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June 10<sup>th</sup>, 2013

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

From: Chris Fick, Intergovernmental Relations Associate

Re: HB 2656 – 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 HB 2656, which would modify the definition of the state's transient lodging statutes 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 reflects a lack of understanding for their business model and is mired in lawsuits across the country. Both of these claims are fully answerable and should not stand in the way of this committee taking action on this bill.

**The OTC Business Model**

The primary 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 offer, rather than on the room itself. There are three simple rebuttals to this claim.

First, 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. 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.

Second, conventional travel agents have served as intermediaries between room renters and hotels for decades, and transient lodging taxes have always applied to the room rate charged to the customer, with no prior deduction for the travel agent’s commission.<sup>1</sup>

Lastly, it is a standard feature of many states’ tax laws that if a tax-exempt charge is not separately stated to the consumer but rather is bundled with a taxable charge, the entire transaction is taxable. Even if one accepted for the sake of argument that OTC services are being provided solely to the room renter, and therefore provide no benefit to the hotel, the OTC’s “service charge” or “facilitation fee” is nevertheless bundled with the room charge in the bill the customer pays. On that basis alone the standard treatment would be to charge tax on the total retail amount (see example below, and website view on page 4).

**Example:**

Standard two queen bed room, The Grand Hotel, downtown Salem	
Check-in Saturday, February 23 <sup>rd</sup> , 2013, one night, advance purchase, fully refundable	
Figures below reflect actual comparison of Grand Hotel and Expedia websites	
<b>The Grand Hotel website:</b>	
\$139.00	Retail room charge to consumer
<u>13.90</u>	Taxes (at 10%)
<b>\$152.90</b>	<b>Total cost to consumer</b>
<b>Expedia website:</b>	
\$111.20	Expedia’s “wholesale” room cost (assuming Expedia marks up by 25%)
<u>27.80</u>	Expedia’s 25% mark-up or “facilitation fee”
\$139.00	Expedia’s room charge shown to consumer
<u>13.91</u>	Expedia’s “Taxes and Service Fees” shown to consumer
<b>\$152.91</b>	<b>Total cost to consumer</b>
Expedia pays \$11.12 in taxes on the room (10 percent of the \$111.20 wholesale cost), or \$2.78 less than the \$13.90 it would pay if it paid tax on the room’s full retail cost. This \$2.78 is retained by Expedia in addition to the \$27.80 Expedia receives through its wholesale-to-retail markup.	

**Lawsuits**

The second claim from the OTCs will be that the bill is legally questionable. While scores of local governments have filed lawsuits against OTCs claiming that their hotel taxes are due on the full retain 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.

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<sup>1</sup> “Prior to the advent of the Internet and online travel intermediaries, the taxation of receipts that traditional travel agents derived from their services in facilitating the sale of hotel accommodations to consumers was not a contentious one. . . . [T]he full amount paid by the consumer for taxable hotel accommodations booked through a travel agent was subject to sales or accommodations tax, and it was not reduced by the commission generally remitted by the hotel operator to the travel agent.” Walter Hellerstein, memorandum to the National Conference of State Legislatures Re: “Travel Intermediaries,” July 16, 2009. See also: Beth Anne Stanford, “State and Local Efforts to Collect Additional Tax on Hotel Rooms Booked Online,” *State Tax Notes*, January 31, 2005, p. 319.

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 not be alone in clarifying the intent of its statutes. North Carolina clarified that its transient lodging tax applies to OTCs in 2011. Minnesota has passed legislation in 2012, clarifying its intent, and the new requirements became effective last July 1. New York has also clarified its statutes, but the issue has been challenged in court by the OTCs.

**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 to core services. 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.

We respectfully ask that this committee to support HB 2656.



Traveler info > Payment > Confirmation

### Who's Traveling?

Connect using Facebook or sign in to your Expedia account to book faster!  
Please tell us who will check in.

Name: \*

First and Last Name

Phone Number: \*

Country: \*

United States of America (1)

Preferred Phone Number\*

+ Add another number

Room: 2 Adults, Two Queen Beds, Non-smoking  
Special/Accessibility Requests

Note: All special requests (such as in-room amenities, bed type, and smoking preference) are shared with the hotel. We recommend you confirm them directly with the hotel before travel.

**CONTINUE** FREE cancellation before February 22

[View hotel details](#)

### Trip Summary

The Grand Hotel In Salem  
1 Room: Deluxe double queen

1 Night: Feb/23/2013 - Feb/24/2013

Room 1: 2 Adults  
1 night  
Taxes & Fees

avg./night \$139.00  
\$13.91

Total: **\$152.91**  
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Trip price: \$152.91  
Statement credit: -\$125.00

Your cost after savings: **\$27.91**  
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