



## **Testimony of Stephen Shur in Opposition to HB 160 and HB 64: Applying the State Sales Tax to Travel Services**

My name is Stephen Shur, and I am the President of the Travel Technology Association. My organization represents companies like Orbitz, Expedia, Priceline and many others.

Our industry is responsible for booking millions of room nights in Ohio annually. We are in strong opposition to any proposal that would apply the state sales tax to travel agent service fees.

First, and most importantly, online travel agents don't buy rooms in bulk at wholesale rates and resell them at retail rates. To understand this is to also acknowledge that when a traveler books a room via a travel agent, either online or in Ohio, the total amount the traveler pays for the room includes:

1. the room rate set by the hotel,
2. all applicable taxes based on that room rate, and
3. a service fee charged by the travel agent (online or in the community)

Applying the state sales tax to the fees charged by travel agents will have the opposite of the intended effect of raising revenue. Travel agents are the engine that help steer travelers to Ohio. Taxing online and community travel agents will serve as a disincentive for them to steer travelers to Ohio.

These taxes will ultimately be passed on to the consumer in the form of higher room rates. Priceline.com found that when the room rate is increased by 1%, there is a 2% reduction in bookings. Raising room rates in Ohio through higher taxes will have a ripple effect through the state's economy as leisure travelers choose to stay in other states to save money. Small businesses who benefit from travel and tourism will be negatively impacted by these taxes as well.

Proponents of taxes on travel services suggest that travel agents, both online and in the community are collecting but not remitting the taxes on the hotel room. With regard to the question of whether the proper taxes are being levied, collected and remitted, there is no loophole. The tax is based on the rate that the hotel sets. The hotel provides the

good or service, in this case, the hotel room, to the traveler. Online travel agents do not operate hotels or have control of inventory nor do they set the price that the consumer pays for the room. Every single court that has reviewed this question has found that online travel companies do collect and remit the proper taxes. (see addendum “Examples of Court Rulings that OTCs Do Not “Buy and Resell” Rooms”).

As in the case of AAA discounts or AARP discounts, the tax calculated and paid by the consumer is based on the discounted room rate that is set and agreed to by the hotel.

Why does this matter and how does it relate to this legislation? This legislation would require the sales and lodging tax to be collected on the total amount the consumer pays which means this new tax would apply to the service fees charged by travel agents and represents a new sales tax on services in Ohio, travel agent services, to be specific.

This is bad for Ohio tourism and particularly bad for Ohio travel agents who already pay tax on the service fees (income) they charge their clients.

Like any new taxes, this tax would be passed on to the consumer in the form of higher hotel rates. It should be no surprise that Ohio hotels will be at a distinct disadvantage to neighboring states, none of which impose a sales tax on these services.

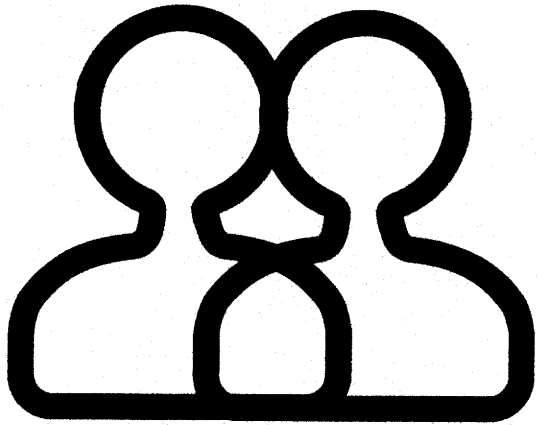
It has been said that when you tax something, you get less of it. In this case, we are talking about hotel bookings in Ohio.

The opportunity cost of this tax is high. It's not about raising revenue. It's not about closing a loophole that doesn't exist. It's not about leveling any playing field. It's simply a new state sales tax on services and a disincentive for online travel agents and Ohio travel agents to steer people to Ohio hotels.

This new sales and lodging tax on services is a job killer, a small business killer and a burden on Ohio businesses and citizens. I urge you to reject this proposal.

Thank you.

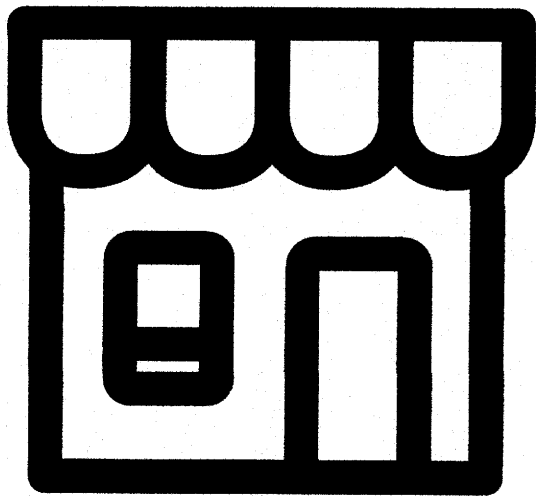
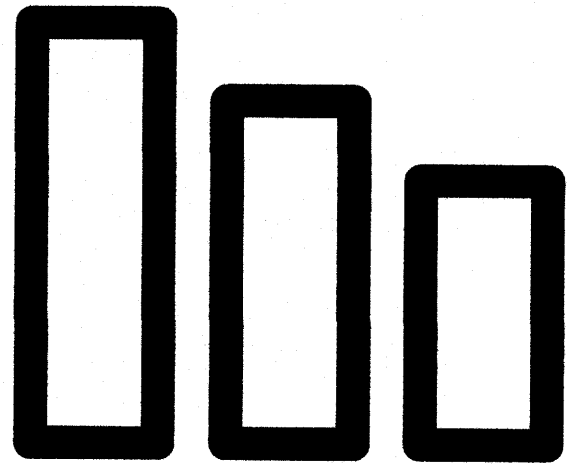
# OHIO'S COMMUNITY TRAVEL AGENCY INDUSTRY



284 Locations

1,904 Jobs

**\$59.9** million in  
direct economic  
impact to state



**79%** employ fewer  
than 5 people,  
**88%** less than 10

Source: U.S. Census

**SB160/HB150:**  
New Tax on OH #SmallBiz

## THE TRUTH ABOUT HB 150/ HB 64

<b><i>What the Proponents of the New Tax on Travel Services Say...</i></b>	<b>The Truth</b>
<p><b>HB 150/SB 160 is not a new tax. This is simply closing a loophole.</b></p>	<p><b>HB 150/SB 160</b> would apply the state sales tax to the service fees of travel agents, online and in the community. Currently, travel agents don't pay sales tax on the fees they charge their clients. Under this bill, they would. This is a new tax on services.</p> <p>There is no loophole. OTAs collect from the consumer the room rate, the taxes on that room rate and service fees and pass on the proper amount for the room and taxes to the hotels.</p> <p><u>Every court</u> that examined whether OTAs are collecting and remitting the proper taxes has found that they do. <u>100% of the court rulings.</u></p>
<p><b>HB 150/SB 160 levels the playing field for the hotels.</b></p>	<p>The hotels are not at a disadvantage to the OTAs.</p> <p>They choose to partner with OTAs who help them market unsold inventory.</p> <p>Taxing travel agents does not level the playing field or benefit hotels in any way. It simply levies a new tax on Ohio travel agents and on the service fees of OTAs.</p> <p>There is no direct or indirect correlation between taxing travel agents and benefits to the hotels.</p> <p>Hotels could simply choose to not partner with OTAs like Southwest Airlines does.</p> <p>The hotels' real motivation was revealed recently:</p> <p>"Marriott would prefer "this money not be kept by the [OTAs] to pad their profit margins to increase their marketing budgets and their ability to outcompete us in</p>

