

**Testimony of James Rowley**

**Before the  
Pennsylvania House of Representatives  
Tourism & Recreational Development  
Committee**

**Hearing on House Bill 1651  
Concerning State & Local Hotel Occupancy  
Tax Collections and Online Travel Agencies**

**April 26, 2010**

Mr. Chairman, members of the Committee, thank you for the opportunity to be here today. My name is Mickey Rowley, and I am deputy secretary for Pennsylvania's tourism, film, and economic development marketing office in the Department of Community and Economic Development. Prior to my appointment by Governor Rendell in 2003, the bulk of my career was spent working in the hotel industry in a variety of capacities. Based on my current position and my previous career, I am very familiar with the issues surrounding the avoidance of room tax payments by online travel companies.

This issue is of paramount importance to the commonwealth, which relies on the state hotel occupancy tax to help fund its general fund obligations. And although House Bill 1651 is confined to the state occupancy tax, this issue is also extremely important to our tourism promotion partners across the state that rely on local room tax revenues to fund a large portion of their operations; and to our hoteliers who are at a competitive disadvantage relative to the online travel agencies, or OTAs, such as Expedia, Priceline, Orbitz, Hotels.com, Travelocity, and others. Due to a seeming loophole, these online companies are able to charge consumers a lower amount in room tax than hoteliers collect for a hotel room that, in effect, costs the consumer exactly the same.

I would like to take a moment to explain how this happens. The average cost of a hotel room last year in Pennsylvania was \$100 (or \$99.96 to be exact). If a consumer booked a room directly with the hotel – either using the hotel's online booking engine or through a phone call – at the state average of a hundred dollars, that customer would have paid \$6 in state hotel occupancy tax and \$3 or more in local room taxes, depending on the county they stayed in. Let's assume they stayed at a hotel where the local room tax rate is 3%. That customer who booked directly with the hotel would have paid a total of \$109 for a single night at the hotel – \$100 paid to the hotel for the cost of the room and \$9 for state and local room taxes.

Now let's assume that same consumer booked that exact same hotel room through an online travel company, such as Expedia or Orbitz. The consumer probably doesn't know that Expedia and the hotel have negotiated a tax-inclusive agreement where Expedia has agreed it will not sell the hotel room for less than the amount charged by the hotel. This has been standard practice between hotel companies and the online travel companies for several years after InterContinental Hotels pulled its hotels out of Expedia when Expedia started undercutting InterContinental's lowest price. InterContinental's brands include the Crowne Plaza, Holiday Inn, and Holiday Inn Express, among others, so it has a lot of properties and some clout.

Returning to our example.... Booking the room through Expedia, the customer still pays \$109. However, how that money is divvied up among the various entities is a bit different. The hotel gets whatever price it has negotiated with Expedia – for our example, we'll assume it's \$80. We'll also assume Expedia gets an initial commission of 20% or \$20 in our example, although in practice the OTC's commission may be as high as 40%, according to a recent report by the Center on Budget and Policy Priorities. Expedia's \$20 commission together with the \$80 the hotel receives matches the \$100 the consumer would have paid for the room – excluding taxes – if he or she had booked the room directly with the hotel. Where it differs is in how the room taxes are levied.

In the case of the room booked directly with the hotel, it's straightforward – a combined 9% in state and local occupancy tax assessed on the \$100 nightly room rate, or \$9 with \$6 going to the state and \$3 for the local share. However, it's far less straightforward when the room is booked through Expedia or the other online travel companies. Expedia only collects the tax based on the \$80 room rate it has negotiated with the hotel and not on its \$20 commission or fee. The total cost to the consumer for the room is no different. That consumer is still paying \$100 for the hotel room – \$80 going from Expedia to the hotel and \$20 retained by Expedia. But instead of paying \$9.00 in

state and local room taxes, the consumer is paying \$7.20 or 9% of \$80. Under its agreement with the hotel, it can't sell the hotel room for less than what the hotel charges directly, so Expedia is pocketing the \$1.80 difference.

Now \$1.80 may not seem like much, but multiply some portion of the twenty-five million, two hundred twenty-nine thousand hotel rooms sold in the Commonwealth last year and that \$1.80 translates into an estimated four to six million dollars annually that is currently lost to the Commonwealth, according to a report by the Center on Budget and Policy Priorities.

