

Jury sides with Texas cities in lawsuit against online hotel booking companies

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A jury has awarded \$20 million to Fort Worth, Dallas, Grapevine and more than 170 other Texas cities as part of a federal class-action lawsuit against online hotel booking companies accused of pocketing hotel occupancy taxes as profit.

Numerous North Texas cities participated in the lawsuit, first filed by San Antonio in 2006, to collect tourism tax revenue that they said was underpaid by Internet hotel room wholesalers.

According to the lawsuit, heard in San Antonio, booking companies such as Expedia.com, Hotels.com, Priceline.com and Southlake-based Travelocity have paid cities hotel occupancy taxes based only on the wholesale rates they had negotiated with the hotels rather than the retail rates customers paid when they booked online.

For instance, if the companies booked a block of rooms at \$75 a night and resold them for \$100 a night, they paid taxes only on the lower rate.

"The companies ignored the Texas comptroller's rulings that go back to 2002 that clearly tell them they must remit the hotel occupancy taxes based on the price they charge customers for hotel rooms that they sell in Texas," said Steve Wolens, lead trial attorney for the cities.

Andrew Weinstein, a spokesman for the Interactive Travel Services Association, said the jury dismissed a claim that online travel companies have been collecting and keeping the taxes owed to the cities. The online booking companies plan to appeal the verdict.

"On the issue of who controls hotels, we were disappointed in the jury's decision because we believe the language in the ordinance is very clear," Weinstein said. "Online travel companies do not own, operate, manage or control hotels, and we are confident the 5th Circuit Court of Appeals will agree with the decisions of five other federal courts that online travel companies do not owe these taxes." Fort Worth stands to gain millions of dollars and is one of the top cities owed money, behind San Antonio, Dallas and Austin, said Wolens, of national law firm McKool Smith. Other North Texas cities in the suit include Mansfield, Hurst, Euless, Bedford, Grand Prairie and Irving.

'We can always use it'

The verdict was a rare bit of good financial news for Fort Worth. The city slashed its budget this year to make up for a downturn in tax revenue. Dozens of positions have been cut, and most employees will have to take eight unpaid furlough days this year.

Assistant City Manager Karen Montgomery said she hadn't heard of the case but was happy about the verdict. "We can always use it," she said.

There are restrictions on how cities can spend hotel occupancy tax revenue; it can't be used to offset a drop in general tax funds, for example, she said.

Cities use such revenue for infrastructure and initiatives that promote tourism and the convention and hotel industry, such as convention centers, sports stadiums and arts programs.

Fort Worth, which collected \$17.1 million in hotel occupancy taxes in fiscal 2008, used some of the revenue for incentives on the new Omni Fort Worth Hotel.

"It's important money during these tough economic times. But taxes are taxes whether the economy is flying high or sinking low. These are taxes they were obligated to collect and remit," Wolens said. "They were pocketing the difference."

Tougher ordinance

The jury reached its verdict, which could rise with statutory penalties and interest, on Friday after a four-week trial in the U.S. District Court for the Western District of Texas. Wolens expects the verdict to be appealed, and at least 45 similar cases are being litigated nationwide, he said.

Arlington did not participate in the class action lawsuit, but the City Council is expected to vote today to toughen its ordinance on hotel occupancy tax collections in light of the litigation. Part of Arlington's hotel occupancy tax revenue is being used to pay back the city's portion of the \$1.2 billion Cowboys Stadium.

"We're not going to get anything from the past," Arlington City Attorney Jay Doegey said. "We will be darn sure in the future that that we're going to get paid what we should be paid."

Staff writer Mike Lee contributed to this report, which includes material from the *Star-Telegram* archives.

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Arlington city attorney

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