


Online Travel Companies charge the customer for fees and estimated hotel taxes

 Thu Aug-5-2010 (3 nights)

Hilton San Diego Gaslamp Quarter

401 K St
San Diego, CA 92101
United States of America

Check in: Thu Aug-5-2010
Check out: Sun Aug-8-2010



Star Rating:  [More lodging info](#)

Room/unit type: Deluxe King

Summary	
Hilton San Diego Gaslamp Quarter	
Check in:	8/5/2010
Check out:	8/8/2010
# of nights:	3
2 Adults	
8/5-8/7:	\$199.00/night
<u>Taxes/fees:</u>	\$25.48/night
Total:	\$673.44

What are Taxes & Service Fees?

The taxes are tax recovery charges Expedia pays to its vendors (e.g. hotels); for details, please see our [Terms of Use](#). We retain our service fees as compensation in servicing your travel reservation.

Litigation or *Legislation*?

<p>Cities suing OTCs for taxes on fees</p>	<p>Over 60 contingency fee lawsuits</p> <p>9 resolved in favor of OTCs</p> <p>2 resolved against OTCs (Georgia)</p> <p>Rest are pending (and still <i>spending</i>)</p>
<p>State Legislation</p>	<p>Missouri: occupancy tax applies <u>only</u> to hotel payments (2010)</p> <p>North Carolina: force hotels to collect occupancy tax on OTC fees (2011)</p> <p>Ohio HB 59: tax on anything paid by customer</p> <p>WV, HI and others: impose sales tax on fees paid by residents to travel agents</p>

Travel Agents do not operate hotels

“...travel intermediaries generally do not provide hotel accommodations. They neither own nor operate hotels, and their function, to wit, facilitating consumers’ booking of hotel accommodations, is distinct from the provision of the hotel lodging itself.”

“...sales tax policy supports the view that travel intermediaries’ margin should be taxed as a service discrete from the provision of hotel accommodations.”

Professor Walter Hellerstein
University of Georgia Law School

Missouri law (2010)

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. ...

Ohio HB 59 (2013)

What it would do	“levy the tax on any amount the purchaser pays to the hotel intermediary for the intermediary's services plus any amount paid for the furnishing of lodging in a hotel”
Why it's wrong	<p>Travel agents routinely bundle rooms, food, transit, and events. This bill imposes occupancy tax on:</p> <ul style="list-style-type: none">• taxi from the airport to the hotel• meals at a local restaurant• event tickets• golf outings and wine tastings• guided tours

Recap: 'Show Me' State Shows the Way

What it does	“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.”
Why it's needed	<p>Stop the lawsuits</p> <p>Preserve online model that saves consumers money and helps smaller hotels</p> <p>Protect travelers from <u>multiple</u> and <u>discriminatory</u> taxes on their travel spending</p>

Cities' lawsuits are a questionable tactic that discriminates against the online channel

“Cities' litigation strategies also raise serious oversight questions because they hire contingency fee lawyers to pursue these lawsuits. Some cities have also backed off pursuing litigation because easy revenue is not forthcoming.”

“There is no principled basis for only taxing those services provided by Internet businesses. If state and local officials believe that online travel companies should pay sales or excise tax based on the services they provide, it should occur as part of a general taxation of all services.”

Joseph Henchman
The Tax Foundation

7,500 local hotel tax regimes

Applicable Taxes in New York City	for a \$200 room
Sales taxes	
New York State Sales Tax = 4%	\$ 8.00
New York City Sales Tax = 8.375%	\$ 16.75
Local lodging taxes	
Hotel Occupancy Tax = \$2 + 5.875%	\$ 13.75
Additional Fee = \$1.50	\$ 1.50
Total taxes due	\$ 40.00
Effective tax rate	20%

The Streamlined Sales Tax Project looked at local hotel taxes, and *ran the other way.*

West Virginia Tax Department Publication

2. SERVICE FEES

TAXABILITY OF SERVICE FEES BASED ON CUSTOMER AND CUSTOMER LOCATION

--Service fees for travel agent services directly charged to a West Virginia customer **Taxable**

3. *VENDOR CHARGES FOR NON-TRANSPORTATION SERVICES & AMENITIES*

Out-of-state vendor's services rendered outside of WV

--Charges for services of an out-of-state vendor of lodging, food, rental vehicles or other services or amenities which are rendered wholly outside of West Virginia **Not Taxable**

Sourcing of Travel Agent Services

Section 309. APPLICATION OF GENERAL SOURCING RULES

Each member state shall agree to require sellers to source the retail sale of a product in accordance with Section 310. The provisions of Section 310 apply regardless of the characterization of a product as tangible personal property, a digital good, **or a service**.

...

Section 310. GENERAL SOURCING RULES

When the product is not received by the purchaser at a business location of the seller, the sale is sourced **to the location where receipt by the purchaser ... occurs ...**

...

Section 311. GENERAL SOURCING DEFINITIONS

For the purposes of Section 310, subsection (A), the terms “receive” and “receipt” mean:

Taking possession of tangible personal property,

Making first use of services ...