

## Online booking causes tax war

BY CHARISSA JONES • USA TODAY • NOVEMBER 1, 2010

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The last time you went on vacation or hit the road for work, chances are you scanned the hotel bill but barely gave the taxes that were tacked on a thought.

Yet those taxes, paid for occupying a hotel room, are at the root of battles being waged in courts across the U.S. between online travel booking sites and cities and states that say they're not getting their fair share.

The crux is whether occupancy taxes should be based on the discounted rate online companies such as Expedia and Orbitz negotiate with and pay to hotels, or the higher, retail room rate actually paid by guests. Online travel companies pocket the difference as their fee.

The discrepancy over the proper tax amount has led some local governments to rewrite ordinances and to at least 40 lawsuits filed by those on both sides of the issue.

Government officials say cities are losing an estimated \$1 billion a year in revenue that would go toward promoting tourism and in some cases, paying for schools, law enforcement and other municipal services. Those dollars are especially important during the current economic downturn, some say, when treasuries are lean and every penny counts.

Online travel companies, meanwhile, have taken their case to Capitol Hill, where they're lobbying for federal legislation that would declare that the taxable amount should not include their fees or income.

"Cities provide ... education, social welfare infrastructure, roads, highways and these have a cost," said Lars Etzkorn, program director for the National League of Cities. "Certainly any time that a dollar is owed to government and it's not paid ... then it has to be made up somewhere, or there's going to be a cut in service.

Etzkorn said there's "a basic equity" question involved because consumers think they're paying a tax that is going to a public good, not to private profit. "So," he said, "it's smoke and mirrors."

But Andrew Weinstein, spokesman for the Interactive Travel Services Association, disagrees. Based on several legal rulings, he said, taxes are to be paid based on the amount the hotel actually receives.

"Occupancy taxes are based on the rate the hotel sets and receives," he said, "not the profits, fees or commissions of its partners. The facilitation fees are no more part of the hotel rate than the taxi that takes the guest from the airport or the tip they give the bellhop."

### Online travel sites take a cut

Consumers basically pay the same overall amount whether they book a room directly with a hotel or through a third-party site, travel industry and government representatives say.

"The difference is how that money is divided up later on," says Marlene Colucci, executive vice president for public policy at the American Hotel & Lodging Association.

For instance, a consumer pays a room rate of \$100. A local occupancy tax of 10 percent tacks on another \$10, and so the guest pays \$110.

But an online travel site may have negotiated a discounted room rate of \$80 with that hotel. A guest who booked through that third-party portal still pays \$110, but the online company will give the hotel \$80 for the room, plus \$8 for the tax, keeping the remaining \$22 as its fee. If the room had been booked directly with the hotel, the municipality would receive \$10 in taxes.

Several cities argue that they are owed that \$10 regardless of how the guest reserved the room. New York City revised its ordinance in September 2009 to make it clear that taxes are owed on what the consumer pays.

"Our goal is to make sure that everyone plays by the same rules," says David Frankel, New York City's finance commissioner. "By closing this loophole, we have ensured that the hotel occupancy tax is the same whether you booked a room directly with a hotel, through a travel agent or over the Internet."

Baltimore similarly amended its law in September 2007 but has been in litigation for more than two years with Expedia, Travelocity and Hotels.com, says George Nilson, Baltimore's city solicitor.

Occupancy taxes typically go toward efforts to draw visitors, and the revenue they bring to a community, and sometimes local services. At a time when many city and state budgets are stretched, some local officials say hotel tax dollars are vital.

"Obviously funds are short all around, and we think it's important that everyone on which a tax is properly imposed should be paying that full amount of tax," says Daniel Cantu-Hertzler, chair of the corporate and tax group for Philadelphia's law department. "It's only fair."

Hotel guests in Philadelphia pay city occupancy taxes totaling 8.2 percent, and the taxes remitted by online travel companies are falling short by hundreds of thousands of dollars a year, Cantu-Hertzler says.

When the city told Expedia in 2007 that it was remitting less than the tax amount due and to pay up, the travel site filed an appeal with the local tax-review board, which ruled in its favor.

Now the city has appealed that decision to the local court of common pleas and is expecting a ruling next month. "I would not be surprised if whichever side doesn't prevail takes an appeal further," Cantu-Hertzler says.

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## **Legal fights go to appeals**

The legal back-and-forth in Philadelphia is typical of what's happening across the country. And decisions by tax authorities and courts have varied.

While Philadelphia's tax-review board backed Expedia, the Superior Court of Fulton County, Ga., issued an order in July stating that 17 online travel companies must pay taxes to the city of Atlanta based on the higher rate charged the customer.

Both sides are appealing that ruling. The city of Atlanta has filed because the order didn't make online companies pay back taxes, and the online companies do not agree with the court's ruling, says Reese McCranie, a city spokesman.

The decision by some municipalities to amend their laws, often drafted before online travel companies even existed, hasn't been enough to make online companies automatically comply, or to override their argument that their fees are not subject to occupancy taxes, says Bill Carroll, a senior lecturer with Cornell University's school of hotel administration.

"It's fuzzy," Carroll says of the issue. "There's no good guys. There's no bad guys. The law is not clear. I would hate to be judging this."

Lawsuits brought by the city of Columbus, Ga., against Expedia, Hotels.com and Orbitz led several online travel companies in late 2008 to refuse to list Columbus hotel rooms on their sites, says Trip Tomlinson, a lead attorney in the three cases.

"We (could) find Columbus, Miss., and Columbus, Texas," but not Columbus, Ga., he said of at least one site. "Not only did they de-list all hotels, they've written Columbus, Ga., off the map."

The Georgia Supreme Court sided with the city.

But the online companies have their supporters. On the rare occasions when a traditional travel agent would negotiate a discounted rate, they'd handle the remitting of taxes the same as their online counterparts, says Paul Ruden, senior vice

president for legal and industry affairs for the American Society of Travel Agents.

"The problem is occupancy taxes that are in dispute are being attached to the income of the agents, and the taxes on books were never contemplated to do that," Ruden says, adding that the online company fees are already taxed separately as income.