	<p>the booking space," according to testimony from a Marriott rep during a March hearing.</p> <p><a href="http://www.businesstravelnews.com/Business-Travel-Agencies/Maryland-Governor-Vetoes-Hotel-Tax-Bill">http://www.businesstravelnews.com/Business-Travel-Agencies/Maryland-Governor-Vetoes-Hotel-Tax-Bill</a></p> <p>There is no tilted playing field. The hotels are asking the legislature to pass new taxes on services to achieve a competitive advantage in the marketplace.</p>
<b>Ohio Bricks &amp; Mortar Travel Agents are Carved Out of HB 150/SB 160</b>	<p>Not true. As drafted, the taxable amount is the total amount paid by the consumer which includes the travel agent service fees for both Ohio travel agents and OTAs.</p>
<b>HB 150/SB 160 will not make Ohio hotels more expensive.</b>	<p>Like most tax increases, this one will be passed on to the consumer in the form of higher room rates, making Ohio hotels more expensive and less competitive with neighboring states.</p> <p>The higher rates will be directly and indirectly charged to the consumer in a variety of ways including when booking packages, in the opaque (name your own price) model and certainly will be accounted for during future negotiations between hotels and OTAs.</p> <p>Travelers are price sensitive. Priceline found that a 1% increase in room rates results in a 2% reduction in bookings. Ohio hotels will be at a distinct disadvantage as a result of this new tax.</p>
<b>Other states are doing this so why shouldn't Ohio?</b>	<p>No state bordering Ohio impose sales taxes on travel services providers, including, Pennsylvania, West Virginia, Kentucky, Indiana or Michigan. Dozens of other states across America have rejected similar proposals in recent years.</p> <p>The states that have passed this tax have not realized the promised revenue due to compliance/remittance complexities.</p>

	<p>In Minnesota, where the tax was passed in 2011, the proponents of the new tax projected that the tax would yield \$8.5 million per year. Since the law was enacted in 2011, the state has collected just over \$2 million (cumulatively, in total) from the new tax. And thus, the state saw no real revenue benefit while incentivizing travel agents to steer travelers elsewhere.</p> <p>Portland, OR, was recently named the most expensive city for travel taxes in the country, due in part to Oregon's passage of similar travel services tax in 2012. Meeting and convention planners are paying attention.</p> <p>North Carolina passed a similar measure in 2012. They have not collected any tax revenue from this tax to date due to remittance and compliance implementation challenges, nearly four years after passage.</p>
<b>HB 150/SB 160 is not a tax on Ohio citizens</b>	<p><u>Impact on OH Travel Agents</u></p> <p>There are over 1,900 travel agents employed in Ohio who currently don't pay sales tax on their service fees. This bill would apply the state sales tax to their service fees. Applying the sales tax to service fees is equivalent to triple taxation for these small businesses as they already pay state and federal income taxes on their fee revenue. This is a job killer.</p> <p><u>Impact on Ohio travelers</u></p> <p>Industry data shows that between 25% and 30% of all Ohio hotel bookings on online travel sites are booked by Ohioans. Ohioans will pay more for lodging under this new law.</p>
<b>150/SB 160 won't impact Ohio travel and tourism economy.</b>	<p>Industry data shows that a 1% increase in room rates results in a 2% reduction in bookings. Travelers will choose to stay in neighboring states to save money on hotels.</p>

	It has been said that “if you tax something, you get less of it”. Why would Ohio want to impose a new sales tax on services on an industry that markets Ohio to the world?
<b>150/SB 160 places no hardship on Ohio travel agents</b>	This new tax on small businesses will also create a tremendous administrative burden for travel agencies and other small businesses in Ohio. If enacted, travel agencies of all sizes will now be responsible for creating extensive record keeping and administrative functions for collecting and remitting this tax. Compliance will be especially difficult for small business travel agents.
<b>150/SB 160 will raise much needed revenue for the state.</b>	Any revenue raised by this new tax will pale in comparison to the economic impact last as a result of a reduction in hotel bookings. Other states that have passed similar measures saw revenues that were significantly lower than the projections put forth by the proponents of the new tax.

**OPINIONS ADDRESSING “COLLECT BUT NOT REMIT” THEORY**  
**HOTEL OCCUPANCY TAX CASES**

1. Affirming grant of motion to dismiss and motion for summary judgment in favor of OTCs – *City of Columbus v. Hotels.com, L.P.*, 693 F.3d 642 (6th Cir. 2012) (“According to the terms of the ordinances and the function of the online travel companies, the online travel companies are not ‘operators’ within the meaning of the applicable ordinances and are thus not subject to the . . . ordinances.”)
  - Granting summary judgment in favor of OTCs – *City of Findlay v. Hotels.com, L.P.*, 2010 WL 4806850 (N.D. Ohio Nov. 18, 2010) (holding that OTCs are not liable for collecting guest taxes under the ordinances and **do not “collect but fail to remit”** amounts to hotels)
  - Granting summary judgment in favor of OTCs – *City of Columbus v. Hotels.com, L.P.*, 2010 WL 4806859 (N.D. Ohio Nov. 18, 2010) (holding that OTCs are not liable for collecting guest taxes under the ordinances and **do not “collect but fail to remit”** amounts to hotels)
2. Affirming summary judgment in favor of OTCs – *Wake County v. Hotels.com, L.P.*; *Buncombe County v. Hotels.com, L.P.*; *Dare County v. Hotels.com, L.P.*; and *Mecklenburg County v. Hotels.com, L.P.*, 762 S.E. 2d 477 (N.C. Ct. App. Aug. 19, 2014) (affirming underlying dismissals, which held OTCs “are not operators of hotels, motels, tourist homes, or tourist camps within the meaning of [the statute],” the OTCs’ gross receipts are not subject to tax, that claims for accounting, conversion, and constructive trust were due to be dismissed, and that **rejected the plaintiff’s “collected-but-not remit theory of recovery”** holding that “[p]laintiffs have been unable to direct this Court to any binding legal precedent to support a ‘collected-but-not remitted theory of recovery’”), *pet. rev. denied*.
  - Granting summary judgment in favor of OTCs – *Wake County v. Hotels.com, L.P., et al.*, Case No. 06-CVS-16256, 2012 WL 6673127 (Sup. Ct. Dec. 19, 2012)
  - Granting summary judgment in favor of OTCs – *Buncombe County v. Hotels.com, L.P., et al.*, Case No. 07-CVS-585, 2012 WL 6673127 (Sup. Ct. Dec. 19, 2012)
  - Granting summary judgment in favor of OTCs – *Dare County v. Hotels.com, L.P., et al.*, Case No. 07-CVS-56, 2012 WL 6673127 (Sup. Ct. Dec. 19, 2012)
  - Granting summary judgment in favor of OTCs – *Mecklenburg County v. Hotels.com, L.P., et al.*, Case No. 08-CVS-741, 2012 WL 6673127 (Sup. Ct. Dec. 19, 2012)
3. Granting summary in favor of OTCs – *City of Gallup v. Hotels.com, L.P.*, No. 2:07-cv-00644-JDC-CG (D.N.M. Mar. 29, 2013) (**rejecting collect but not remit theory of**



liability and reaffirming prior ruling that OTCs are neither “vendors” under ordinance nor trustees of occupancy tax proceeds)

4. Granting summary judgment in favor of OTCs – *Hamilton County, Ohio v. Hotels.com*, No. 3:11-cv-15, 2013 WL 46799422 (N.D. Ohio August 30, 2013) (confirming OTCs are not “vendors” or “operators” and further holding that OTCs are not liable for collecting guest taxes under the ordinances and **do not “collect but fail to remit” amounts to hotels**)
  
