

TOURISM AND RECREATIONAL DEVELOPMENT COMMITTEE  
HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA  
PUBLIC HEARING ON HOUSE BILLS 871-875  
ONLINE TRAVEL SERVICES

Public Hearing held in the National Constitution Center, 525 Arch Street, Philadelphia, Pennsylvania, held on Tuesday, October 29, 2013, commencing at 1:01 p.m., before Kathleen McHugh, a Registered Professional Reporter, Certified Realtime Reporter, Certified Court Reporter, (NJ), and Notary Public.

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1 APPEARANCES:

2 Chairman Pro Tem Gordon Denlinger

3 Chairman Thaddeus Kirkland

4 Representative Mike Fleck

5 Representative Matt Gabler

6 Representative Doyle Heffley

7 Representative Rob W. Kauffman

8 Representative Dan Moul

9 Representative Vanessa Lowery Brown

10 Representative Frank Burns

11 Representative Margo Davidson

12 Representative Jaret Gibbons

13 Allen R. Taylor

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1                   CHAIRMAN PRO TEM DENLINGER: Good  
2 afternoon, everyone. Welcome to this hearing of the  
3 House Tourism and Recreational Development Committee.  
4 I'm Representative Gordon Denlinger and I'm subbing in  
5 for Representative Jerry Stern who is unable to chair the  
6 meeting today, and so I was happy to say yes to his  
7 request to take the gavel. But he didn't give me a  
8 gavel, so I'm gavelless, but all the same.

9                   I'm going to ask that the members identify  
10 themselves and the district that they represent. So  
11 we'll start to the far right here with Representative  
12 Moul.

13                   REPRESENTATIVE MOUL: Good afternoon. I'm  
14 Representative Dan Moul from 91st Legislative District  
15 and that is Adams County, home of Gettysburg, where  
16 America was saved.

17                   REPRESENTATIVE KAUFFMAN: And I'm Rob  
18 Kauffman, representative from Franklin and Cumberland  
19 Counties, the Chambersburg/Shippensburg area.

20                   CHAIRMAN KIRKLAND: Good afternoon.  
21 Representative Thaddeus Kirkland, Democratic Chairman of  
22 the committee. Your neighbor right next door, Delaware  
23 County.

24                   REPRESENTATIVE HEFFLEY: Representative  
25 Doyle Heffley. 122nd District, Carbon County.

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1                   REPRESENTATIVE GABLER: Good afternoon.  
2 Matt Gabler, 75th Legislative District, Elk and  
3 Clearfield Counties.

4                   REPRESENTATIVE FLECK: Good afternoon.  
5 Representative Mike Fleck, 81st District, Blair,  
6 Huntingdon, and Mifflin Counties.

7                   REPRESENTATIVE BURNS: Representative  
8 Frank Burns, Cambria County.

9                   REPRESENTATIVE GIBBONS: Representative  
10 Jaret Gibbons from the 10th District, Beaver, Lawrence,  
11 and Butler Counties.

12                  CHAIRMAN PRO TEM DENLINGER: Very good.  
13 Thank you, Members.

14                  The topic of today's hearing, public  
15 hearing, is House Bills 871 through 875. There are  
16 packets available which have the bills in them up on the  
17 front corner chair here.

18                  These bills amend the various state and  
19 county hotel room taxes to require that the full price a  
20 customer pays to book a room, including any amount  
21 retained by an intermediary, such as an online booking  
22 agent, is subject to state and county taxes. As  
23 mentioned, the summary of the bills is in the packets.

24                  We're going to hear first from the prime  
25 sponsor of these bills, Representative Gary Day from

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1 Lehigh Valley, and we'll follow that with a panel  
2 representing lodging and travel organizations and a  
3 second panel representing online travel sellers.

4 So with that, I will turn it over to  
5 Representative Kirkland for any opening comments.

6 CHAIRMAN KIRKLAND: Thank you,  
7 Mr. Chairman.

8 Just wanted to say welcome to you all. We  
9 look forward to having a very good discussion concerning  
10 this legislation. Appreciate the efforts of  
11 Representative Day and others as we move forward, so  
12 welcome to sunny Philadelphia.

13 CHAIRMAN PRO TEM DENLINGER: Well said.  
14 Very good.

15 We do want to thank the National  
16 Constitution Center for welcoming us and allowing us to  
17 meet here today, a beautiful site where we recognize the  
18 rich history of our nation.

19 With those preliminaries out of the way,  
20 Representative Day, if you'd like to begin your  
21 testimony, we're ready to begin.

22 REPRESENTATIVE DAY: Thank you very much,  
23 Mr. Chairman.

24 I'd like to thank, you know, the chairman  
25 of the committee, Representative Stern, very kind to

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1 schedule this hearing and I want to take this time to  
2 thank you, Mr. Chairman, for your introduction, and also  
3 thank the Constitution Center for allowing us to have  
4 this hearing here.

5           Also, I think it's important to note that  
6 our Minority Chairman Kirkland has been a leader in this  
7 issue many years before I picked up the flag on this  
8 issue, and now through this package of legislation trying  
9 to forward and achieve hopefully a mutual beneficial  
10 result to the industry as well as Pennsylvania's tourism.

11           So I think it should be said and noted  
12 right away that I very much appreciate Minority  
13 Chairman's kind words at the opening here and recognize  
14 your work on this as well, and I appreciate that very  
15 much.

16           I view today's public hearing as a way to  
17 explain the intent of this legislative package and the  
18 actions proposed. I view the hearing as a way to allow  
19 for industry experts to, you know, testify and give  
20 information either for or against this legislative  
21 package but also hopefully to help guide us towards that  
22 mutual understanding of how to make Pennsylvania tourism  
23 stronger and better.

24           This legislation to me is not a new tax.  
25 Many people have already come out and talked about this

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1 legislation as a new tax. I believe it's merely filling  
2 or closing a tax loophole.

3 Now, make no mistake, it is a new tax to  
4 the businesses that have been enjoying the benefits of  
5 taxation of other travel industry, tourism industry  
6 businesses, but escaping paying the tax that other  
7 partners in tourism pay, which, by the way, this tax is  
8 for the betterment of Pennsylvania tourism.

9 So I want to make clear right from the  
10 start that in no way is this meant as an attack on those  
11 businesses. Merely closing a loophole that they've  
12 enjoyed. They've done nothing wrong as far as I'm  
13 concerned. It's a change that this -- this loophole  
14 could be around \$5 million to the Commonwealth of  
15 Pennsylvania.

16 So it's an impressive amount of dollars.  
17 It's not just five or \$10,000 across the Commonwealth.  
18 It could be an impressive amount of dollars that stay  
19 with these companies now and -- rather than be rightfully  
20 used in tourism promotion across Pennsylvania.

21 So let me explain the loophole. So hotels  
22 charge, let's say, \$300 for a room and that includes,  
23 from a business perspective, it could include any of the  
24 following: Land, buildings, amenities of that -- that  
25 cost in that room, cleaning, administration, reservation

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1 services, and when they sell a room they pay a hotel tax  
2 on all of these services. All of these services and  
3 costs to providing that hotel room.

4 But the tax is applied to the final sales  
5 price of the room. So if our Internet companies, our  
6 contract -- reservation contractors pay less than the  
7 \$300, let's say \$240 for that room, they could charge the  
8 end-user any amount of dollars.

9 Usually you'd think with a business plan,  
10 majority of those rooms are higher than what they paid  
11 for, otherwise they wouldn't be able to stay in  
12 business. So, on average, those rooms will be higher,  
13 and it's just that increment that is not paying the hotel  
14 tax.

15 So I want to be clear right from the start  
16 that it's not the entire amount, but it's just the  
17 increment difference between what the reservation  
18 companies pay and what the end-user pays.

19 So, hotel tax. Why is it here? Should it  
20 be here? Most tourism professionals, most people, even  
21 hoteliers, will say they've come to the conclusion, not  
22 all of them but most of them, have come to the conclusion  
23 that it should be here. And it's a tax that's generated  
24 by the industry for use by the industry and it's used to  
25 expand the industry, including, hopefully, jobs in



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1 Pennsylvania.

2           So the legislature enables this tax  
3 structure and it was implemented to be calculated, the  
4 hotel tax was implemented to be calculated based on the  
5 sale of the room night to the consumer.

6           Therefore, this loophole emerged when  
7 Internet-based companies came in and provided the  
8 reservation portion of this service of selling that room  
9 and they innovated to their betterment, to the industry's  
10 betterment. They innovated, became more efficient, and  
11 hopefully achieved renting out more of those rooms in  
12 Pennsylvania.

13           You know, the question becomes, their  
14 efficiency, their innovation, should the amount that they  
15 save, should that be all part of their profit? I say  
16 yes. Should the amount that they save by not paying the  
17 tax be part of their margin as well, I'm saying no with  
18 this legislation.

19           I'm saying it's time -- in the beginning I  
20 was in an Internet company and our mantra was, you know,  
21 don't tax the new Internet companies. This is in '99,  
22 2000. We're almost 15 years later.

23           An uncompetitive tax period, in my eyes,  
24 could be six, maybe seven years of government staying out  
25 of the way. It's now time for Pennsylvania to look at

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1 closing this loophole, and I don't think -- I think their  
2 margin is well enough that we won't be injuring their  
3 company.

4           They will not be keeping the \$5 million  
5 collectively as an industry. Those dollar amounts will  
6 be coming back to Pennsylvania to help fund the expenses  
7 and to create a fair taxation system in Pennsylvania and  
8 equality among all transportation companies in  
9 Pennsylvania.

10           Now, I could go on and talk about  
11 Pennsylvania sales tax, who's exempt from that, as a  
12 close sister to the idea of a hotel tax, and who should  
13 be exempt from certain services, but I'm not going to do  
14 that today.

