

NetChoice *Promoting Convenience, Choice, and Commerce on the net*

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Senator Janet D. Howell, Chair
Senate Finance and Appropriations
Virginia State Senate

RE: **Opposition to SB 1398 – Creating a New Tax on Travel Agents and Websites**

Dear Chair Howell and members of the committee,

We ask you to not advance SB 1398, as it imposes a new tax on services provided by travel agents and online travel companies. SB 1398 places a new tax on the fees that these travel agents charge for researching, comparing, and booking rooms for travelers.

Cities and states favor hotel taxes since they fall mainly on visitors – not on resident voters. But under SB 1398, this approach would be completely reversed, since the new service tax would be paid *only* by Virginia citizens – *not by travelers* from out-of-state.

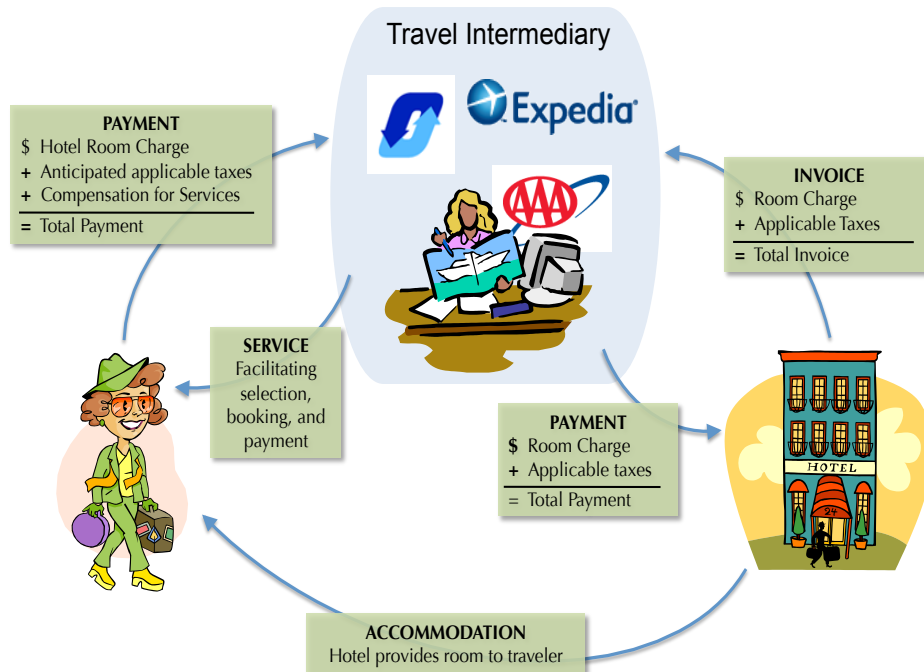
Imposes a new tax on Virginia citizens

Today, Virginia does not impose sales tax or lodging tax on service fees charged by travel agents. These service fees compensate agents for researching and comparing available hotel options, booking the room, and handling payment to the hotel. But SB 1398 would impose a new tax on these service fees provided by travel agents and online travel companies, a tax that is passed directly 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 *Virginia* citizens book their travel

The new tax imposed on booking service fees by SB 1398 would only impact Virginia’s citizens and businesses. That is 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.

For example, say two tourists are booking a hotel room in Virginia. One lives in Maryland, the other in Fairfax. The Maryland tourist would *not* pay the tax created by SB 1398 when they booked through a travel agent since they received their online booking services outside of Virginia.¹ But, the tourist living in Fairfax who books through a travel agent *would* pay the tax created by SB 1398.

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

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

Virginia travel agents routinely create packages that bundle hotel rooms, food, travel, and events into one price. SB 1398 could allow Richmond tax collectors to impose their 13% 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
- tickets to the Science Museum
- golf course, cart, and club rental
- guided tour of Richmond
- wine tastings

¹ Note that the out-of-state tourist still pays the Virginia occupancy tax when they book the room.

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

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 Virginia.

As noted above, out-of-state travel agents and websites already collect and remit lodging taxes when they make payment to a Virginia 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.

To consider another example, say that a West Virginia tourist uses a West Virginia travel agent to book a Virginia hotel room. West Virginia *already* taxes travel agent service fees provided to state residents receiving the service at their home location. So, any West Virginia-based travel agent or website is already collecting sales tax on the service fee when booking West Virginia travelers at Virginia hotels. In fact, this new tax would attempt to impose *double taxation* of the same service fee paid by this West Virginia tourist, which was probably not the intention of the bill's authors.

Please remember that SB 1398 would impose new taxes only on Virginia citizens, while placing your in-state travel services at a competitive disadvantage to out-of-state rivals.

The decision in *Wayfair* does not extend to service taxes

In the same way that the Supreme Court Decision in *South Dakota v Wayfair* did not extend to taxes like estate or property taxes, it likewise does not extend to service taxes. So, the statements that *Wayfair* clears the way for Virginia's extraterritorial taxation created by SB 1398 are false. Since Richmond's tax collectors cannot reach out-of-state travel agency businesses, SB 1398's new service taxes will apply only to Virginia travel agents.

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, Virginia tax collectors do not have the 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 Virginia'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 Virginia'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 SB 1398 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.”²

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

Sincerely,

Carl Szabo

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NetChoice is a trade association promoting free expression and free enterprise on the net.

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² Missouri HB 1442 (2010), signed into law July 2010 (emphasis added).