

The NetChoice Coalition

Promoting Convenience, Choice, and Commerce on The Net

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April 2, 2012

Sen. Randy McNally, Chair
Tennessee Senate
Finance, Ways and Means Committee
20 Legislative Plaza
Nashville, TN 37243

RE: **Opposition to SB 2663 That Creates a New Tax on Tennessee Travelers**

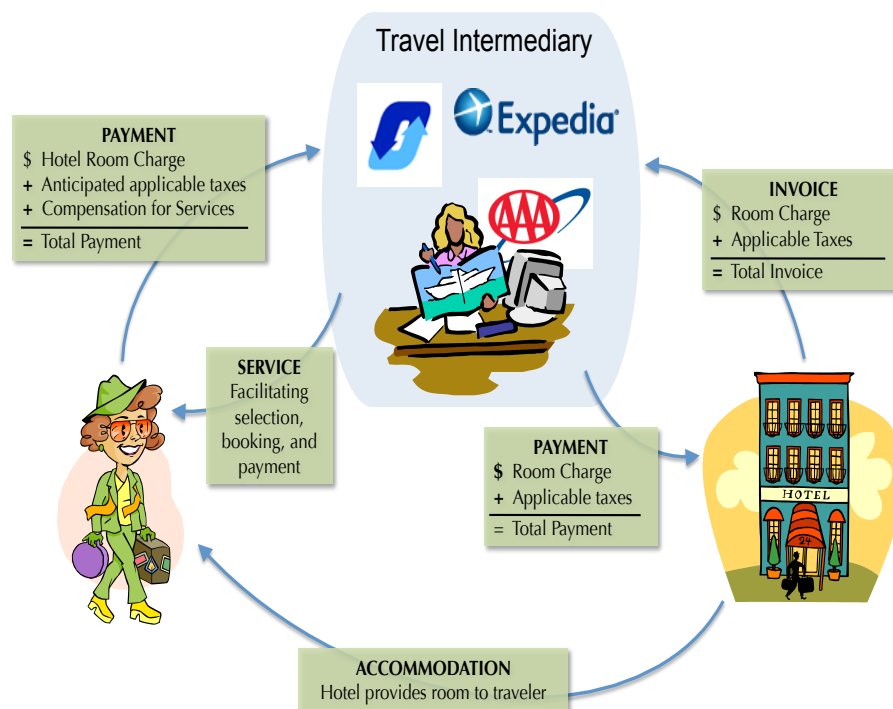
Dear Chairman McNally;

We encourage you to reject SB 2663 because it imposes an unworkable new tax on services provided by Tennessee's travel agents and online travel companies (travel intermediaries). SB 2663 wrongly asserts that the provision of a hotel room is the same as a travel agent providing services when they research, compare, and book rooms for travelers.

Cities and states favor hotel taxes since they fall mostly on visitors – not on resident voters. But under SB 2663 this approach would backfire since the service tax would be paid *only* by Tennessee's citizens – *not by travelers* from out-of-state. And the tax would *only* impact Tennessee businesses like wedding and convention planners.

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. Treating a travel service provider the same as a hotel for tax purposes obscures the difference between a hotel room and a service. The overwhelming majority of courts that have examined this issue concluded that online travel company service fees are not subject to hotel occupancy taxes. Moreover, any occupancy taxes due are already fully paid on the amount received by hotels when a traveler uses an agent or online travel company.

Online Travel Companies Already Collect And Remit All Lodging Taxes Owed to Tennessee

SB 2663 requires travel companies to collect and remit lodging taxes. However, travel intermediaries inside and outside of Tennessee *already* collect and remit these lodging taxes.

For example, when an out-of-state tourist books a hotel room in Nashville through a travel website, the website already collects Nashville’s fifteen-percent lodging tax on the full amount paid to the Nashville hotel operator.

Because Tennessee is already receiving this tax revenue under existing state laws, this aspect of SB 2663 is unnecessary.

Impact of Treating and Taxing Travel Services the Same as Hotel Operators

Travel intermediaries already collect and remit lodging taxes

Imposes new tax on Tennessee Citizens

New tax collection requirements apply only to Tennessee-based travel services

Generates nominal tax revenue

SB 2663’s New Tax On Travel Service Fees Would Only Apply When *Tennessee Citizens* Book Their Travel

SB 2663 also imposes this tax on booking service fees charged to travelers, a tax which would impact only Tennessee’s citizens and businesses. That’s because of the commonly accepted rule 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 Volunteers fans are booking tickets to see UT play in Neyland Stadium. One lives outside of Tennessee, the other in Nashville. The UT fan living out-of-state would *not* pay the tax created by SB 2663 when they booked their travel online, since they received their online booking services outside of Tennessee.¹ But, the UT fan living in Nashville who books their travel online *would* pay the tax created by SB 2663.

SB 2663’s new tax would therefore only apply to services provided to Tennessee-based travelers. The tax would *not* apply to service fees paid by out-of-state travelers booking Tennessee hotels.

SB 2663’s New Tax On Service Fees Would Only be Collected by Tennessee-Based Travel Agents and Travel Websites

The requirement to collect SB 2663’s new tax on booking services could only be enforced against travel agents and websites that have a physical presence in Tennessee. As noted above, out-of-state travel agents and websites already collect and remit lodging taxes when they make payment to the Tennessee hotel operator. But out-of-state travel agents would not be required to collect SB 2663’s new tax on service fees for providing reservation services at the time travelers book their hotel.

To consider another example, say that a West Virginia tourist goes online to book a Tennessee hotel room. West Virginia already taxes travel agent service fees provided to state residents receiving the service at their home location.

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

So any West Virginia-based travel agent or website is already collecting sales tax on the service fee when booking West Virginia travelers at Tennessee hotels. In fact, SB 2663'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 SB 2663 would impose new taxes only on Tennessee 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. For example, the Texas Legislative Budget Board found no increase in tax revenue from treating travel service fees as if they were the same as hotel occupancy charges.²

So when you consider this tax, please consider whether the minimal tax revenue is worth the harm to Tennessee'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 Tennessee's travel and tourism industry focus on serving travelers and creating jobs – not on collecting nominal new taxes from the state's own citizens.

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

Sincerely,



Steve DelBianco
Executive Director
NetChoice

cc: Members of the Committee

NetChoice is a coalition of trade associations and e-Commerce businesses who share the goal of promoting convenience, choice and commerce on the Net. More information about NetChoice can be found at www.netchoice.org

² See Report from John S O'Brien, Director, Legislative Budget Board to Honorable Harvey Hilderbran, Chair, House Committee on Ways & Means, IN RE: HB1454 by Murphy (Relating to the hotel occupancy tax on the price paid for a Hotel room.), As Introduced, Mar. 25, 2011.