

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

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June 21, 2013

Sen. Peter Courtney, President  
Oregon State Senate  
Salem, OR 97301

RE: **Opposition to HB 2656 – Creating a New Tax on Oregon Travelers**

Dear Senate President Courtney:

We encourage you to reject HB 2656 because it imposes an unworkable new tax on services provided by Oregon travel agents and online travel companies. This bill imposes a new tax on the fees travel agent 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 2656, this approach would backfire since the new service tax would be paid *only* by Oregon’s citizens – *not by travelers* from out-of-state. And the tax would *only impact* Oregon businesses like wedding, convention, and trip planners.

### **HB 2656 imposes a new tax on Oregon citizens**

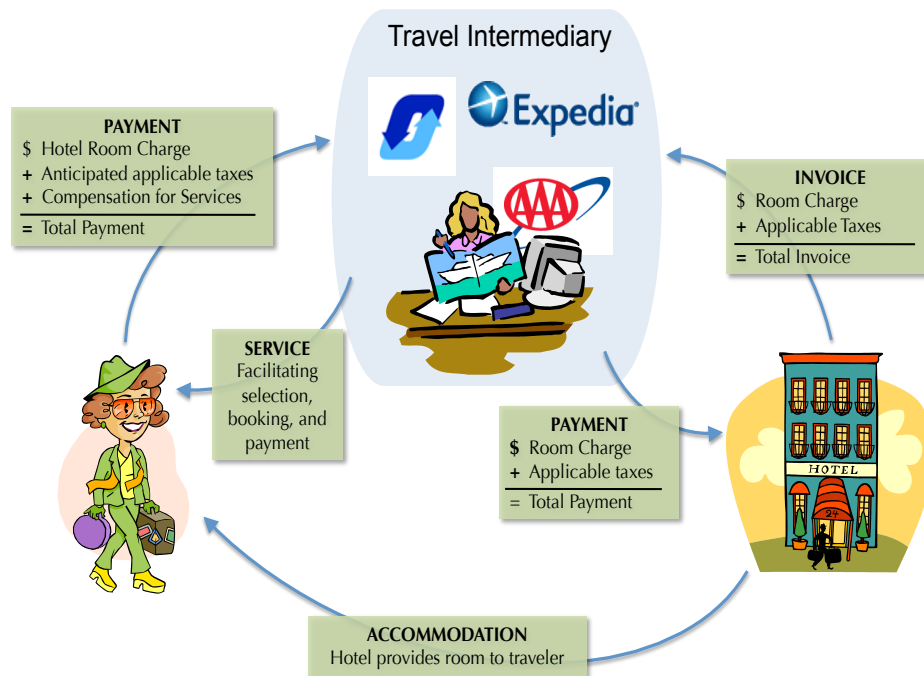
HB 2656 creates a new tax on services by applying the existing hotel tax on “accommodations fees.” But accommodation fees are paid for services provided by small travel agents who put together travel packages.

If you pass HB 2656 you will impose a new tax on the accommodations services provided by travel agents, a tax that is passed onto, and only felt by, 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 ALEC and NCSL, we’ve seen a lack of understanding 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 an 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 2656's new tax on travel service fees would only apply when *Oregon citizens* book their travel**

The new tax imposed on booking service fees by HB 2656 would impact only Oregon's citizens and businesses. That's because 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 Oregon. One lives in West Virginia, the other in Portland. The West Virginia tourist would *not* pay the tax created by HB 2656 when they booked through a travel agent since they received their online booking services outside of Oregon.<sup>1</sup> But, the tourist living in Portland who books through a travel agent *would* pay the tax created by HB 2656.

HB 2656's new tax would therefore only apply to services provided to Oregon-based travelers. The tax would *not* apply to service fees paid by out-of-state travelers booking Oregon hotels.

### **HB 2656's new tax on service fees would only be collected by Oregon-based travel agents and Oregon-based travel websites**

The requirement to collect HB 2656's new tax on booking services could *only* be enforced against travel agents and websites that have a physical presence in Oregon. As noted above, out-of-state travel agents and websites already collect and remit lodging taxes when they make payment to the Oregon hotel operator. But out-of-state travel agents would not be required to collect HB 2656's 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 Oregon 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

<sup>1</sup> Note that the out-of-state tourist still pays the Portland occupancy tax when they book the room.

already collecting sales tax on the service fee when booking West Virginia travelers at Oregon hotels. In fact, HB 2656'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 2656 would impose new taxes only on Oregon citizens, while placing your in-state travel services at a competitive disadvantage to out-of-state rivals.

### **HB 2656 imposes new tax collection costs on small travel agents**

If a small travel agent books only one trip for a customer to Oregon, that travel agent must now fill out tax forms for the state and local jurisdiction. This imposes great costs on travel agents and the 5% of the sales tax allowance is not nearly enough to offset the new costs for travel agents.

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.<sup>2</sup> For small travel agents the costs can be *even higher* due to the complexities of the travel based sales taxes.

We ask you to not impose these new costs on Oregon travel agents, nor give an excuse for California tax collectors to impose *their* taxes on *your* 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. Moreover, the Oregon fiscal note incorrectly assumes that *all* booked hotel rooms will be subject to the new tax, but that is a vast over estimation.

First, as discussed above, because of the sourcing law in Oregon, the service taxes could not be imposed on any out-of-state traveler.

Second, Oregon 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 Oregon'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 Oregon'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 2656 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,*

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<sup>2</sup> Available at <http://www.netchoice.org/wp-content/uploads/cost-of-collection-study-sstp.pdf>.

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.”<sup>3</sup>*

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

Sincerely,



Steve DelBianco  
Executive Director, NetChoice



Carl M. Szabo  
Policy Counsel, NetChoice

cc: Members of the Committee

NetChoice is a trade association of e-Commerce businesses. More information at [www.netchoice.org](http://www.netchoice.org)

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<sup>3</sup> Missouri HB 1442 (2010), signed into law July 2010 (emphasis added).