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February 3<sup>rd</sup>, 2012

To: Senator Ginny Burdick, Chair  
Members of the Senate Finance  
and Revenue Committee

From: Chris Fick, Intergovernmental Relations Associate

Re: SB 1519 – Transient lodging tax collectors

The League of Oregon Cities is an association of all 242 cities in Oregon. Oregon's cities are home to seventy percent of all Oregonians and eighty percent of the state's jobs and income tax collections.

The League strongly supports SB 1519, which would modify the definition of tax collector to ensure that online travel companies (OTC) and other lodging intermediaries pay state and local transient lodging taxes on the retail price at which they sell rooms, rather than at the lower wholesale price at which they contract for rooms.

The OTCs will argue that this issue is mired in lawsuits across the country and reflects a lack of understanding of their business model. Both of these claims are fully answerable and should not stand in the way of this committee taking action on SB 1519.

#### Lawsuits

While scores of local governments have filed lawsuits against OTCs claiming that their hotel taxes are due on the full retail room rate, not the wholesale rate, the court cases are largely a reflection of statutory language that predates the widespread usage (or even advent) of the Internet.

Since this bill is prospective and not retrospective, however, those cases should not have any bearing on this bill. This bill would simply clarify that OTCs will henceforth be required to pay the state and local transient lodging taxes on the retail prices of their sales.

Oregon would also not be alone in clarifying the intent of its statutes. North Carolina clarified that its transient lodging tax applies to OTCs last year, and the law took effect January 1<sup>st</sup>. Minnesota has passed legislation also clarifying its intent, and the new requirements will become effective July 1<sup>st</sup>. New York has also clarified its statutes, but the issue has been challenged in court by the OTCs.

### **The OTC Business Model**

The other claim that will be made is that the OTC should not be charged on the mark-up between the wholesale price and the retail price because this would be a tax on the service that the OTCs are providing, such as the advertising, marketing, informational and booking services that these companies provide, rather than on the room itself.

There is no more justification for the claim that states or localities should tax only the wholesale price of a room rental than there would be for the claim that they should tax only the wholesale price of any other good subject to a tax. Moreover, the OTCs are providing the same advertising, marketing, informational or booking services that the hotels themselves are providing. Yet we don't allow hotels to deduct those expenses from their room rates when they calculate the transient lodging taxes owed.

Lastly, conventional travel agents have served as intermediaries between room renters and hotels for decades, and hotel taxes have always applied to the room rate charged to the customer, with no prior deduction for the travel agent's commission.

### **Bundling the Taxes and Fees**

Also at issue is the mixing of taxes and fees in the taxable transaction. Even if one accepted the argument that the OTC is providing services only to the end consumer and not to the hotel operators, the OTC's "taxes and fees" is bundled together in the line on the bill that the customer pays. This comingling of taxes and fees does not reflect the full "fees" that the OTCs are collecting for their services; it only reflects a part of those fees. It is poor public policy to allow a business to inaccurately bundle its taxes along with its profits. The "Streamlined Sales and Use Tax Agreement," which 23 states have incorporated into their tax code, says that the "sale price" on which a tax is based may not include any deductions for "charges by the seller for any services necessary to complete the sale" unless they are "separately stated on the invoice... given to the purchaser."

### **Tourism Demands on Municipal Services**

Tourists often place large demands on city infrastructure, public safety services and other municipal services. The failure of OTCs to pay their fair share of the transient lodging tax results in cities not being properly compensated for the expenses they incur. Cities throughout Oregon are struggling with revenue shortfalls that are resulting in major cuts. Maintaining and expanding our tourism industry will depend on our ability to provide the basic infrastructure, amenities and safe environment that visitors expect. This bill will help us ensure that visitors to Oregon will enjoy their stay and want to return. One estimate by the Center on Budget and Policy Priorities estimates that local governments would see transient lodging tax revenues increase by \$3 to \$4 million annually should this bill pass.

Most importantly, passage of this bill will clarify that going forward the proper approach to imposing a transient lodging tax will be to base the tax rate on the full retail room rate, just as it is calculated for rooms booked by traditional travel agents and room occupants themselves. We respectfully ask that this committee support SB 1519.