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FOR IMMEDIATE RELEASE

March 26, 2017

Ohio-based Employers Applaud Efforts to Create Parity with Out-of-State Online Entities

COLUMBUS – A measure to require out-of-state online travel companies to remit existing taxes that they already collect from consumers will close an obsolete loophole that harms Ohio companies employing tens of thousands of individuals in hotels and hotel-related jobs. It's also a win for Ohio's travel industry and its local communities, according to the association representing Ohio's hotel and lodging operators.

The Ohio Hotel & Lodging Association supports efforts by Rep. Dave Greenspan to introduce House Bill 571 to clarify and modernize the Ohio Revised Code as it relates to online hotel room sales.

"Ensuring that online travel companies remit taxes they already collect from consumers is fair and just to everyone in the marketplace," Joe Savarise, Executive Director of the Ohio Hotel & Lodging Association, said. "This is neither a new tax, nor an increase in the tax rate. The taxes in question have been applied to hotel rooms for decades. Ohio's hotels already pay these taxes fully, even when those transactions take place on the hotel's own booking website."

HB 571 was introduced with the intent and effect of clarifying the Ohio Revised Code to create a level economic playing field and to codify the obvious -- that taxing jurisdictions did not intend to provide online travel companies (OTCs) with an unfair economic advantage over lodging businesses with respect to taxes. The bill would require OTCs to operate like any other seller of goods and collect and remit sales tax on the price paid by the consumer.

Currently, online travel companies and hotels charge the same amount to consumers for accommodations in a particular hotel property. However, the amount of tax remitted by the OTC to state and local governments is less (see attached infographic for details). Online travel companies keep the difference in amount remitted for themselves.

In response to efforts to eliminate this unfair loophole, opponents falsely claim that the bill requires a tax increase or would increase the cost for consumers. A review of memorandum from the online travel companies and their own advisors demonstrates this is not the case. An Expedia memo dated July 28,

[more]

2003 and uncovered in legal proceedings stated, *“Regarding the question of whether we should pass on occupancy tax costs to our customers, the current answer is ‘no’ – or maybe a more accurate answer is that we do not currently believe that is possible from a competitive standpoint.”*

