

Flagler bed-tax lawsuit against online travel firms proceeds

BY JULIE MURPHY, STAFF WRITER

May 19, 2011

BUNNELL -- Multiple lawsuits filed by more than a dozen counties against online travel companies such as Expedia and Priceline are moving forward and attorneys expect to receive documents by the end of the week that illustrate how the companies' funds flow and taxes are collected when they sell a room to a customer.

Flagler County Attorney Al Hadeed said the companies, claiming that they aren't hotels, have been able to avoid paying Flagler County's 4 percent tourist development council tax, also known as a bed tax, for several years.

But a bill passed by the Florida House during the last legislative session that would have exempted such companies from paying the taxes died in the Florida Senate.

If approved, the bill could have cut off lawsuits filed by many counties, including Flagler and Volusia in separate suits, seeking to obtain back taxes they claim they are owed by the online travel companies.

The Florida House on May 2 voted 77-38 to pass the bill and Flagler County representatives Fred Costello and Bill Proctor voted against it, Hadeed said. The session ended before the Senate could vote on the bill.

"We've completed a confidentiality agreement," Hadeed told Flagler County officials during Monday night's commission meeting. "Wednesday, we'll start getting those documents. We expect to start taking depositions next month."

Hadeed said the suit filed by Flagler and 11 other counties -- Leon, Manatee, Pinellas, Polk, Nassau, St. Johns, Alachua, Escambia, Charlotte, Hillsborough and Pasco -- has been in pretrial status since it was filed in 2009 in Leon County.

"It can proceed now that the legislative session is finished," Hadeed said Tuesday. "It's a complicated lawsuit -- complicated by the number of counties and the number of online companies."

Late last month, Volusia County and the Volusia County School Board also filed a separate lawsuit against four online travel companies -- Expedia, Priceline, Travelocity and Orbitz.

Volusia County spokesman Dave Byron said the playing field should be level.

"(We continue) to support the position that online travel companies should pay the same taxes," he said. "Any taxes lost take away from money that's needed to market the area."

Volusia County also uses bed-tax dollars, collected and dedicated to future tourism promotion and events, to pay bonds that financed the expansion of the Ocean Center.

Flagler County Commissioner Milissa Holland said it's "obscene" that online travel companies have been allowed to skirt paying millions in tax dollars for so long.

"It's money that is just sitting there," she said. "They're collecting it. They should pay their fair share. I hope that, once and for all, they will have to pay this tax money that goes to municipalities throughout Florida."

Hadeed said the state's Revenue Estimating Conference -- a group of economists that makes official estimates for the governor and Legislature -- gave an official opinion that 60 of the state's 67 counties that levy tourism taxes will lose out on \$27.8 million in bed taxes for the fiscal year beginning July 1. The four-year estimate is \$131.5 million.

That doesn't include standard sales tax, Hadeed said. The unofficial estimate for that is \$40 million in the first year.

Hadeed said representatives for these businesses argue that they act in a middle-man position, similar to how travel agents operate, and not as hotels. The difference, Hadeed said, is that the online companies buy inventory that they control.

"A travel agent was paid a commission," Hadeed said, "but the room was taxed on the full price before the commission was paid."

Online travel companies pay taxes when they purchase the rooms. But if, for example, they purchase a room for \$10 a night and sell it for \$50 a night, taxes aren't paid on the \$40 difference.

"They've been trying to get this tax exemption to escape the liability," Hadeed said of the recent bill passed by the House.

He said these "billion-dollar companies" have used substantial resources for lobbyists and lawyers.

"It's a David and Goliath struggle, but now we can scrutinize their documents," Hadeed said.