15           In the interest of keeping my testimony as  
16 short as possible, giving you a thumbnail sketch  
17 overview, why I'm doing this legislation, why now, and  
18 what the importance is to Pennsylvania is why I'm here to  
19 talk today.

20           So in the interest of that time, I myself  
21 desire to hear from the industry and I'll cut all my  
22 introduction down to right here.

23           I want to thank you all for your  
24 engagement, for coming here to this wonderful facility,  
25 and being here today to listen and examine and review

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1 this legislative proposal, and I'm wide open to any  
2 comments, ideas, or changes to move -- to move to close  
3 this tax loophole and bring these assets to Pennsylvania  
4 in the time of, you know, short budgeting issues that we  
5 all face all the time, and to try to drive what could  
6 become Pennsylvania's -- I think it's -- isn't tourism  
7 second highest industry behind agriculture -- and to push  
8 it further into being that economic generator for  
9 Pennsylvania without raising broad taxes across people in  
10 Pennsylvania.

11 Mr. Chairman, thank you for the  
12 opportunity to speak and I look forward to hearing from  
13 industry professionals, if that's -- or if you'd  
14 like questions --

15 CHAIRMAN PRO TEM DENLINGER: I think we'd  
16 like to open it up to a few questions if we may.

17 REPRESENTATIVE DAY: Sure.

18 CHAIRMAN PRO TEM DENLINGER: And I'll  
19 begin. I'm just wondering, could you share with us -- I  
20 have two questions, actually. What other states and  
21 their state sales tax models do with regard to -- their  
22 hotel room tax models do with regard to online or third  
23 party sellers, that's question number one.

24 And, number two, can you share with us --  
25 and if you don't know the answer to this right off, I'll

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1 fully understand -- the percentage of stay bookings that  
2 happen via sort of the traditional contact a hotel and  
3 what percentage would be via third party reseller?

4 REPRESENTATIVE DAY: So the first question  
5 I'll answer very quickly because it's a complicated grid  
6 of what would be -- how it would be done in different  
7 states, and it would be something that would be more  
8 efficient to be shared with the committee at a later time  
9 through Allen or there may be some people testifying  
10 today with that data presented in a more concise --

11 CHAIRMAN PRO TEM DENLINGER: If you could  
12 find that out and get back to the committee, that would  
13 be appreciated.

14 REPRESENTATIVE DAY: Sure.

15 And could you restate, percentage -- I  
16 think I -- but I want to clarify that second question.

17 CHAIRMAN PRO TEM DENLINGER: Sure. Just a  
18 rough round number by percentage, the number of  
19 traditional bookings versus third party bookings that  
20 happen within the industry.

21 REPRESENTATIVE DAY: I think both of our  
22 testifiers will be able to testify and agree on that  
23 exact number. It's changed. Over the years, over the  
24 last 15 years, it's been a steep curve of changing where  
25 the volume increased, and I don't -- I don't feel

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1 comfortable sharing today because I think my numbers  
2 would be older than the industry could provide at this  
3 hearing.

4 CHAIRMAN PRO TEM DENLINGER: Very good.  
5 With that, Chairman Kirkland.

6 CHAIRMAN KIRKLAND: Thank you,  
7 Mr. Chairman.

8 Just briefly. First of all, thank you  
9 Representative Day for introducing the legislation and  
10 taking the bold stance of providing us with this  
11 information and this legislation, which I believe is very  
12 desperately needed.

13 You had mentioned \$5 million comes back to  
14 help, this \$5 million, you said from the expenses, and I  
15 wasn't clear on the expenses of Pennsylvania, the  
16 expenses of the industry, and if so, could you give us  
17 some clarity on which type of expenses that we might be  
18 talking about?

19 REPRESENTATIVE DAY: Sure. I think that  
20 was in my comments about -- I was trying to tie together  
21 two components of -- I was trying to give the industry  
22 its due and not give the impression that there is a tax  
23 loophole for the entire \$300 room night.

24 And I was trying to break it out and say  
25 that there's different services that go into that \$300.

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1 So the services I talked about would be the services  
2 provided by the hotelier that go into the value of that  
3 room night, that final room night, so I might have been  
4 confusing with that language.

5 That was the expenses I was talking about,  
6 and I think you asked, correct me if I'm wrong, but the  
7 dollar amount, the 5 million. That was an estimate done  
8 probably about 18 to 20 months ago. It could -- it's  
9 probably a lot higher than that.

10 But on the incremental amount and the  
11 dollar amount that would come back to the Commonwealth  
12 and also other transportation entities in the  
13 Commonwealth, so I added that together to try to -- you  
14 can really, as you know, make the numbers look how you  
15 want them to look for your argument, so the most honest  
16 way I tried to quantify what the legislation meant is to  
17 put that altogether and say what would all those dollars  
18 be for just the incremental amount added up and brought  
19 back to Pennsylvania.

20 Does that answer your question?

21 CHAIRMAN KIRKLAND: That's good.

22 REPRESENTATIVE DAY: Thank you.

23 CHAIRMAN KIRKLAND: Thank you,

24 Mr. Chairman.

25 CHAIRMAN PRO TEM DENLINGER: Very good.

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1 Some questions also from Representative Doyle Heffley.

2 I do want to acknowledge the presence of  
3 Representative Vanessa Brown. Welcome. Good to have you  
4 join us today.

5 REPRESENTATIVE HEFFLEY: Question. The  
6 services that the -- the travel agency -- or the online  
7 travel agencies provide, how is that different than the  
8 services that a travel agent would provide? I mean, if  
9 the travel agent was booking, say, a trip, and they're  
10 selling a block of rooms, are they taxed on their  
11 services that they provide in that room tax as well?

12 REPRESENTATIVE DAY: I -- to be honest  
13 with you, I haven't looked at it that way. I don't know  
14 how it would be compared exactly and I wouldn't feel  
15 comfortable telling you -- I wouldn't feel comfortable  
16 answering that question without answering it wholly and  
17 fully.

18 I -- I tried to compare their activity to  
19 the same as the reservation activity, say, Hilton Hotels,  
20 they have reservation activity, and they're  
21 subcontracting out that reservation activity for -- you  
22 know, with these companies.

23 Your question is a good question and  
24 something that we can work toward and try to figure out  
25 if there is equality there or not, tax fairness or not.

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1 REPRESENTATIVE HEFFLEY: Thank you.

2 CHAIRMAN PRO TEM DENLINGER: I believe we  
3 will have someone testifying by the travel agents  
4 association that could probably zero in on that issue.

5 We do also want to acknowledge the  
6 presence of Representative Margo Davidson. Welcome,  
7 Margo. Glad to have you join us.

8 With that Representative Rob Kauffman. I  
9 believe you have a question.

10 REPRESENTATIVE KAUFFMAN: I was just going  
11 back to in your opening statement you talked about the \$5  
12 million per year revenue generation, correct?

13 REPRESENTATIVE DAY: Yes.

14 REPRESENTATIVE KAUFFMAN: Did any of those  
15 figures, were they generated from the industry, from  
16 independent study, from the Commonwealth, how did those  
17 figures come about?

18 REPRESENTATIVE DAY: I'm going to ask  
19 Allen for a little bit of support here. Can you give me  
20 a little bit of help on that?

21 MR. TAYLOR: It's an estimate. It's an  
22 estimate from -- back of the envelope calculations  
23 honestly.

24 It's very hard to determine because each  
25 county has a different room tax and then you have the



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1 state sales tax -- I mean, state hotel and occupancy tax  
2 as well, so you could be dealing with 9 percent or you  
3 could be dealing with 15.5 percent in Philadelphia.

4           Then you have to figure out how many  
5 people are staying in each of those locales that book  
6 through online travel sellers, so it's very difficult to  
7 get our hands on. Revenue really didn't have a good  
8 figure for us either.

9           REPRESENTATIVE DAY: So we tried to go  
10 through Pennsylvania revenue, and I think -- I think  
11 there were reports and maybe our tourism folks might be  
12 able to help us with that. There might have been other  
13 state reports, but nothing that I wanted to cite in my  
14 comments today.

15           MR. TAYLOR: It's a slippery figure.

16           REPRESENTATIVE KAUFFMAN: So that may be  
17 something that -- we might get a more accurate reading  
18 with appropriations help and, you know, those folks  
19 looking at it.

20           MR. TAYLOR: If it's possible.

21           REPRESENTATIVE KAUFFMAN: Okay. So it's  
22 that obscure that we may never know until we do it?

23           MR. TAYLOR: Right.

24           REPRESENTATIVE DAY: Representative, when  
25 I went through the calculations myself, I settled on that

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1 as hopefully an unassailable number. I think the number  
2 is going to be higher from my lay look at how we  
3 calculated that, so I thought that was a floor or darn  
4 close to a floor.

5 REPRESENTATIVE KAUFFMAN: Thank you.

6 CHAIRMAN PRO TEM DENLINGER:

7 Representative Moul.

8 REPRESENTATIVE MOUL: Thank you,  
9 Mr. Chairman. Thank you, Gary, for your testimony and  
10 giving me a reason to come to this wonderful city and  
11 spend the day.

12 I guess to get to the crux of your  
13 legislation, one would have to ask, is the difference  
14 between what the end-user pays for the room and what an  
15 online service would pay for the room, would that be  
16 considered a commission, and then follow that up by, do  
17 we charge pillow tax on commissions.

18 REPRESENTATIVE DAY: Well, I think once we  
19 get past the facts, we come down to the legislature has  
20 to make a decision on whether this is a taxable action or  
21 not, and that's kind of what your question is. You want  
22 to call it a commission? Should we tax it? Do you want  
23 to call it this?

24 And I think whoever engages on this issue  
25 one way or the other has to say, I'm looking at it more

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1 like a commission. I'm looking at it more like, this is  
2 a subcontractor performing a reservation service, that's  
3 why I wrote these bills, and I think that that means that  
4 it's a tax loophole that needs to be closed.

