

Expedia to Priceline Targeted as States Cry for Revenue: Taxes

By Tom Gilroy - Aug 19, 2013



Patrick Fallon/Bloomberg

An employee demonstrates how to prepare a room for guests at a hotel in Los Angeles, California, on April 8, 2012.

[Expedia Inc. \(EXPE\)](#), [Priceline.com Inc. \(PCLN\)](#) and online travel companies may face a growing chorus of states raising tax rates on their transactions.

The principal advocacy organization for state legislators is calling on states to consider rules that would require online travel companies to pay hotel occupancy taxes on the full rental price paid by customers, and not simply the wholesale rate they have negotiated with hotels, Bloomberg BNA reported.

State and local governments are increasingly critical of the “merchant model” used by online travel companies, saying it puts local hotels at a disadvantage and hurts revenue collection as municipal budgets shrink. States including [New York](#) and [North Carolina](#) passed legislation requiring payment on the full room price. In [South Carolina](#) and [Georgia](#), state supreme courts ruled taxes were due on the full rate, not the wholesale rate.

Expedia, Orbitz LLC, Travelocity.com LP and Priceline.com have argued for years in lawsuits around the country that the difference between what they agree to pay hotels to list rooms for rent on their websites and what they charge customers is a service fee for “facilitating” the transaction, and thus isn’t subject to occupancy taxes.

The National Conference of State Legislatures committee studied the issue and said last week that states should consider legislation that requires the companies to remit taxes based on the full rental price paid by the user.

The committee also said states should consider legislation requiring the companies to publicly and explicitly display charges and resort fees leading to the final price to the user; and require that taxes, fees and service charges be separately stated instead of bundling them together.

Sending Signal

The recommendation “sends a signal to elected officials in all 50 states that laws need to be clarified to ensure that hotels are not placed at a competitive disadvantage” because identical transactions by online companies have a different tax treatment, said Katherine Lugar, president and chief executive officer of the American Hotel & Lodging Association.

“Fortunately for taxpayers, legislators are beholden to their constituents -- constituents who don’t like new taxes -- not to an NCSL working group,” the online travel companies’ trade group, the Travel Technology Association, said in a statement emailed to BNA.

In addition to saying the “merchant model” shortchanges municipalities of taxes they are owed, many of the cities, counties and states that have sued in the past nine years have complained that the online companies intentionally obfuscate how much tax a customer is paying when renting through one of their websites.

June Ruling

A June ruling by an Illinois Circuit Court judge in a case brought in 2005 by the City of Chicago found that the online companies had breached a duty to taxpayers by such bundling of fees and taxes.

“Defendants, in their sole discretion, mingle hotel accommodations tax and travel service fees into one lump sum,” Judge Robert L. Cepero wrote in his summary judgment order and opinion. “The consumer is never explicitly told how much they are paying for hotel accommodations tax. The comingling shows that the tax collector, the OTCs, insulate themselves from accountability as to the exact amount of tax collected versus the exact amount of taxes due.”

The National Conference of State Legislatures doesn’t tell states what laws to adopt; rather it guides them should they consider legislation in a given area.

The [task force](#), however, can have an impact. The group’s point-of-sale 911 fees legislation model it adopted in 2010 has now been enacted in more than 30 states, and disaster model legislation the task force approved in 2012 will be enacted in more than 15 states by the end of 2013, a task force official told BNA in June.

No Strangers

The online travel companies are no strangers to the corridors of power in state capitals, having lobbied for years for legislation to exempt their “facilitation” fees from occupancy taxes. Missouri did just that in 2010. Efforts in other states, particularly in hotel-rich [Florida](#), have fallen short, though a number of states have looked at legislation along the lines of the [National Conference of State Legislatures](#) resolution and chosen not to adopt it.

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