

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

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Senator Alberta Darling, Co-Chair
Representative John Nygren, Co-Chair
Room 305 East, State Capitol
Madison, WI 53702

RE: **Opposition to Creating a New Tax on Wisconsin Travelers**

Dear Co-Chairs Darling and Nygren, and Members of the Joint Committee On Finance:

We encourage you to oppose the budget amendment from Rep. Kooyenga and Sen. Marklein to create a new sales tax on service fees paid to travel agents. This amendment would impose an unworkable new tax on services provided by Wisconsin travel agents and online travel companies when they help travelers to research, compare, and book hotel rooms.

Cities and states favor hotel taxes since they fall mostly on visitors – not on resident voters. But with this amendment the new service tax would be paid *only* by Wisconsin citizens – *not by travelers* from out-of-state. And the tax would *only impact* Wisconsin businesses like wedding and convention planners.

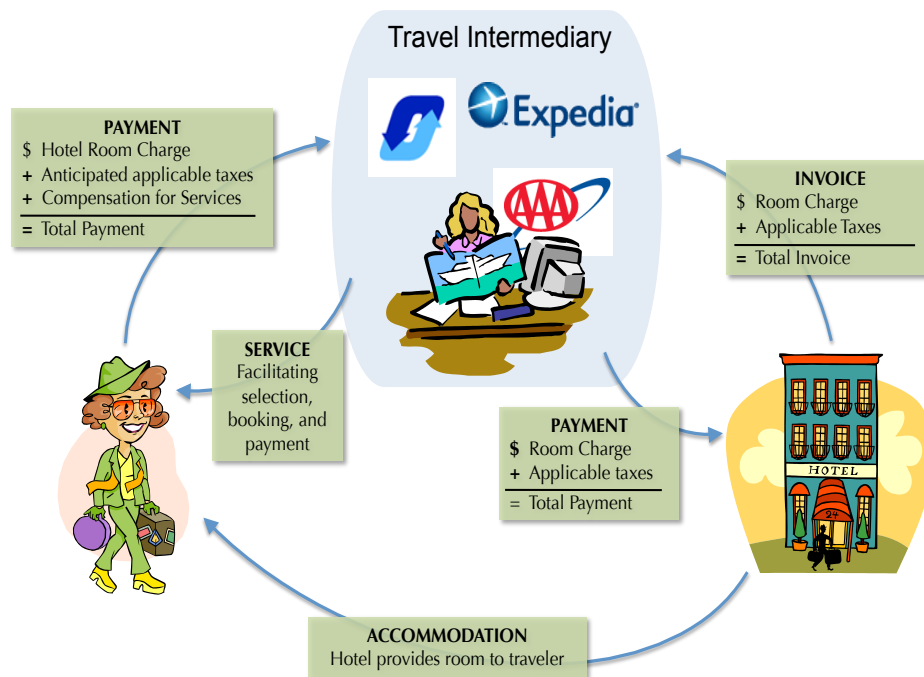
The Amendment imposes a new tax on Wisconsin citizens

Today, Wisconsin 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. This amendment 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 use 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 forwarding room revenue and applicable taxes to the hotel operator. Clearly, this facilitation service is distinct from providing the actual room where the traveler eventually stays.



This amendment applies the occupancy tax to more than just hotel rooms

Wisconsin travel agents routinely create packages that bundle hotel rooms, food, travel, and events into one price. This amendment allows Milwaukee 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
- tickets for the Harley-Davidson Museum
- guided tour of the Miller Brewery
- seats for a Brewers baseball game

This new tax on travel service fees would only apply when *Wisconsin citizens* book travel

The new tax imposed on service fees by this amendment would impact only Wisconsin's citizens and businesses. That's because the Streamlined Sales and Use Tax Agreement (SSUTA) and Wisconsin's rules say the source jurisdiction for taxable services is where a tourist uses a service.¹ So the reservation service fee is sourced to the traveler's home location when they booked the room – not to the traveler's destination.

For example, say two tourists are booking a hotel room in Wisconsin. One lives in Pennsylvania, the other in Milwaukee. The Pennsylvania tourist would *not* pay the tax created by Rep. Kooyenga's

¹ See, e.g., "Receive," as defined in Wis. Stats. § 77.522 (1)

amendment when they booked through a travel agent, since they received their online booking services outside of Wisconsin.² But, the tourist living in Milwaukee who books through a travel agent *would* pay the tax created by this amendment.

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

The amendment's new tax on service fees would only be collected by Wisconsin-based travel agents and Wisconsin-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 Wisconsin. As noted above, out-of-state travel agents and websites already collect and remit lodging taxes when they make payment to the Wisconsin 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 Wisconsin 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 Wisconsin 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 amendment's authors.

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

The amendment imposes new tax collection costs on small travel agents

If a small travel agent books only one trip for a customer to Wisconsin, that travel agent must now fill out tax forms for the state and local jurisdiction.

A Price Waterhouse Coopers study found that small retailers under \$1 million in revenue, already incur 17 cents for every sales tax dollar they collect.³ For small travel agents the costs can be *even higher* due to the complexities of the travel based sales taxes.

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, because of the sourcing law in Wisconsin, the service taxes could not be imposed on any out-of-state traveler. Second, Wisconsin 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.

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

³ Available at <http://www.netchoice.org/wp-content/uploads/cost-of-collection-study-sstp.pdf>.

So when you consider this tax, please consider whether the minimal tax revenue is worth the harm to Wisconsin'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 Wisconsin'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 this amendment we suggest amending it to clarify when an occupancy tax applies. We suggest substituting the existing 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.”⁴

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

Sincerely,



Carl Szabo
Policy Counsel, NetChoice

cc: Members of the Committee

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

⁴ Missouri HB 1442 (2010), signed into law July 2010 (emphasis added).