5. Affirming summary judgment in favor of OTCs on city’s claim for back taxes. The Eleventh Circuit did not address the OTCs’ obligations going forward after May 16, 2011, which were resolved through a settlement. – *City of Rome v. Hotels.com, L.P.*, No. 12-14588, --- Fed. Appx. ----, 2013 WL 6510384 (11th Cir. Dec. 13, 2013) (“While the Localities offer facts that they hope raise the Court’s eyebrows, they, **after years of discovery, have failed to present sufficient evidence that raises a genuine question that the OTCs, in fact, collected any taxes above the wholesale rate**”)
  
6. Granting summary judgment in favor of OTCs – *City of Atlanta v. Hotels.com, L.P.* (Fulton County Super. Ct., Sept. 9, 2013) (granting OTCs’ motion for summary judgment on all remaining claims, including conversion and breach of trust.) In previous Amended Final Order (July 10, 2010), Court found that “[t]he **hotel occupancy tax amount is calculated based on the wholesale rate, as opposed to the full room rate.**” (Order at 2)



## AMERICANS for TAX REFORM

May 15, 2015

Ohio State Capitol  
1 Capitol Square  
Columbus, Ohio 43215

Dear Legislator,

I write to you today in opposition to House Bill 150 and Senate Bill 160. These two pieces of legislation would harm Ohio businesses and deter tourists from choosing Ohio as a travel destination. HB 150 and SB 160 would allow for higher taxes on consumers who use online travel services, brick and mortar travel agencies, tour operators, wedding planners, and other Ohio service providers.

A tax increase on these small businesses will ultimately impact other businesses and attractions who rely on a vibrant tourism economy: restaurants, taxis, attractions like Cedar Point and Kings Island, retail shops, entertainment venues, etc. On top of this new travel tax, these small businesses already pay a federal and state income tax. Earlier this year, the Commonwealth of Virginia rejected a similar measure.

Over the past few years, you and your colleagues have worked hard to make Ohio a low tax, job-friendly state. In fact, Ohio – recently – has been a leader in enacting sound tax reform. HB 150 and SB 160 would be a step backwards for the state, undermining the progress you have made.

This tax will also place an undue burden on interstate Internet commerce and expressly violate the Dormant Commerce Clause of the U.S. Constitution. Well established legal precedent requires companies to have a physical nexus within a state or locality in order for that jurisdiction to compel businesses to collect and remit taxes. This is a presence that Internet travel companies simply do not have. For this reason, at least nine state and federal courts have already ruled against such taxes across the country. Additionally, the effort disregards the Internet Tax Freedom Act, which specifically prevents states and localities from applying discriminatory taxes – such as hotel taxes – to electronic commerce.

Finally, for Taxpayer Protection Pledge signers, Americans for Tax Reform scores this bill as a tax increase and a vote in favor of this bill as a violation of your Pledge to constituents to oppose any and all net tax increases.

I encourage you to remain on the path of making Ohio a great state for small businesses and job-seekers. Vote “No” on HB 150 and SB 160.

If you have any questions please feel free to reach out to Will Upton, state affairs manager at Americans for Tax Reform. He can be reached at (202) 785-0266 or via email at [wupton@atr.org](mailto:wupton@atr.org).

Onward,

Grover Norquist  
President, Americans For Tax Reform

722 12<sup>th</sup> Street N.W.

Fourth Floor

Washington, D.C.

20005

T:(202)785-0266

F:(202)785-0261

[www.atr.org](http://www.atr.org)



May 29, 2015

Dear Senators and Representatives,

On behalf of the some 130,000 Americans for Prosperity activists in Ohio, I am writing in strong opposition to HB 150 and SB 160, both of which would institute a new tax on travel services and greatly harm Ohio's travel and tourism economy. These new taxes would not only impact online travel agencies, who drive millions of travelers to Ohio each year, but more alarmingly, the bills would tax the service fees charged by Ohio travel agents and Ohio tour operators. This tax, if imposed, would place Ohio at a competitive disadvantage with other states without it, and have a profoundly negative impact on our economy.

Higher cost travel means fewer tourists, fewer business travelers and fewer visitors to local attractions, restaurants and nightlife destinations -- hurting local businesses and their employees at a time they can least afford it.

Tourism is an important part of Ohio, and the state's assets -- its people, businesses, and attractions-- deserve an economy that allows them to thrive. These proposed new taxes would make thriving more difficult, and exacerbate the problems of many of Ohio's working families and small businesses.

We hope you will oppose this misguided, job-killing tax hike, and we look forward to working with you in the future.

Sincerely,

J. Baylor Myers  
Ohio Deputy State Director  
Americans for Prosperity

*Americans for Prosperity® (AFP) is a nationwide organization of citizen leaders committed to advancing every individual's right to economic freedom and opportunity. AFP believes reducing the size and scope of government is the best safeguard to ensuring individual productivity and prosperity for all Americans. AFP educates and engages citizens in support of restraining state and federal government growth and returning government to its constitutional limits. AFP has more than 2 million members, including members in all 50 states, and 36 state chapters and affiliates. More than 90,000 Americans in all 50 states have made a financial investment in AFP or AFP Foundation. For more information, visit [www.americansforprosperity.org](http://www.americansforprosperity.org). Americans for Prosperity does not support or oppose candidates for public office.*



## ISSUE ALERT

June 5, 2015

**To: Members of the Ohio Legislature**  
**From: The Jeffersonian Project**  
**Re: Oppose Travel Tax Increases in Ohio**

Dear Ohio Senators and Representatives:

**As you may know, HB150 and SB160 were recently introduced in the Ohio General Assembly. The legislation requires that sales and use taxes be calculated based on the full price paid by customers to the hotel intermediary, meaning that hotel intermediary service fees will now be subject to sales and use taxes.** Additional taxes make travel to Ohio more expensive, thereby harming Ohio's tourism industry and weakening the economy as a result. The Jeffersonian Project, the 501(c)4 affiliate of the American Legislative Exchange Council (ALEC), strongly opposes this new discriminatory service tax on the Ohio travel and tourism economy.

**Hotel intermediaries connect potential tourists with Ohio hotels and by doing so, help generate tax revenue from these visitors through their in-state commerce.** Visitors also add to the Ohio economy through purchases at local restaurants, stores, events and other in-state businesses. In a modern, digital economy, hotel intermediaries serve as a crucial facilitator to position the state to benefit from domestic and global travelers.

**Imposing new taxes in Ohio, including taxes on the state's crucial travel industry, impedes economic growth** and conflicts with the ALEC Principles of Sound Taxation, which states that tax policy should be competitive, neutral and fair to all businesses, regardless of industry. Moreover, as ALEC model policy - the Travel Agent Tax Fairness Act - notes, online travel companies are separate entities from accommodations providers. Online travel companies do not provide lodging and amenities, but instead facilitate the purchase of that lodging, which is distinct and should not be treated as in parity.

**What Ohio will lose in tax revenue from travelers who choose to stay elsewhere will likely outweigh the revenue generated by the expanded tax;** such is the epitome of shortsighted tax policy. As the principle from Economics 101 suggests, *when you tax something more, you get less of it*. Earlier this session, the Virginia Legislature rejected a similar travel tax proposal in both the House and Senate. Virginia lawmakers understood that applying new taxes on travel services will create a disincentive to travel to states with such taxes.

**Therefore, the Jeffersonian Project strongly encourages members in the Ohio General Assembly to avoid new taxes on the state's travel and tourism economy by opposing these bills** and instead focus on broader, fundamental reforms that improve the state's competitiveness.

