

Resolution 2019-3
Opposition to Federal Legislation
Preempting Tax on Online Travel Company Mark-Ups

Background

Online Travel Companies (OTCs) such as Expedia, Travelocity, Orbitz, Priceline, and Hotels.com have adopted similar business operating models. They contract with hotels to facilitate the sale of hotel rooms over the telephone and Internet. OTCs pay discounted rates to hotels that are not disclosed to consumers. The OTCs charge consumers a marked-up retail rate for the accommodations. They also typically charge consumers a service fee. OTCs collect hotel taxes based on the discounted rate for remittance to state and local taxing authorities.

Other intermediaries sell accommodations in homes or other lodging options, including camping sites.

Hotel taxes have been imposed for more than 30 years. They are collected from consumers and remitted to local and state governments, regardless of how the hotel room is rented, whether over the phone, in person at a hotel, by a travel agent, or online.

Any failure to collect hotel or sales taxes on the retail rate hurts tourism in many state and local jurisdictions. Many local hotel or sales taxes are dedicated to funding tourism costs such as hotel to convention center transportation, convention centers, visitor centers, and historic restoration projects. Education, fire, police, and health care budgets also could be reduced.

State and local governments have initiated collection actions against OTCs and other intermediaries to compel the remittance of hotel occupancy or sales taxes on the room rate charged to the consumer (the retail rate, not the discounted rate). Dozens of court cases are pending nationwide. The number of administrative collection efforts is not known because of confidentiality rules.

State and local governments are also updating statutes and other authorities to include intermediaries to ensure they collect and remit the proper taxes. This will create parity with hotels that sell the same rooms at the same rates so there is no disparity in the taxes due and enhanced transparency for taxpayers.

OTCs have made several attempts to secure special federal legislation preempting state and local jurisdictions' taxing authority. This could significantly reduce the hotel occupancy or sales taxes collected when a consumer books a room through an OTC. If successful, this legislation could cause hotels to set up similar affiliated booking companies to substantially minimize their taxes.

Resolution

The Federation of Tax Administrators opposes any federal legislation that would restrict the ability of state and local governments to collect hotel taxes of any kind and to determine the base on which those taxes should be paid.

This resolution shall automatically terminate three years after the Annual Business Meeting at which it is adopted, unless reaffirmed in the normal policy process. To be voted on by the membership at the June 26, 2019 Annual Business Meeting.