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Tennessee lawmakers target hotel tax loophole

By Shelly Bradbury

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BY THE NUMBERS

129,076 - hotel rooms in Tennessee

29.2 million - hotel rooms rented annually in Tennessee

62 percent - estimated statewide occupancy rate

11.4 percent - rooms booked through online travel companies nationwide

Source: Tennessee SB212 Fiscal Note

Tennessee legislators are debating whether to change state law in order to collect more taxes from online travel companies.

Proponents say the move will level the playing field between brick-and-mortar hotels and online booking agents while pumping more dollars into local economies. But opponents are calling the bill a misguided effort that will eventually backfire on local officials.

State Sen. Doug Overbey, R-Maryville, and Rep. Art Swann, R-Maryville, are co-sponsoring the bill. Online travel companies work by buying rooms from hotels in bulk at a lower price, then reselling those rooms to the consumer at a higher price, Overbey said.

Under current state law, the online travel companies are only required to pay the hotel/motel tax on the wholesale price they pay the hotel. But brick-and-mortar hotels are required to pay the tax on the price they charge the consumer.

So if an online travel company buys a room from a hotel for \$50, then resells that room to the consumer for \$75, the company pays taxes only on the \$50. But if the hotel sells that room to the consumer directly, the hotel must pay taxes on the \$75.

"What we're trying to do is close a loophole that is adversely impacting our local governments that the online travel companies are exploiting," Overbey said.

Requiring the online travel companies to pay taxes on the rate the room is sold to the consumer would increase tax revenues statewide by more than \$1.5 million, according to the bill's fiscal note.

"Sevier County alone is losing \$300,000 annually," Overbey said. "That's important money that can go back into the promotion of tourism in our state."

About 11 percent of hotel rooms were booked through online travel companies nationwide in 2011, according to the fiscal note, although travel market research company PhoCusWright reports that 42 percent of hotel rooms were booked online in 2012.

Robin Reck, director of communications at The Travel Technology Association, a group of online travel companies, said the bill is based on a misunderstanding.

"Many state governments and local municipalities simply do not understand how our business model works," she said. "Online travel companies do not own or operate hotel rooms or control hotel inventory. Online travel companies do not buy, sell or resell hotel rooms."

Rather, companies facilitate the process, she said. A special report published in May 2012 by the Tax Foundation, a non-profit organization, described the position.

"But suppose you hired a neighbor's teenager or a personal shopper to buy the shirt," it reads. "Let's say the shopper found a shirt for \$80 at Walmart and charged you \$20 for her time. In that case, you haven't bought a shirt for \$100. You've bought an \$80 shirt and you've paid \$20 for nontaxable services."

Reck said online travel companies already pay a fair amount in taxes and that the bill could end up hurting local economies.

"This proposed tax would more likely bite the hand that feeds Tennessee travel and tourism and place current revenue levels at risk," she said. "This is not about closing any sort of loophole."

But Tennessee Hospitality Association President and CEO Greg Adkins said he supports the bill.

"The other side is calling it a tax increase," he said. "But it's about leveling the playing field. And the one thing government should do for business is create a level playing field."

Swann emphasized that the bill won't affect consumers directly.

"It's a positive all the way around," he said. "It doesn't cost the consumer anything. It's something owed by the secondary who is not paying it."

Overbey said the bill would have a trickle-down affect across the state.

"Tourism is one of our largest industries in the state," he said. "If our cities, like Pigeon Forge, can capture that \$60,000, they will plow that back into their tourism and development efforts that will bring people into Tennessee, which will generate more sales tax and increase revenue in Tennessee."

He added that the bill is already being considered by legislators in hearings, and could be voted on in the next three weeks.