



127 WASHINGTON AVENUE, 4th FL WEST | NORTH HAVEN, CT 06473 |
TEL: 860-635-5600 | FAX: 203-782-7755 | www.ctlodging.org



To: Honorable Senator Eileen Daly
Honorable Representative Patricia Widlitz
Finance Committee

From: Chuck Moran, Legislative Chair for the Connecticut Lodging Association

Date: March 12, 2012

Subject: Testimony for Public Hearing: Support of Raised Bill No. 5420

Good morning Senator Daily, Representative Widlitz and members of the Finance Committee. My name is Chuck Moran, I am the Legislative Chairman and Past President of the Connecticut Lodging Association and Regional Manager for the Waterford Hotel Group.

The Connecticut Lodging Association is proud of the vital role the lodging industry plays in the economy in the State of Connecticut. On behalf of our hotels and in the interest of their employees, we're writing to express our support for HB5420 -AN ACT CONCERNING THE IMPOSITION OF THE SALES TAX ON ROOM REMARKETERS.

Currently online travel companies such as Expedia, Orbitz and Travelocity are only paying tax on the discounted wholesale rate they pay to hotels, not on the full room rate paid by the consumer. By contrast, the hotels, motels, inns and B&Bs, residents of the State, pay the full tax on the rooms they sell directly to the consumer. This different tax burden is neither fair nor justified.

The owners of the hotel/motel properties have made significant capital investment within the State. They pay real estate and personal property taxes and other fees. They have deep and long term ties to their community. They hire local residents to be associates and managers. The lodging industry is one of the few fields where the American Dream is still possible. Great customer service skills and hard work can lead an employee to a managerial position. All we ask is for a level playing field on which to compete with new online resellers, and HB 5420 would provide just that.

HB 5420 would also stop the short-changing of Connecticut consumers by the OTCs' tax payment practices. Contrary to popular belief, it is important to emphasize that consumers generally pay the same amount for a hotel room whether they book directly through the hotel or through an OTC. The question is how money already being paid by consumers gets divided – it can either be retained by OTC middlemen, or the government can collect what it is due in room occupancy taxes based on the actual retail rates consumers are paying for rooms.

With the fiscal issues facing the State, it is imperative to collect all of the taxes that are due. As many of the lodging establishments in Connecticut are small businesses there should not be an unfair advantage to the room remarketers. We urge you to support this bill for the businesses, employees and citizens of Connecticut. I have attached additional documents for your review regarding this important issue.

PROTECTING LODGING BUSINESSES IN CONNECTICUT

Connecticut's lodging industry supports legislation that will ensure tax equality between hotels and online travel booking intermediaries/room remarketers, while protecting vital funding that supports the communities where we operate.

Online Travel Companies (OTCs; i.e., Expedia, Orbitz and Travelocity) are engaged in heated lobbying campaigns at the local, state and federal levels to preserve the lucrative manner in which they collect and remit hotel sales and occupancy taxes. Connecticut's lodging industry wants to ensure OTCs compete fairly and is seeking support for legislation (H.B. 5420) that would ensure hotel bookings through OTC websites are taxed in the same manner as bookings made through all other channels.

Background. Connecticut hotels have long collected room occupancy taxes. These taxes are paid by guests, collected by hotels and remitted to the state based on the retail rate paid for use of a room.

Nationwide, OTCs have taken advantage of dated tax laws that often reference amounts received "by hotels" and fail to explicitly account for the OTCs' new role as intermediaries or remarketers in the booking process. Instead of collecting and remitting occupancy taxes on the retail rates paid by consumers for hotel rooms, OTCs have systematically chosen to remit such taxes based on the wholesale rates they pay hotels for rooms. OTCs choose not to include the wholesale to retail markup they charge customers – in the form of fees that add to the total price paid for a hotel room – as part of the basis for calculating taxes owed. The OTCs' tax practices cause a loss of revenue at the state and local levels that would otherwise have been targeted to supporting the Connecticut communities where we operate our businesses and employ residents.

How It Works. Let's assume a \$100 hotel room is available in a jurisdiction that imposes a 10% occupancy tax. In the first example below, a customer books the room directly through the hotel's website and pays a total rate (inclusive of taxes) of \$110. The jurisdiction receives \$10 in revenue because the taxes due are being calculated on the total retail rate the customer pays. Even if a room were booked through a travel agent receiving a commission, the same tax is paid to the jurisdiction. In the second example, if the same room is booked through an OTC, despite the fact that the customer will pay the same \$110 rate, the taxing jurisdiction would only receive \$8 in revenue. This occurs because the OTC chooses to calculate the taxes due based on the wholesale/contract rate they pay the hotel, not the retail rate the customer pays, and retains the \$22 difference.



