

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

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Chairman John E. Bradley
House Revenues Committee
265-S Stratton Office Building
Springfield, IL 62706

RE: **Opposition to House Bill 293 - Article 45-5 Hotel Operators Occupancy Tax Act**

Dear Chairman Bradley and members of the House Revenues Committee,

We encourage you to oppose HB 293 as it imposes a new tax on services provided by online travel companies. This bill 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 293, this approach would backfire since the new service tax would be paid *only* by Illinois citizens – *not by travelers* from out-of-state.

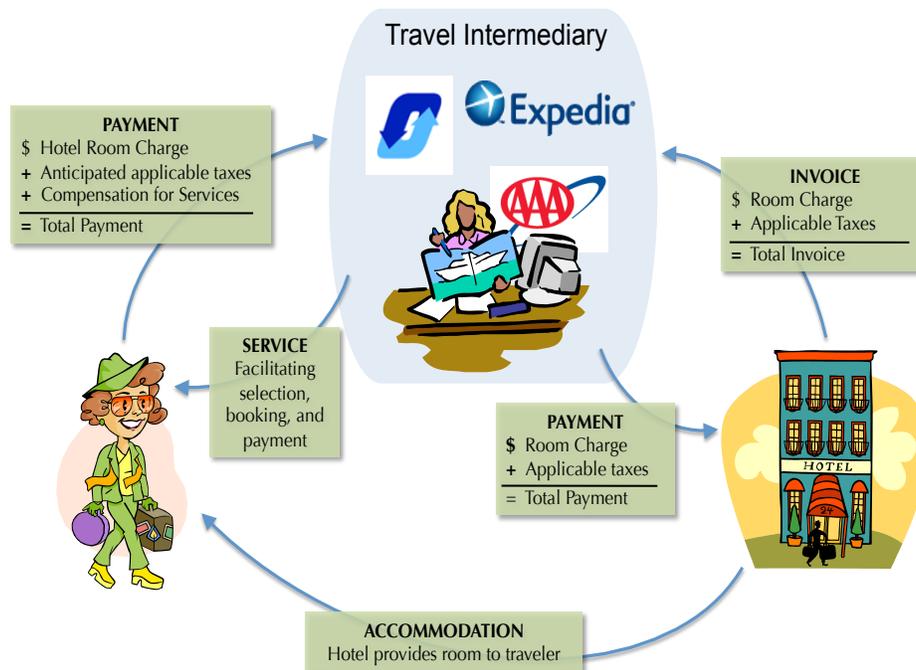
HB 293 imposes a new tax on Illinois citizens

Today, Illinois 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. HB 293 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.



HB 293's new tax on travel service fees would only apply when *Illinois citizens* book their travel

The new tax imposed on booking service fees by HB 293 would impact only Illinois'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.

For example, say two tourists are booking a hotel room in Illinois. One lives in Ohio, the other in Springfield. The Ohio tourist would *not* pay the tax created by HB 293 when they booked through a travel agent since they received their online booking services outside of Illinois.¹ But, the tourist living in Springfield who books through a travel agent *would* pay the tax created by HB 293.

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

HB 293's new tax on service fees would only be collected by Illinois -based travel websites

The requirement to collect HB 293's new tax on booking services could *only* be enforced against travel agents and websites that have a physical presence in Illinois. As noted above, out-of-state travel agents and websites already collect and remit lodging taxes when they make payment to the Illinois 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 Illinois 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

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

already collecting sales tax on the service fee when booking West Virginia travelers at Illinois hotels. In fact, HB 293's 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 HB 293 would impose new taxes only on Illinois citizens, while placing your in-state travel services at a competitive disadvantage to out-of-state rivals.

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, Illinois 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 Illinois'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 Illinois'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 293 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 me know if I can provide further information.

Sincerely,



Carl Szabo

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NetChoice is a trade association of online content and e-Commerce

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