



Date: February 1, 2012

To: Chair Burdick & Members of the Senate Finance & Revenue Committee

From: Bill Perry, Oregon Restaurant & Lodging Association

Re: Senate Bill 1519 – Statewide Lodging Tax Collections

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Senator Burdick and Members of the Committee,

For the record, I am Bill Perry from the Oregon Restaurant & Lodging Association, here today in support of Senate Bill 1519. SB 1519 clarifies how lodging taxes should be collected from lodging sales across the state, and establishes some uniformity on these collections.

Online travel companies (OTCs) typically choose to calculate state and local hotel occupancy taxes based on the wholesale cost they pay to a hotel for a room, rather than the retail price they receive from the customer. This practice results in lower taxes collected by state and local jurisdictions for rooms booked through an OTC, rather than directly with a hotel.

Statewide, a large portion of this money would go to tourism promotion efforts both at the state and local levels. Dollars would also be collected to assist with infrastructure support for communities that had taxes in place for this purpose before legislative changes enacted in 2003.

Many jurisdictions have become aware of this strategy and have filed lawsuits against some of the OTCs for what they contend are unpaid tax revenues. In response, these companies are seeking legislation that would protect this practice by making it a legitimate tax exemption through a federal preemption of state and local authority.

OTCs include Expedia, Orbitz, Travelocity, etc., and are also referred to as “third party intermediaries” (TPIs). In some cases, a hotel enters a contract with a TPI to provide rooms at a discounted rate, i.e. the “wholesale cost.” The TPI then posts the rooms for sale at a higher rate to consumers. This is referred to as the “wholesale booking model.”

The center of the dispute involves other instances that follow the "commission model," which is similar to the model used by traditional travel agencies. When using the wholesale booking model, a TPI advertises a room to consumers at a rate higher than its wholesale cost and includes unspecified taxes and fees in its final price.

There is discussion at the federal level regarding legislation that would require the TPIs to disclose to consumers what portion of the "taxes and fees" are being passed on to the various government entities, and what portion of such is being retained by the TPI.

SB 1519 would create a uniform practice in statute on what many thought was already in place. Stakeholders in the lodging industry, in local government and consumers in general believe that taxes should be paid and collected on the retail price of the room. In fact, the state of Minnesota recently passed legislation that accomplishes this exact practice; several other states are also working to address this issue as well.

Thank you for your time today. Please support SB 1519, and I would be happy to answer any questions you may have.

Bill Perry  
Oregon Restaurant & Lodging Association

February 3, 2010

# White Paper: Reclaiming Unremitted Taxes From Online Travel Companies

By National Online Travel Litigation Group

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## **Introduction**

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Online travel companies (OTCs) collect more in taxes than they pay to the government. OTCs purchase and pay taxes for hotel rooms at wholesale rates. Having marked up the prices on those same hotel rooms to a retail rate, OTCs collect from guests taxes on the retail rate. OTCs keep for themselves the difference between the taxes on wholesale and retail pricing. Government authorities are successfully using civil actions against OTCs to collect unremitted tax revenue.

## **The Issue**

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### **How They Operate**

Online Travel Companies (OTCs) provide hotel accommodations to the general public through internet transactions. The number of hotel reservations made using OTCs has exploded over the last several years. Fifty-six percent (56%) of non-business travelers report making travel reservations online.<sup>1</sup> As the use of OTCs increases, so does awareness of the OTC business model, which divests cities, counties, and states ("governments") of the taxes owed on OTC transactions.

Through agreements with hotels, OTCs obtain hotel rooms at reduced rates (wholesale). OTCs then mark up room prices and rent rooms to the public at retail rates. When a guest books a room with an OTC, the guest is quoted the retail price for the room plus an additional amount for taxes and fees. The consumer is presented three line items: the room price, taxes and fees, and the combined total price. The OTC collects as taxes a percentage of the retail price paid by the guest. Once the consumer pays for a room through an OTC website, the sale of the room is complete.