5 I looked at the hotel taxes put out there  
6 almost like a grid on top of an economic behavior to do  
7 what I would rather do. Rather than broad taxes, I'm a  
8 fee-based person, I'd rather those fees be used for that  
9 industry.

10 So to get back to your question directly,  
11 I wouldn't look at it as a commission, I look at it as  
12 they're performing the reservation service. And in  
13 Pennsylvania, sales tax, hotel tax is meant to be  
14 generally on the end-user, final price to the consumer.

15 If you get into sales tax exemptions, I  
16 worked on a farm, you understand farm tax exemption. I  
17 have people coming into my office who install garage  
18 lifts that lift up vehicles. If they perform maintenance  
19 on those, they have to charge sales tax. If they sell  
20 the whole package, they don't.

21 And that whole slippery slope of who's  
22 exempt and who's not, I think that's where the  
23 legislature actually has to end up making a policy  
24 decision on are they going to exempt this activity or  
25 not.

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1                   So I'm not -- I'm saying my position is  
2 that I'm viewing it as a reservation service  
3 subcontracted by the hotels. If we want to look at this  
4 differently as a body, I'm open to that and following  
5 that to its just conclusion.

6                   REPRESENTATIVE MOUL: What do you think  
7 the commission, if you will, for lack of a better term  
8 here now, what do you think the average commission to an  
9 online service would be if a room sells to them for 100,  
10 what would they charge it out as? I don't know that  
11 answer.

12                   REPRESENTATIVE DAY: You know, I tried to  
13 make a statement and I might be a little guilty of, I  
14 wrote this out two weeks ago, and then every time I went  
15 back over it, I made it more and more efficient because I  
16 thought of my colleagues and tried to be as efficient as  
17 possible, and I may have cut that part a little too  
18 short.

19                   I don't know, and I don't know what that  
20 number is. The best way to get that information is from  
21 the industry. If I represented the industry, I would  
22 probably estimate that a little lower, depending on  
23 variables. All proper, but depending on certain  
24 variables. I would want that to be as small as possible.

25                   The bottom line comment I tried to

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1 make in my comments were, they must be selling an average  
2 of them for over what they paid, otherwise why would they  
3 stay in business, why would they show the returns that  
4 they're showing.

5           Unless there's a completely different  
6 business model, that they're making money another way and  
7 they're selling rooms for less. I don't know what that  
8 is. I don't know if there's kickbacks like the car  
9 industry or anything like that. I don't know that that  
10 would matter for my argument here.

11           My argument here is, I think they purchase  
12 low and sell higher than that on average, and that  
13 increment, and I'm trying to be clear and fair to them,  
14 some people make the argument, they're not paying their  
15 fair share. I don't want to make that argument. There  
16 is a lot of -- their activity is being paid the tax.  
17 There's a small amount that's sliding through what I  
18 consider a loophole for Pennsylvania's tourism industry.

19           So I hope I answered your question. Your  
20 question was, What do they pay, what are their margins?  
21 The answer is, I don't know, but I would think it has to  
22 be more than what they pay for on average. Not every  
23 room, but on average.

24           REPRESENTATIVE MOUL: Clear as mud. Thank  
25 you.

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1 CHAIRMAN PRO TEM DENLINGER: I think on  
2 that note we will move on to the next testifying panel.

3 Representative Day, thank you for your  
4 testimony.

5 REPRESENTATIVE DAY: Thanks very much.  
6 Thanks, everyone.

7 CHAIRMAN PRO TEM DENLINGER: And at this  
8 time we'll welcome to the front table here Mr. Bill  
9 Fitzgerald, President of the Valley Forge Convention and  
10 Visitors Bureau; Mike Rodden, general manager of the  
11 Philadelphia Marriott West; and Shawn McBurney, Senior VP  
12 of Government Affairs for the American Hotel and Lodging  
13 Association.

14 Gentlemen, welcome all, and I don't know  
15 if you flipped a coin to see who would want to go first  
16 here, but I'll leave that up to your discretion.

17 MR. FITZGERALD: We did, but based off  
18 some of the questions, I'm thinking we may want to flip-  
19 flop some things because Mike's testimony really answers  
20 quite a few of the questions that I just heard asked, but  
21 I didn't --

22 CHAIRMAN PRO TEM DENLINGER: Mike, you're  
23 first up.

24 MR. FITZGERALD: I didn't plan to say  
25 that. I hope you're okay with it.

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1 MR. RODDEN: Fair enough. Absolutely.

2 Good afternoon. Chairman pro tem  
3 Denlinger, Chairman Kirkland, and members of the House  
4 Tourism and Recreational Development Committee. Thank  
5 you for the opportunity to testify today regarding the  
6 package of bills sponsored by Representative Day that  
7 would ensure tax fairness and proper remittance of taxes  
8 by online travel companies for hotel accommodations  
9 booked in Pennsylvania.

10 My name is Mike Rodden. I'm the general  
11 manager of the Philadelphia Marriott West Hotel in West  
12 Conshohocken, Pennsylvania.

13 Let me begin by saying that the  
14 Pennsylvania Restaurant and Lodging Association supports  
15 this package of bills because it would close the OTC tax  
16 loophole currently benefiting out-of-state companies.

17 Online travel companies such as Orbitz,  
18 Expedia, Priceline, et cetera, currently remit taxes on  
19 the wholesale cost of the rooms they sell. This package  
20 of bills would ensure online travel companies remit taxes  
21 on the retail cost, the cost that their customers are  
22 paying.

23 At the end of July this committee held a  
24 hearing on hotel taxes and the need for increased tourism  
25 funding. Closing the OTC tax loophole is a simple way to

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1 ensure that local tourism promotion agencies are  
2 receiving the full hotel tax revenue needed to promote  
3 the area they represent at no additional cost to  
4 travelers or taxpayers.

5           Let me refer you to the diagram on Page 3  
6 of my testimony to an example illustrating this  
7 discrepancy. In this example, when a customer purchases  
8 a hotel room directly from a hotel or a hotel's online  
9 channel, he or she would pay \$100 for the room plus \$10  
10 in applicable taxes, assuming a 10 percent tax rate, or a  
11 total of \$110. The hotel would remit the \$10 in taxes  
12 that it collected from the customer back to the tax  
13 jurisdiction.

14           Now, let's say the customer purchased the  
15 same hotel room from an online travel company. In this  
16 example, the customer is charged the same \$100 retail  
17 price before taxes, which is governed by the hotel  
18 contracts with the OTCs. The wholesale rate offered by  
19 the hotel to the OTC is \$80.

20           To the customers, the OTCs assess taxes  
21 and fees on the \$100 retail rate but do not specify the  
22 breakdown of their markup. The OTCs have systematically  
23 chosen to base the tax they remit on the \$80 wholesale  
24 rate the OTC pays the hotel, not on the \$100 retail rate  
25 the customer pays the OTC. So they remit \$88 to the



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1 hotel, the \$80 wholesale rate and the \$8 in taxes.

2           The result is for virtually identical  
3 transactions of booking a hotel room, two different  
4 amounts of taxes are remitted depending on the booking  
5 method. \$10 from the straight hotel booking versus \$8 in  
6 an OTC booking. The customer is paying the money, it's a  
7 matter of who gets to keep it, the OTC or the tax  
8 authorities.

9           Let me point out that in no other  
10 wholesale to retail business model are taxes only  
11 remitted on the wholesale rate. If you were to purchase  
12 a television by Best Buy, the tax is assessed and  
13 remitted based on the retail price the consumer pays, not  
14 the wholesale price Best Buy paid the manufacturer.

15           Back to the diagram, we are looking at a  
16 \$2 shortfall between what the hotel remits to the state  
17 and what the OTC remits on a similar transaction. It was  
18 estimated by the Department of Community and Economic  
19 Development in 2010 that if the OTCs remitted taxes based  
20 on the retail amount of the rooms they sell, the states  
21 could have received up to 5 million in additional sales  
22 and hotel tax revenue. That's millions of additional  
23 funds that tourism promotion agencies could use to market  
24 their respective areas and encourage more visitors.

25           This summer the executive committee task

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1 force on state and local taxation of the National  
2 Conference of State Legislators unanimously approved a  
3 resolution that states should pass legislation clarifying  
4 tax laws to ensure OTCs remit taxes on the retail prices,  
5 which is exactly what Representative Day's legislation  
6 would do.

7 This package of bills levels the playing  
8 field by ensuring taxes are remitted equitably and fairly  
9 based on the retail amount paid by the customer,  
10 adjusting the law as necessary to stop the OTC practice  
11 of choosing the basis on which they are remitting taxes,  
12 and ensure consistency in hotel tax policy.

13 On behalf of the PRLA, I urge you to vote  
14 these pieces of legislation out of committee, close the  
15 OTC tax loophole, and ensure Pennsylvania receives the  
16 additional revenue to promote our destinations.

17 Thank you for your time and I'll be happy  
18 to take any questions.

19 CHAIRMAN PRO TEM DENLINGER: Thank you,  
20 Mike. I think we want to hold questions from the group  
21 for a moment, however, there were some issues raised  
22 during the last testimony. Would you like to expand your  
23 remarks to address any of the questions previously raised  
24 by members of the committee?

25 MR. RODDEN: I can give you a couple from

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1 the hotel perspective. The question was asked about the  
2 travel agencies when they booked and how that is  
3 typically done. I'm speaking for 90 plus percent of the  
4 transactions that I'm aware of in a traditional travel  
5 agency model.

6 The agency would book the room for the  
7 consumer. And I'll use the same \$100 example. And the  
8 consumer would come to the hotel and pay us, and after  
9 the fact, we would pay a 10 percent commission to the  
10 travel agency or \$10 in that case. We would remit taxes  
11 on the \$100 sales price.

12 There may be other contractual models that  
13 individual hotels have worked out but that's the  
14 traditional model.

