

NetChoice

Promoting Convenience, Choice, and Commerce on The Net

Steve DelBianco, Executive Director

1401 K St NW, Suite 502

Washington, DC 20005

202-420-7482

www.netchoice.org



February 5, 2013

Del. Benjamin Cline, Chairman
House Finance Sub-Committee #1
General Assembly Building
201 North 9th Street
Richmond, VA 23219

RE: **Opposition to SB 767 – Creating a New Tax on Virginia Travelers**

Dear Chairman Cline:

We encourage you to reject SB 767 because it imposes an unworkable new tax on services provided by Virginia's travel agents and online travel companies (travel intermediaries). This bill 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.

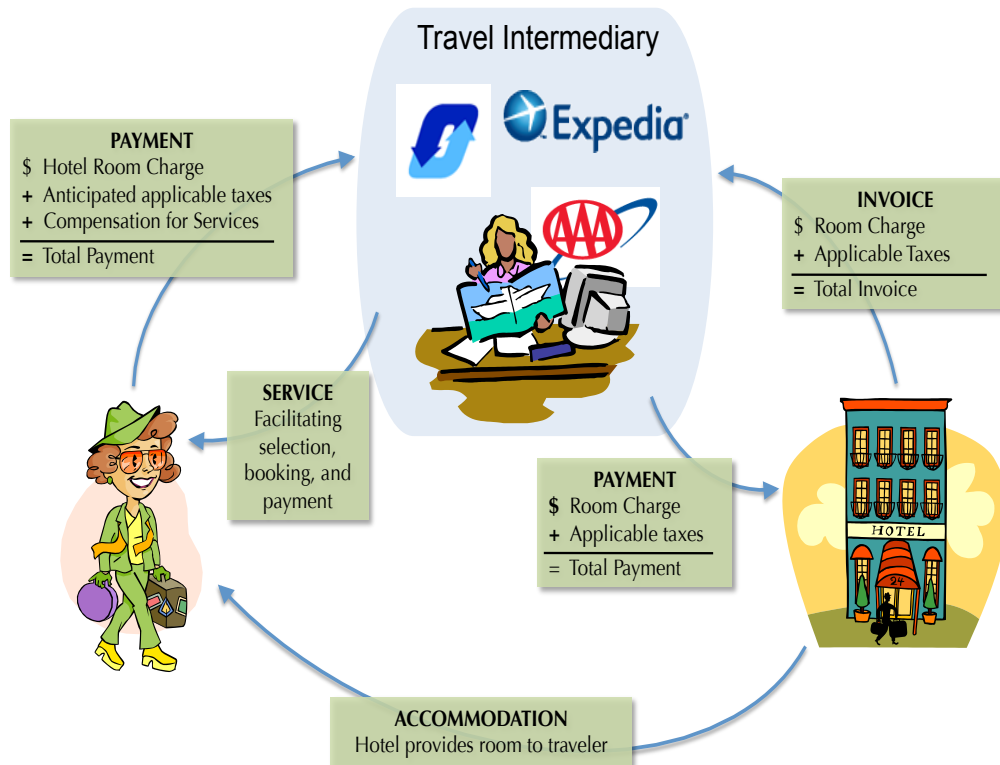
Cities and states favor hotel taxes since they fall mostly on visitors – not on resident voters. But under SB 767, this approach would backfire since the service tax would be paid *only* by Virginia's citizens – *not by travelers* from out-of-state. And the tax would *only impact* Virginia businesses 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 lodging taxes on all amounts paid to Virginia hotels

SB 767 requires travel companies to collect and remit lodging taxes. However, travel intermediaries inside and outside of Virginia *already* collect and remit these lodging taxes.

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

Because this tax is already collected under existing state laws, this aspect of SB 767 is unnecessary.

SB 767 could allow tax collectors to impose their occupancy tax on more than just hotel rooms

Virginia travel agents routinely create packages that bundle hotel rooms, food, travel, and events into one price. SB 767 could allow Richmond tax collectors to impose their 13% occupancy taxes on the 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 Science Museum
- golf course, cart, and club rental
- guided tour of Richmond
- wine tastings

SB 767's new tax on travel service fees would only apply when *Virginia citizens* book their travel

SB 767 also imposes this tax on booking service fees charged to travelers, a tax which would impact only Virginia'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 tourists are booking a hotel room in Virginia. One lives in West Virginia, the other in Fairfax. The WV tourist would *not* pay the tax created by SB 767 when they booked their travel online, since they received their online booking services outside of Virginia.¹ But, the tourist living in Fairfax who books their travel online *would* pay the tax created by SB 767.

SB 767's new tax would therefore only apply to services provided to Virginia-based travelers. The tax would *not* apply to service fees paid by out-of-state travelers booking Virginia hotels.

SB 767's new tax on service fees would only be collected by Virginia-based travel agents and Virginia-based travel websites

The requirement to collect SB 767's new tax on booking services could *only* be enforced against travel agents and websites that have a physical presence in Virginia. As noted above, out-of-state travel agents and websites already collect and remit lodging taxes when they make payment to the Virginia hotel operator. But out-of-state travel agents would not be required to collect SB 767'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 Virginia 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 Virginia hotels. In fact, SB 767'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 767 would impose new taxes only on Virginia 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

Moreover, the VA Department of Taxations fiscal note, "*does not consider any potential revenue loss* resulting from OTC's that boycott a state or locality as a result of legislation imposing the tax on the mark-up fees."³ Nor does the fiscal note consider the new costs imposed on Virginia's travel agents.

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

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.

³ Department Of Taxation 2013 Fiscal Impact Statement, SB 767 (2/01/13).

So when you consider this tax, please consider whether the minimal tax revenue is worth the harm to Virginia'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 Virginia'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 SB 767 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

cc: Members of the Committee

NetChoice is a trade association of 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

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