Thank you for your consideration.

*The Jeffersonian Project is the 501(c)4 affiliate of the  
American Legislative Exchange Council.*



June 8, 2015

Ohio House of Representatives  
Committee on Finance

Ref: Opposition to the Travel Services Tax H.B. 150

Dear Committee Members:

I write to you today on behalf of the Independent Lodging Industry Association, which represents thousands of independent hoteliers as well as the many small businesses who service independently owned hotels and benefit from our industry. Independently-owned hotels offer travelers unique experiences in virtually every part of Ohio. In order to thrive, these small businesses must compete with the large hotel chains -- and their advertising and marketing budgets -- for travelers. Since most independent hoteliers cannot afford the high cost of competing with major hotel chains, they rely on their partnerships with online travel agents and community travel agents for marketing, advertising, and visibility. When an independently-owned hotel partners with an online travel agent, they are put on equal footing with all other hotels in a given geographic area when they appear in a search result by a traveler. It is through these partnerships that small, often family-owned businesses, can and do compete with billion dollar companies. A recent study by Cornell University found that hotels that partner with online travel agents see up to a 26% increase in direct bookings as a result of the partnership. Further, the study found that these hotels see a billboard effect for their property. For every reservation booked via an online travel agent, the hotel received an additional three to nine bookings on the properties own website as a result of this billboard effect.

And so, it is with great concern, on behalf of the thousands of members of the Independent Lodging Industry Association, that the Ohio legislature is considering applying a new sales tax on the services of online travel agents and that of community travel agents throughout Ohio. Like most taxes, these additional costs will ultimately be passed on to the consumer, making Ohio hotels more expensive and less competitive with neighboring states that don't tax travel services.

As I am sure you are aware, travel and tourism is an important component to the state's economy, and efforts to tax and burden any aspect of travel will be counterproductive. Instead of making lodging more expensive in Ohio through new and higher taxes, let's work together to help grow travel and tourism for the entire state by making Ohio hotels more affordable and accessible than before.

The Independent Lodging Industry Association and its Ohio members are strongly opposed to the Travel Services Tax legislation (H.B 150), which would unjustly tax travel services and harm Ohio's travel and tourism economy.

Sincerely,

***Bobbie Singh-Allen***

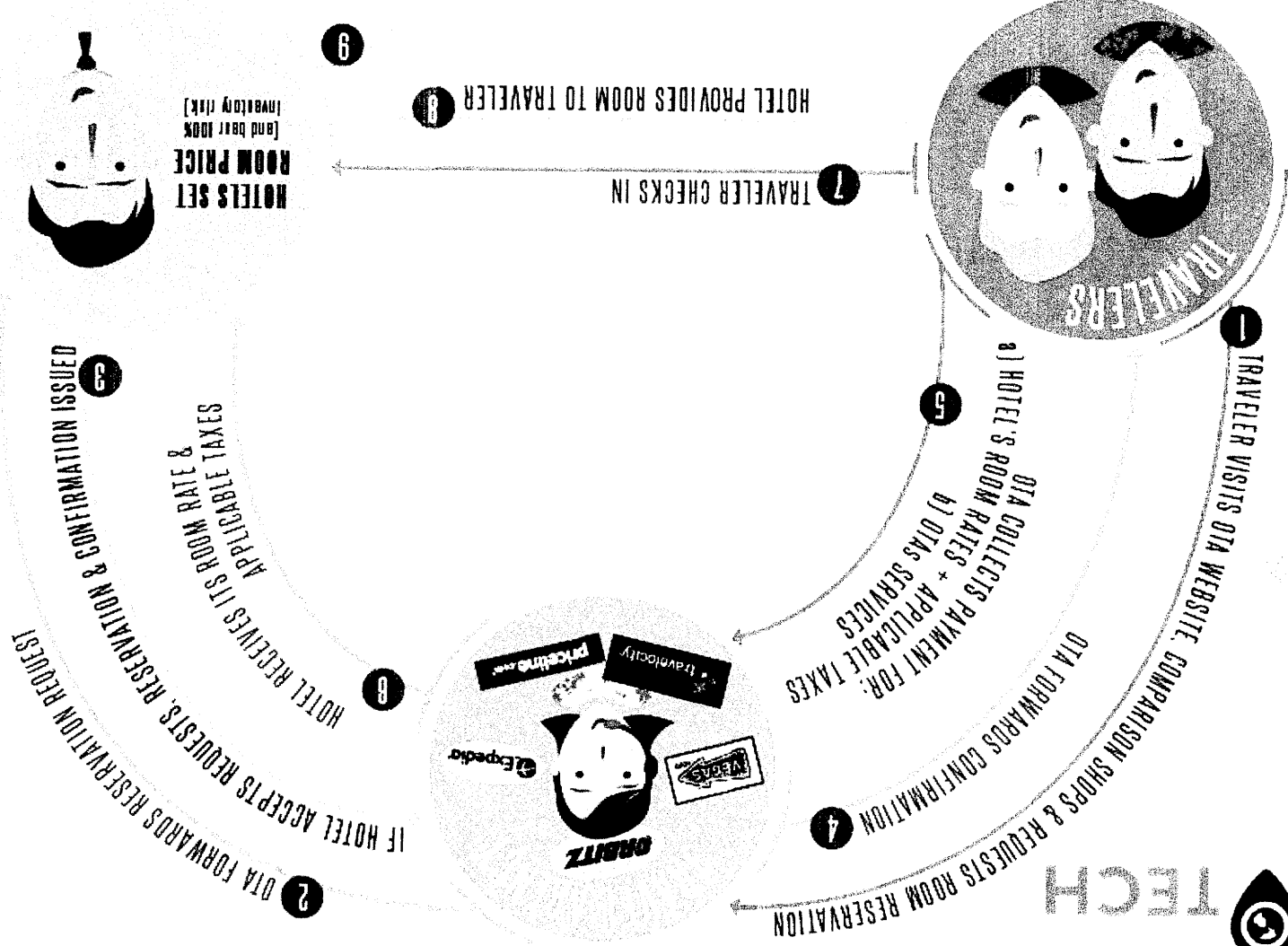
Bobbie Singh Allen

**About the Independent Lodging Industry Association**

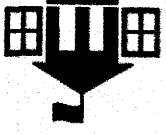
The Independent Lodging Industry Association (ILIA) is a national association with over 5,000 members nationwide. It was founded in 2010 by the California Lodging Industry Association (CLIA). CLIA was established 68 years ago by a group of independent hotel owners and operators. Over the past several decades, independent hotels, independently owned franchised hotels, and owners have been impacted by decisions being made out of the halls of State Capitols to Washington, D.C. Chain hotels have dominated the policy making process. ILIA will level the playing field and allow independent hotels a seat at the table. For more information, please contact me at: [bobbie@independentlodging.org](mailto:bobbie@independentlodging.org) or 916-826-2075. ###

Online  
Travel  
Agencies:

# How They Work



By offering side-by-side comparisons, access to the growing array of travel options and competitive prices, OTAs have given travelers the power to search, compare, and book from the palm of their hand from anywhere in the world. This is how they work.





**For Immediate Release:** May 28, 2015

**Contact:** Philip Minardi, Director of Communications and Public Affairs, (708) 574-4075,  
[pminardi@traveltech.org](mailto:pminardi@traveltech.org)

## **Lawmakers Introduce New Tax on Buckeye State Travel and Tourism**

*HB150/SB160 levy new sales tax on over 300 Ohio travel agencies and  
their nearly 2,000 full-time employees*

**Columbus, OH** – This month the Ohio General Assembly will take up House Bill (HB)150 and its companion Senate Bill (SB)160, legislation imposing a new sales tax on the service fees of travel agents, both online and in the community.