15 CHAIRMAN PRO TEM DENLINGER: Very good.

16 I think with that we'll move to the second  
17 testifier.

18 MR. FITZGERALD: Good afternoon,  
19 Gentlemen. Chairman Denlinger, thank you. Chairman  
20 Kirkland, thank you. And House Tourism Committee  
21 Members, thank you.

22 My name is Bill Fitzgerald and I'm the  
23 president of the Valley Forge Convention and Visitors  
24 Bureau, but most of my background is the hotel business.  
25 Worked for Hilton for 25 years. Had several of their

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1 hotels as a general manager, most recently at the  
2 Doubletree Hotel in Philadelphia here.

3 I'm also here today representing the  
4 Pennsylvania Association of Travel and Tourism which is  
5 the statewide organization that represents Pennsylvania's  
6 travel and tourism industry. Our organization's members  
7 are the 49 convention and visitors bureau, the CVBs if  
8 you will, the various regional marketing organizations,  
9 CPTMC as an i.e., as well as many private sector  
10 businesses representing our travel and tourism industry  
11 throughout Pennsylvania, its wineries, arts and culture,  
12 hotels, B&Bs, retail outlets, ski areas, snow mobiling,  
13 amusement parks, and so many other travel and tourism-  
14 related businesses.

15 I'm here today to comment on the bills --  
16 package of bills that Representative Day has introduced,  
17 HB 871 through HB 875. These bills would close the  
18 current loophole that permits online travel companies to  
19 remit less tax than in-state lodging establishments.  
20 PATT supports the closing of this loophole. This has  
21 been an issue that has been on our priority list for  
22 several years.

23 Currently the Commonwealth and the  
24 counties, as you've heard, are losing money because the  
25 online travel companies, these OTCs, are remitting taxes

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1 on a lesser amount than the actual cost at which they  
2 sell a hotel room. When a customer books an overnight  
3 stay directly with a lodging establishment, the lodging  
4 establishment charges the appropriate tax on the billed  
5 cost of the room and remits the taxes to the state and to  
6 the local county.

7           When a customer books an overnight stay  
8 with an on-line travel agency, such as an Expedia,  
9 Travelocity, or Orbitz, just to name a few, these  
10 companies are only remitting the taxes on the wholesale  
11 amount that the company paid for the room, not the actual  
12 cost that the consumer paid.

13           The Commonwealth is losing valuable sales  
14 tax revenue because the full tax is not being remitted  
15 back to the state. Counties are losing valuable hotel  
16 occupancy tax revenue that is intended for the tourism  
17 promotion because full tax is not being collected.

18 Millions of dollars are being lost both at the state and  
19 local levels.

20           Representing Montgomery County as I do,  
21 looking at some numbers the other day, Montgomery County  
22 rents 1.8 million rooms each year or thereabouts, or did  
23 last year. If you were due to use the analysis and ask  
24 the question, What percentage is typically rented to  
25 OTCs, you would get about 10 percent. So that would be

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1 180. If you used the \$100 analogy that was presented  
2 before, that would be about \$360,000 to Montgomery County  
3 alone.

4 So I do believe that there's a way to get  
5 this a lot more structured than -- I know the 5 million  
6 they said they wrote on the back of a napkin or  
7 something, but there are organizations out there that do  
8 provide that level of accuracy that could detail this out  
9 to a much further extent.

10 At issue is the difference between the tax  
11 that would be due on the posted room rate, which hotels  
12 remit if booked directly through them, and the tax  
13 collected on the wholesale rate, which is the amount the  
14 OTCs currently remit.

15 Looking at the bigger picture, travel and  
16 tourism in Pennsylvania is losing its dominance and  
17 losing significant market share. There's many  
18 measurements out there that reflect this. For many years  
19 we've held firm at the number four spot in the country,  
20 but now we are seventh.

21 And one of the reports that's out there  
22 show Pennsylvania one of the very few states that  
23 actually has negative trends as compared to several other  
24 states in our country that have positive gains in  
25 tourism. At issue here is the lack of funding that's

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1 available to the market and promote the Commonwealth.

2           At our tourism funding peak in 2000, the  
3 state invested about 44 million to fund travel and  
4 tourism marketing both at the state and local levels.  
5 This year's tourism budget, as many of you know, is \$3  
6 million.

7           The designated tourism promotion agencies  
8 and their stakeholders rely on this local share of the  
9 room tax to fund their marketing promotion efforts for  
10 their respective counties and regions. These room tax  
11 dollars are in many cases being targeted by other  
12 entities for nontourism related initiatives.

13           We shared with this committee at the hotel  
14 tax meeting on the 31st that we're working with PRLA and  
15 other stakeholders to address our concerns with what is  
16 happening around Pennsylvania with room taxes at the  
17 local level. One of the solutions is closing this  
18 loophole.

19           In closing I'd like to thank  
20 Representative Day for this introduction of this package  
21 of bills, Chairman Stern, Chairman Kirkland, and this  
22 committee for their support of our industry. It's  
23 important for us to be working together on these  
24 important legislative issues.

25           I would be happy to answer any questions.

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1                   CHAIRMAN PRO TEM DENLINGER: Very good.  
2 Thank you, Bill. We appreciate that testimony. And,  
3 Sean, whenever you're ready.

4                   MR. MCBURNEY: Mr. Denlinger,  
5 Mr. Kirkland, members of the committee, thank you very  
6 much for the opportunity to testify. My name is Sean  
7 McBurney. I'm senior vice president of governmental  
8 affairs with the American Hotel Lobby Association. We  
9 count as one of our partners the Pennsylvania Restaurant  
10 and Lodging Association. We very much appreciate you  
11 looking into this issue.

12                   As noted earlier, this really comes down  
13 to a policy decision whether the state wants to tax  
14 in-state Pennsylvania hotels at a higher effective rate  
15 than out-of-state companies. It all comes down to that.

16                   We've already gone through the transaction  
17 quite eloquently, and my testimony also includes a chart  
18 very similar to Mike's on Page 7, I believe.

19                   We must remember that this is the same  
20 transaction if you go to a Hilton.com or a Marriott.com,  
21 it's the same transaction. And what is effectively  
22 happening is that in that example, in-state hotels are  
23 being taxed at an effective rate of 10 percent, as they  
24 should be.

25                   But the OTCs are choosing to tax -- to



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1 remit this and choose for themselves an effective tax  
2 rate of 8 percent. Now, is it the policy of Pennsylvania  
3 to implement that policy? That's up to the state to  
4 determine.

5           Pennsylvania is not alone in looking at  
6 this issue. Many other states have looked at it as  
7 well. Columbus, Georgia and Atlanta, Georgia both sued  
8 the OTCs for what they contend were collected but  
9 unremitted taxes based on this issue. The Supreme Court  
10 of Georgia agreed with them and found for the cities,  
11 finding that the OTCs had charged on that incremental  
12 amount we're talking about.

13           Same thing happened in South Carolina.  
14 Supreme Court of South Carolina felt the same way. These  
15 things are not based on any constitutional principle.  
16 There's a lot of confusion involved with this because it  
17 involves the Internet, but this is really a wholesale  
18 versus a retail argument.

19           As Mike noted in his testimony, in the  
20 Best Buy example, or you can say if you go to a grocery  
21 store, would you pay tax on milk you buy on what the  
22 grocery store paid for it or what you paid for it at the  
23 checkout? Obviously it's what you paid for it at the  
24 checkout.

25           Several states, rather than going through

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1 the courts, have found their statutes somewhat cloudy as  
2 Pennsylvania's is and instead clarified their  
3 legislation. States of North Carolina, New York, New  
4 York City, Oregon, have all done this, and they're all  
5 now on the books as collecting or requiring the OTCs to  
6 remit tax based on the retail prices not their wholesale  
7 costs.

8 I believe the state of Minnesota has done  
9 it administratively and also Washington, D.C. has passed  
10 legislation to change their ordinance as well.

11 The National Conference of State  
12 Legislatures recently unanimously passed a resolution  
13 calling on all states to clarify their statutes to make  
14 sure there is equal application of the tax laws so that  
15 in-state hotels are not taxed at a higher effective rate  
16 than out-of-state companies.

17 AHLA, my organization, first became aware  
18 and involved with this issue when the OTCs went to  
19 Congress, and because they were being sued all over the  
20 country, they wanted Congress to preempt Pennsylvania and  
21 every other state and locality in the country from  
22 administering your own tax laws. They wanted to make  
23 sure that they could only be taxed at their wholesale  
24 costs.

25 AHLA along with a coalition of public

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1 sector unions, convention and visitors bureaus, franchise  
2 associations, other industry organizations, and tax  
3 collectors organizations went to Congress. We informed  
4 them of the same thing we're informing you of today of  
5 the actual transaction and it died. They haven't stopped  
6 but we're remaining vigilant. We're preventing that from  
7 passing Congress.

8           There's a lot of confusion involving some  
9 of the aspects. Some people say, well, there's no  
10 nexus. The Supreme Court has ruled there's no nexus  
11 here. The out-of-state companies argue, well, we're not  
12 located in Pennsylvania, you can't tax us. Well,  
13 clearly, as we've noted, they're paying tax. That's a  
14 false argument. They're paying tax. They only choose to  
15 do it on their wholesale cost. The question is here, do  
16 they remit on the retail price or not, and that's up to  
17 the state to determine.

18           There's another claim that this violates  
19 the Internet Tax Freedom Act, which has nothing to do  
20 with sales, it has to do with Internet access, so that's  
21 a false argument as well.

22           The new taxes claim continually crops up,  
23 but clearly occupancy taxes have existed for decades,  
24 well before the advent of the Internet. This is nothing  
25 new. This is about the equal application of taxation to

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1 hotels in Pennsylvania and out-of-state companies.

2 We strongly support this legislation to  
3 make sure that we are not discriminated against in  
4 Pennsylvania and that equal application of the tax laws  
5 is enforced, and I'm ready to answer any questions you  
6 may have. Thank you very much.

