

**SYNOPSIS OF THE CASE**

**2015 MT 241, DA 14-0260: MONTANA DEPARTMENT OF REVENUE**, Plaintiff and Appellant, v. **PRICELINE.COM, INC.; TRAVELWEB, LLC; TRIP NETWORK, INC; ORBITZ, LLC; EXPEDIA, INC.; HOTELS.COM, L.P.; HOTWIRE, INC.; TRAVELOCITY.COM, LP; SUITE59.COM, LLC; and DOES 1 THROUGH 1000, INCLUSIVE**, Defendants and Appellees.<sup>1</sup>

The Montana Supreme Court held that the fees that Online Travel Companies (OTCs) charge travelers for using OTC services to reserve lodging and rental vehicles are taxed under Montana's Sales Tax but not Montana's Lodging Facility Use Tax. The Supreme Court further determined that the Montana Department of Revenue is entitled to collect tax owed under the Sales Tax going back to November 8, 2010, the date on which the Department filed suit against the OTCs.

In 1987, the Montana Legislature passed the Lodging Facility Use Tax, placing a four percent tax on accommodation charges, meaning the fee charged for lodging by an owner or operator of a facility. In 2003, the Legislature adopted the Sales Tax, imposing a three percent tax on the sales price of accommodations and campgrounds and a four percent tax on the sales price of rental vehicles. On November 8, 2010, the Department sued the OTCs in the First Judicial District Court, arguing that the OTCs owed the Department tax on OTC fees under both the Lodging Facility Use Tax and the Sales Tax. The District Court disagreed and ruled in favor of the OTCs.

The Supreme Court affirmed the District Court's ruling that the Lodging Facility Use Tax does not apply to OTC fees, but reversed the District Court's ruling that the Sales Tax does not apply to OTC fees. The Supreme Court found that the OTCs are not owners or operators of a facility and, therefore, under the plain language of the Lodging Facility Use Tax, OTC fees are not accommodation charges taxed by the statute. By contrast, the Supreme Court found that the plain meaning of the Sales Tax requires taxing OTC fees because those fees are included in the sales price of accommodations, campgrounds, and rental vehicles, and the OTCs, as sellers of services, are required to collect and remit the Sales Tax to the Department. Finally, the Supreme Court determined that the OTCs are liable for the Sales Tax on OTC fees dating back to the date when the Department filed suit because, from that point forward, the OTCs were officially on notice that the Department sought to collect tax on OTC fees.

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<sup>1</sup> This synopsis has been prepared for the convenience of the reader. It constitutes no part of the Opinion of the Court and may not be cited as precedent.

Justice McKinnon and Justice Rice concurred with the Court's conclusion that the Lodging Facility Use Tax does not apply to OTC fees but dissented from the Court's conclusion that the Sales Tax applies to OTC fees. The Dissent maintained that the statutory language of the Sales Tax was ambiguous concerning whether an OTC performs a "service for consideration" and that, therefore, the legislative history of the Sales Tax needed to be considered to determine if OTCs were included. The Dissent concluded that the Montana Legislature's rejection of House Bill 147 in 2007, which would have added OTCs to the Sales Tax, clearly established that the intent of the Legislature was that OTCs were not to be included in the Sales Tax.