

Chicago Tribune



A guest checks in at the InterContinental O'Hare in a 2008 file photo. (Chris Walker/Tribune / April 8, 2013)

Local towns sue online travel agencies for back taxes

By Gregory KarpTribune reporter

April 8, 2013

Several Illinois municipalities have filed a lawsuit against online travel agencies, claiming the Internet bookers aren't remitting the correct amount of hotel tax, shortchanging revenue-thirsty cities and towns for more than a decade.

But a travel industry organization says online booking agencies pay all they're required to pay.

The municipalities claim online travel agencies, such as Priceline, Expedia, Travelocity, Hotels.com and Hotwire, have charged consumers retail prices but only remitted hotel taxes based on wholesale prices.

The suit claims municipalities are owed hotel tax on the full amount.

"This is an effort to collect taxes that have not been paid," said Tom Prindable, managing partner of Chicago-based Clifford Law Offices, among the firms representing local governments. "This is outrageous conduct."

But online travel companies have argued that the difference between the wholesale and retail prices is a fee for their services. Because it is not for lodging, it is not subject to hotel occupancy taxes, they say.

The local governments hope to collect back taxes tracing to the 1990s, when the online travel booking business began, Prindable said.

The dispute involves how hotel room rates are viewed. Customers using an online travel site pay the agreed-upon rate to the site. It forwards the pre-negotiated wholesale amount to the hotel and keeps the rest. The question is whether tax should be paid on the higher retail price or the wholesale price.

Lawyers said Monday it was difficult to estimate the amount of money potentially owed to municipalities without knowing the total number of rooms rented, something they hope to learn through discovery. If Illinois joined the suit, it might be due a projected \$150 million, Prindable said.

Parties to the suit include Warrenville, Bedford Park, Oakbrook Terrace, Oak Lawn, Orland Hills, Rockford and Willowbrook. Lawyers said they expect other municipalities to join the litigation.

The Travel Technology Association, an industry organization for online travel companies, has argued that the difference between the wholesale and retail prices is not subject to hotel taxes.

The issue has been tried in courts of other states, including Florida, Texas, California and Hawaii. After a Florida court in February sided with online travel companies, the association said in a news release it showed "a clear national trend, where state and federal courts have repeatedly rebuffed efforts by state and local governments to attempt to impose hotel occupancy taxes on (online travel companies) for their services."

"The bottom line is that the vast majority of these cases are consistently being won by the online travel companies," said Robin Reck, spokeswoman for the association. "It is a huge waste of taxpayer dollars to invest in this fruitless litigation, which, even if successful, ends up hurting tourism and thereby revenue."

Michael Krzak, a partner at Clifford Law Offices, said law firms filing the suit have evaluated municipal ordinances and believe the online travel companies are violating those ordinances because they collect tax on the full retail amount but only remit hotel taxes on the lower wholesale amount.

The industry organization said all necessary tax revenue is transferred in full.

"In dozens of cases nationwide, no court has found that (online travel companies) collect taxes and do not remit the full amount," Reck said.

Absent from the list of defendants is Chicago-based online travel agency Orbitz Worldwide, but that's only because lawyers are still looking into adding Orbitz to the list of defendants, Krzak said.

"We anticipate filing against them too," Krzak said.

Orbitz, because it's based in Illinois, pays taxes on its service fees in the form of corporate income taxes, Reck said.

gkarp@tribune.com