Ohio is home to over 300 travel service providers, from brick-and-mortar travel agencies to tour operators. These two bills would add a new “double tax” on local businesses that already pay income tax on their sales revenue. Beyond the impact on Ohio travel agents, the bill would levy a new tax on online travel companies, making hotel rooms in Ohio more expensive and less competitive with neighboring states – none of which have a sales tax on travel services.

**“Last year alone, online travel agencies (OTAs) helped travelers from across the globe book over 1.7 million room nights in Ohio hotels, B&Bs and inns,”** said Steve Shur, president of The Travel Technology Association. **“Of those room nights, over 25% were booked by Ohio citizens, at Ohio destinations.”**

Gov. Kasich's proposed budget also looks to increase the state's sales tax from 5.75% to 6.25% and to expand the sales tax base to include travel service providers., 88 percent of which are small business employers.

Just last week the governor of Maryland vetoed a similar tax, and in February Virginia's legislature voted down such a measure in both chambers of their General Assembly.

**“This bill would not only levy new taxes on local small businesses but also in-state travelers who will see the cost of their family trip to Cedar Point, or their business trip to Columbus, increase. Instead of creating new taxes on Ohio's travel and tourism economy, policymakers should be working to grow travel and tourism in Ohio. Taxing online travel companies and Ohio travel agents will have the opposite effect,”** concluded Shur.



**ABOUT TRAVEL TECH**

The Travel Technology Association is the trade association for the travel technology industry, and is dedicated to promoting public policy that helps connects consumers and travel providers, eliminates barriers to travel, and protects the traveling public.

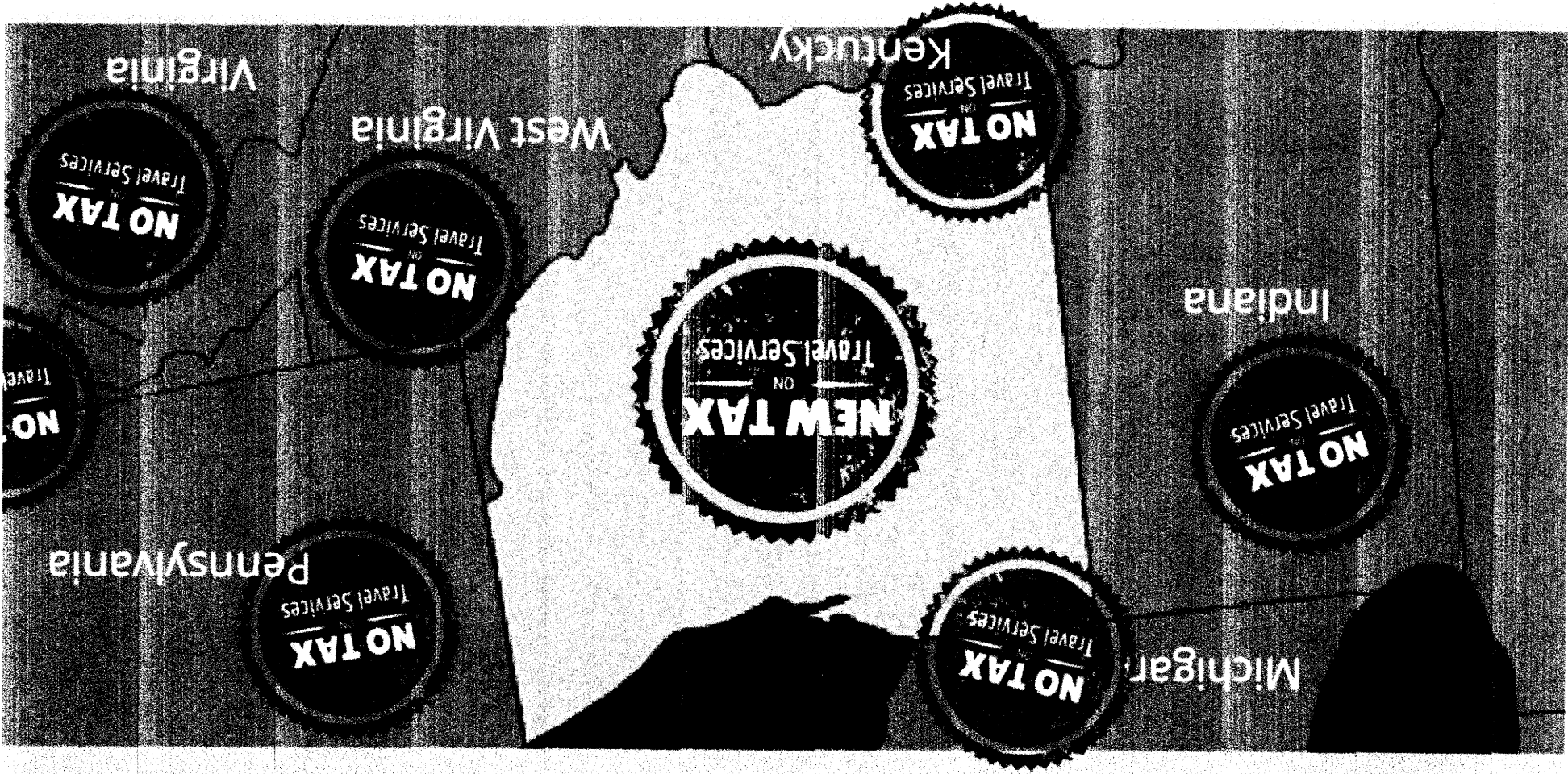
Travel Tech members include: Orbitz, Expedia, Priceline, Sabre, Amadeus, Travelport, Airbnb, HomeAway, TripAdvisor, CheapOAir, and Vegas.com.

Learn more about the Travel Technology Association by visiting us at [TravelTech.org](http://TravelTech.org) and following us on Twitter, [@TravelTech](https://twitter.com/TravelTech).

###

## HB150 & SB160:

## Giving Travelers a Reason to Skip the Buckeye State



H.B. 150 and S.B. 160 are NEW taxes on services and a TAX INCREASE that will make Ohio hotels more expensive and less competitive with neighboring states.

# JUST THE FACTS:

Do Online Travel Agents Buy Rooms in Bulk at Wholesale Rates and Resell them at Retail Rates?

**"WHEN WE SAY WHOLESALER, IT'S NOT THE MOST APPROPRIATE ANALOGY. EXPEDIA DOESN'T PRE-PAY MARRIOTT FOR ROOMS. WHAT HAPPENS IS THEY HAVE ACCESS TO A CONDUIT FOR SELLING. SO, FIRST AND FOREMOST THEY'RE NOT ALLOWED TO UNDERCUT US. WE OPEN THAT INVENTORY, IT'S OUR INVENTORY, AND THEY'RE ALLOWED TO SELL IT AT THAT PRICE WE'VE INDICATED."**

Testimony from a Marriott Hotel Representative during a February 11th Hearing on Maryland's S.B. 190

*The fact is, online travel agents (OTAs) do not buy hotel rooms at wholesale rates and then sell them to consumers at retail rates. As service providers, OTAs do not take inventory of, nor set room rates for, hotel rooms. OTAs are the technology and marketing platforms hotels, inns, and B&Bs use to reach a global audience. HB150 and SB160 are nothing more than new taxes on the service fees of travel agents, both online and brick-and-mortar and will ultimately make travel more expensive and Ohio less competitive.*

Learn more at [www.TravelTech.org](http://www.TravelTech.org)

**HB150/SB160's Tall Tale Argument:**  
***Online travel agents buy rooms in bulk (wholesale) from hotels and sell them at retail prices to consumers***

**The fact:** Online travel agents (OTAs) do not buy rooms from hotels and re-sell them. OTAs are marketing platforms that help hotels market the rooms that they operate (their own inventory).

