House Tourism and Recreational Development
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April 26, 2010

Chairman Kirkland, Chairman Barrar and members of the House Tourism and Recreational Development Committee, on behalf of Secretary of Revenue Daniel Hassell, I would like to thank the Committee for the opportunity to discuss the issue of the taxation of online travel companies (OTCs), such as Travelocity, Expedia and Orbitz. The Department believes the current statute requires OTCs to collect and remit the hotel occupancy tax, however because a controversy has arisen on this point the Department supports clarifying the statute. A good starting point for this discussion is the current status of the imposition of Pennsylvania's hotel occupancy tax on OTCs.

In the typical business model, the OTC negotiates room rates with the hotels and then offers those rooms to customers through its website, at a higher rate. When the customer selects a room on the OTC website, the customer's credit card is charged by the OTC for the total price of the room as listed on the website. No hotel occupancy tax is charged at the time the occupant's credit card is billed.

After the customer completes their stay, the hotel bills the OTC for the lower room rate negotiated by the hotel and the OTC along with the applicable Pennsylvania hotel occupancy tax based on the price charged by the hotel to the OTC. The hotel collects and pays the hotel occupancy tax to the Commonwealth based on this lower price. The difference between the amount charged on the customer's credit card and the amount charged by the hotel to the OTC is retained by the OTC, and no tax is paid on the differential which is essentially the OTC's markup. This is the amount that the Department believes is currently subject to tax. However, OTCs are challenging the imposition of tax by Pennsylvania and other taxing authorities throughout the country. House Bill 1651 is intended to confirm the OTC's obligation to pay tax on the differential even clearer than it is under current law.

The Department of Revenue estimates that the projected loss of state hotel occupancy tax from the failure of the OTCs to collect and remit tax on their markup ranges from $1.6 million in 2008-09 to $2.1 million in 2014-15. These revenue losses are based on audit data from online travel companies produced by the Department's Bureau of Audits.

The Department believes that the definition of "rent" includes any amounts paid to the OTCs. On this basis, the Department has audited several OTCs and issued assessments on the differential previously discussed. The OTCs have filed appeals contesting the assessments mainly on the grounds that they are not hotel operators.

The Commonwealth imposes "an excise tax of six percent of the rent upon every occupancy of a room or rooms in a hotel in this Commonwealth, which tax shall be collected by the operator from the occupant and paid over to the Commonwealth as herein provided." 72 P.S. § 7210. The OTCs argue that only an "operator" has the obligation to collect and remit the tax. An "operator" is defined as "[a]ny person operating a hotel." 72 P.S. § 7209(a)(4). It is anticipated that this issue will be decided by the Commonwealth Court or Pennsylvania Supreme Court depending on how far the matter is pursued. Clarifying the statute to make clear that the OTCs are required to collect sales tax would settle this issue in the future.

As currently written, House Bill 1651 amends the definition of "rent" to specifically include any amounts charged by OTC. Although the Department believes the current definition is sufficient to capture these amounts, the amendment eliminates any doubt as to whether OTC charges are included in taxable rent. As long as these provisions are being amended, and again the Department believes the current statute is sufficient, the Department recommends that the term "operator" be clarified to finally settle the issue as to whether OTCs are hotel "operators." Attached is the Department's language accomplishes this.

Thank you for the opportunity to address this issue.