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**Proponent Testimony ■ H.B. 571, Online Travel Company Tax Parity**

Ohio House Ways and Means Committee ■ Representative Tim Schaffer, Chair

June 20, 2018

Chairman Schaffer and committee members, thank you for the opportunity to speak to you today in favor of Ohio's communities, our travel economy, and tax fairness for entities selling hotel accommodations in Ohio, in the form of Online Travel Company Tax Parity, H.B. 571.

I'm Joe Savarise, Executive Director for the Ohio Hotel and Lodging Association (OHLA). Ohio is home to more than 1,450 hotel properties providing more than 134,000 rooms to guests across the state. We employ more than 35,000 people, produce 92,782 direct-impact jobs, and are an integral part of Ohio's vital travel economy. The hospitality, travel and tourism sector produces \$44 billion in annual sales, and \$3.4 billion in taxes.

Many of Ohio's hotels are locally-owned and operated, franchised businesses. These job creators make brick-and-mortar investments in our communities and are part of the fabric of our state. They seek fairness and equity in the way their businesses are taxed.

OHLA supports Online Travel Company (OTC) tax parity as a vital step in eliminating ambiguity in Ohio's tax code. The health of Ohio's travel economy relies on the intent of the law -- to require lodging businesses to remit taxes based on the full retail rate, just as businesses in other sectors must. While our members support the state's economy and efforts to bring more business and travelers to the state, they do so on an uneven playing field.

HB 571 is a solution that will provide much-needed revenue to our local communities, while ending the unfair competitive advantage out-of-state OTC's now have in the Ohio marketplace; all without creating a new tax or raising rates of existing tax. We simply seek to ensure that all are participating on equal terms.

**OTC Tax Parity is a simple step to modernize the Ohio Revised Code to reflect the true intent and ensure OTCs remit tax on the price their consumers pay for the hotel room.** We support the specific, simple mechanism in H.B. 571 that will make this happen: clarifying that these entities, when acting as intermediaries for hotel sales, are required to remit the tax, and that the taxable base is the amount the consumer pays for the room.

Ohio hotels are required to remit tax on the retail rate paid by the customer. Preventing online travel companies from taking advantage of a perceived ambiguity in our code and closing this tax loophole will keep millions of additional tax dollars in Ohio as taxes each year. This will be in the form of sales taxes needed by our state and local governments to provide vital services, and lodging taxes that will support local convention and visitor bureaus and bring more business and travelers -- and dollars -- to Ohio.

Not addressing this disparity will continue to provide these out-of-state companies a windfall at the expense of Ohio businesses and Ohio taxpayers. As they refer to in their own memoranda shared by the sponsor of this legislation, "a luxury" they know they won't have forever.

The OTCs contend that a quarter of hotel bookings are made through them. Contrary to popular belief, these websites do not negotiate with hotels to pass lower room rates onto consumers. They are merely an alternative booking option. For the same room type, on the same night, at the same hotel, OTCs offer consumers the same room rate as the hotel itself. What is less obvious to consumers is that OTCs retain a cut (generally 15-25 percent) of the published retail room rate as compensation, paying hotels what is akin to a “wholesale” rate for the room.

Ohio’s hotel industry would like to underscore that requiring compliance with the law is by no means a “new” tax.

Lodging tax has existed as far back as the 1930s; it was included in the Ohio Revised Code in its current form in the 1960s; and was updated in the 1980s. Entities that sell accommodations in Ohio are required to collect and remit lodging tax. Online travel companies have always been liable for this tax. The problem is that OTCs exploit ambiguity in the code.

H.B. 571 is also not a tax increase, as a quick review of the legislation verifies. As the representative of thousands of businesses selling accommodations in Ohio, our organization would oppose the legislation if that were the case. Nothing in this proposal increases any existing tax rate.

All of Ohio’s five neighboring states have similar taxation for hotel rooms, including sales taxes and lodging taxes.

Legislation like H.B. 571 is routinely met with claims that no court has ruled against OTCs and required them to remit their tax based on the price the consumer pays. Nothing could be further from the truth.

Most recently, the Colorado Supreme Court ruled 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.*]

The Supreme Court of Georgia in 2009 ruled:

“Expedia is not the end-consumer, is not a member of the public at large, and it is not the occupant of the hotel room. Therefore, the wholesale rate which Expedia, a non-occupant, pays for the room cannot be the rate on which the tax is based.” [*Expedia, Inc. v. City of Columbus*]

And the United States District Court for the Northern District of Illinois ruled in 2011:

“Because the record establishes that [the OTCs’] customers cannot occupy hotel rooms in Rosemont unless they pay the full amount [the OTCs] charge, [the OTCs’] fees and mark-ups are part of the rental rate subject to Tax.” [*Village of Rosemont v. Priceline.com*]

Action to create OTC tax parity is not limited to the courts. An editorial endorsing similar legislation that took effect in Maryland in 2016 explained:

“You can’t blame [online travel companies] for trying, but logic and equity are on the side of states that demand, justly, that online agencies remit taxes on the full payments they receive for room sales, not the discounted prices ... [OTCs] may have become used to this comfy arrangement. That doesn’t make it right or equitable. It’s just a loophole.” [*Washington Post* May 15, 2015]

Perhaps the most insidious tactic employed to continue the tax avoidance strategy of these out-of-state companies is the specter of increased costs to consumers. But as this committee has already heard, the online travel companies own internal memoranda refute this false claim.

OTCs already charge an amount of tax and fees based on the amount the consumer pays for the room. The merely chose to remit only a portion of that amount. The cost for consumers does not need to increase for OTCs to comply with the law. Their own analysts, answering the question “should we pass on occupancy tax costs to our consumers” wrote, “No. ... We do not currently believe that is possible from a competitive standpoint.”

Hotel rooms are sold in an open, competitive market. The competition that exists between hotels, and the ability for consumers to book through numerous channels, will mean that the price they continue to pay will be fair.

Since 2009, at least 11 states have taken specific actions to institute OTC tax parity. Passage of H.B. 571 is critical if Ohio doesn’t want to fall behind other competing markets in recouping the resources state and local governments, and our destination marketing entities that produce business for local communities, are due. We should no longer allow the forfeiture of these dollars, which fund tourism promotion, infrastructure and other vital services.

In the end, this legislation merely removes ambiguity and clarifies that there is tax parity between OTCs and hotels that sell their rooms directly.

Consumers will pay the same price. OTCs are merely inflating their profits with a dividend at the expense of Ohio taxpayers. Raising their prices further will make them uncompetitive against hotel and lodging companies.

OTCs will continue to sell hotel rooms in Ohio because that is their business, and in their economic interest. Anyone concerned by threats that these out-of-state businesses will somehow hurt Ohio by refusing to promote Ohio destinations can rest assured that Ohio’s hotel operators, hotel brands, our destination marketing partners, attractions, local communities and the many travel economy partners who support H.B. 571 will continue to do so.

When Ohio consumers make other purchases, they expect to pay, and have vendors remit, tax on the retail rate. All Ohio’s hotels follow this simple principle. At the same time, our industry is taxed different from any other, with a very specific tax. It is time for everyone to pay their fair share. Thank you for the opportunity to share our support.

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