The online travel companies vehemently disagree and see no reason to pay room taxes on their mark-up, claiming they should only collect and pay taxes on the wholesale price they have negotiated with the hotels. They contend they are not actually renting hotel rooms, but are simply acting as an intermediary between the consumer and the hotel, so there is no reason for the room tax to be levied on their mark-up.

They are wrong. The hotel tax is supposed to be levied on the price the consumer pays for the hotel room. In my example, it should be on the full \$100, which includes both the \$80 wholesale price the online travel company paid for the room and its \$20 mark-up. As far as I know, no other business excludes its mark-up when calculating tax that is owed by the consumer. If I go to the local hardware store and buy a shovel that costs \$25, I pay the state's 6 percent sales tax on the full \$25 retail price for that shovel. The hardware store does not exclude its mark-up and claim it should collect sales tax just on its cost for the shovel – that is, just the wholesale price – contending it is acting only as an intermediary between the manufacturer and the consumer. The hardware store collects the tax on the total retail price paid by the consumer.

In the same vein, if I buy something from a consignment shop, I pay sales tax on the full price being charged by the shop. In this case, the shop is truly an intermediary. Its function is to

facilitate a sale between the person who is trying to sell something and the person who wants to buy it.

For online travel companies to claim they are different from any other merchant selling a good or service is ridiculous. Yet, this has been their position for several years now and they are not backing off despite the dozens of lawsuits filed against them by states and municipalities across the United States. Some they have won, including a recent decision by the Philadelphia County Tax Review Board based on how the City's room tax ordinance is worded and not on the merits of the issue. Most of the lawsuits are tied up in litigation that has dragged on for years.

However, the online travel companies have lost a number of lawsuits; perhaps most notably last year's \$20.6 million decision in a suit brought by San Antonio and more than 170 other Texas municipalities. Not surprisingly, the online travel companies are appealing this decision, which is what they do whenever they lose.

They have also taken the added step of de-listing hotels in some of the smallest jurisdictions that have challenged them, apparently as an example to others thinking about filing suit. Our own Lawrence County happens to be just one of those chosen.

After an attorney filed suit against the online travel companies on behalf of Lawrence County last November, Orbitz stopped listing hotels located in the county. It is a true tale of David and Goliath since there are just a few hotels in the entire county. Last week when I searched on Orbitz for hotels in New Castle, the nearest hotel I could find was in Beaver Falls, Beaver County. There were hotels listed for Grove City, Mercer, Hermitage, and even a number of hotels in Ohio, but not a single listing for a hotel in New Castle. Fortunately, other online travel companies haven't followed Orbitz's lead – at least in this instance.

Why de-list hotels in Lawrence County and not some much larger destination that has sued the OTCs or modified their laws to ensure the tax is levied on the total retail price paid by the consumer? Simply, it isn't in the financial interests of the online travel companies to do so. Instead, the OTCs de-list the smallest destinations, but aggressively fight the lawsuits of the largest ones. In the case of New York City, which last year adopted a law extending the City's hotel occupancy tax to "re-marketers" and on the total retail price paid by consumers who rent a hotel room in New York City, the OTCs are pursuing a lawsuit themselves against the City. It will be very interesting for us in Pennsylvania to see how this lawsuit is finally decided, although I should note the New York City law had several provisions that go beyond the provisions in House Bill 1651.

I would like to conclude by noting that some in the travel industry argue the online travel companies are pure evil and should have no role in facilitating travel. I don't share this opinion. I believe online travel companies can and do provide a valuable service to both the traveling public and to the industry. This is perhaps especially true for independent hotels that don't have the name recognition and advertising power of the chain hotels. Being listed along with the major chain hotels can give an independent hotel access to a worldwide audience that it could otherwise never afford.

Nevertheless, I do believe that when it comes to their avoidance of taxes based on the full retail price paid by the traveling public, the online travel companies are wrong. I hope you will give their full support to House Bill 1651 and ensure its enactment into law and that similar legislation will be introduced and enacted for the local room tax.

Thank you for allowing me the opportunity to comment on this vitally important issue.