have filed three different bills in recent weeks, acknowledge state law is vague on the tax liability.

"It's not clear enough to me or them," said Sen. Mike Bennett, R-Bradenton, who is sponsoring a measure (SB 996). "Florida deserves the tax money. And all we're asking for is what we're owed."

Along with Bennett, Rep. Janet Long, R-Seminole, (HB 335) and Sen. Evelyn Lynn, R-Ormond Beach, (SB 156) have filed legislation attempting to clarify that online companies should pay sales and tourist-related taxes on the higher retail rate they charge.

Odds of winning the lawsuits may be stacked against Florida, however. The Interactive Travel Services Association said companies have had six lawsuits dismissed against them in recent months filed by governments across the nation, the most recent being an appellate victory Tuesday in a Kentucky case.

"The language of most state laws is unclear because they were created before the Internet age," ITSA's Andrew Weinstein said Wednesday. "Courts have also sided with the approach that if the statutes are unclear, they should err on the side of those who have not formerly been required to pay taxes."

The push by Florida lawmakers also stems, in part, from prospects that Congress could impose a ban on collecting taxes on the retail price of rooms. For the past two years, Expedia, Priceline and other companies have tried to attach an amendment to various bills in Congress seeking to bar cities and counties from imposing taxes on rooms rented through an online company or conventional travel agent.

The effort has so far proved unsuccessful. But it's likely to be revived when Congress returns after a Christmas break, said Michael Mazerov, who has studied the issue for the Center on Budget and Policy Priorities, a Washington, D.C. Non-profit.

"They've never been willing to let this be introduced as a freestanding bill," Mazerov said. "But they've been trying to slip it onto something else. In most states, the statutory language didn't anticipate the business model of online travel companies. And the companies are trying to keep the outdated language that's there now."

But even if local governments successfully clarify laws to rope-in the Internet services, companies have begun fighting back.

On Monday, Internet travel firms sued New York city to stop a measure which went into effect in September that allowed the city's hotel occupancy tax to be applied to "third-party travel intermediaries" in an attempt to capture more taxes from online bookings.

"It's a difficult issue," Weinstein told the News Service of Florida. "But we're willing to work with Florida to reach a conclusion that is fair and equitable to everyone."