7 CHAIRMAN PRO TEM DENLINGER: Very good.  
8 Thank you, Sean and all for your testimony. Very much  
9 appreciated.

10 So we're in the issues of tax equity,  
11 competitive imbalance, in-state, out-of-state issues as  
12 were shared and nexus and so forth.

13 I do thank you for doubling back to share  
14 with us how some other states have addressed this and  
15 that was included in the testimony.

16 I think I'm going to defer a question  
17 initially here and turn to Chairman Kirkland. Do you  
18 have an initial question?

19 Other members of the committee?  
20 Representative Heffley.

21 REPRESENTATIVE HEFFLEY: In using the  
22 example of the \$100 room, I think it was Mike, you had  
23 used that example, and online, if it's \$110, they sell a  
24 room for \$80, there's \$20 the online travel companies  
25 make. Now, that \$20, they're saying that that's their

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1 service fee for selling that room, correct?

2 MR. RODDEN: That is and -- well, the  
3 total price is not completely defined between taxes and  
4 fees. The \$20 clearly is. I think that's the difference  
5 between what we would be charging for the room and what  
6 they're charging and what they're remitting to the hotel.

7 REPRESENTATIVE HEFFLEY: Does the online  
8 companies, do they charge you a fee for marketing the  
9 rooms for you?

10 MR. RODDEN: No. So if you go -- well, if  
11 you go to this example, I shouldn't say no. The -- in  
12 this example with the \$100 hotel room, they would pay the  
13 hotel \$80. So we are paying them \$20 out of that \$100  
14 transaction.

15 Whereas, if they did not book through the  
16 online company, they booked through Marriott.com, per se,  
17 then we would keep the entire 100. So in essence,  
18 they're getting that \$20 for selling the hotel room in  
19 this transaction. The \$2 is -- the difference between  
20 the \$10 and the \$8 is really what this conversation is  
21 all about. The \$20 is an industry agreement and  
22 something nobody has any concerns with, I don't believe.

23 REPRESENTATIVE HEFFLEY: So when they  
24 auction those rooms off, say if they charge -- somebody  
25 is willing to pay \$130, then they could have made a lot

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1 more on that room.

2 MR. RODDEN: Yes. With my particular  
3 company, we have an agreement with them that they cannot  
4 -- that we always have the -- as low a price as they will  
5 offer, so you can't get a lower price through them. They  
6 can sell them for whatever they would want to, but  
7 obviously market forces would come into play there.

8 REPRESENTATIVE HEFFLEY: So the hotels  
9 really like the servicing. You're probably -- are you  
10 renting a lot more rooms because of this, these types of  
11 services, has it increased your occupancy rate?

12 MR. RODDEN: It's part of the business now  
13 and it's -- clearly a lot of customers like to buy that  
14 way, so we want to make it so customers can buy how they  
15 want to. So we're obviously paying a fee to them for it,  
16 that there's no problem with that, no question with that,  
17 and I think all hotels are willing participants in that.

18 REPRESENTATIVE HEFFLEY: One of the things  
19 that most hotels -- I'm just trying to understand all  
20 this, most of the hotels, and I love it, is the reward  
21 point stays. If somebody uses those reward points and  
22 say they're going to stay at a room here in Philadelphia,  
23 how do they pay the occupancy tax? Is that on top of the  
24 rewards points? Who pays those taxes when you give --  
25 say somebody is cashing in enough for three free nights,

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1 do they pay the tax or does the hotel chain pay the tax?

2 MR. RODDEN: I can speak for our hotel. I  
3 would think it would be the same for all companies.

4 There is internal accounting done where my hotel gets  
5 paid by my brand for that room and there is a tax charged  
6 to my brand for that sale. So based on the occupancy, we  
7 charge them for the reward point.

8 The customer does not pay anything. So if  
9 we said we're charging Marriott \$50 for that room that  
10 night, in this example, we would also charge them \$10 tax  
11 which they would pay, Marriott would pay.

12 REPRESENTATIVE HEFFLEY: So they would pay  
13 -- they would pay the -- you would pay the occupancy tax  
14 on the cost that you were charging your parent company?

15 MR. RODDEN: Yes, exactly.

16 REPRESENTATIVE HEFFLEY: And that's a  
17 reduced cost, though, correct?

18 MR. RODDEN: It can be. If it's a very  
19 busy time it can be very close to the full retail. It  
20 corresponds to the business levels.

21 But then we would get that tax from them  
22 and remit it, just like in all the other examples.

23 REPRESENTATIVE HEFFLEY: Okay.

24 MR. RODDEN: Does that make sense?

25 REPRESENTATIVE HEFFLEY: Yes. I'm trying

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1 to understand that, because I used some of those points a  
2 little while ago in South Carolina on a trip, my nephew  
3 graduated from Paris Island, and we used those, and they  
4 didn't charge any taxes and I was kind of -- I didn't  
5 understand how that worked.

6 MR. RODDEN: It's definitely a tax  
7 transaction and then we would remit it just like anything  
8 else. We just would get reimbursed by our parent  
9 company.

10 MR. FITZGERALD: Because it does -- what I  
11 would add to that is, when Marriott or Hilton, whomever,  
12 submits to the hotel, their piece of that room for that  
13 night that a frequent guest paid, it shows up as  
14 revenue. So you have to pay tax on revenue.

15 So whatever revenue shows, then you have  
16 to pay the tax on your revenue, hotel room revenue. So  
17 in many occasions the formulas are a hotel gets  
18 reimbursed by the brand 90 percent of their going ADR.

19 So if our average daily rates are \$100,  
20 the brand in this case, let's use Hilton where I'm from,  
21 would give to the hotel, the receiving hotel who had  
22 the -- used the stay for -- you know, had the room  
23 occupied by the frequent user, they would get 90 bucks,  
24 so you'd pay tax on the \$90.

25 REPRESENTATIVE HEFFLEY: But the regular



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1 would be -- so if somebody came in off the street,  
2 though, it would be 100. They would pay tax on \$100.  
3 You're selling it to yourself cheaper, so you're paying  
4 taxes on the \$90.

5 MR. FITZGERALD: The brand reimburses the  
6 hotels. There's a formula they use and most reimburse --  
7 but all are different. 90 percent of what the hotel is  
8 going at -- so the hotel doesn't lose out for maybe a  
9 traveler who typically goes to Texas but wants to use  
10 their points in Pennsylvania, they don't want that hotel  
11 to lose out, so they'll reimburse the hotel from their  
12 budget at corporate, if you will, the brand, will  
13 reimburse, and that shows up as revenue for the hotel so  
14 the hotel has to pay the tax on the revenue.

15 REPRESENTATIVE HEFFLEY: And then just one  
16 more question. Bear with me. I didn't want to get off  
17 subject. Just looking at how that compares to this  
18 process as well in comparison.

19 Then one other question. With that  
20 estimated \$5 million that would go back, and that would  
21 go back to the counties and the counties would then  
22 distribute that money as they currently do with vacation  
23 money, some of that money would go into grants, some of  
24 it would go to vacation bureaus, but the county, the  
25 commissioners generally have a wide discretion of how

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1 that money could be used?

2 MR. FITZGERALD: It would show up as --  
3 my understanding it would show up as additional room tax  
4 to the CVBs or whatever agency, if you will, similar to a  
5 CVB is in receipt of a room tax.

6 In our county we only collect 2 percent on  
7 the room tax. There's some counties, Philadelphia for  
8 instance, I think is 8.2. So their numbers would be  
9 different. Others -- most counties in Pennsylvania are  
10 closer to three or over three. So it all depends on what  
11 that -- that county's tax structure is.

12 You know, if you go into a hotel in  
13 Montgomery County, it's 6 percent and 2 percent, so it's  
14 eight. This scenario here shows a 10 percent  
15 jurisdiction tax, but that's just an example.

16 So it would show up in that -- you know,  
17 in our case the 2 percent would be -- it would be within  
18 that 2 percent room tax, bed tax.

19 REPRESENTATIVE HEFFLEY: And obviously I  
20 think we're all in agreement that we'd all like to see  
21 additional funding for tourism. I represent Carbon  
22 County. Their number one industry is tourism. And, you  
23 know, it's something that's important.

24 I am just a little skeptical on how  
25 legislation -- I mean, we're looking at companies like

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1 Expedia and Priceline that are marketing, that are  
2 helping to market our region, so I'm a little -- have  
3 quite a few concerns and questions about this  
4 legislation, how that's going to impact them in their  
5 marketing and pushing into our areas and as far as what  
6 that tax should be.

7 MR. McBURNEY: May I, on that? That  
8 comes -- that's been raised in other states where that's  
9 been brought up. The online travel companies tend to  
10 make that argument, if they're taxed at the same rate  
11 that hotels are it's going to hurt tourism. For example,  
12 in New York City. They wanted to make sure that their  
13 ordinance applied equally. They called it the New Jersey  
14 Promotion Act. Well, I don't think anybody would mistake  
15 Newark for New York.

16 It really doesn't. The online travel  
17 companies don't promote any location. They promote  
18 themselves. If somebody goes on to their site and they  
19 want to go to Charleston, South Carolina or they want to  
20 go to Vegas or they want to go to New York City, they  
21 don't really care. They just want to make the  
22 transaction through them. So they're not really  
23 promoting a destination as they are themselves.

24 CHAIRMAN PRO TEM DENLINGER:  
25 Representative Gibbons?

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1 REPRESENTATIVE GIBBONS: Thanks.

2 A series of -- a few questions here that I  
3 hope will kind of build off each other. I want to start  
4 with, looking at your direct hotel booking model, and my  
5 question is, I'm looking at where you say the commission  
6 might be paid back to the travel agents, but if those  
7 travel agents charge, say, an additional fee, under this  
8 proposal, would that additional fee be taxed as well?