OTCs claim that the difference between the advertised retail rates paid by consumers and the wholesale rate they pay hotels is a "service fee" not subject to sales or occupancy taxes. However, no separately stated "service fee" is disclosed as part of an OTC transaction and these sums merely add to the cost of booking a hotel room, the underlying trigger of occupancy taxes. In addition, while hotels provide similar services, we cannot deduct marketing, reservation, or system costs associated with providing reservation services from the taxable amount due the jurisdiction.

Legislative Action. H.B. 5420 is being considered by the General Assembly to close the OTC tax loophole in Connecticut and create tax equity across booking channels. The lodging industry in Connecticut supports the legislation and its "dual remittance" approach, requiring hotels to remit taxes based on the revenue we receive from the OTCs for the booking and the OTCs to remit taxes based on the revenue they receive.

OTCs should be required to collect and remit sales and occupancy taxes on the full retail rates paid by customers booking hotel rooms through their websites. OTCs will argue that requiring they remit taxes on the retail rate the customer pays equates to an unfair "tax increase." The OTCs are merely the tax remitter in the transaction; the customer is the taxpayer. Further, since market forces and contracts dictate that guests pay virtually identical prices for a hotel room regardless of which booking channel is used, H.B. 5420 will end a market-distorting windfall for OTCs without harming consumers or raising their cost to travel to Connecticut.

Connecticut's tax code should be updated to ensure that local hotels – major employers that have made real investments in this state – are able to compete fairly with OTCs. **Please support tax equity between hotels and the OTCs by closing the OTC tax loophole through passage of H.B. 5420.**

Bill 5420: Taxation of Online Travel Companies/Room Remarketers

Myths vs. Facts

Myth: Requiring Online Travel Companies (OTCs) to remit CT sales taxes based on the retail rate they collect from consumers constitutes a “new tax”

Facts:

- ✓ This bill simply clarifies how the existing sales tax on room rentals applies to OTC bookings, confirming that the tax is owed on the retail price, rather than on the OTCs’ wholesale cost
- ✓ Hotels incur the same kinds of marketing and room booking services as OTCs, but are not allowed to deduct their service costs from the amount taxed
- ✓ Not taxing the OTC retail markup in effect *creates a loophole*, producing a windfall for the OTCs, subsidized by CT taxpayers
- ✓ Tax fairness is only achieved by requiring all participants to collect and remit sales taxes based on the full retail rate

Myth: Requiring OTCs to remit taxes on the retail rate is a “service tax”

Facts:

- ✓ Although OTCs call their markup many things (facilitation fee, service fee, etc.), it is nothing more than a retail markup of a wholesale price they negotiate with the hotel
- ✓ The service they provide is no different than what hotels or travel agents provide when they facilitate and execute a booking for a hotel stay
- ✓ CT has long taxed the rental of hotel rooms, whether offered by hotels directly or by travel agents or other “service providers” – there is no reason that OTCs should be treated differently

Myth: Requiring OTCs to remit taxes on the retail rate will lead to “higher cost for CT travelers”

Facts:

- ✓ OTCs are unlikely to charge consumers more as a result of closing this loophole – their price is already marked up enough to cover the full amount of the tax
- ✓ The consumer is already paying the money—it is a matter of who gets to keep it, the OTCs or the State of Connecticut

Myth: The Internet Tax Freedom Act Moratorium “protects OTCs from paying the full sales tax”

Facts:

- ✓ The Moratorium prohibits the imposition of taxes on:
 - Internet access services and,
 - Multiple or discriminatory taxes on electronic commerce
- ✓ The Moratorium does not apply in any way to OTCs. This is a sales tax, not an internet access tax
- ✓ The sales tax is a pass-through tax collected from the consumer and remitted to the tax authority. The OTCs pay corporate income taxes on their net profits. There is no “double taxation” here

Myth: CT cannot apply the tax to OTC margins because “they lack ‘nexus’ to the state”

Facts:

- ✓ Court decisions in other jurisdictions have concluded that the OTCs have substantial nexus to state and local taxing jurisdictions
- ✓ OTC employees & representatives visit the states where they do business, and the OTCs voluntarily enter into contracts to sell hotel rooms physically located in those states
- ✓ See: *Travelscape, LLC v. SC DOR, South Carolina Supreme Court, January 18, 2011*
Village of Rosemont, IL v. Priceline.com, Inc., U.S. Dist Ct. ND IL., October 14, 2011

Myth: This bill would add a “tax burden on traditional travel agents”

Facts:

- ✓ The commissionable travel agent model is entirely different than the OTC wholesale model:
 - Travel agents charge a commission on the retail rate paid by the guest
 - OTCs mark-up discounted rates
- ✓ Under the travel agent commission model, sales taxes are already being collected and remitted on the full retail rate paid by consumers for room rentals
- ✓ Under the OTC model, taxes are not remitted on the full retail rate paid by guests, which is why tax jurisdictions across the country are focused on closing this loophole