Supporting statement from a Marriott Representative at the Maryland Senate Budget and Finance Committee Hearing on SB190 on February 11, 2015:

*"When we say wholesale, it's not the most apt analogy. Expedia doesn't pre-pay Marriott for rooms. What happens is they have access to sell, they're another conduit for selling. So, first and foremost they're not allowed to undercut us. We open that inventory, it's our inventory, and they're allowed to sell it at that price we've indicated."*

**If online travel agents do not buy rooms at wholesale and sell them at retail, then it is clear that are not collecting sales tax on "retail room rates" and remitting taxes only on the "wholesale rate".**

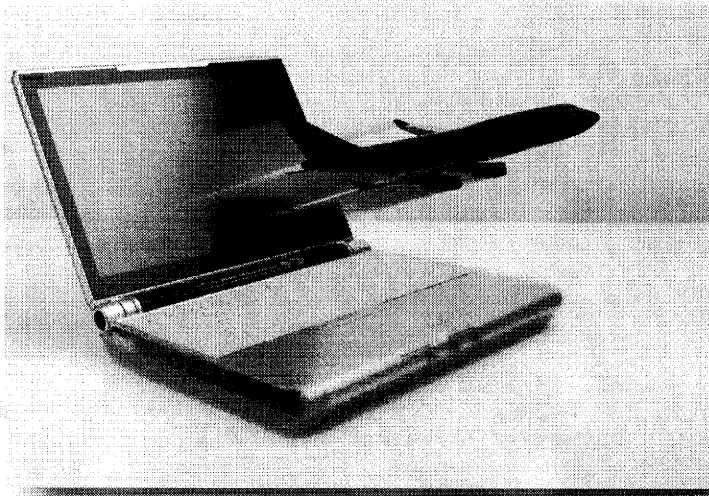
**The terms "retail" and "wholesale" do not apply to a hotel booking involving an online travel agent. OTAs are only providing travel agent services in assisting travelers with the ability to search and compare and connect them to the supplier (the hotel) for booking.**

**HB150 and SB160 apply the state sales tax to the service fees that OTCs charge their customers. This is a new sales tax on services.**

**It unfairly singles out a specific industry (travel agents) and clearly would constitute a new sales tax on services in Ohio and would impact the 2,000 people who work as brick and mortar travel agents throughout Ohio.**

# Taxation of Online Travel Companies (OTCs)

*a TAX FOUNDATION Issue Summary*



## **What is the hotel tax?**

In traditional hotel transactions, travelers book a room and pay a hotel tax based on the amount they pay to the hotel. The tax rate varies from state to state, but generally runs higher than other sales tax rates. The rate discrepancy goes against the neutrality principle of sound tax policy.

## **Overview of Taxation of OTCs**

Online travel companies facilitate transactions between travelers and hotels, and charge a fee for the service. The cost the traveler pays is comprised of three parts: cost of hotel room, hotel tax, and service fee. If a traveler books a room through an OTC, the cost is often less than if they book directly through the hotel. For example, if the hotel tax rate is 15 percent

and a room costs \$100 when booked directly, the tax paid would be \$15. If, instead, the traveler books through an OTC and the room costs \$75, the tax would be \$11.25. Add in a service fee of \$10, and the total cost is \$96.25. Instead of calculating the tax on solely the cost of the hotel room (\$75), some municipalities have brought suit to collect tax on the cost of the hotel room and the service fee (\$85) – a tax they often have no legal basis to collect.

## **What does the law say about taxation of OTCs?**

Though laws vary from locality to locality, hotel tax statutes typically provide that hotel taxes are paid by travelers based on the amount they pay to the hotel. Amounts paid by guests to others are not subject to the hotel tax.

Some cities (such as New York City, South San Francisco, and Washington, DC) have legislatively altered their statutes to expand hotel taxes to amounts paid by the consumer to anyone connected with the hotel transaction.

## **What do the courts say?**

OTCs neither operate hotels nor resell hotel rooms as wholesalers, placing them outside the proper scope of hotel occupancy taxes. A vast majority of courts have ruled it is unlawful for municipalities to tax OTCs as hotels.

## **Why does this matter?**

Taxing only Internet-based travel facilitation services and doing so at a high rate suggest that the motivation is to shift tax burdens to nonresidents, not revenues. This burdens the free-flow of capital and disregards the benefits principle, which says that those who receive the benefit of a service should pay for that service.

## **Why do localities try to tax these companies?**

State and local governments think extending the hotel tax to online travel companies will bring easy revenue. It doesn't. Instead, unsuccessful lawsuits have produced high costs, extended litigation and negative impacts on the tourism industry.

## **Why don't state and local governments change the law?**

State and local government don't simply change the statute because, due to the mobile nature of service companies, service providers are much more likely to move if faced with excessive taxation. Legislators recognize that adding new taxes to the stream of commerce will reduce demand for tourism and hurt the local economy.

## **Who is hurt by attempts to expand the hotel tax?**

The tourism industry and travelers pay the cost of aggressive and unjustified taxation of online travel companies. When nonresidents are taxed at a higher rate than residents and only services primarily used by nonresidents are taxed while everything else



is exempt, the real motivation becomes clear: a "meddlesome, money-grabbing plan." When cities and states act in such a way towards one set of businesses, investment and economic growth can be chilled as other businesses take note.

### **How does the taxation of OTCs differ from the online sales tax discussion?**

Many of the same issues arise in taxing online sales and online travel companies. A tax on both would shift the tax burden to nonresidents and damage the national economy. But it is specifically unprincipled to levy a tax on the narrow base of online services.

Most states exempt sales taxes on services. If states taxed online travel companies while exempting other services, it would place online service providers at a disadvantage. By singling out only services provided by Internet-based travel companies, state and local

governments demonstrate their motivation is to gouge revenue from out-of-staters, not fairness.

**OTCs help bring in business and tax revenue by promoting destinations to the world in multiple languages and currencies. They are not competing with Main Street, they are supporting it.**

In-state service providers engaged in the same line of business (especially "brick-and-mortar" travel agents) operate using the same business model, and are gravely threatened by these proposed taxes.

*For more information please see: [www.taxfoundation.org/OnlineTravel](http://www.taxfoundation.org/OnlineTravel) and*

*[www.taxfoundation.org/OnlineTravel.pdf](http://www.taxfoundation.org/OnlineTravel.pdf)*



### **About the TAX FOUNDATION**

One of America's most established and relied-upon think tanks, the Tax Foundation has, since 1937, worked for simple, sensible tax policy at the federal, state, and local levels. We do this by informing Americans about the size of tax burdens and providing economically principled analysis of tax policy issues.

The Tax Foundation has been a national leader in promoting a sense of "tax consciousness" in the public. Its distribution of information has helped provide policy makers with the lay of the land in the ongoing debate over tax and budget policies, as well as with a greater understanding of the policies proposed.

In its 76 years the Tax Foundation has earned a reputation for its independence in gathering data and publishing information on the public sector in an objective, unbiased fashion.