The OTC sets the retail price of the room to be paid by the consumer and is the merchant of record. The OTCs do not disclose the retail rental rate to the hotels or the wholesale rate to the consumer. The guest pays the OTCs the correct amount of tax – an amount based upon the full amount the guest paid the OTC for the room.<sup>2</sup> However, OTCs remit to the government a tax payment based only on the wholesale rental rate which the OTCs pay to the hotel. The remainder of the tax is unlawfully retained by the OTCs. The government loses this additional tax revenue.

For example, if a consumer pays Expedia.com \$100.00 for a room in a hotel located in Portland, Expedia.com calculates the tax rate the consumer pays on that "gross" or retail amount (\$100.00). Expedia.com, however, purchases that room from the hotel at a lower "net" or wholesale rate, for instance, \$60.00. Because Expedia.com and other online travel companies

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<sup>1</sup> This reflects a thirty-seven percent (37%) increase from the year 2000. 2009 National Leisure Travel Monitor. Available for purchase at <http://www.ypartnership.com/#publications>.

<sup>2</sup> OTCs operate using two business models: the Agency Model and the Merchant Model. The transaction described here and the transactions giving rise to tax underpayment represents the Merchant Model. In contrast, under the Agency Model, an OTC functions more like a traditional travel agent. The hotel sets the price of the room, is the merchant of record for the transaction, and the guest pays the hotel directly.

sell to "consumers" who occupy the rooms, the transient lodging taxes are due as 6% of \$100 or \$6.00.<sup>3</sup> However, the amount of sales tax remitted has been based on the lower "net" rate. In this example, the government would only receive \$3.60 (6% of \$60.00), an underpayment of the tax liability by \$2.40. Thus, in this single example transaction, the government's collected tax would be 40% less than the appropriate tax. This discrepancy between taxes collected and taxes remitted forms the basis of litigation to reclaim lost tax revenue.

## **Reclaiming Lost Tax Revenue**

At a time when tax revenues are down across the country, Portland cannot afford to lose tax revenue as a result of the deliberate tax evasion by the OTCs.

In 2008, Portland collected approximately \$44.6 million as its share of the lodgings tax. Based upon our investigation to date, 50% of hotel room bookings are made online. Furthermore, 5% of online bookings are made by OTCs and the typical mark up by the OTCs from the wholesale rate to the retail rate ranges from 30-40%.<sup>4</sup> As a result, OTCs have underpaid Portland hotel sales taxes by approximately \$955,714.29.

As noted below, there is a strong argument that the applicable three year statute of limitation is tolled. The OTCs commenced the wrongful practice of withholding taxes on the "spread" between the wholesale and retail rental rates around 1999.<sup>5</sup> While the amount of annual sales taxes has increased over time, we estimate that Portland is owed approximately \$9,557,142.86 in back taxes since 1999 assuming tolling of the statute of limitations.<sup>6</sup> Portland's penalty and interest provisions relating to unpaid taxes may increase the amount due by the OTCs to Portland by as much as 50%. Using only 25% in penalties for late payment, approximately \$23,480,207.52 may be available to Portland in retrospective relief.

In addition, the value of prospective relief obviously will be substantial. To illustrate, payment of taxes on the full retail rental amount collected by OTCs would generate more than an additional \$4,778,571.43 for the 5 year period following the date on which the OTCs commenced paying such taxes.

Thus, the estimated value of this litigation to Portland is in excess of \$28,258,778.95.

## **Pending Litigation**

Governments are addressing tax underpayment by OTCs through legislation and litigation. Pending and recently enacted legislation require that OTCs collect and pay taxes on the retail price that guests pay rather than the lower, wholesale price paid by the OTC.<sup>7</sup> Although the change in law makes it clear what OTCs must collect and remit, it is unlikely to

<sup>3</sup> This example refers only to the 6% of the 11.5% tax that would be charged, as only 6% is remitted to Portland.

<sup>4</sup> Recovering the 30% underpayment in taxes will result in greater than 40% increase in tax revenues from OTCs.

<sup>5</sup> The term "spread" is used to describe the difference in the price that OTCs pay and the price that guests pay.

<sup>6</sup> Assuming that the litigation takes two years, and the City is able to recover back taxes for three years, the retrospective value would be \$15 million; \$3 million per year over five years.

