

Duff on Hospitality Law

## **Travel Agent "Victory" on Occupancy Taxes in Missouri: Developing Trend?**

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Missouri governor Jay Nixon signed HB 4211 into law on July 8, adding another point in the travel agent column in the contest with hoteliers, cities, counties and states over hotel/motel occupancy tax issues. The Missouri law codifies the current practice of all municipalities that assess occupancy taxes, namely, the hotels pay tax on the income they receive for their rooms and the travel agents (primarily on-line travel agents or OTAs) pay nothing. No occupancy tax, that is. Normal corporate income tax applies.

This is the latest in a series of disputes at all levels of play on occupancy taxes, including municipal lawsuits against large OTAs for back taxes owed as a result of the wholesale or "merchant" model used by those OTAs, to federal legislation proposed by the Interactive Travel Services Association and opposed by the AH&LA (but supported by, for example, the California Lodging Industry Association), to these types of state efforts to unify the taxation practices of their municipalities.

(You can skip this next part if you know the drill or don't like math). The dispute arises because of the lower dollar amount of tax paid when rooms are booked through OTAs using the merchant model, as opposed to the more traditional travel agent commission model.

### Sample Calculation: Traditional Commission Model

- Hotel provides rooms for OTA to distribute at retail, say, \$100.
- OTA collects the \$100 plus per room plus 10% tax (\$10) from the traveler
- OTA pays the hotel \$110 and the taxing authority gets \$10.
- Hotel pays OTA a 20% commission on the \$100 (\$20) on top of that and nets \$80.

### Sample Calculation: Merchant Model

- Hotel provides rooms for OTA to distribute at a price lower than retail, say, \$80 per room.
- OTA marks up the "wholesale" price to, say, \$110 and collects that amount from the traveler.

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- OTA pays hotel \$80 and the taxing authority gets 10% tax (\$8).
- OTA keeps the rest (\$22) as profit.

You see the problem, from the taxing authorities' perspective. What happened to that \$2 they feel they are owed in taxes? The hoteliers certainly don't want to pay it, as that would effectively raise their tax rate, which can't be right. The OTAs maintain that it's not their tax to pay. All they're doing is making profit by facilitating transactions; they aren't hotel operators, they're middlemen.

It's a contentious issue, with all three sides having serious money at stake. Travelers have gotten into the fight as well with at least one class action lawsuit filed against Expedia on its home court in King County, Washington. The class action settled, but demonstrates this isn't one of those arcane tax issues exciting only to tax geeks.

**Tags:** hotel, OTA, tax