



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

March 31, 2016

Representative Cheryl L. Grossman
Representative Gary Scherer
Ohio House of Representatives
Columbus, OH 43215

Curtis Bramble
Senate President Pro Tempore
Utah
President, NCSL

Karl Aro
Director of Administration
Department of Legislative Services
Maryland
Staff Chair, NCSL

William T. Pound
Executive Director

Dear Representatives Grossman and Scherer:

On behalf of the National Conference of State Legislatures Executive Committee Task Force on State and Local Taxation, we are pleased to provide principles for the tax treatment of online travel companies (OTC) as you consider legislation in this arena. These principles were developed by the Task Force after an extensive review of the OTC industry over a period of 18 months.

We all realize that with the rapid growth of the digital economy, state and local tax codes have difficulty keeping up with new technology. One challenge is the taxation of online travel companies (OTC), intermediaries between customers and lodging retailers. OTCs sell rooms at a retail price, which includes bundled "taxes and fees." However, OTCs only remit occupancy tax on the wholesale rate they pay to the retailer, retaining the difference. This practice could result in reduced revenue for the states and raises concerns of transparency and clarity of real costs to the consumer.

The Task Force principles ensures transparency for taxpayers by requiring OTCs to display all taxes, fees, and service charges on their websites and not bundle those charges so the charges are hidden from the consumer. The Task Force also recommends that OTCs be required to remit taxes based on the total rental price paid by the user, not just on the wholesale rate OTCs pay to hotel retailers.

The Task Force believes that to promote efficiency, states should impose this tax through statutory means and not through administrative regulation. We contend that any law enacted must clarify that the retail price advertised and charged by OTCs must receive the same tax treatment as room reservations made directly through lodging retailers.

If you have any questions on this issue, please contact Max Behlke in NCSL's Washington DC office at (202) 624-3586, max.behlke@ncsl.org.

Sincerely,

Representative Chris Perone
Chair, Commerce Committee
Connecticut House of Representatives

Senator Pamela Althoff
Chair, Republican Caucus
Illinois Senate

Delegate Sheila Hixson
Chair, Ways & Means Committee
Maryland House of Delegates

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NCSL Task Force on State and Local Taxation Principles for the Taxation of Online Travel Companies

With the emergence of the digital economy, state and local tax codes continue to have difficulty keeping up with rapidly advancing technology. One challenge states and localities face is the taxation of online travel companies (OTC), which act as intermediaries between costumers and operators of short-term lodging, such as hotels, motels, inns and bed and breakfasts.

NCSL recognizes that the OTC business model is to contract with the businesses in the lodging industry to market rooms, allowing those businesses to fill rooms they otherwise might not. The OTCs sell the rooms to consumers/customers at a retail price that is equal to or higher than what the customer would pay if they purchased the same room directly from that business. The OTCs then remit to the business a pre-negotiated contracted wholesale rate for the room and taxes due on the wholesale rate, retaining the difference as profit (the compensation for marketing the room). The OTCs have complete control over the transaction, including the remittance of taxes.

States and localities contend that this business model of only remitting taxes on the wholesale price OTCs pay the lodging business rather than on the retail rate the customer is paying, results in a shortage of revenue remitted from the sales/occupancy taxes charged. In addition, a higher effective tax rate is imposed on hotels that remit taxes based on the retail rate customers are paying. The OTC business model also raises concerns about transparency and clarity of charges to the customer. As courts continue to hear lawsuits regarding OTC tax remittance practices, states continue to examine possible legislative statutory solutions to ensure codes are clear and factor the relatively new role OTC's play in the marketplace.

The National Conference of State Legislatures' Executive Committee Task Force on State and Local Taxation has studied online travel companies and has developed the following principles that states should consider when addressing taxation of lodging accommodations:

1. To promote transparency for taxpayers, states should consider legislation that requires online travel companies, and hotel websites to:
 - A) Publicly and explicitly display the charges, and resort fees, ultimately leading to the final price to the user.
 - B) Require that taxes, fees, and service charges be separately stated instead of bundling them together.
 - C) If a business does not comply with 1. (A) or (B) then impose tax on the entire bill.
2. To ensure full collection of taxes that are due and to promote equity and fairness in the tax code, states should consider requiring OTCs to remit taxes based on the rental price paid by the user.
3. To ensure that taxation is efficient, states should consider:
 - A) Imposing any tax on online travel companies through statutory impositions and not through administrative regulation;
 - B) Carefully devising definitions so that there is clarity to buyers and sellers of hotel rooms.