<sup>7</sup> New York City has enacted legislation that incorporates the terms "room remarketer," "net rent," and "additional rent" to make OTCs' tax obligation clear. N.Y.C. Admin. Code § 11-2501 (2009).

provide for the collection of years of previously unremitted taxes. Some governmental entities are not yet pursuing lawsuits, but have started administrative proceedings, initiated inquiries, and proposed tax assessments against OTCs for remittance of taxes. Many government entities are filing suit against OTCs to recover unpaid tax obligations.<sup>8</sup>

In 2004, there were few, if any cases, dealing with this subject matter. By 2007, dozens of governments asserted their claims and sued OTCs for violating the statutory and common laws of their respective states, cities, and counties.

At present, more than 200 cities and counties have sued the OTCs.<sup>9</sup> Government entities that have chosen litigation are well on their way to successfully reclaiming lost tax revenue. Some of the suits seek certification as a class of government entities. Larger municipalities have filed stand-alone cases.<sup>10</sup> The suits seek retrospective damages, such as back taxes, penalties and interest, as well as prospective relief to prevent future underpayment.

Favorable decisions in hotel tax litigation in other jurisdictions demonstrate the viability of these claims.<sup>11</sup> The Federal District Court for the District of Maryland rejected the legal arguments of OTCs and denied their Motion to Dismiss the Mayor and City Council of Baltimore's case.<sup>12</sup> A similar motion to dismiss was denied in County Commissioners of Worcester County, Maryland's case.<sup>13</sup> Most recently, a jury in the Western District of Texas

<sup>8</sup> OTCs named as defendants in lawsuits include Expedia, Inc.; Hotwire, Inc.; Priceline.com, Inc.; Lowestfare.com, Inc. and Travelweb LLC, (subsidiaries of Priceline.com, Inc.); Hotels.com, L.P.; Orbitz, Inc.; Orbitz, L.L.C.; Cheaptickets, Inc.; Travelport, Inc.; Internetnetwork Publishing Corp. (d/b/a Lodging.com); Maupintour Holding L.L.C.; Site59.com L.L.C.; Travelocity.com, Inc.; Travelocity.com, L.P.; and Travelnow.com, Inc.

<sup>9</sup> Chen, Stephanie, *Web Spawns Suits Over Hotel Tax*, The Wall Street Journal, A4, <http://online.wsj.com/article/SB121686363795679679.html> (accessed September 28, 2009).

<sup>10</sup> These cases include *Mayor & City Council of Baltimore v. Priceline.com Incorporated, et al.*, which is represented by John W. Crongeyer; and cases involving the following government entities: Los Angeles; Philadelphia; Chicago (class action); Florida (class action); Findalay, Ohio; Bellingham, Washington; and Rome, Georgia, for whom John W. Crongeyer serves as counsel.

<sup>11</sup> See, e.g., *City of Charleston v. Hotels.com, L.P.*, No. 2:06-cv-1646-PMD, 520 F. Supp. 2d 757, 2007 U.S. Dist. LEXIS 83628 (D.S.C. Nov. 5, 2007) (denying motion to dismiss where tax was imposed on those engaged in "furnishing accommodations to transients" because defendants received money in exchange for "supplying" hotel rooms); *City of North Myrtle Beach v. Hotels.com L.P.*, No. 4:06-CV-3063-RBH,

2007 U.S. Dist. LEXIS 85886 (D.S.C. Sept. 30, 2007) (denying motion to dismiss where ordinance taxed the gross proceeds received by a provider or seller of hotel rooms). See also *City of San Antonio v. Hotels.com*, No. SA-06-CA-381-OG, 2007 U.S. Dist. LEXIS 39757 (W.D. Tex. Mar. 16, 2007) (denying motion to dismiss where occupancy tax was levied on any person or entity owning, operating, managing, or controlling any hotel and plaintiff alleged defendants had a right to control occupancy as a result of their contracts with hotel); *Leon County v.*

