



Hotel Occupancy Tax Alert - Update

Transient occupancy tax litigation by cities and local governments continues to mushroom

*By Jim Butler and Jim Abrams
November 6, 2009*

The transient occupancy tax litigation by cities and local governments continues to mushroom.

On November 3, 2009, Florida filed one of the first lawsuits against Expedia and Orbitz for lost bed taxes, but using the Florida Deceptive and Unfair Trade Practices Act.

Although October was a big month in the OTC battles, November may be even bigger. Today, we are going to look at the latest litigation filings and what they mean.

Latest development in the local government litigation against the OTCs

On October 31, 2009, San Antonio won a \$20 million verdict against major travel companies. Earlier in the month, the Georgia Supreme Court upheld a lower court decision against the OTCs for the City of Columbus. And just last week, 5 Florida counties announced they would sue Expedia, Orbitz, Priceline and Travelocity over shortchanged bed taxes. (if you missed this, see " Hotel Occupancy Tax Alert: online travel company suits over transient occupancy taxes raise - 5 things every hotel owner and operator needs to know " at www.HotelLawBlog.com or click the link at the end of this article.)

But November promises to be another important month. On November 3, 2009, Florida Attorney General Bill McCollum announced what is believed to be the first such TOT lawsuit filed by a state against the online travel companies. Some Florida tax officials have estimated the underpaid bed taxes in Florida at \$146 million since 2000.

As the State of Florida now joins more than 200 municipalities and other governments suing Expedia and the other online travel companies, the high stakes got even higher. What does this all mean for hotel owners and operators?

How many hundreds of millions of taxes are at issue?

No one knows how much lost tax revenue is at issue. But just a few days ago, looking at present awards and assessments already made, we saw more than \$300 million at stake.

If the recent filings by the State of Florida and 5 more counties in Florida indicate a continuing

trend, this number can soar even higher.

Why is the current occupancy tax litigation so important for hotel owners and operators?

The current occupancy tax battles are generally between Expedia and the other online travel companies pitched against various state, county and local governments. If matters went no further, this litigation might be a matter of idle curiosity for hotel owners and operators. But it does not look like it will stop there.

James O. Abrams is a senior member of the JMBM Global Hospitality Group® and the former President and CEO of the California Hotel & Lodging Association. He has been watching the TOT problem develop over the past few years, starting with the lawsuit which Los Angeles filed in 2004 against all of the OTCs.

According to Abrams, before the City of Los Angeles filed suit, it amended its TOT ordinance to allow it to collect TOT from the OTCs. Later in 2004, the city sent all of the hotels a letter which said, in so many words, that if the city cannot collect the additional TOT from the online travel companies, it was going to collect it from the hotels.

Recently, the cities of Anaheim and San Francisco have taken the same position and told local lodging operators informally that they intend to come after the hotels for the additional TOT if they ultimately lose to the online travel companies in court. This seems to be part of a national trend.

On the flip side, Abrams says, "I am convinced that if the local governmental entities ultimately win, the online travel companies will do whatever they can to recoup the extra TOT from the hotels."

So either way, hotels are likely to be targeted for unpaid bed taxes, by either frustrated local governments who were unsuccessful against TOTs, or by the TOTs who lost to local governments.

We will keep you posted on new developments we see. If you learn of anything new, please let us know and we will share material information with our readers.

If you would like more detail on this issue, please click "[Hotel Occupancy Tax Alert: online travel company suits over transient occupancy taxes raise - 5 things every hotel owner and operator needs to know.](#)"

Jim Abrams is a senior member of the JMBM Global Hospitality Group® and the former President and CEO of the California Hotel & Lodging Association. Jim has served the hospitality industry for 40 years and specializes in lodging and hospitality law and in representing and advising trade associations and other non-profit entities. Jim has significant experience in government affairs at the national level, the state level - including the California Legislature and scores of state agencies - and with local governments and agencies. He has authored successful ballot measures and scores of bills for his clients. For more information, contact Jim at jabrams@jmbm.com or 415.398.8080.

Jim Butler is one of the top hotel lawyers in the world. GOOGLE "hotel lawyer" or "hotel

mixed-use” or “condo hotel lawyer” and you will see why. He devotes 100% of his practice to hospitality, representing hotel owners, developers and lenders. Jim leads JMBM’s Global Hospitality Group®—a team of 50 seasoned professionals with more than \$40 billion of hotel transactional experience, involving more than 1,000 properties located around the globe. In the last 5 years alone, they have brought their practical advice to more than 80 “hotel-enhanced mixed-use” projects, a term Jim coined to fill a void in industry lexicon. This term describes one of the hottest developments in real estate—where hotels work together with shopping center, residential, office, retail, spa and sports facility components to mutually enhance the entire project’s excitement and success. Jim and his team are more than “just” great hotel lawyers. They are also hospitality consultants and business advisors. They are deal makers. They can help find the right operator or capital provider. They know who to call and how to reach them. They are a major gateway of hotel finance, facilitating the flow of capital with their legal skill, hospitality industry knowledge and ability to find the right “fit” for all parts of the capital stack. Because they are part of the very fabric of the hotel industry, they are able to help clients identify key business goals, assemble the right team, strategize the approach to optimize value and then get the deal done. Jim is the author of the Hotel Law Blog, www.HotelLawBlog.com. He can be reached at +1 310.201.3526 or jbutler@jmbm.com.

Contact:

Jim Butler
Chairman, Global Hospitality Group
Jeffer, Mangels, Butler & Marmaro
LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067-4308
(310) 201-3526 direct
jbutler@jmbm.com
www.HotelLawBlog.com