



October 29, 2010

Judge thwarts Expedia's bid to duck NYC tax law

State court quashes suit filed by Priceline, Expedia and others seeking to reinstate a legal loophole for skimming off of city's hotel occupancy tax.

By [Hilary Potkewitz](#)

Discount online travel agencies Expedia.com, Priceline.com and others lost big in New York State Supreme Court last week when a judge dismissed their lawsuit against the city's hotel tax. The ruling will pay off in greater transparency for online travel customers and preserve millions for city coffers.

The lawsuit targeted a city law, enacted in September of last year, which levied a tax on the service fees pocketed by the online agencies and forced the companies to provide their customers with a breakdown of the hotel taxes on their bill.

The court's moves means that online-travel bookers will have to pay the city the full amount of the city hotel occupancy tax they collect based upon the quoted room rate to their customer, rather than a lower rate they might have negotiated internally with the hotel operator.

In a destination city like New York, the Hotel Room Occupancy Tax is a big deal, producing \$363 million in tax revenue for the city last year, according to the Independent Budget Office.

More than 10 online travel agencies joined a lawsuit against the New York City Department of Finance last December trying to block the law, which cut into their revenues and, they claimed, threatened their livelihoods.

"We are pleased that the court confirmed the city's right to impose the hotel room occupancy tax on the full amount charged for a hotel room," said Joshua Wolf, assistant corporation counsel with the tax division of the New York City Law Department.

Norwalk, Conn.-based Priceline.com, one of the prime plaintiffs in the suit, declined comment Friday. The firm has a second claim pending before the State Supreme Court seeking to exempt at least part of their fees from the hotel tax.

The law in question, Local Law 43, closed a tax loophole that online travel agencies had enjoyed for years. When a customer booked a hotel room through an online travel site, they pay the quoted room rate—for example, \$200—plus the hotel tax. In New York City, the hotel room occupancy tax is 5.875%, so the bill in this case would be nearly \$212.

But in most cases, online travel booking sites negotiate a discounted room rate with the hotel, at say, \$150 per night, which the hotel tax would boost to about \$159.

Before Local Law 43 was enacted, online travel agencies would collect the \$212 from their customer, pay the hotel \$159, and then pocket the difference as a service fee.

City officials smarted at the idea that online travel agencies were collecting the \$12 in "hotel taxes" but then only paying \$9 in actual hotel taxes to the city.

The city law enacted more than a year ago changed the provisions of the tax, mandating that hotel occupancy tax be levied on "the entire amount paid by the customer" for the hotel room, among other changes.

The city estimated that the law generated an additional \$14 million in additional hotel tax revenue for fiscal year 2011.

Cities across the nation are having this battle with online travel-booking sites, with new laws and lawsuits flying. A Superior Court judge in Atlanta ruled in July that the online agencies were cheating the city out of hotel occupancy taxes, ordering that taxes be based on the total room rate paid by the customer.

Industry groups like the Interactive Travel Services Association warn that these laws will result in higher rates for rooms booked online.