National Press Building  
529 14th St, NW, Suite 420  
Washington, DC 20045-1000  
[www.TaxFoundation.org](http://www.TaxFoundation.org)  
(202) 464-6200

*For more information please contact:*

**Richard Morrison**  
Communications Manager  
(202) 464-5102  
[Morrison@TaxFoundation.org](mailto:Morrison@TaxFoundation.org)



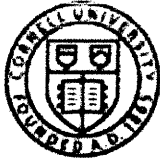
### Examples of Court Rulings that OTCs Do Not “Buy and Resell” Rooms

- a. *Wisconsin Department of Revenue v. Orbitz, LLC*, No. 14-CV-1708 (Circuit Court of Dane County December 11, 2014) (affirming administrative decision in favor of OTC).
  - i. Court noted with approval the administrative finding that “there was no factual basis to find that Orbitz was in the business of ‘reselling’ rooms, based on Orbitz’s activities: Orbitz did not purchase rooms for resale; Orbitz did not pay for rooms, then solicit customers to buy from its inventory; Orbitz did not take title to the rooms; Orbitz did not obtain from the hotel a right to occupancy to the rooms in question.” *Id.* at 12.
- b. *Expedia, Inc. v. City and County of Denver, Colorado*, No. 13CA0779 (Colo. Ct. App. July 3, 2014) (reversing and remanding with instruction to vacate all assessments against OTCs).
  - i. Court explained that the contracts between OTCs and hotels “specify that they are not rental or sales agreements for certain hotel rooms or blocks of rooms, but rather are agreements that the OTCs will facilitate the booking of hotel room reservations. Generally, the hotel is not obligated to accept any number of reservations from the OTC, and the OTC has neither the right nor the obligation to make a particular number of reservations at a given hotel.” *Id.* at 4.
- c. *Priceline.com Inc. & Travelweb LLC*, Decision of Municipal Tax Hearing Officer, City of Phoenix, Arizona (May 28, 2014) (granting protests of assessments and making findings of fact and conclusions of law).
  - i. Tax officer found that “Taxpayer does not purchase, physically possess or reserve any specific rooms.” Decision at 9 (factual finding #6).
- d. *Montana Dep’t of Rev. v. priceline.com, Inc.*, No. CDV-2010-1056 (District Court of Lewis and Clark County March 6, 2014) (granting summary judgment in favor of OTCs and holding OTCs are not subject to state lodging and sales taxes because OTCs do not own or operate hotels, provide accommodations, or rent vehicles to customers)
  - i. Court explained, “Defendants are companies that use the internet to attract customers, provide information, and, in some cases, provide travel arrangements and reservations for customers. In this sense, the OTCs are akin to travel agents, as they are taking advantage of communications...with the facilities to connect persons seeking accommodations with the facilities. There is no statutory language...showing a legislative intent to tax these practices....They may use the language stating or implying sale, but it is clear that the OTCs do not deal with the physical location or accommodation as does a hotel or motel owner.” Op. at 10.
- e. *Orbitz, LLC v. Broward County*, Case No. 2009-CA-126 (Fla. 2d Jud. Cir. Ct. July 13, 2012), affirmed per curium, *Broward County, Fla. v. Orbitz, LLC*, -- So. 3d --, 2014 WL 551767 (Fla. Dist. Ct. App. Feb. 12, 2014) (granting summary judgment on the merits in favor of the OTCs and holding tax is on privilege of renting out rooms, but OTCs are not engaged in business of renting out rooms).

- i. Court found the OTCs “do not purchase the rooms from the hotels, then resell or sublet the rooms to their customers. They have no possessory interest in the hotel rooms nor can they grant others that right.” *Id.* at 4.
- f. *Alachua County, et al. v. Expedia.com, et al.*, 110 So. 3d 941 (Fla. Dist. Ct. App. 2013) (affirming summary judgment in favor of OTCs and finding OTCs are not exercising taxable privilege of engaging in business of renting hotel rooms to customers and “[t]he consideration the [OTCs] ultimately keep is not for the rental or lease [of hotel rooms], but for their service in facilitating the reservation”)
- i. Court concluded, “[a]t the risk of belaboring the obvious, the Companies do not own, possess, or have any leasehold interest to convey in any hotel room, but merely transfer a reservation request from the tourist to a hotel.” *Id.* at 946.
- g. *City of Santa Monica v. Expedia, Inc.*, BC 236166, 2012 WL 5360882 (Cal. Ct. App. Nov. 1, 2012) (affirming dismissal on the merits, finding “clear language [of the Ordinance] limits the taxable amount to the amount that the hotel itself charges and receives”); *petition for review denied*, Supreme Court of California, January 23, 2013.
- i. The Court explained, “[t]he OTCs are not product resellers; the OTCs never obtain or purchase the right to occupy a hotel room for resale to transients.” *Id.* at \*2.
- h. *City of Goodlettsville v. Priceline.com Inc.*, 844 F.Supp. 2d 897 (M.D.Tenn. 2012) (granting summary judgment on the merits in favor of the OTCs).
- i. Court found that “[c]ontrary to the allegations set forth in the Complaint, the evidence demonstrates that OTCs do *not* purchase or take title to hotel rooms and do not pay the hotels before a booking is made. Instead, the evidence shows that OTCs contract for the right to market an allotment of rooms, in return for the hotel’s promise to reimburse the OTCs at the negotiated net rate for any rooms sold, with no payments made until after a booking occurs and with no penalty for unsold rooms.” *Id.* at 907.
- i. *Orange County v. Expedia, Inc.*, No. 2006-CA-2104 (Fla. 9th Jud. Cir. Ct. June 22, 2012) (granting summary judgment in favor of OTCs and holding that tax statute is “ambiguous as applied to online travel companies operating in the Merchant Model” and that in such circumstances, the “tie goes to the taxpayer.”)
- i. Court contrasted the Complaint’s allegations with the evidence: Plaintiffs “do not have evidence demonstrating that any such rooms are in fact pre-purchased by online travel companies and then resold or let to customers. (Plaintiffs alleged in their Declaratory Judgment Complaint that Orbitz bought rooms from hotels and then turned around and resold those same rooms, allegations the Court notices have also been made in some of the other pending cases involving [Tourist Development Tax] disputes. Apparently, Plaintiffs’ allegations were wrong. ...).” *Id.* at 6.
- j. *City of Philadelphia v. City of Philadelphia Tax Review Board*, 37 A.3d 15 (Pa. Commonwealth Ct. Feb. 2, 2012) (affirming administrative decision on the merits in favor of OTC, holding Expedia, Inc. does not meet the definition of ‘operator’ under the ordinance).



- i. Court explained that the contract between Expedia and the hotels “specified that the contract was not a rental or sale agreement for certain hotel rooms or block of rooms and that Expedia merely facilitated the booking of a hotel room reservation.” *Id.* at \*17. Additionally, “Expedia’s hotel contracts do not guarantee Expedia the right to make a specific number of reservations and they do not guarantee rooms to Expedia’s customers.” *Id.* at \*20.
  - ii. Court further “agree[s] with the Board that Expedia’s use of the language that it ‘sells’ hotel rooms in older filings with the Securities and Exchange Commission and in advertisements is not controlling and does not reflect the reality of how Expedia actually conducts its business. Expedia presented substantial evidence before the Board reflecting the manner in which it conducts its business.” *Id.* at \*21 n.11.
- k. *City of Houston, Texas, et al. v. Hotels.com, L.P., et al.*, 357 S.W. 3d 706 (Tex. App.—Houston [14 Dist.], pet. denied October 25, 2011) (affirming summary judgment on the merits in favor of OTCS and concluding “that, at minimum, the provisions at issue reasonably can be construed to tax only amounts paid to hotels.”)
  - i. Court explained, “[t]he OTC does not purchase the right to use the room and then resell that right to a consumer, and does not promise that any reservations will be made.” *Id.* at 708.
- l. *Mayor & City of Baltimore v. Priceline.com, Inc.*, No. MJG-08-3319, 2011 WL 9961251 (D. Md. Aug. 2, 2011) (Granting summary judgment in favor of OTCs on pre-amendment tax claims by holding OTCs are not “operators” of hotels under pre-2007 version of relevant statute and granting partial summary judgment in favor of city on post-amendment tax claims).
  - i. Court found that Orbitz SEC filing specifically stated that “Orbitz has ‘no obligation to pay the hotel suppliers for unsold rooms.’” *Id.* at \*3. Further, the court explained “the evidence establishes that the OTC merely purchases from the hotel and sells to a customer the right to use a hotel room.” *Id.* at \*4.



