

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

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May 21, 2013

Senator Tim Schaffer, Chairman
Ohio Senate
1 Capitol Square
Columbus, Ohio 43215-4210

RE: **Opposition to HB 59 Section 5739.081 – Creating a New Tax on Ohio Travelers**

Dear Chairman Schaffer and Members of the Senate Ways and Means Committee:

We encourage you to reject Section 5739.081 (lines 114,454-114,471) of HB 59 because it imposes an unworkable new tax on services provided by Ohio travel agents and online travel companies. This section imposes a new tax on the fees 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 Section 5739.081, this approach would backfire since the new service tax would be paid *only* by Ohio citizens – *not by travelers* from out-of-state. And the tax would *only impact* Ohio businesses like wedding and convention planners.

Section 5739.081 imposes a new tax on Ohio citizens

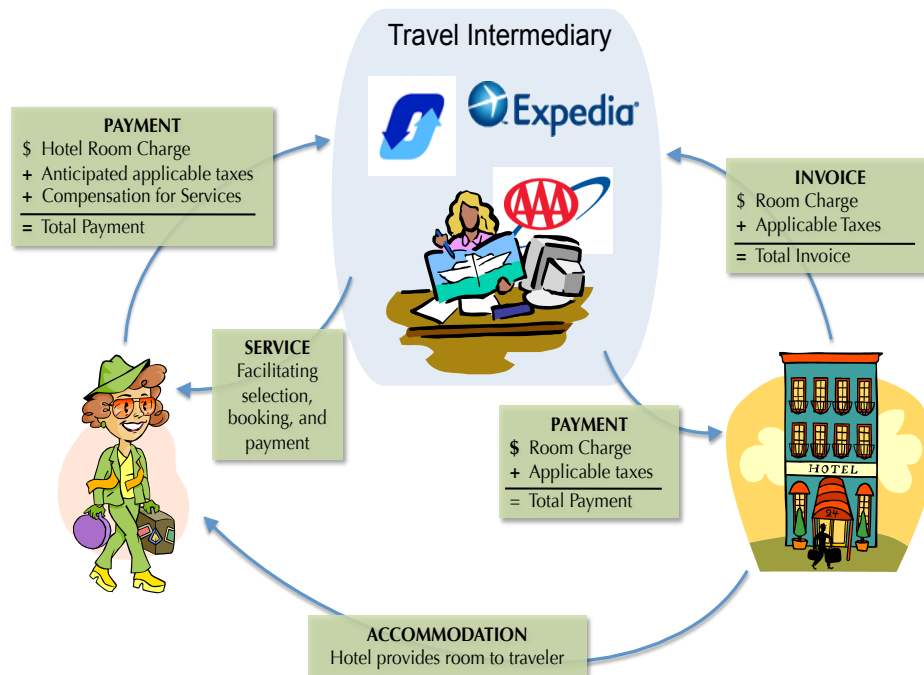
Today, Ohio does not impose sales tax or lodging tax on service fees charged by travel agents. These service fees compensate travel agents for researching and comparing available hotel options, booking the room, and handling payment to the hotel. Section 5739.081 would impose a new tax on these service 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, at ALEC, 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.



Section 5739.081 allows tax collectors to levy their occupancy tax on more than just hotel rooms

Ohio travel agents routinely create packages that bundle hotel rooms, food, travel, and events into one price. Section 5739.081 allows Cleveland 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 to the Rock and Roll Hall of Fame
- golf course, cart, and club rental
- guided tour of Cleveland
- wine tastings

Section 5739.081’s new tax on travel service fees would only apply when *Ohio citizens* book their travel

The new tax imposed on booking service fees by Section 5739.081 would impact only Ohio’s citizens and businesses. That’s because of the Streamline Sales and Use Tax Agreement (SSUTA) and Ohio sourcing rules¹ 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.

¹ Ohio Revised Code (R.C.) section 5739.033(C)

For example, say two tourists are booking a hotel room in Ohio. One lives in West Virginia, the other in Cleveland. The West Virginia tourist would *not* pay the tax created by Section 5739.081 when they booked through a travel agent since they received their online booking services outside of Ohio.² But, the tourist living in Cleveland who books through a travel agent *would* pay the tax created by Section 5739.081.

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

Section 5739.081's new tax on service fees would only be collected by Ohio-based travel agents and Ohio-based travel websites

The requirement to collect Section 5739.081's new tax on booking services could *only* be enforced against travel agents and websites that have a physical presence in Ohio. As noted above, out-of-state travel agents and websites already collect and remit lodging taxes when they make payment to the Ohio 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 Ohio 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 Ohio hotels. In fact, Section 5739.081'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 Section 5739.081 would impose new taxes only on Ohio citizens, while placing your in-state travel services at a competitive disadvantage to out-of-state rivals.

Section 5739.081 imposes new tax collection costs on small travel agents

If a small travel agent books only one trip for a customer to Ohio, 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.

We ask you to not impose these new costs on Ohio 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, because of the sourcing law in Ohio, the service taxes could not be imposed on any out-of-state traveler. Second, Ohio tax collectors do not have authority to force out-of-state travel

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

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

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 Ohio'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 Ohio'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 Section 5739.081 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."*⁴

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 online content and e-Commerce businesses promoting and protecting convenience, choice and commerce on the Net. Learn more about NetChoice at www.netchoice.org

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