9 I don't know if they do this or not, but  
10 would they happen -- you know, I don't know if they have  
11 any processing fees or something that they charge the  
12 consumer, would those fees that they charge be subject to  
13 the tax under this legislation, under these proposals?

14 MR. MCBURNEY: I can address the  
15 traditional travel agent model. And as you noted in that  
16 diagram, the commission to the traditional travel agent  
17 is called obviously the commission model, whereas the OTC  
18 model below it is referred to as merchant model in the  
19 industry.

20 The traditional travel agent is remitted  
21 their commission post tax, so they get their money after  
22 the tax on retail price has been charged. As for  
23 additional fees charged, I'm not aware of any. But as  
24 far as this transaction goes, it would have no effect on  
25 them.

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1           If there are additional service fees  
2 they're charging their customers, that, I couldn't  
3 address. With hoteliers you're going to see that.

4           REPRESENTATIVE GIBBONS: Right. And  
5 that's, I guess, my concern. I mean, the hotel is not  
6 going to be involved in that, that would be the travel  
7 agent who would be involved in that.

8           And I guess that kind of leads me into my  
9 second question where you talked about, you know, these  
10 companies are already remitting tax, but they're not, at  
11 least in the model, looking at the OTC, you know, or  
12 merchant model, they're not actually remitting it in the  
13 sense that they're not directly remitting it, at least  
14 according to your model, to the taxing jurisdiction.  
15 There's no relationship, I guess, existing there. It  
16 seems that they're remitting it to the hotel who's  
17 remitting it to the taxing jurisdiction.

18           I guess my concern is, again, if there are  
19 travel agent fees that somehow get caught up in this or  
20 even for these larger companies, now -- and my  
21 understanding, now they would have to establish a, I  
22 guess, relationship to submit that to the taxing  
23 jurisdictions or would they submit this additional money  
24 to the hotel who would then submit it through to the  
25 taxing jurisdiction?

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1 MR. McBURNEY: I can speak to what other  
2 states have done. Leaving aside for a moment that extra  
3 fee, that, I'm not familiar with. However, in South  
4 Carolina, what they did, after the Supreme Court said,  
5 Okay, OTCs, you have to pay the tax on retail prices,  
6 they said, We're going to treat those transactions as a  
7 resell transaction.

8 Hotels, you don't collect any tax, and  
9 we're going to give you a resell certificate for these  
10 OTC transactions. And so now the OTCs are supposed to  
11 remit the entire \$10, if you will, directly to the  
12 jurisdictions.

13 In North Carolina, it's what we call a  
14 dual remittance, where the hotel would remit that \$8 they  
15 received and continue to pass that through, and then the  
16 OTC would remit directly to the jurisdiction that extra  
17 \$2.

18 New York has the same kind of similar  
19 thing as North Carolina, except it's done a little bit  
20 differently, so that's a dual remittance as well, so it  
21 all depends on the way the state wants to set it up.

22 And are there -- I guess, the travel agent  
23 model, the nonOTC, more traditional travel agent, are  
24 there any relationships or -- I mean, it doesn't sound  
25 like it's common, but might there be some out there that

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1 do a similar type of, I don't know, I guess the wholesale  
2 type model or is it pretty much almost all through a  
3 commission model with traditional travel agents, nonOTC,  
4 non-online?

5 MR. MCBURNEY: I will let my colleague  
6 from that association address that. I'm not real  
7 familiar with that.

8 MR. FITZGERALD: Yes, I mean, from my  
9 knowledge, the traditional travel agent, that's a  
10 negotiated thing that happens upfront with a company.  
11 Sometimes it happens with the brand if it's a large  
12 travel agent. Sometimes it happens at the local level  
13 with an individual hotel.

14 But, again, if you're charged \$100, the  
15 guest is actually charged the \$100. The cost of the  
16 travel agency is a commission line within our room's  
17 expenses. It's just a cost of doing business that you  
18 pay. It could be 10 percent. It could be 15 percent.  
19 Sometimes it goes 20 percent. That happens with  
20 transient and group bookings. That's all depending on  
21 what you negotiate as is the OTC. That typically is  
22 negotiated with the brands at a corporate level, but is,  
23 of course, as seen here, a whole different model.

24 Mike, I'll let you chime in, too.

25 MR. RODDEN: No. No difference.

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1 MR. GIBBONS: Because, I mean, that's my  
2 concern is I'm -- you know, we have a lot of smaller -- a  
3 number of smaller travel agent types that, the last thing  
4 I want to see is them get caught up with having to do  
5 additional bookkeeping with remitting monies to anybody.

6 MR. FITZGERALD: This should not affect  
7 them in any way, shape, or form.

8 REPRESENTATIVE GIBBONS: To wrap up, I  
9 just want to get a little deeper into the whole nexus  
10 discussion that, Sean, you were talking about.

11 I mean, this kind of reminds me of a few  
12 years back the whole concept with the so-called Amazon  
13 loophole, the tangible goods sales and how Amazon was not  
14 collecting and it was supposed to be the individual  
15 remitting it. Now, since then, they -- most of those  
16 online sales, the larger ones like Amazon, have started  
17 collecting that and now are submitting it to the state.

18 But I guess in that circumstance, I can  
19 somewhat see at least the buyer, the nexus that the buyer  
20 is in the State of Pennsylvania, but my thought here is  
21 if companies -- you know, a person who lives out of  
22 state, let's say it's a New York resident coming to  
23 Pennsylvania and they're buying from a company online  
24 that's based out of Texas, let's say, and I mean, the --  
25 the nexus that they create, I mean, there's no -- other



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1 than I guess the tangible good is existing here in the  
2 sense of the hotel, but those individuals aren't really  
3 here, the transaction between them doesn't occur here,  
4 the transaction is actually between the hotel and the  
5 OTC, not -- they said -- it just concerns me about  
6 that -- is that whole nexus question because there's  
7 never actually a -- you know, a tangible transaction  
8 between -- you know, this seems to be happening here to  
9 tie it back. That's the part that somewhat concerns me.

10 As I said, I can see with the Amazon,  
11 well, at least the good was coming into the state and the  
12 buyer was somebody who lived here, but where you have a  
13 buyer who lives out of state, an OTC that's out of state,  
14 and you're trying to tax that transaction, it pretty  
15 much -- you know, the fee that they're paying to the OTC  
16 isn't actually coming into Pennsylvania ever. That's  
17 where I start wondering is there a nexus between that  
18 transaction back to Pennsylvania. I mean, if I was their  
19 attorney, that's what I would be arguing.

20 MR. MCBURNEY: It has been brought up in  
21 several cases and rejected every time, including the  
22 Supreme Court in Georgia and in the Supreme Court of  
23 South Carolina, for a number of reasons. And also the  
24 taxable action is the hotel stay.

25 REPRESENTATIVE GIBBONS: Okay.

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1 MR. McBURNEY: And the hotel obviously is  
2 in your jurisdiction.

3 REPRESENTATIVE GIBBONS: Right.

4 MR. McBURNEY: And that kind of -- there's  
5 also another issue here that's kind of related to it.

6 The OTCs try to set themselves up as  
7 something unique, something different from the hotels,  
8 and therefore they shouldn't be held on the same laws.  
9 The hotels are not owned by Hilton or Marriott. Hilton  
10 and Marriott are a franchisor. Their relationship with  
11 their hotels is a franchisee/franchisor relationship. A  
12 franchisee agreement is a marketing agreement, very  
13 similar to the agreement, a marketing agreement the OTC  
14 would have with a hotel. So in that sense they're almost  
15 identical.

16 There's no question that the hotels are  
17 remitting tax on the retail price and we will continue to  
18 do so, but the OTCs are very analogous to a hotel brand's  
19 website, Hilton.com, Marriott.com, to the hotel. They're  
20 separate. These hotels are owned by different people.

21 REPRESENTATIVE GIBBONS: I guess my last  
22 question, you talked about the various court cases in  
23 other states. Sounds like most of these have gone  
24 through state court. Have any federal courts dealt with  
25 this, and if they have, have the arguments been made at

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1 the federal level and has anything happened there?

2 MR. MCBURNEY: There has been a federal  
3 court case in Texas. There's a Federal District Court in  
4 Texas found for 173 cities, I believe, in Texas and  
5 against the OTCs and has compelled the OTCs to remit on  
6 the retail prices.

7 REPRESENTATIVE GIBBONS: That's why I was  
8 just wondering, what the federal questions were in  
9 looking out, because states are going to be different but  
10 federal is going to be applicable more so across the  
11 country.

12 MR. MCBURNEY: I believe that is being  
13 challenged. There may be a deal but the court did find  
14 for that.

15 REPRESENTATIVE GIBBONS: So initially the  
16 District Court found for them.

17 All right. That's all of my questions.  
18 Thank you.

19 CHAIRMAN PRO TEM DENLINGER:  
20 Representative Moul.

21 REPRESENTATIVE MOUL: Thank you, Chairman  
22 Denlinger.

23 Just a couple real quick questions and you  
24 might not even know these answers. What percentage are  
25 your rooms generally rented by OTCs?

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1 MR. RODDEN: At my property it's about 5  
2 percent of this year's room nights, which is an increase  
3 of 23 percent since the prior year. I believe the  
4 industry average would be closer to 10 percent.

5 MR. MCBURNEY: It's hard to say. It's  
6 between 5 and 10 percent. It all depends on if they're  
7 brands, because the brands all have their own online  
8 presence or an independent, but overall probably  
9 somewhere about 10 percent.

10 REPRESENTATIVE MOUL: So it's safe to say  
11 they're a pretty intricate part of your industry?

12 MR. MCBURNEY: Yes.

13 REPRESENTATIVE MOUL: Probably next  
14 question is probably better suited for the last panel but  
15 I'm just going to ask your opinion. If this bill were to  
16 pass today, would the price of the rooms go up?