*Hotels.com, L.P.*, No. 06-21878, 2006 U.S. Dist. LEXIS 88253 (S.D. Fla. Dec. 6, 2006) (denying motion to dismiss where occupancy tax was levied for the privilege of renting, leasing, or letting for consideration hotel rooms and complaint alleged defendants engaged in the practice of subletting accommodations); *City of Fairview Heights v. Orbitz, Inc.*, No. 05-CV-840-DRH, 2007 U.S. Dist. LEXIS 26736 (S.D. Ill. July 12, 2006) (denying motion to dismiss on principal claims where ordinance imposed a duty on owner of every hotel or motel to collect the tax and defined "owner" to include any person receiving consideration for the rental of a hotel room); *City of Findlay v. Hotels.com, L.P.*, 441 F. Supp. 2d 855 (N.D. Ohio 2006) (denying motion to dismiss where, although ordinance did not impose a direct tax on defendants, plaintiff pled that defendants were in fact collecting taxes under the ordinance and failing to remit the same).

<sup>12</sup> *Mayor & City Council of Baltimore v. Priceline.com Inc., et al.*, Civil Action No. MJG-08-3319.

<sup>13</sup> *County Commissioners of Worcester County v. Priceline.com Inc.*, Civil Action No. MJG-09-00013.

found that OTCs were not collecting and remitting the appropriate amount for transient taxes, and awarded the Plaintiff government entities \$20 million.<sup>14</sup> A number of claims have also been resolved in confidential settlement agreements.

Despite the significant revenue at stake, some governmental entities have chosen inaction. Many of these entities are taking a “wait and see” approach. Others seem to simply be ignoring the tremendous growth of online travel companies and the role OTCs play in disrupting a revenue source. Inaction is unwise for two reasons. It ignores the evisceration of a viable source of revenue and it risks the foreclosure of recovery on past nonpayment.

Allowing underpayment to continue under their current scheme could, as described by the Supreme Court of Georgia, create a gaping loophole eviscerating tax ordinances. “...A hotel operator could simply incorporate a shell entity or make some other similar arrangement, rent the hotel rooms to that entity for a nominal amount, and then re-rent the rooms to consumers, who would be taxed only on the nominal sum paid by the side entity to the operator.”<sup>15</sup> This result is not what lawmakers envisioned. Although each suit is based on a government entity's specific ordinance, the allegations are generally applicable to each jurisdiction in which OTCs operate to avoid taxes.

## **Portland's Transient Lodgings Tax**

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Portland levies a 6% Transient Lodgings Tax on the “rent charged by an operator”...“for the privilege of occupancy in any hotel.”<sup>16</sup> The term “rent” is, “the consideration charged, whether or not received by the operator, for the occupancy of space in a hotel, valued in money...without any deduction.”<sup>17</sup>

An “operator” is “proprietor of the hotel in any capacity.”<sup>18</sup> An agent performing the functions of an operator, “shall have the same duties and liabilities as his/her principal.”<sup>19</sup> The operator must collect the tax when he/she collects rent from the hotel guest.<sup>20</sup> “The tax collected or accrued by the operator constitutes a debt owing by the operator to the City.”<sup>21</sup> The taxes collected by the operator are due and payable to the City Tax Administrator.<sup>22</sup>

As persons selling the right to occupy hotel rooms, the OTCs are obligated to collect and remit the proper amount for the transient tax. The price paid to OTCs by hotel guests constitutes

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<sup>14</sup> This figure will increase with interest and penalties.

<sup>15</sup> *Expedia, Inc. v. City of Columbus*, 2009 WL 1649663 (Ga. 2009).

<sup>16</sup> Portland City Code § 6.04.020.

<sup>17</sup> Portland City Code § 6.04.010(M); The Bureau of Licenses of the City of Portland may require that an operator's returns “show the total rentals upon which tax was collected or otherwise due, gross receipts of operator for such period and an explanation in detail of any discrepancy between such amounts, and the amount of rents exempt, if any.” Portland City Code § 6.04.070

<sup>18</sup> Portland City Code § 6.04.010(K).

<sup>19</sup> *Id.*

<sup>20</sup> See Portland City Code § 6.04.030.

<sup>21</sup> *Id.*

<sup>22</sup> See Portland City Code § 6.04.070(A).

the rent or consideration for occupancy subject to the tax. The OTCs' failure to remit such taxes has resulted in millions of dollars in lost revenue for Portland.