Cornell University  
School of Hotel Administration

## Search, OTAs, and Online Booking: An Expanded Analysis of the Billboard Effect

*Vol 11 No 8*

**By:** Chris Anderson Ph.D.

### **Executive Summary:**

Replicating and expanding an earlier study, this report confirms and quantifies the so-called billboard effect that occurs when online travel agents (OTAs) include a particular hotel in their listings. An earlier study, based on four JHM-owned hotels, found that a hotel's listing on Expedia increased total reservation volume by 7.5 to 26 percent depending on the hotel. This number excluded reservations processed through the OTA itself. This larger and more exhaustive study analyzes the billboard effect based on booking behavior related to 1,720 reservations for InterContinental Hotel brands for the months of June, July, and August of three years (2008, 2009, and 2010). The analysis determined that for each reservation an IHG hotel receives at Expedia, the individual brand website receives between three and nine additional reservations. Although these reservations are made through "Brand.com" (the individual brand's site), they are directly created or influenced by the listing at the online travel agent. The study also gained an indication of the amount of surfing time spent by would-be guests who are investigating and studying potential hotels to book. Some travelers recorded as many as 150 searches, but that was exceptional. The more typical activity was still considerable: the average consumer made twelve visits to an OTA's website, requested 7.5 pages per visit, and spent almost five minutes on each page.

## Study Methodology

Our comScore dataset consists of 1720 purchase events ( hotel reservations) at a InterContinental Hotels Group (IHG) related website (e.g., HolidayInn.com) during June, July, and August of 2008, 2009, and 2010. Owing to the nature of the comScore data we have all travel related website visits (e.g., TripAdvisor.com, Orbitz.com, LasVegas.com) and travel related searches (Google, Yahoo and Bing) for 60 days prior for each of these reservations.

These data are publicly available from comScore. ComScore tracks a sample of approximately 2,000,000 consumers, logging their site visits. Of these 2,000,000+ consumers, 1720 booked one or more hotel room nights at an IHG related brand online during the above mentioned sample window. We have complete travel related online site visits for each of these 1720 reservations for 60 days prior to the reservation. Consumers from the comScore sample also made 122 reservations at Expedia during the same period (note the approximately 14:1 ratio (1720:122) of IHG:Expedia bookings).

Of the 1720 bookings, approximately 62% visited an Expedia site. For 22% of the 1720 bookings Expedia was the only OTA visited prior to the IHG.com related reservation. These produce ratios of 1066:122 ( $.62 \times 1720:122$ ) or 8.75:1 and 378:122 ( $.22 \times 1720:122$ ) or 3.1:1. It is from here we indicate that each reservation at Expedia impacts 3-9 reservations at IHG.com related sites ("....for each reservation at the OTA 3 to 9 reservations at the brand's website are directly influenced by listing at the OTA...).

It is important to note that in the first Billboard study we argue causation as a result of the experimental design, in this follow-on study we simply state correlation between bookings at the OTA and those at supplier direct sites.

<http://www.hotelschool.cornell.edu/research/chr/pubs/reports/abstract-15540.html>



## ***The Truth about HB 150 & SB 160: The Travel Services Tax***

<b>What the Proponents of the New Tax on Travel Services Say</b>	<b>The Facts</b>
<b>HB150/SB160 is not a new tax. This is simply closing a loophole.</b>	<p>These bills would apply the state sales tax to the service fees of travel agents, online and in the community. Currently, travel agents don't pay sales tax on the fees they charge their clients. Under this bill, they would. This is a new tax on services.</p> <p>There is no loophole. Online travel agents (OTAs) collect from the consumer the room rate, the taxes on that room rate and service fees and pass on the proper amount for the room and taxes to the hotels.</p> <p><b>Every court</b> that examined whether OTAs are collecting and remitting the proper taxes has found that they do. <u>100% of the court rulings.</u></p>
<b>HB150/SB160 levels the playing field for the hotels.</b>	<p>The hotels are not at a disadvantage to the OTAs.</p> <p>They choose to partner with OTAs who help them market unsold inventory.</p> <p>Taxing travel agents does not level the playing field or benefit hotels in any way. It simply levies a new tax on Ohio travel agents and on the service fees of OTAs.</p> <p>There is no direct or indirect correlation between taxing travel agents and benefits to the hotels.</p> <p>Hotels could simply choose to not partner with OTAs like Southwest Airlines does.</p>
<b>Ohio bricks &amp; mortar travel agents aren't impacted by the new tax.</b>	<p>Not true. HB150 and SB160 would apply the state sales tax to the service fees of 300 Ohio travel agencies and their nearly 2,000 employees.</p>
<b>HB150/SB160 will not make Ohio hotels more expensive.</b>	<p>Like most tax increases, this one will be passed on to the consumer in the form of higher room rates, making Ohio hotels more expensive and less competitive with neighboring states.</p> <p>The higher rates will be directly and indirectly charged to the consumer in a variety of ways including when booking packages, in the opaque (name your own price) model and certainly will be accounted for during future negotiations between hotels and OTAs.</p>
<b>Other states are</b>	<p>All states that surround Ohio do NOT impose sales taxes on travel</p>

<p><b>doing so why shouldn't Ohio?</b></p>	<p>services providers. Dozens of other states across America have rejected similar proposals in recent years and Gov. Hogan of MD just vetoed a similar measure last week.</p> <p>The states that have passed this tax have not realized the promised revenue due to compliance/remittance complexities.</p> <p>Portland, OR was recently named the most expensive city for travel taxes in the country, due in part to Oregon's passage of similar travel services tax in 2012. Meeting and convention planners are paying attention.</p>
<p><b>HB150/SB160 are not a tax on Ohio residents.</b></p>	<p><u>Impact on Ohio Travel Agents</u> There are nearly 300 Ohio travel agencies with over 1,900 full time employees who currently don't pay sales tax on their service fees. This bill would apply the state sales tax to their service fees. This is a job killer.</p> <p><u>Impact on Ohio travelers</u> Industry data shows that between 25% and 30% of all Ohio hotel bookings on online travel sites are booked by Ohio residents. Ohio citizens will pay more for lodging under this new law.</p>
<p><b>HB150/SB160 won't impact Ohio's travel and tourism economy.</b></p>	<p>Industry data shows that a 1% increase in room rates results in a 2% reduction in bookings. Travelers will choose to stay in neighboring states to save money on hotels.</p> <p>It has been said that "if you tax something, you get less of it". Why would Ohio want to impose a new sales tax on services on an industry that markets Ohio to the world?</p>
<p><b>HB150/SB160 places no hardship on Ohio travel agents</b></p>	<p>This new tax on small businesses will also create a tremendous administrative burden for travel agencies and other small businesses in Ohio. If enacted, travel agencies of all sizes will now be responsible for creating extensive record keeping and administrative functions for collecting and remitting this tax. Compliance will be especially difficult for small business travel agents.</p>
<p><b>HB150/SB160 will raise much needed revenue for the state.</b></p>	<p>Any revenue raised by this new tax will pale in comparison to the economic impact lost as a result of a reduction in hotel bookings.</p>