17 MR. MCBURNEY: No.

18 REPRESENTATIVE MOUL: Why?

19 MR. MCBURNEY: It hasn't anywhere else.  
20 The online travel companies already charge retail price  
21 or higher. As noted before, the brands all have  
22 agreements so that the OTCs cannot undercut the brand's  
23 price. They can charge a lot higher and oftentimes they  
24 do.

25 The advantage you have with an OTC is they

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1 aggregate all the brands and all the hotels in a certain  
2 area and they market like crazy. You can't turn on a TV  
3 without seeing an advertisement for them. But, no, they  
4 will not and they haven't in other jurisdictions.

5 REPRESENTATIVE MOUL: When you go to their  
6 website, and I don't travel as much as I'd like to so I  
7 don't use them too often, but do they advertise for  
8 different regions, different areas of the country on  
9 their website, different specials that are going on?

10 MR. MCBURNEY: I believe if a jurisdiction  
11 like Las Vegas wants to pay for that, they will.

12 REPRESENTATIVE MOUL: Oh, that's something  
13 that they pay for?

14 MR. MCBURNEY: I believe so. I don't  
15 believe the OTCs do it for free.

16 REPRESENTATIVE MOUL: I guess that's going  
17 to be a question coming up for the next panel. Thank you  
18 very much.

19 MR. FITZGERALD: I would just add that  
20 pricing is always supply and demand based. I mean,  
21 prices will flex. If this was a busy time, they'd go  
22 up. If this was a slow time, they'd go down. And I  
23 think pricing is never just add two more bucks because --  
24 you know, I think it's -- you know, that's my opinion is  
25 that the pricing is always going to be demand based.

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1 REPRESENTATIVE MOUL: In most cases if I  
2 were to call -- if I were to check the price of a hotel  
3 room online and turn around and call you direct, where  
4 would I get the best price or is it going to be the  
5 same?

6 MR. RODDEN: The same.

7 REPRESENTATIVE MOUL: It will be the same  
8 price?

9 MR. RODDEN: Yes.

10 MR. FITZGERALD: There is a -- there is --  
11 most of the brands now have a best price guarantee on our  
12 brand site, so of course to avoid -- we don't want to  
13 have to pay somebody else, we'd rather have them book on  
14 our brand site. So if you go to Marriott.com or  
15 Hilton.com, that \$100 would come right to Hilton or  
16 Marriott. If you book that \$100 rate through  
17 Travelocity, of course we would only net \$80, so we have  
18 a best price guarantee for the -- most brands do.

19 REPRESENTATIVE MOUL: You probably prefer  
20 that they call you direct, wouldn't you?

21 MR. FITZGERALD: Yes.

22 REPRESENTATIVE MOUL: I thought so.

23 MR. MCBURNEY: And you get loyalty points,  
24 too, with the hotel.

25 MR. FITZGERALD: Yes, you don't get

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1 loyalty points --

2 REPRESENTATIVE MOUL: You don't get  
3 loyalty points going through the OTCs?

4 MR. FITZGERALD: Yes. You know, if this  
5 gentleman -- you know, if you checked in using -- booking  
6 it through Travelocity, couldn't get his points.

7 MR. McBURNEY: And a related question to  
8 the price question is, a logical thing would be, well, is  
9 occupancy going to go down in those jurisdictions that  
10 have an equal application of the law, and the answer to  
11 that is no as well.

12 In New York City after they did,  
13 occupancies were up 4.1 percent. In South Carolina, they  
14 went up 2 percent. That's just within the year after  
15 they applied the law.

16 REPRESENTATIVE MOUL: Now, you just said  
17 something, and I'm going to wind it up here. I don't  
18 want to abuse my time.

19 But if they don't get loyalty points if  
20 they book through an OTC, doesn't that then make them  
21 working on commission?

22 MR. FITZGERALD: Who's working on or --

23 REPRESENTATIVE MOUL: The OTC. If they're  
24 not offering everything that you are, that means they are  
25 an outside contractor working on a commission as opposed

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1 to being your sales agent.

2 MR. MCBURNEY: I don't think that would  
3 define that at all.

4 REPRESENTATIVE MOUL: I think we drew a  
5 definite line there, because they're not offering  
6 everything that you would offer if they called you  
7 direct. That disjoins them from you.

8 MR. MCBURNEY: I really don't see the  
9 distinction, especially if you're talking about a retail  
10 price to the customer and the same price.

11 REPRESENTATIVE MOUL: Okay. Just  
12 something to think about. Thank you.

13 CHAIRMAN PRO TEM DENLINGER:  
14 Representative Kauffman would be next. I am advised that  
15 we're pushing the clock here a little bit, so I'll ask  
16 that you --

17 REPRESENTATIVE KAUFFMAN: I'll keep it  
18 short although my colleagues didn't.

19 Thank you, Mr. Chairman.

20 I was trying to make sure I understand  
21 this entirely, and I guess a little bit of what I have to  
22 ask piggybacks on Representative Moul's question about  
23 would the price of the room go up, and I actually just  
24 went back in my -- I was sitting here not playing on my  
25 phone but actually looking at my last online travel



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1 reservation, and I was looking, you know, the cost of the  
2 room being \$113 and the taxes and fees all balled into  
3 one at \$24.62.

4                   Now, you said the price of the room would  
5 not go up. Now, is it -- is it your assertion that it  
6 doesn't -- it wouldn't really matter necessarily what  
7 jurisdiction that would be in, those fees would be pretty  
8 much the same? Do they just estimate them, they just --  
9 they just have a general ballpark of what the taxes and  
10 fees are, or do they actually charge you the tax that  
11 they're remitting, or do they charge greater than the tax  
12 you're remitting?

13                   I'm trying to -- I thought looking in my  
14 online reservation would make it clearer but it made it  
15 more muddy for me.

16                   Do you understand what I'm --

17                   MR. FITZGERALD: The fee -- the fee that's  
18 charged to the brand is negotiated upfront. So in many  
19 cases I'm familiar with a 17 percent fee that's charged  
20 by, let's call it, some of the bigger OTCs to the brands.

21                   As far as how they determine and  
22 project taxes, I'm not quite sure. You'd probably have  
23 to ask them that.

24                   Are you looking at an online -- a third-  
25 party --

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1                   REPRESENTATIVE KAUFFMAN: I'm looking at a  
2 specific reservation and I'm just thinking, if they're  
3 charging actual taxes -- you know, if they're not  
4 estimating things, you know, my reality would say, well,  
5 if they're having to remit a greater tax, then the price  
6 of the room would go up, unless there's some fudging of  
7 all of the figures inside that ball of taxes and fees.

8                   MR. FITZGERALD: But if they're not  
9 competitive with the brands, they're not going to  
10 raise the -- if you're the consumer, and you just went  
11 and you typed in Marriott.com and you look for Tuesday  
12 night, and then you typed in Travelocity and you looked  
13 for Tuesday night, that's a competitive situation.  
14 You're going to want to -- you're not going to just raise  
15 -- you know, why raise that, especially --

16                   REPRESENTATIVE KAUFFMAN: I bid on this  
17 one.

18                   MR. FITZGERALD: Oh, that would be  
19 different. That would be like a Priceline, right, I  
20 think that's a different model maybe. What --

21                   REPRESENTATIVE KAUFFMAN: Yes, that's what  
22 it is, it's Priceline. Is that -- I mean, they have both  
23 models though.

24                   MR. FITZGERALD: Oh, that's -- that's  
25 different.

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1 MR. RODDEN: It is different.

2 MR. FITZGERALD: So when you're talking  
3 Priceline, Hotwire --

4 MR. MCBURNEY: Those are two opaque sites,  
5 where you don't know the identity of the hotel before you  
6 book it, and those are kind of outside this conversation.

7 REPRESENTATIVE KAUFFMAN: But Priceline I  
8 think has both models though. They do have the regular  
9 online travel booking company.

10 MR. MCBURNEY: If you see that, then it's  
11 a merchant model and that's what we're talking about.  
12 And your term "fudging," I would say they would change  
13 their calculation, because they know what their prices  
14 are and they know what the tax rates are.

15 Prices have not increased through their  
16 site on these -- in these jurisdictions where the tax has  
17 been applied equally.

18 REPRESENTATIVE KAUFFMAN: All right.  
19 Thank you.

20 CHAIRMAN PRO TEM DENLINGER: Thank you,  
21 Panel. We appreciate your testimony very much.

22 We will now welcome our second group.

23 Hold on, Gentlemen. Representative  
24 Davidson has a quick question.

25 REPRESENTATIVE DAVIDSON: I just wanted to

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1 go back to what I believe your testimony was a little bit  
2 earlier regarding pricing and the OTCs. I think we did  
3 establish that they do market particular regions on their  
4 sites.

5           The other question had to do with pricing  
6 and whether or not consumers can get lower prices on the  
7 online sites, and most of us believe that you can, even  
8 though there's probably a floor to that, but how would  
9 that affect that if -- if we changed the law the way it's  
10 being proposed, how would it affect the consumer's  
11 ability to get lower prices on the online sites, because  
12 you can get lower prices.

13           There's probably a floor, because whatever  
14 the room block is, whatever the block is that you sell to  
15 the online companies, come in at one rate just like they  
16 do for, say, AAA or some of the other discount models  
17 that there are.

18           MR. FITZGERALD: My position would be that  
19 pricing is purely a supply and demand factor relative to  
20 competition, your downtime, your peak times. I do -- my  
21 belief is that it would not be impacted at all. However,  
22 others could have a varying opinion.

23           I believe that when hotel pricing is done,  
24 whether it be at a property or whether it be done online,  
25 it's all based off of being competitive, because if

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1 you're not competitive, you're not going to get an  
2 opportunity to book the room.

