

NetChoice *Promoting Convenience, Choice, and Commerce on The Net*

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April 2, 2019

Rep. Dustin Burrows, Chair
Ways and Means Committee
Texas House of Representatives
Austin, TX

RE: **Opposition to HB 3579 creating a New Tax on Travel Agents and Websites**

Dear Chair Burrows,

We respectfully ask that you **not** advance HB 3579 which creates a new tax on services provided by travel agents and online travel companies. HB 3579 imposes a new tax on the fees these travel agents charge for researching, comparing, and booking rooms for travelers.

Cities and states favor hotel taxes since they fall mostly on visitors – not on resident voters. But under HB 3579, this approach would backfire since the new service tax would be paid *only* by Texans– *not by travelers* from out-of-state.

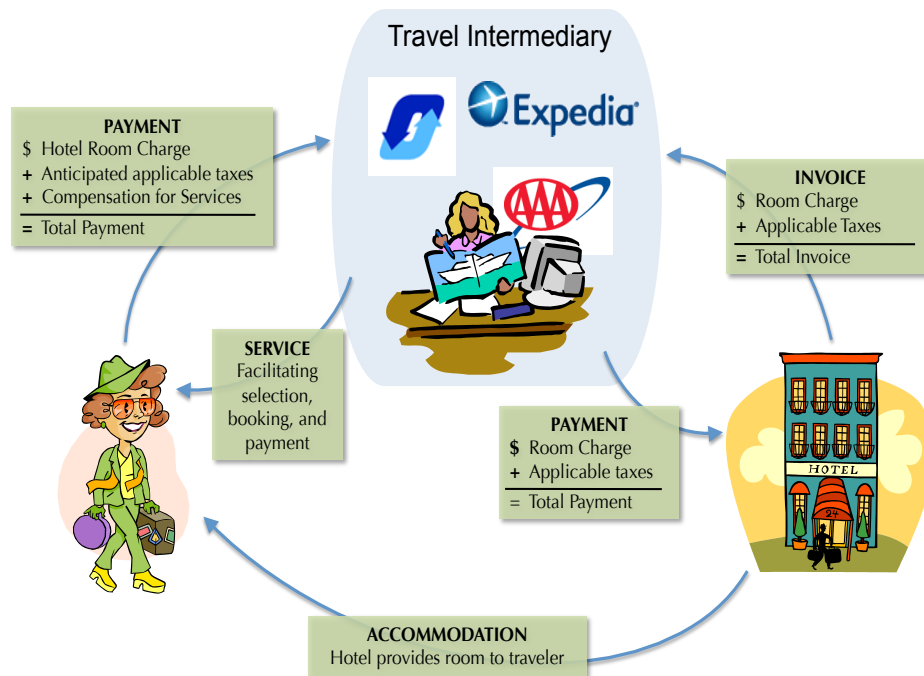
Imposes a new tax on Texans

Today, Texas does not impose sales tax or lodging tax on service fees charged by travel agents. These service fees compensate travel agents for researching and comparing available hotel options, booking the room, and handling payment to the hotel. But HB 3579 would impose a new tax on these service fees provided by travel agents and online travel companies, a tax that is passed on to your constituents.

Nearly all travel agents and travelers rely upon online services to research, compare, and book reservations

From our work on this issue in states and at NCSL, it's clear there is some misunderstanding about travel reservation services and taxes. The chart below shows the flow of services, taxes, and payments in a typical transaction where a traveler uses a travel agent or online travel company to research and book a hotel reservation.

As shown in the chart, travel agents and online travel companies are providing a *service* to travelers. These services include comparisons of rates and amenities at multiple hotels, plus facilitation in making the reservation, processing the payment, and sending charges and applicable taxes to the hotel operator. Clearly, this facilitation service is distinct from the room provided by the hotel where the traveler eventually stays.



Creates a new tax on travel service fees that would only apply when Texans book their travel

The new tax imposed on booking service fees by HB 3579 would impact only Texas's citizens and businesses. That's because of the rules for determining the source jurisdiction for taxable services – when a tourist uses a travel service, the reservation service fee is sourced to the traveler's home location – not to the traveler's destination.

Under Texas law,

(26) Services. Receipts from a service are apportioned to the location where the service is performed. If services are performed both inside and outside Texas, then such receipts are Texas receipts on the basis of the fair value of the services that are rendered in Texas.¹

For example, say two tourists are booking a hotel room in Texas. One lives in San Francisco, the other in Waco. The California tourist would *not* pay the tax created by HB 3579 when they booked through a travel agent since they received their online booking services outside of Texas.² But, the tourist living in Hilo who books through a travel agent *would* pay the tax created by the HB 3579.

This new tax would therefore only apply to services provided to Texas-based travelers. The tax would *not* apply to service fees paid by out-of-state travelers booking Texas hotels.

¹ 34 Tex. Admin. Code § 3.591(e)(26).

² Note that the out-of-state tourist still pays the Texas occupancy tax when they book the room.

Allows tax collectors to levy their occupancy tax on more than just hotel rooms

Texas travel agents routinely create packages that bundle hotel rooms, food, travel, and events into one price. But HB 3579 allows Austin tax collectors to impose their occupancy taxes on all kinds of goods and services when included in travel packages:

- taxi from the airport to the hotel
- food served at a hotel restaurant
- tours of the Alamo

This new tax on service fees would only be collected by Texas-based travel websites

Because of Texas's sourcing laws on services (see above), the requirement to collect this new tax on booking services could *only* be enforced against travel agents and websites that have a physical presence in Texas.

As noted above, out-of-state travel agents and websites already collect and remit lodging taxes when they make payment to the Texas hotel operator. But out-of-state travel agents would not be required to collect this new tax on service fees for providing reservation services at the time that travelers book their hotel.

Minimal revenue generated

For reasons explained above, every state, city, and county that has enacted a similar new tax has failed to gain the anticipated tax revenue.

First, as discussed above, the service taxes could not be imposed on any out-of-state traveler. Second, Texas tax collectors do not have authority to force out-of-state travel agents to collect these new service taxes since states can only impose collection obligations on businesses with a physical presence.

So, when you consider this tax, please consider whether the minimal tax revenue is worth the harm to Texas's travel agencies and travel websites.

Avoid the conflation of travel services and lodging providers

By maintaining the true distinction between travel service providers and hotel operators, you can help Texas's travel and tourism industry focus on serving travelers and creating jobs – not on collecting nominal new taxes from the state's own citizens.

Instead of passing HB 3579 we suggest amending it to clarify when an occupancy tax applies. We suggest substituting the existing bill text with this language from Missouri law:

“Any tax imposed or collected by any municipality, any county, or any local taxing entity on or related to any transient accommodations, whether imposed as a hotel tax, occupancy tax, or otherwise, shall apply solely to amounts actually received by the operator of a hotel, motel, tavern, inn, tourist cabin, tourist camp, or other place in which rooms are furnished to the public.

Under no circumstances shall a travel agent or intermediary be deemed an operator of a hotel, motel, tavern, inn, tourist cabin, tourist camp, or other place in which rooms are furnished to the public unless such travel agent or intermediary actually operates such a facility. ...

This section is intended to clarify that taxes imposed as a hotel tax, occupancy tax, or otherwise, shall apply solely to amounts received by operators, as enacted in the statutes authorizing such taxes.”³

We appreciate your consideration of our views, and please let us know if we can provide further information.

Sincerely,

Carl Szabo

Vice President and General Counsel, NetChoice

NetChoice is a trade association of e-Commerce and online businesses. www.netchoice.org

³ Missouri HB 1442 (2010), signed into law July 2010 (emphasis added).