

Duff on Hospitality Law

Tax Fight Over Hotel Rooms Booked by Online Travel Companies Now Hits Close to Home

By Joy Ellis on 3.12.12 | Posted in Hotels

Our newest post comes from my Portland, Oregon colleague and partner, [Joy Ellis](#). For those of you who have not met Joy, Joy serves as the Portland Chair of our Hospitality, Travel and Tourism Practice Group. She also has over 15 years of legal experience in the areas of commercial litigation, employment litigation and employment-related advice, and brings us important news on the latest chapter of ongoing litigation between online travel companies and the many jurisdictions that have sought to collect allegedly unpaid or underpaid lodging taxes. This latest installment involves our own City of Portland. Thank you Joy for this important update.

Across the country, online travel companies (“OTCs”) are involved in litigation with local officials over the tax on hotel rooms. City officials argue that online travel sites shortchange the cities on their local hotel taxes. The OTCs disagree.

Here’s the crux of the issue: let’s say a guest books a hotel room through an OTC’s website. The traveler booking the room pays an amount to the OTC, part of which goes to the hotel and part of which is kept by the OTC as a facilitation and service fee. The fee attributable to the hotel includes the often severely discounted (“net” or “merchant”) room rate agreed upon between the OTC and the hotel, plus the hotel tax owed on that discounted rate. City officials want the hotel tax to be based on the *entire* (“retail”) amount paid by the traveler to the OTC. The OTCs argue that local lodging tax on hotel rooms should be remitted based on the actual amount a hotel receives for a room rather than the total amount that a guest pays the OTC for a room.

The legal wrangling has now hit closer to home. In mid-February, a group of ten OTCs including major stake-holders Orbitz, Travelocity, Priceline, Hotels.com and Expedia filed a declaratory judgment action in Multnomah County Circuit Court (in Portland, Oregon), asking the judge to order Portland to stop trying to collect the city’s 11.5 percent lodging tax on the total amount paid by a guest who books a room online.

It’s not just chump change. The City of Portland estimates that the amount in back taxes owed under its argument is \$5 million to \$8 million (less its attorney fees), with future revenues of \$750,000 to \$1 million per year. In December, city officials sent letters to the targeted OTCs,

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putting them on notice that the City was going to initiate collection actions for “failure to properly collect and remit transient lodging taxes.” In response, the OTCs filed their declaratory action.

As in other cities, the OTCs have taken the position that they have followed the laws and that the City is trying to mischaracterize OTCs as hotel “operators” under the city ordinance (if they are operators, then the tax applies). This legal argument has been made across the country in numerous courts, and the vast majority of rulings have gone in favor of the OTCs. Most recently, high courts in Kentucky, Tennessee and Pennsylvania have all affirmed that local jurisdictions cannot impose taxes on OTCs for their reservation services under the existing hotel tax ordinances. In other words, the City of Portland will have to buck the national trend to prevail in litigation.

Should Portland be able to collect from the OTCs, the money (after paying attorney fees) would be funneled towards core services including police and parks, which in turn would bolster Portland’s tourism efforts. Tourism promotional organizations have therefore sided with the City of Portland and want to see that hotel taxes be paid on the full retail price the guest pays to the OTC for the room.

We are following the litigation with interest and will keep you updated on any developments. The outcome of this litigation and the many other cases like it will not only affect local jurisdictions' tax coffers, but may also have a significant impact on the future tax obligations of hotels in these jurisdictions. If you would like more information or have any questions as to how this litigation may impact you, please contact [me](#) or [Greg](#).

Tags: City of Portland, lodging tax, online travel companies, OTC