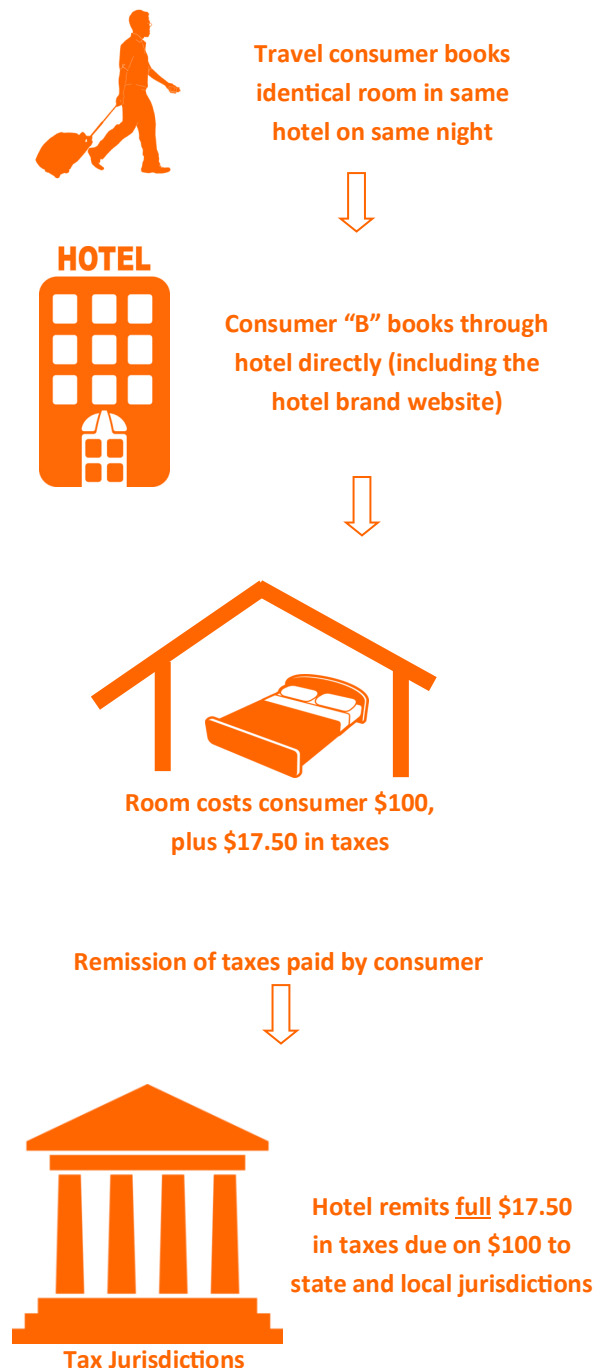
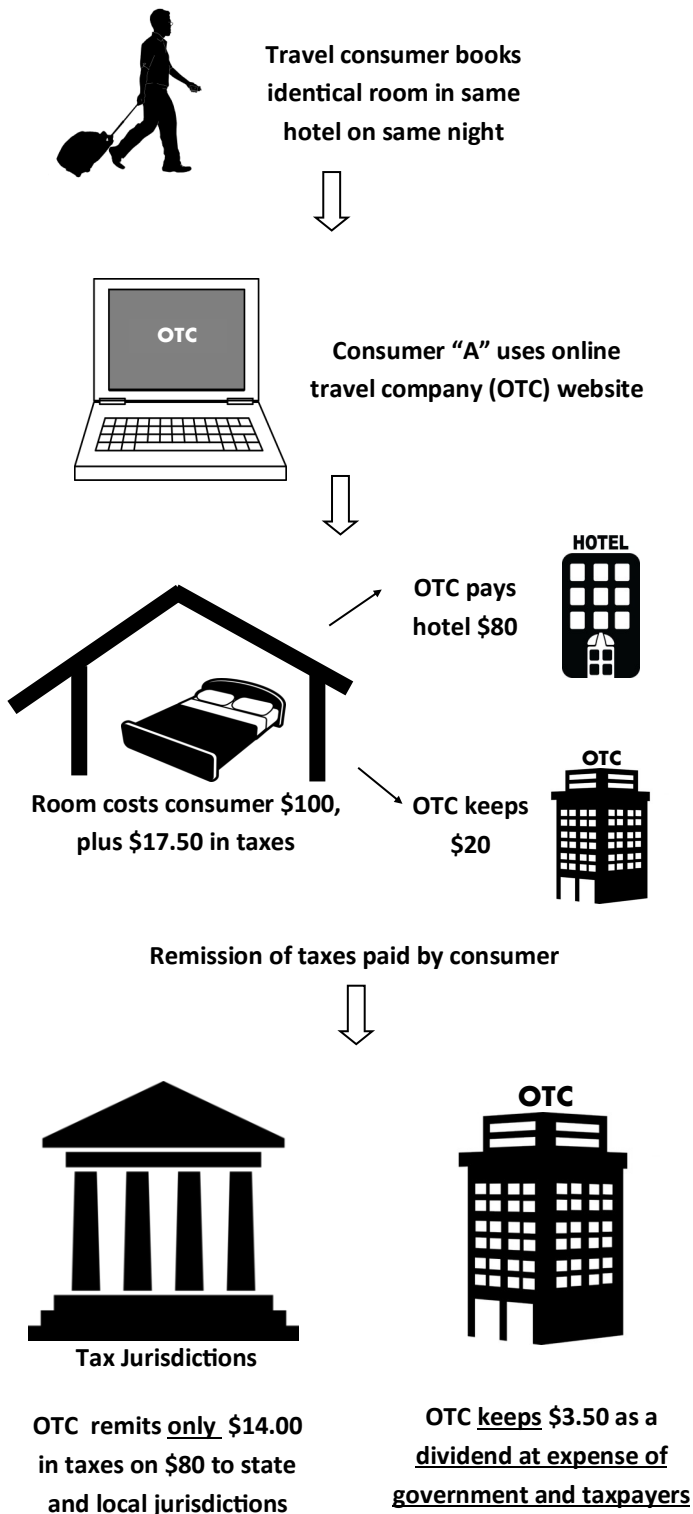
Other company memorandum described the loophole as a “luxury” that the OTCs know they won’t be able to enjoy forever.

