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## Tax Decisions & Rulings

### Electronic Commerce


# Hawaii Court Grants Summary Judgment To State, Rules OTCs Owe Back Tax Penalties

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LOS ANGELES-A Hawaii Tax Appeal Court judge Aug. 12 granted summary judgment to the state, finding that online travel companies like Expedia Inc., Orbitz LLC, and [Travelocity.com](#) LP owed Hawaii interest on penalties assessed for failure to pay general excise tax (GET), bringing the total the online firms owe the state to almost \$246 million, the deputy attorney general prosecuting the case told BNA Aug. 13 ( [Travelocity.com LP v. State](#), Haw. Tax App. Ct., No. 1TX 11-1-0021, *ruling* 8/12/13).


The oral ruling added some \$25 million in interest to the unpaid GET, and penalties, the same court ruled in January and March the OTCs owed Hawaii. Equally important, the ruling, when it is finalized-probably within days-paves the way for both sides to appeal decisions in the case that went against them, Supervising Deputy Attorney General Hugh R. Jones said.

The court found in October 2012 that the OTCs did not owe transient accommodation tax (TAT) on the difference between what they agree to pay hotels to list rooms on the OTCs' websites, and the marked-up price they charge customers to rent those rooms.

However, in January 2013, the same judge ruled the state's GET did cover the mark-up, and in March found that penalties applied to those unpaid taxes (55 DTR K-1, 3/21/13 ). The latest ruling granted the state's motion for summary judgment on the question of whether the companies also should pay interest on the penalties.

Normally, the next step would be appeals by both parties to the Hawaii Intermediate Court of Appeals, but Jones said he believed the two sides would agree to a joint request to transfer the case to the Hawaii Supreme Court. Under Hawaii law, the companies must first pay the \$245.6 million in back taxes, penalties, and interest before they may appeal the assessments, Jones noted.

That amount covers tax years 2000 through 2011.

Separately, the OTCs in June also filed appeals of TAT and GET assessments totaling more than \$87 million levied by the Hawaii Department of Taxation for tax year 2012 (118 DTR K-2, 6/19/13 ).

A spokeswoman for the Travel Technology Association, the OTCs' trade group, confirmed in an August 13 email to BNA that both sides had agreed to request the matter go to the Supreme Court, but declined to comment further.

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