



State sues online travel companies over taxes

By [CHARLES S. JOHNSON Gazette State Bureau The Billings Gazette](#) | Monday, November 8, 2010

HELENA — The state Revenue Department on Monday sued online travel reservation companies and alleged they have cheated the state out of millions of dollars in state lodging taxes.

The agency sued [Priceline.com](#), Expedia, Orbitz, Travelocity and their subsidiaries in a lawsuit filed Monday afternoon in state district court in Helena.

The state contended that these online travel reservation companies are not paying the full amounts of state lodging, state sales taxes and state car rental taxes that the state is owed.

It seeks payment of restitution of taxes owed to the state and penalties and interest from the companies.

However, Andrew Weinstein, a spokesman for the Interactive Travel Services Association of Washington, D.C., said Monday night the money under discussion between the industry and Montana totals less than \$100,000.

“The state is potentially putting the second largest industry in Montana at risk for a nominal amount of revenue on an issue the courts have ruled overwhelmingly for the online travel companies,” he said.

In the lawsuit, the Revenue Department outlined how it contended these online companies don't pay their full taxes owed to Montana:

If someone paid Expedia \$100 for a hotel room in Helena, Expedia calculates the tax rate the user pays on that “gross” or retail amount of \$100. But the company pays for that room for a reduced, negotiated amount, say \$60. Because Expedia is the ultimate seller of the lodging to the user who will occupy the hotel room, Expedia assesses and collects \$7 in taxes from the traveler (\$100 times the 7 percent tax rate).

However, Expedia remits taxes based on the reduced negotiated retail rate. So the Revenue Department would receive only \$4.20 (the \$60 reduced negotiated wholesale amount times the 7 percent tax rate). That amounts to a tax underpayment of \$2.80 (\$7.00 minus \$4.20).

“Thus, in this single example transaction, the tax remitted to the department would be 40 percent less than the appropriate tax due,” the lawsuit said. “This discrepancy between taxes collected and taxes remitted forms the basis of this action to reclaim the lost revenue.”

Weinstein disagreed, saying that facilitation fees charged by intermediaries such as the online travel agencies are not taxable.

“We strongly believe that the state is wrong on both the facts and the law on this issue,” he said. Monday night. “There have been 12 (similar) court cases around the country. Ten have been decided for the online travel companies, and the remaining two (in Atlanta and San Antonio) were split verdicts.”

He added, “What's taxable is not the amount the consumer pays but what the hotel receives.”

The Revenue Department said 68 lawsuits have been filed in 22 states against online travel companies. It said San Antonio and other Texas cities won \$20 million in their 2006 lawsuit against Expedia and other companies.

State lodging tax revenue is divided between tourism promotion and the state general fund.

In September, Gov. Brian Schweitzer confronted Travelocity leaders over the issue at an economic development summit in Butte.

“You have an obligation to pay that tax to Montana and make your books available to Montana,” the Associated Press quoted Schweitzer telling Sam Gilliland, CEO of Saber Holdings, Travelocity's parent company.

Gilliland told Schweitzer: “We are right on the issue of these hotel taxes.”