In analyzing the viability of litigation, Portland's City Code has definitions of "rent" and "occupancy" that would arguably place the City in an even stronger position to collect unremitted taxes than in other jurisdictions. As noted above, Portland City Code § 6.04.010(m) defines "rent" used to calculate the 6% tax as consideration charged "for the occupancy." The term "occupancy," in turn, is defined as not just the right to use the room, but specifically the "right to use or possession for lodging or sleeping purposes."<sup>23</sup> Thus, in Portland, OTCs cannot circumvent the tax by simply contracting for wholesale room rates when their intent is to re-book the rooms to guests. By calculating rent based on the consideration charged for "occupancy," the Portland City Code contemplates taxing rent based on what is charged to the end user who sleeps or lodges in the room. Any other interpretation would render a portion of the "occupancy" definition meaningless.

Portland City Code § 6.04.090 provides that if a return is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the Bureau from such information as may be obtainable. The Bureau will deliver a written notice of its determination to the operator by mail.<sup>24</sup> The operator may petition the Bureau for a redetermination and redemption and refund within 10 days from the date of service of notice by the Bureau.<sup>25</sup> If the operator fails to file a petition in a timely matter, the determination becomes final.<sup>26</sup> The operator must pay the additional taxes before he/she is able to file an appeal of the determination with the Business License Appeals Board.<sup>27</sup> An appeal may also be filed with the City Council.

Portland City Code § 6.04.090(3) provides that every deficiency determination must be made and notice thereof mailed within three years of the close of the quarter for which the amount is determined or after the return was filed (whichever is later). However, in the case of fraud, refusal to collect, or evasion, the tax may be assessed at any time within 3 years after discovery by the Bureau of any fraud, intent to evade or failure or refusal to collect said tax, or failure to file return.<sup>28</sup>

Accordingly, there is a substantial argument that because the OTCs failed to remit taxes, the statute of limitations has not started to run and that the OTCs are liable for taxes, penalties and interest dating back to approximately 1999.

Returns filed after the due date are subject to both penalties and interest. For failing to file a tax return, an operator shall pay a penalty of 10% of the tax due if the failure is for not more than one month, with an additional penalty of 15% of the tax due.<sup>29</sup> Furthermore, if the underpayment of tax is attributable to fraud, a penalty equal to 25% of the underpayment of tax

<sup>23</sup> See Portland City Code § 6.04.010(j).

<sup>24</sup> See Portland City Code §§ 6.04.090(A)(1), (3).

<sup>25</sup> See Portland City Code §§ 6.04.100, 6.04.090

<sup>26</sup> See Portland City Code § 6.04.100

<sup>27</sup> See Portland City Code § 6.04.100.

<sup>28</sup> See Portland City Code § 6.04.090.

<sup>29</sup> See Portland City Code §§ 6.04.080(A), (B).



attributable to fraud will be imposed.<sup>30</sup> In addition to penalties, if a tax is not timely paid, interest is payable at the rate of 1% per month or fraction thereof...from the date on which the remittance first became delinquent until paid." Interest is compounded monthly.<sup>31</sup> All penalties and interest are merged with the tax, and become part of the tax required to be paid. "If delinquency continues, requiring additional penalty and interest calculations, previously assessed penalty and interest are added to the tax due. This amount becomes the new based for calculating new penalty and interest amounts."<sup>32</sup> The Bureau Director may also impose a civil penalty of up to \$500 for each violation of the City Code.<sup>33</sup>

The City Attorney is responsible for all of legal matters of the City, including prosecution of all violations of the Portland City Code with approval by the Commissioner In Charge.<sup>34</sup>

## Our Litigation Group

OTCs such as Expedia<sup>35</sup> and Priceline.com<sup>36</sup> only partially remit taxes, thereby profiting unlawfully at the expense of the City and taxpayers. OTCs have vigorously defended this lucrative business model. With substantial resources and sophisticated legal counsel at their disposal, OTCs present a three-pronged defense of administrative tactics, sophisticated lobbying, and expensive litigation. To successfully pursue lost tax revenue from OTCs, it is important to have a litigation team of experienced counsel with exceptional resources.

