

Issue Brief

The Problem

Online travel companies (like Expedia, Orbitz, Travelocity, and others) contract with hotels to sell rooms to consumers and pay a certain portion of the sale price to the hotels. However, online travel companies typically fail to remit state and local taxes on the rate paid by consumers; rather, they pay taxes only on the rate they pay to the hotels and retain the difference, depriving cities and states of much needed tax revenue. On the other hand, when hotels sell a room directly to the consumer, via their website or through other means, they remit state and local taxes on the amount charged to consumers.

Response from State & Local Governments

Many states and localities throughout the country contend that online travel companies are not meeting their tax obligations. In fact, guidance was issued by the National Conference of State Legislatures to state tax directors recommending tax parity between hotels and online travel companies. This guidance was originally issued in 2013, reissued in 2014 and recommended the following:

“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.” (National Conference of State Legislatures, 2014)

This is truly a nationwide issue; numerous cities and states have sued the online travel companies to recover the lost revenue with varying degrees of success, and litigation continues in jurisdictions across the country. Some jurisdictions have pursued legislative remedies; in 2014 alone, various states, including Pennsylvania, Kentucky, Massachusetts, and Rhode Island, contemplated legislation to ensure tax parity between hotels and online travel companies. While some states have been successful, others are still pushing for parity.

Not a New Online Sales Tax

There is no debate as to whether taxes are owed by the online travel companies, the question is simply over the amount. Thus, this issue is fundamentally different from the much publicized debate over whether states can assess a sales tax on online companies that ship goods into their state, or assess a tax to connect to the Internet. In the case of hotel rooms, the taxable commercial activity clearly takes place within the state and local jurisdiction, no matter how the room is booked.

Solution

Passing state and local laws that clarify that online travel companies must remit the full tax on the rate they charge and collect from consumers, rather than on the amount they pay to hotels, would ensure that state and cities are not losing out on tax revenue.