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Md. officials go after taxes from travel websites

O'Malley looking to follow Baltimore, counties in search for revenue

By **Annie Linskey**, The Baltimore Sun
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In a hunt for more revenue, **Maryland** officials are weighing ways to pressure hotel-booking websites such as **Expedia** and Orbitz to pay more taxes — a tactic that has netted some cities, counties and states tens of millions of dollars, but left others mired in lengthy legal battles.

The premise is simple. Maryland now collects sales taxes based on the bulk rates that the websites pay hotels for their rooms. But some officials say the taxes should be based on the higher prices for which the websites sell the rooms to customers.

Or, as Gov. **Martin O'Malley** put it recently: The typical booking website "somehow avoids paying the local hotel room tax."

The idea comes in lean budget times for the state: The General Assembly increased fees and taxes this year to meet a budget shortfall, tolls are increasing and a Senate budget panel is set to consider an array of new taxes, including expanding the sales tax to other Internet services.

But it's been the source of tension between O'Malley and Comptroller Peter Franchot, the state's independently elected tax collector. Owing to a quirk in Maryland law, Franchot must conduct a separate audit before the state can start a legal process to claim the taxes.

Despite at least a year of urging from O'Malley, Franchot has made no public progress on the audit the governor has requested. Franchot declined to discuss the matter for this article, saying that he is bound by tax law not to discuss or disclose the existence — or outcomes — of audits.

There's good reason for Maryland officials looking to boost revenue to turn toward the websites. Baltimore City and **Worcester County** both collected money after suing websites, including Expedia and Orbitz, for back taxes. And in Baltimore at least, some of the companies are paying higher taxes going forward.

Baltimore and Montgomery counties and the District of Columbia have also filed lawsuits seeking more taxes.

"We believe Maryland has a very, very strong claim," said John Crongeyer, an Atlanta lawyer who specializes in suing the booking sites and wants to represent the state.

Crongeyer, who has represented Baltimore city and Baltimore and Montgomery counties, estimates that the state is owed roughly $30 million in back taxes and penalties. He says the state should be receiving between $1.4 million to $4 million a year.

(By way of comparison, the state expects $4 million a year from doubling the fee for issuing a birth certificate.)

Around the country there are more than 80 similar lawsuits percolating, with mixed results. A Texas jury found recently that the online booking companies owed the state about $20 million. But in March a Los Angeles Superior Court judge threw out a finding that the companies owed the City of Santa Monica $3 million.

An industry spokesman says the lawsuits rely on a fundamental misunderstanding of the companies' business model.

Arthur B. Sackler, the executive director of the Interactive Travel Services Association, says the difference between what the companies pay for rooms and what they sell them for should be viewed as a service charge, not part of the taxable price.

Taxing the price paid by consumers, Sackler says, hurts the fragile industry by unnecessarily driving up rates.

"Anything that burdens more travel and tourism is a negative for the state," he said. "This is a tax on consumers. It will be passed through one way or another."

E-mails to Travelocity, Orbitiz and Expedia were not returned.

The travel companies are not afraid to play rough: Orbitz and other companies stopped listing hotels in **Columbus**, Ohio, after officials there sued.

"Companies have made the decision that, because the cost of the tax is higher than the revenue, they start sending travelers and tourists to competing destinations," Sackler said.

The legal battle between Columbus and Orbitz lasted four years. In the end, the booking site paid the city nearly a half a million dollars.

Sackler's group is pushing federal legislation to head off more lawsuits. It has not yet been introduced, he said.

The travel companies are fighting fairly powerful fiscal forces: Across the country, elected officials need more cash. And the lawsuit presents an appealing option.

Firms such as Crongeyer's approach city, county and state attorneys and offer to work on contingency.

That's what happened in Baltimore. In 2007, Crongeyer called City Solicitor George Nilson with the following pitch: The online travel companies owe the city about $6 million in back taxes. We can claw it back for you.

The city sued four companies, and now, four years later, Baltimore is set to pick up $2 million in a settlement with Priceline and Expedia.

As part of the deal, those two companies promised to pay taxes. Until now, the city received taxes only from the hotels. Travelocity did not settle, but also began sending monthly tax checks to the city. Since December Baltimore has seen an extra $15,000 in revenue.

Nilson is pleased with the result — and Crongeyer's law firm. It would have been difficult, he said, for his own attorneys to go up against the travel companies solo.

But Nilson said the law firm's estimates on back taxes owed were off the mark. The law firm assumed that the travel companies' market share in Baltimore was similar to their share in Florida and Nevada — states that are home to mega-sized tourist destinations, he said.

Crongeyer said that he used the best information available at the time, and used a more conservative estimate for Maryland.

Crongeyer, who has founded an organization called the National Online Travel Litigation Group, has made something of a cottage industry out of suing the companies,

The group analyzed Maryland's tax law and data on tax revenue from hotels — and concluded the state could be owed $35 million in taxes going back to 1999.

Gov. Martin O'Malley has long expressed a desire to recover tax dollars from the travel companies — and in a January letter addressed to Franchot cited the possibility of the federal legislation sought by the industry as a reason to move more quickly.

He fired off another letter to Franchot and Attorney General **Douglas F. Gansler** in April to express his "on-going concern" about the state's "failure" to collect the taxes. He requested "an update" on the matter and "an aggressive timeline for resolution."

Seeing no progress, the governor became testy during a May meeting of the Board of Public Works, a three-member panel that includes O'Malley and Franchot. He steered a rare freewheeling discussion about taxes to the online travel companies.

"I know other states have gone after them," O'Malley said. "I know I've asked all around. I've asked the comptroller's office. I've asked the attorney general's office."

The governor continued: "Is it moving? I mean, I've been asking about this for a year or more. … More like a year and a half."

O'Malley said he had sent "three or four" letters to Gansler and Franchot "saying, please, counties are going after Travelocity, states are going after Travelocity."

Franchot assured the governor that the audit would be finished soon. He said his office was "on it like white on snow."

Raquel Guillory, a spokeswoman for O'Malley, said this week that the governor is "still awaiting the outcome."

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