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Testimony to the Ohio Senate Finance Committee ▪ Sub. HB 166 ▪ May 23, 2019
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Chair Dolan, Vice Chair Burke, Ranking Member Sykes, and members of the Senate Finance Committee, thank you for the opportunity to testify in support of the "Hotel Intermediaries" sales and lodging taxes clarification language in Sub. House Bill 166. The intent and effect of this language is simple: to clarify Ohio's tax laws to create a level economic playing field by requiring Online Travel Companies (OTCs) to operate like any other seller of goods by collecting and remitting sales tax on the price paid by the consumer.

When a consumer rents accommodations in Ohio through an internet booking company, the amount of tax remitted is currently based on what is akin to the "wholesale" price the OTC negotiated to have access to the hotel room, not the higher amount the consumer actually pays for the room. Booking sites for companies like Expedia and Priceline, and their many affiliates, charge consumers a higher price for rooms than those companies pay hotels for the same rooms. They keep the difference, and that's how they make a profit. (See attached infographic for details).

This language would not change that business model, but would make a simple clarification that levels the playing field regarding tax remittance between our in-state hotels, who employ hundreds of thousands of Ohioans, and out-of-state travel companies who have been remitting a lower amount of tax for years.

Clarification Summary
The language specifies that a hotel intermediary is a person that arranges for the sale of hotel rooms. Excluded from this definition are hotels; any person receiving a commission from a hotel; and any person imposing a charge for the service as long as the charge is separately identified on an invoice, bill of sale, receipt, or similar document given to the consumer. It specifies that the taxable base, for the purposes of the sales and use tax and local lodging taxes, is to be the advertised price of a room. And it requires the hotel intermediary to collect and remit local lodging taxes to the subdivision levying the tax.

Some of the most recent actions to address this problem across the nation include:

Pennsylvania – Effective 2019
Pennsylvania's H.B. 1511 or Act 109, signed into law by Gov. Tom Wolf on Oct. 24, 2018 and effective January 22, made online booking entities responsible for collecting and remitting sales and hotel occupancy taxes on rooms reserved through online platforms. It also dictated that the sales and hotel occupancy tax would be based on the customer's rate for the room, not the wholesale rate. A dozen online travel companies have registered for this process so far, including Expedia and Priceline subsidiaries and Airbnb, and $715,000 was remitted in the first month.

ALEC Online Lodging Marketplaces – Issued 2018
Model language specifies that with respect to any lodging transaction, the booking platform will remit the applicable tax to the state agency. It reads: "<u>This section clarifies tax is applied to amount consumer pays</u>… not "net amount received by [operator]."

Colorado – Effective 2017
The Colorado Supreme Court ruled in April 2017 that online booking companies failed to remit the right amount of lodging tax, because they sell hotel rooms to consumers:

(continued)

> "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.*]

NCSL Adopted Clarification Position – Adopted 2013
The National Conference of State Legislatures' Executive Committee Task Force on State and Local Taxation studied online travel companies and developed the following recommended principle for states when addressing taxation of lodging accommodations:

> "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 <u>remit taxes based on the rental price paid by the user.</u>"

Other states where state-level action on online travel companies had occurred, either in the legislature or the courts, include but are not limited to:

- Maryland (2016)
- Indiana (2016)
- Rhode Island (2015)
- Wyoming (2015)
- Hawaii (2015)
- Oregon (2013)
- Montana (2012)
- Washington, D.C. (2011)
- South Carolina (2011)
- North Carolina (2011)
- New York (2010)
- Georgia (2009)

Expedia Court Documents - 2003
In response to efforts to eliminate this unfair loophole, opponents falsely claim that efforts similar to this create a new tax, require a tax increase and/or would increase the cost for consumers. A review of memorandum from the online travel companies and their own advisors demonstrates this is not the case. An Expedia memo dated July 28, 2003 and uncovered in legal proceedings stated:

> "*Regarding the question of whether we should pass on occupancy tax costs to our customers, the current answer is 'no' – or maybe a more accurate answer is that we do not currently believe that is possible from a competitive standpoint*."

Other company memorandum described the loophole and the dividend the companies receive from taxpayers as a "luxury" that the OTCs know they won't be able to enjoy forever.

With action occurring across the country to modernize and clarify how online booking transactions are taxed, our industry and a large coalition of travel economy partners urge your support for this simple but important step. Thank you.

About the Ohio Hotel & Lodging Association

Founded in 1893, the Ohio Hotel & Lodging Association provides advocacy, information, resources, and education for operators and professionals in every type of lodging business. OHLA supports efforts to grow Ohio's travel economy, to provide jobs for hospitality professionals, and to maintain a prosperous hotel and lodging market. Ohio's brick-and-mortar hotel businesses employ more than 35,000 people directly, and support 184,000 total jobs. They provide 26 million room nights to guests annually and generate $25.5 billion in business sales and support $3.4 billion in taxes. The taxes generated by hotel stays in Ohio help provide critical services at both the state and local level. These services are important to residents and travelers alike. In addition, Ohio's hotel businesses provide direct support in the form of tax funding for destination marketing efforts which help bring even more travelers – and more economic activity – to Ohio.

Out-of-state online travel companies (OTCs) remit less taxes than others selling the same room in the same hotel on the same night -- and cost Ohio, its communities, and taxpayers in the process.

Travel consumer books identical room in same hotel on same night

OTC

Consumer "A" uses online travel company (OTC) website

HOTEL

OTC pays hotel $80

Room costs consumer $100, plus $17.50 in taxes

OTC

OTC keeps $20

Remission of taxes paid by consumer

Tax Jurisdictions

OTC

OTC remits <u>only</u> $14.00 in taxes on $80 to state and local jurisdictions

OTC <u>keeps</u> $3.50 as a <u>dividend at expense of government and taxpayers</u>

Travel consumer books identical room in same hotel on same night

HOTEL

Consumer "B" books through hotel directly (including the hotel brand website)

Room costs consumer $100, plus $17.50 in taxes

Remission of taxes paid by consumer

Tax Jurisdictions

Hotel remits <u>full</u> $17.50 in taxes due on $100 to state and local jurisdictions

In both scenarios, the consumer pays the exact same amount, $117.50, for the room, but only the hotel remits tax based on this amount. OTCs remit tax on a lower rate, and the state and communities are deprived of critical revenue.