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Web Spawns Suits Over Hotel Tax

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More than 200 municipalities have filed altogether more than 30 lawsuits alleging that online travel companies have pocketed millions of dollars in hotel taxes paid by consumers that rightfully belong to city and county governments.



Recently, some of the claims have gained traction.

From metropolises such as Los Angeles, Chicago and Atlanta to tourist destinations like Branson, Mo., and Charleston, S.C., the cities allege companies are either failing to fully collect and remit hotel taxes or improperly keeping tax payments by consumers who book lodgings online. Industry leaders [Expedia Inc.](#), [Travelocity.com LP](#) and [Orbitz Worldwide Inc.](#) are named in many of the suits.

The Interactive Travel Services Association, a trade group representing online travel companies, says the companies aren't obligated to pay the taxes in dispute and have done nothing wrong.

Florida officials claim online travel companies will short them by about \$22 million in unpaid taxes over the 12 months starting October. A Miami-Dade County lawsuit estimates the companies owe the county about \$7 million in past taxes.

Lawyers representing metropolitan Louisville, Ky., in another court case estimated online operators underpaid their taxes by \$10 million to \$15 million over the past five years. The city of Charleston, S.C., says it has been losing about \$450,000 a year from unpaid occupancy taxes.

The cases have been slowed by questions of how to apply local tax statutes that predate the rise of the Internet, and by difficulty determining exactly how much money was allegedly owed local governments.

As online reservations become prevalent, recouping potential tax revenue has become more pressing for cities - many of which use hotel taxes to fund tourism promotion and other economic development efforts. In a study conducted in early 2008 by National Leisure Travel Monitor, 56% of leisure travelers surveyed researched and booked their hotel reservations online, up from 19% in a similar survey conducted in 2000.

Some of the lawsuits have picked up speed in recent months. In May, U.S. District Judge Orlando Garcia in San Antonio granted class-action status to 175 cities suing the reservations companies. The case is scheduled for trial next year. "It's an illegal practice not only in Texas but all over," says Steve Wolens, an attorney representing the cities.

Attorneys will be watching what happens after oral arguments in a motion before the Georgia Supreme Court, scheduled for September. The court has agreed to hear arguments from the city of Atlanta that could streamline the process of determining how much money, if any, the reservations companies owe.

At the heart of the dispute is the question of how local taxes -- the often substantial add-ons to nearly all hotel bills -- should be calculated on rooms sold at sometimes discounted rates by the online companies.

Expedia -- which operates Hotels.com and other sites -- and similar businesses typically enter into contracts with hotel companies to offer reservations for a set number of rooms on their Web sites.

The municipalities say they are receiving taxes only on the wholesale price the online companies pay hotels, and that they should be getting tax revenue based on the room rate paid by consumers.

Many of the lawsuits allege the reservation companies charge tax on the retail price, pay tax on the wholesale price and pocket the difference.

"We strongly believe this has been the deliberate practice of these companies," says Kevin Ross, an Atlanta attorney representing more than 20 cities and counties in Georgia.

The Interactive Travel Services Association says the companies charge consumers for the rooms, the tax "the hotel tells us," and a service fee.

An Expedia filing with the Securities and Exchange Commission said the company doesn't collect tax on the full retail price.

Judge Garcia, in his May ruling, said the defendants in the case paid taxes on the wholesale price "but they have never paid taxes" on the full retail price.

The association says they aren't obligated to pay tax on the retail price because they don't own the rooms. Reservations operators say it's the responsibility of the hotels to remit taxes.

The travel companies "aren't providing a hotel room," says Art Sackler, executive director of the association. "They are providing the service for you to book the rooms."

"When online travel companies facilitate the booking of the rooms, local municipalities reap the benefits of the increased tourism," says Paul Chronis, a Chicago-based attorney representing Orbitz.

Mr. Chronis says Orbitz is fighting about 40 such lawsuits. Expedia and Travelocity declined to comment.

In many cases, the courts have granted municipalities the right to examine online companies' financial data in an effort to document tax claims. The city of Los Angeles, which filed one of the first major cases in 2004 in Los Angeles County Superior Court, won an order last year creating an administrative procedure to calculate past taxes. The case is pending while the city and companies exchange data.

Similar processes are underway in Miami-Dade County, and Chicago, where Cook County Circuit Court Judge Sheldon Gardner rejected a motion by 17 reservations companies to dismiss the city's lawsuit in December 2007.

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