Our litigation group is comprised of attorneys with a wealth of experience in complex litigation, class representation, and hotel tax litigation. This litigation group includes experienced regional and national counsel who have represented cities and counties around the country for more than four years.<sup>37</sup>

This group has experience in more states than any other litigation group nationally, with cases in the following venues: Georgia, Indiana, Michigan, Maryland, Missouri, and California. More cases are due to be filed in the coming weeks and months. Ours was the first litigation group to obtain a federal court denial of the Defendants' Motion to Dismiss. In May of 2006, Judge Harold Murphy in the Northern District of Georgia denied the OTC's dismissal attempt and wrote the lead opinion, which has been followed by more than a dozen other federal and state courts.

Our experience in online travel litigation has led to favorable state supreme court opinions. Our Group has authored amicus briefing that was submitted to the Supreme Court of Georgia, resulting in decisions that effectively eviscerated the Defendants' defenses in Georgia

<sup>30</sup> See Portland City Code § 6.04.080(C).

<sup>31</sup> See Portland City Code § 6.04.080(D).

<sup>32</sup> See Portland City Code § 6.04.080(E).

<sup>33</sup> See Portland City Code § 6.04.170.

<sup>34</sup> See Portland Code § 3.10.030(C), (G).

<sup>35</sup> Expedia, Inc. Form 10-Q filed 08.11.06, "The Company believes that the claims discussed above lack merit and will continue to defend vigorously against them."

<sup>36</sup> Priceline.com, Inc. Form 10-K filed 03.07.06, pg. 36, "We intend to defend vigorously against the claims in all of the aforementioned proceedings. We are unable at this time to predict the outcome of these proceedings or reasonably estimate a range of possible loss, if any."

<sup>37</sup> We have a presence in all regions of the United States.

and have transformed the litigation into an accounting project. A recent victory in Maryland added to our group's successes. There, counsel successfully circumvented a negative federal court decision in the Fourth Circuit and defeating an online travel defendants' Motion to Dismiss in the case for the city of Baltimore.

More than victories for our current clients, our experience gives us access to a wealth of information that is invaluable to future clients. Our litigation group has the most substantial database of documents and substantive discovery of any group in the country working on these cases. This database includes collection data and documents pertaining to hundreds of thousands of hotel bookings by Defendants. We even have access to the discovery from other groups representing governments, though those groups do not have access to our discovery.<sup>38</sup> The discovery sharing orders obtained from the courts (e.g., Baltimore and Georgia) provide this group with a unique competitive advantage over all other litigation groups.

Outside the courtroom, our group has successfully defeated state legislative/lobbying efforts in Georgia. We have worked with selected hotels and travel associations in countering the Defendants' lobbying activities. We are one of the primary litigation groups contributing (financially and otherwise) to counter-lobbying efforts at the federal level, resulting in numerous defeats of Defendants' repeated and ongoing attempts to gain amnesty from liability.

Our experience and resources are documented and invaluable.

## **Conclusion**

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OTCs are pocketing tax revenue as profit for themselves. The amount of money at stake is substantial. The OTCs vigorously oppose all collection efforts. Their aggressive use of outside counsel, the existence of voluminous documents (many of which are held confidential), and convoluted business tactics and evolving terminology make accurate tax assessments very difficult without detailed knowledge of the OTCs' business model and method of operation. To maximize its recovery, we believe Portland should initiate litigation using outside counsel experienced in litigating against these Defendants as soon as reasonably possible.<sup>39</sup> Online travel companies have vowed to continue this practice and fight recovery. Legislation may work prospectively, but does not provide a retrospective remedy for collecting taxes. Our group has the experience and resources to mount a successful offensive for Portland.

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<sup>38</sup> Such a distillation of information is important where Defendants routinely produce millions of pages of documents.

<sup>39</sup> The current economic climate makes the recovery of these tax revenues, penalties, and interest especially critical. Only experience counsel who are familiar with the business models, witnesses, documents, tactics, and lawyers of these Defendants will be able to recover the full amount that is owed to Portland.



# Minnesota House of Representatives

## H.F. No. 20 – 2011 1st Special Session (Posted Jul 19, 2011)

*Note: This excerpt is taken from the 21 page tax bill and condensed for space/print considerations.*

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### ARTICLE 3 SALES AND USE TAXES

**Section 1 [Sales and use tax inclusions and exemptions]** includes accommodation intermediary services in the list of products and services subject to sales and use tax, effective the day after final enactment. Exempts the purchase of ring tones from sales and use tax, effective September 30, 2011.

