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Electronic Commerce

OTCs, Georgia Jurisdictions OK Partial Hotel Occupancy Class Action Settlement

BNA Snapshot

City of Rome, Ga. v. Hotels.com LP, N.D. Ga., No. 05-cv-249, settlement announced 3/19/12

Key Holding: Several online travel companies agree to a partial settlement with hundreds of Georgia cities, towns, and counties over disputed transient occupancy taxes and will now pay taxes on the full room price paid for discounted hotel rooms booked through their travel websites.

Key Takeaway: Settlement marks one of the rare times the OTCs agree to pay taxes on the discount rate negotiated with hotel owners and on the markup added to the price customers see online.

By Tom Gilroy

LOS ANGELES—Online travel companies (OTCs) like Expedia Inc., Orbitz LLC, and Travelocity.com Inc. have agreed to pay hundreds of Georgia cities, towns, and counties disputed transient occupancy taxes, according to sources involved in the partial settlement of the nearly seven-year-old litigation (*City of Rome, Ga. v. Hotels.com LP*, N.D. Ga., No. 05-cv-249, settlement announced 3/19/12).

In addition, the online companies agreed in the partial settlement of the class action filed in 2005 that going forward they will pay taxes on the full price of the room paid by customers booking them on OTC websites.

The settlement ends at least part of one of the oldest of the dozens of cases around the country pitting the OTCs against municipalities over the basis for calculating occupancy taxes.

It also represents one of the rare times the OTCs have agreed to pay taxes on both the discounted rate they negotiate with hotel owners to list the rooms and on the “markup” they add to the price seen by customers.

Center of Dispute

In all of the cases working through courts around the United States, the OTCs have argued that taxes were due only on the negotiated, retail rate, and that the markup was their fee for “facilitating” the transaction.

Federal and state courts hearing the cases have come down on both sides of the question, often basing their decisions on the precise language of local transient occupancy statutes that were written long before the advent of internet-based commerce.

But the Georgia class action plaintiffs had the benefit of two Georgia Supreme Court decisions in 2009 and 2011, which found that occupancy tax laws in the cities of Columbus and Atlanta clearly called for calculating the taxes owed on the basis of the full price paid by the customer booking the room.

Settlement Details

The settlement covers almost 260 jurisdictions, including large cities like Augusta, Savannah, and Macon and the counties in the metro Atlanta area, as well as much smaller cities and towns, the sources said.

The settlement calls for the OTCs to pay the unpaid portion of taxes owed on hotel rooms booked through their websites from the May 2011 state supreme court decision in the Atlanta case to the present, plus 7 percent interest on that amount.

Exactly how much money that will amount to is still being hammered out, sources said.

The online firms will then begin paying on the full room price going forward, the sources added.

However, the settlement has not ironed out all the issues involved in the lawsuit.

The "taxes and fees" portion of the price listed on OTC websites is not included in the settlement and remains in dispute.

Moreover, claims by the class members for the alleged underpayment of occupancy taxes for the years before the 2011 state supreme court ruling are part of ongoing litigation in the case.

Both sides have filed motions for summary judgment in the matter, but the court has not yet ruled on those motions.

The settlement must still be approved by the U.S. District Court hearing the case, and class members must still have the opportunity to object or opt out of the agreement.

A spokesman for the Interactive Travel Services Association (ITSA), the OTCs' trade group, did not return a call seeking comment.