Recently, the Supreme Court in Colorado made that state one of the latest to recognize that OTCs owed millions in hotel room taxes. On April 24, 2017, the court stated online booking companies failed to remit the right amount of lodging tax, because they sell hotel rooms to consumers:

“Although the OTCs maintain that even in merchant-model transactions they do not sell, or furnish for consideration, a right to occupy or use the hotel rooms in question, no matter what terminology they may choose to use in describing their transactions, as a functional matter that is precisely what they do.” [*City and County of Denver v. Expedia Inc.*]

Ohio’s brick-and-mortar hotel businesses employ more than 35,000 people directly, and support 93,000 hotel-related jobs. They provide 26 million room nights to guests annually and generate \$25.5 billion in business sales and support \$3.4 billion in taxes. The taxes generated by hotel stays in Ohio help provide critical services at both the state and local level. These services are important to residents and travelers alike. In addition, Ohio’s hotel businesses provide direct support in the form of tax funding for destination marketing efforts which help bring even more travelers – and more economic activity – to Ohio.


**Out-of-state online travel companies (OTCs) remit less taxes than others
selling the same room in the same hotel on the same night --
and cost Ohio, its communities, and taxpayers in the process.**



In both scenarios, the consumer pays the exact same amount, \$117.50, for the room, but only the hotel remits tax based on this amount. OTCs remit tax on a lower rate, and the state and communities are deprived of critical revenue.


Online Booking Examples --


Same hotel reservation costs consumer an identical amount for room and taxes
in same hotel on same night

Sign in

Secure booking — only takes 2 minutes!

Book online or call 1-800-391-5807

 Sign in to earn 515 Expedia+ points ↕

 Great choice! You chose the cheapest room at SpringHill Suites Columbus OSU. Don't wait, book now!

Room 1: 2 Adults, 1 King Bed and 1 Double Sofa Bed, Non-smoking

✓ Breakfast included ✓ Free parking ✓ Free internet


Contact name *


Country code *


United States of America +1

Mobile phone number *

☐ Text me my confirmation. Standard rates may apply.

Special/Accessibility requests (optional) 

SpringHill Suites Columbus OSU 



1 Room: Studio, 1 King Bed with Sofa bed

Check-in: Sat, May 20

Check-out: Sun, May 21


1-night stay



No surprises! Here's a breakdown of your price:

Room 1: 2 Adults	avg./night
1 Night ↕	\$219.01
Taxes & Fees	\$38.32

Trip Total: \$257.33

Rates are quoted in US dollars.




SpringHill Suites Columbus OSU
1421 Olentangy River Road Columbus, OH 43212 USA
+1-614-297-9912  Photos 

Reservation Step 1 of 3

Review Reservation Details

1. Your selection

SpringHill Suites Columbus OSU
1421 Olentangy River Road Columbus, OH 43212 USA




Check in: Saturday, May 20, 2017
Check out: Sunday, May 21, 2017

Room(s): 1
Guest(s) per room: 1
Room type(s): Studio, 1 King, Sofa bed
[Edit](#) • [Room details](#)

3. Summary of Charges

1 room(s) for 1 night(s)	Prices in USD
Saturday, May 20, 2017	219.00
Total cash rate	219.00
Total taxes and fees	38.33
Total for stay in hotel's currency	257.33 USD

 Our best rate. Guaranteed.

Online Travel Companies Tax Avoidance Strategies Revealed

Excerpts from internal memoranda authored by attorneys, accountants and tax advisors show in their own words what the OTCs think about paying their taxes

Knowingly avoid the payment of taxes

OTCs knew as early as 2003, as one Florida lawmaker put it, “that they owed the taxes to the state, and have been purposefully and intentionally failing to pay the taxes, hoping that they wouldn't be sued before they could change state law.”

“It appears that the total price that customers pay to the companies for hotel rooms is subject to taxation in most jurisdictions analyzed.”³ “The tax is assessed on the entire price of the occupancy, and tax authorities typically define this as the entire price that the consumer perceived to be the price of the hotel room.”¹

Resist, delay and make it as difficult as possible...