**Sections 2 to 4 [Online lodging reservations]** allows for the collection of sales tax for lodging reservations secured by intermediaries, effective the day after final enactment. Under current law, intermediaries do not charge sales tax on fees they may receive from the provider of lodging services (e.g., a hotel). As a result, the consumer pays less tax if a room is booked through an intermediary rather than if made directly with the hotel, even though in both situations the price of the room is the same. Under these sections, the tax would be the same in both situations, and intermediaries will be required to collect and remit sales tax on the full amount charged for lodging services.

**Section 2** adds the definition of “accommodations intermediary” to include a person entity that brokers, coordinated, or arranges lodging for a customer.

**Section 3** adds the definition of “accommodations provider” to include any person or entity that furnishes lodging.

**Section 4** requires accommodations intermediaries to collect and remit sales tax on the service provided in connection with securing lodging in Minnesota.



# Minnesota House of Representatives

## On-line Travel Companies Sales and Use Tax

	FY 2012	FY 2013	FY 2014	FY 2015 (\$000s)
General Fund (6.5%)	\$3,800	\$4,800	\$5,000	\$5,200
N Resources & Arts (0.375%)	<u>\$200</u>	<u>\$300</u>	<u>\$300</u>	<u>\$300</u>
Total – All Funds	\$4,000	\$5,100	\$5,300	\$5,500

Effective the day following final enactment.

Lodging and related services are subject to the sales and use tax. The final price charged to the consumer of the room rental is generally considered the price subject to sales tax. For national online reservation services which are not located in Minnesota, the industry practice has been to pay sales tax to the hotel/motel companies on their purchase price and not based on the price they charge to the consumer.

The proposal provides definitions for “accommodations intermediary” and “accommodations provider”. The price charged by an accommodations intermediary includes the price paid to the accommodations provider plus any additional charge for services. The proposal provides that service, in excess of the price paid by the accommodations intermediary to the accommodations provider, provided by the accommodations intermediary is taxable.

- Based on preliminary data for the 2009 Minnesota Sales Tax Statistics, it is estimated that \$107.1 million would be the amount of the sales and use tax at the 6.875% sales tax rate from the accommodation sector. It is estimated that 83% of this total, or \$88.9 million, was attributable to room rentals.
- Growth rates are based on the June 2011 projections by Global Insight, Inc., for consumer spending in the accommodation sector.
- Information from Hospitality eBusiness Strategies (HeBS) reports that 45% of all calendar year 2010 booking will be generated from the Internet. This percentage is forecast to grow at 0.5 percentage points per year.
- Additionally, for calendar year 2009, HeBS reports that 60% of the online sales were attributable to hotel-branded websites and 40% accounted were sales by the intermediary websites.
- It is estimated that the portion of the room price that is being held by the intermediary as a reservation service is 25% of the final price to the consumer.
- Calendar year data was converted to fiscal year data.
- The estimate for fiscal year 2012 assumes enactment before the end of July.

By Senator Gardiner

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A bill to be entitled  
An act relating to taxation of transient rentals;  
amending s. 212.03, F.S.; defining the terms "total  
rental charged," "total consideration,"  
"consideration," and "rent" for purposes relating to  
the tax on sales, use, and other transactions, the  
tourist development tax, the tourist impact tax, the  
convention development tax, and the municipal resort  
tax on the rental of transient accommodations;  
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (8) is added to section 212.03,  
Florida Statutes, to read:

212.03 Transient rentals tax; rate, procedure, enforcement,  
exemptions.-

(8) The terms "total rental charged" as used in this  
section, "total consideration" as used in ss. 125.0104 and  
125.0108, "consideration" as used in s. 212.0305, and "rent" as  
used in chapter 67-930, Laws of Florida, as amended, have the  
same meaning and include the total amount that a person licensed  
pursuant to ss. 509.241 and 509.242 or regulated by the  
Department of Business and Professional Regulation receives for  
the right to occupy the person's transient accommodations.

Section 2. This act shall take effect July 1, 2012.