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I focus on the tax issues of individuals, businesses & more

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Is Expedia Stealing From its Customers ?

There are some commercial practices that really annoy me. One is the game that car rental companies play with “prepaid-fuel”. Pay for a full tank of gas and bring the car back empty. Usually I am in too much of a hurry to spend an hour circling the airport so that I can coast up to the agent processing the returned rental cars with an empty tank. Besides that would not be environmentally responsible. So I end up letting [Enterprise](#) sell the same gallon or two of gas that I have already paid for to somebody else, who probably does the same thing. My latest annoyance is “tax recovery amounts” paid to on-line travel companies. There has been a war between cities and on-line travel companies. The City of [Houston](#) just lost a battle in the [Cout of Appeals of Texas](#). The issue is about whether the cities should be collecting room taxes on the amounts that online travel companies (OTCs) charge their customers or the amount that OTCs pay the hotels. To make it personal I am going to pick on [Expedia](#), which is one of the defendants in this case. In a better world this would be a case of Expedia standing up for me their customer. If Expedia can get the city to charge me less tax that’s great and it is really admirable of the companies to stand up for their customers in the lawsuit. Of course this is not that better world. Expedia does not collect taxes. It collects a “tax recovery charge”:

The actual tax amounts paid by the [Expedia](#)Companies to the hotel suppliers may vary from the tax recovery charge amounts, depending upon the rates, taxability, etc. in effect at the time of the actual use of the hotel by our customers. We retain our service fees as compensation in servicing your travel reservation.

So they recover some taxes from you. If they recover some extra taxes,they keep the extra for themselves. The cities do not like this and have been suing. There does not seem to be some broad federal issue at work here so the decisions have been based on the precise wording on the statutes and similar issues like state constitutional provisions. The [City of Chicago](#) lost to [Stubhub](#) on an “amusement tax”, where the issues were similar based on the [Illinois](#) constitution. To be fair to [Stubhub](#), they just did not want to be involved in collecting a tax rather than collecting or (recovering) a tax that they do not remit in full. Expedia has been working on a settlement with [Orange County Florida](#) (Orlando is in Orange County). [Bowling Green](#) lost its case. In [Travelscape LLC v South Carolina Department of Revenue](#) the Supreme Court of South Carolina ruled against an Expedia subsidiary.

Expedia has thrown in the towel with respect to at least one major destination. Their fine print has this message to visitors to the [Big Apple](#) and other places in the Empire State, assuming there are any worth visiting:

In addition to the above, for hotel stays in [New York City](#), [New York sales taxes](#) and [New York City hotel occupancy taxes](#) are collected on both the rent received by the hotel supplier for the room and the amount [Expedia](#) charges for its services. For hotel stays in [New York State](#), but outside of [New York City](#), [New York](#)

sales taxes are collected on both the rent received by the hotel supplier for the room and the amount Expedia charges for its services. In addition, for hotel stays in New York State, but outside of New York City, tax recovery charges are collected to cover the local hotel occupancy taxes due on the rent received by the hotel supplier for the room. New York sales taxes and New York City hotel occupancy taxes due on Expedia's services and the rent received by the hotel supplier, as well as tax recovery charges, are included in the "taxes and service fees" line on our website and in the "taxes" line on the invoice confirmation for your reservation. Expedia may not charge services fees for hotel room stays in New York.

Expedia's New York State and New York City tax registration certificates and numbers are provided below. New York State and New York City have amended their laws to seek to tax Expedia's services and to require that you be informed of these taxes.

Lesser cities might want to look at the New York statute as a model, although there might be state constitutional issues. Also, conceivably Expedia could choose to not cover a city if it go too uppity and lacked the attractiveness of New York or Orlando. There is one suggestion in the [Bowling Green](#) decision that intrigues me:

*Finally, the City argues that the trial court erred in dismissing its complaint in its entirety, including claims for conversion, unjust enrichment and constructive trust arising from the OTCs' collection of the full transient room tax collected on behalf of the hotels. **We find, however, that it would be the consumer who would have standing to challenge the OTCs in such a manner, rather than the City.***

I wonder if the Court of Appeals of Kentucky is hinting that a class action lawsuit would play well there.