“It appears that the stakes are high enough that OTCs should resist, delay and make it as difficult as possible for any state to require us to collect occupancy tax.”¹

Should OTCs be collecting tax at the total price the customer pays

OTCs have been advised in an opinion from their attorneys “it appears that the total price that customers pay to the companies for hotel rooms is subject to taxation in most of the jurisdictions analyzed...” The opinion also indicates that Expedia “has high risk of exposure to state and local taxes...”³

“Based on our review of the statute and regulations... tax is likely due on the total charge made to the customer... Various local taxes are imposed and administered by the respective locality. The imposition of the tax is identical to the state. Therefore, the local taxes are also likely due on the total charge to the customer.”²

Advisors went as far to say Expedia should “take a reserve each quarter based on an estimate of uncollected taxes that we may ultimately owe.”¹

“Not sure we will forever have the **LUXURY** of having this back-end ‘taxes and service fees’ line item.”

– Internal memo from
Expedia Attorneys

What can Expedia do in order to “minimize occupancy tax exposure?”

Preferred steps include “Assembling a strong team of experts to lobby...”¹ (OTCs have a long history of “engaging... in a massive lobbying effort to try to get local legislators and tax commissioners to buy into their semantic fiction that OTCs are not entities that sell hotel rooms” according to a Georgia court-appointed special master.)⁴

We should consider litigation as a useful tool...

In response to the question “If any tax authority threatens litigation, do we litigate or simply become a tax collector in that state?” OTC attorneys replied, “It appears that the stakes are high enough that we should resist, delay and make it as difficult as possible for any state to require us to collect occupancy tax... most tax regulators -- even the most obstinate -- will offer up some sort of settlement before threatening litigation.”¹

Should we pass on the tax cost to consumers?

“We do not currently believe that is possible from a competitive standpoint... not sure we will forever have the luxury of having this back-end ‘taxes and service fees’ line item.”¹

Sources

- (1) MBS Occupancy Tax Analysis
- (2) Price Waterhouse Cooper, Transaction Tax Risk Narrative Memo to Expedia
- (3) Holland & Knight LLP, Memorandum on Hotel Occupancy Taxes
- (4) Update on Online Travel Company Litigation, Office of Indiana Attorney General

inclined to effect legislative solutions, etc. All of these are variables that will change over time.

If we do begin paying occupancy tax in any state, should we pass on the tax costs to consumers?

Regarding the question of whether we should pass on occupancy tax costs to our customers, the current answer is "no" – or maybe a more accurate answer is that we do not currently believe that is possible from a competitive standpoint. Let me explain these competitive dynamics by explaining the two ways that we might pass on these costs:

The first way to pass on this tax cost is to simply increase the "taxes and service fees" line item, which is added to the customer's bill once they arrive at the "details" page for their transaction. Referring to the first table in this Q&A (and in this case, the third column of that table), our displayed price would hold steady at \$130 (retaining the competitiveness of our displayed price); however, the "taxes and service fees" line item would increase to \$22.55, making the total price paid by the customer \$152.55 and holding our net revenue at \$35.

There are two problems with this approach: First, this "taxes and service fees" line item includes an Expedia fee of roughly 3% of the net rate, bringing the line item to roughly 11% to 21% of the net rate. There is no magic to these numbers – Expedia's hotel team simply feels that somewhere around 11% to 21% is the maximum amount that customers will tolerate (or ignore) being added to their bill prior to check out. This is either because they chalk it all up to tax and the extra 3% gets lost in the noise, or because they have simply gotten used to the age-old "shipping and handling" add-ons. We believe that, if this amount were to jump to 13% or 23% of the net rate, consumers would feel compelled to go to the supplier websites in order to avoid the additional taxes and/or fees. Second, I am not sure that we will forever have the luxury of having this back-end "taxes and service fees" line item. The DOT requires that all taxes and fees be included in the first price that an air customer sees. I would not be surprised if at some point the FTC or a state regulator requires similar display rules for hotel transactions.

The second way that Expedia could pass on this tax cost is to increase its mark-up in each transaction by the tax amount. So, again, using the numbers from the first table in this Q&A, our mark-up would increase to \$34.55, making the displayed price \$134.55, rather than \$130. The total price to consumers including net rate, mark-up, taxes and fees would equal \$152.55 and our net revenue would hold constant at \$35. The obvious downside to this is that it would immediately raise our displayed price to consumers making us less competitive with the supplier websites (who do not need to worry about an intermediary mark-up). Shoppers tend to make their purchase decisions on the first price they see, and a couple of percentage points difference is often enough to lose the beauty contest. This gross-up would also not be possible under the Hilton and Starwood contracts, as those contracts have provisions that limit the mark-up on their respective supply.