3 MR. RODDEN: Just to be clear on the model  
4 we have here, most major brands, if not all, have a  
5 guarantee in place, so the price is not lower when you  
6 book through these. The price that the customer pays.  
7 It's going to be the same. You could call my hotel 100  
8 times and go through these sites 100 times and it will  
9 always be the same price.

10 So there's -- and it just -- that's the  
11 rules we operate under. So if you went into a model  
12 where they had to pay more, if they wanted to pass those  
13 costs onto the consumer, when you went to book, that  
14 extra cost would not be reflected in our direct price  
15 that we're charging, it would be in their model and the  
16 market would drive them back to dealing directly with us.

17 Just like if you go to book an airline  
18 and you see one adds on a \$10 service charge and  
19 another site it doesn't, I mean, you're naturally  
20 going to gravitate to the one without the extra  
21 charge on there. So the market forces would take  
22 care of it in general, but they are an equilibrium.

23 I think what these services offer is,  
24 if you're going to a random city and you want to  
25 compare prices of lots of different brands, it's a

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1 very easy way for you to do it through these sites,  
2 whereas if you go to the Marriott site, you're only going  
3 to see the Marriott brand there.

4           But the prices -- in each one -- if you go  
5 to Cleveland, Ohio and look on the Marriott site at the  
6 Cleveland Airport Marriott, it's going to give you a  
7 rate. If you go to Travelocity, it's going to give you  
8 that same rate, but it will tell you what the Hyatt and  
9 the Hilton and the Westin are also.

10           Does that make sense?

11           MR. MCBURNEY: What Mike said is exactly  
12 right. The -- by contract with the major brands, the  
13 OTCs cannot sell a room for less. And I invite you to go  
14 on the Internet and look at two -- pull up Hilton.com,  
15 pull up Marriott.com, pull up Expedia, Orbitz, and try to  
16 get -- they'll be the same. They'll be the same retail  
17 price.

18           And then the final price after you click  
19 through will be within pennies. And usually the OTCs  
20 will be a little bit more. Now, the OTCs can charge a  
21 lot more. They're not contractually bound to sell at  
22 that lower rate. They can sell a \$200 room as opposed to  
23 a \$100 room, but the hotel wouldn't even know about that.

24           REPRESENTATIVE DAVIDSON: So is it not  
25 true that hotels have a range on any particular day from

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1 the rack rate to a discounted rate so that you might get  
2 a quote on a -- on a telephone transaction, you might get  
3 a quote that's closer to the rack rate at a brand hotel  
4 when you call directly, and the OTCs might be quoting the  
5 discount rate?

6           Would that -- is that inconsistent with  
7 what you're talking about, because isn't there a range is  
8 really my question on any given day?

9           MR. MCBURNEY: Getting into the technical  
10 aspect of this, the way this works is that the hotel's  
11 reservation system, which is managed by the franchisor,  
12 Hilton, Marriott, Starwood, whomever, the OTCs tie into  
13 that system with their system, so there's a real-time  
14 pricing equity, so they know what it is. It goes up and  
15 down with whatever the market is that day. And it will  
16 rise and fall.

17           Now, the OTCs can say, Oh, Hilton is  
18 charging \$100. We want to make an extra 20, so \$120 on  
19 our site. But they can't go below that 100.

20           REPRESENTATIVE DAVIDSON: But what I'm  
21 saying is, you could be quoted at a higher rate that day  
22 at a Hilton -- say we're dealing with Hilton, who I deal  
23 with the most, say you're dealing with a Hilton, you get  
24 quoted a rate that's close to the rack rate or the high  
25 rate for that day, and you can go online and you would

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1 see a lower rate if the Hilton dropped their discount  
2 rate. You're saying that that scenario does not exist?  
3 You're never going to get a lower rate on an online site  
4 than you would be quoted if you called the hotel  
5 directly?

6 MR. MCBURNEY: At the -- I would say the  
7 same time, that would be accurate. However, if you'd  
8 call -- you'd have to call a hotel and the OTC. The --  
9 apples to apples the OTC will never have a lower rate  
10 than the hotel direct, than the brand, but if it  
11 fluctuates during that day, depends on which one you  
12 called.

13 Now, the OTC could have a higher rate and  
14 if the hotel dropped their rate and you go to the hotel  
15 site, the hotel would be cheaper. If you go back to the  
16 OTC, it would probably be back down to that rate, too,  
17 because they're tied into the same system.

18 REPRESENTATIVE DAVIDSON: And I also kind  
19 of beg to differ on the points. Hilton will give you  
20 your points if you book online. So I don't know if  
21 that -- if that varies from brand to brand or if there's  
22 a rule that I'm unaware of that would deny a customer  
23 their points if they book online. Is there a rule that  
24 would deny a customer their points if they book online?

25 MR. MCBURNEY: If you book through an



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1 online travel company, you do not get loyalty points for  
2 that brand. You will not get your Hilton points.

3 REPRESENTATIVE DAVIDSON: Is that a rule  
4 or law or policy of the industry?

5 MR. FITZGERALD: Each brand has their own,  
6 but if you were able to get your points through a third  
7 party, I would be surprised to hear that.

8 MR. MCBURNEY: I would be shocked.

9 REPRESENTATIVE DAVIDSON: I usually get  
10 mine.

11 CHAIRMAN PRO TEM DENLINGER: We're going  
12 to need to move along very quickly. Two last quick  
13 questions. Representative Brown first.

14 REPRESENTATIVE BROWN: Yes, I'll be very  
15 brief. I don't think I need a microphone.

16 CHAIRMAN PRO TEM DENLINGER: Well, we need  
17 you to for recording purposes.

18 REPRESENTATIVE BROWN: Okay.

19 This backs up what Margo Davidson is  
20 talking about. Just recently I went to a conference in  
21 Washington, D.C., and my staff booked the rate and I  
22 looked at it, for four nights it was over \$1,000. I went  
23 on that night myself and used the OTC and the rate was  
24 more than half less.

25 So I'm not understanding how the -- when

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1 you call directly to the hotel it's \$299 and then when  
2 you go online it's 129. That is less.

3 MR. MCBURNEY: That would depend on how it  
4 was booked. If you -- for example, if you went on the  
5 hotel's website and checked the same thing you did at the  
6 OTC, it very well may have been the same rate you're  
7 seeing even though it was less than what you paid.

8 It could be that you had a group rate that  
9 was negotiated earlier and then the rates dropped.

10 REPRESENTATIVE BROWN: And I can tell you,  
11 when I went and booked, because you can book online, and  
12 it holds your reservation for so many hours, at that  
13 point I go to the website of the actual hotel itself to  
14 see if it is less, as they say it would be, and online is  
15 giving me still a higher price, so I just don't find that  
16 to be what my experience was.

17 MR. MCBURNEY: Was it with -- was it a  
18 group rate?

19 REPRESENTATIVE BROWN: No, I just went on  
20 as an individual looking for a single room. I didn't  
21 even know that I was with a group when I went on the  
22 hotel's direct website.

23 MR. MCBURNEY: That's very odd. It should  
24 be -- the OTC's rate should never be lower than the  
25 hotel's rate.

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1 REPRESENTATIVE BROWN: It has been -- and  
2 the last few times that I've been booking for  
3 conferences, I have found more success online with the  
4 OTC than with the hotel directly. I just wanted to share  
5 my experience with the committee.

6 CHAIRMAN PRO TEM DENLINGER: Thank you,  
7 Representative.

8 One last quick one, a yes or no.  
9 Representative Gabler.

10 REPRESENTATIVE GABLER: You said that  
11 the -- this thing that you're describing is major  
12 brands. If we were talking about a discount chain, say a  
13 Motel 6 or something, is it possible that that room may  
14 be different, that maybe they do allow the OTCs to go  
15 cheaper than their own rates?

16 MR. MCBURNEY: It would probably be an  
17 independent rather than a Motel 6. You know, the Dew  
18 Drop Inn down the corner, they could very well have  
19 something, but also where we're talking about a 20  
20 percent discount, those independent OTCs usually take 40  
21 or 50 percent of that room rate.

22 REPRESENTATIVE GABLER: Thank you.

23 CHAIRMAN PRO TEM DENLINGER: Very good.

24 MR. RODDEN: Just one clarifying point.  
25 Just to her point, the guarantee isn't just we guarantee

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1 it, there is a financial aspect to that, so if it was  
2 something that we were doing, undercut or if they were  
3 undercutting us, then we would have financial guarantees  
4 that we'd have to fulfill. So I think that just puts a  
5 little more behind the statement than that that's across  
6 the brand.

7 CHAIRMAN PRO TEM DENLINGER: Thank you  
8 all. We appreciate your testimony.

9 We will welcome to the front table Kevin  
10 Mitchell, Chairman of the Business Travel Coalition; Eben  
11 Peck, Vice President of Government Affairs for the  
12 American Society of Travel Agents; and Steve Shur,  
13 President of Travel Technology Association.

14 And as they're coming forward, I do want  
15 to acknowledge the presence of Diane McGraw who is  
16 director of tourism for DCED.

17 Welcome, Director, good to have you join  
18 us today as well.

19 Gentlemen, when you're ready to begin,  
20 whoever drew the short straw, you can go first.

21 MR. MITCHELL: Thank you.

22 Good afternoon, Mr. Chairman, and  
23 distinguished members of the committee. Thank you for  
24 the opportunity to testify today on this important  
25 subject.

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1           As founder and chairman of the Radnor, PA  
2 based Business Travel Coalition, I represent the  
3 interests of corporate, government, and university travel  
4 and procurement departments in the larger managed travel  
5 community in matters of public policy.

6           I also work with the state attorneys  
7 general on a variety of airline competition issues and I  
8 have been involved with customer advocacy since 1994 and  
9 this occ tax issue since 2005.

10           Before founding BTC, I was a vice  
11 president at CIGNA Corporation where the corporate travel  
12 as well as incentive meetings and event marketing  
13 departments reported in to me. I also managed Eagle  
14 Lodge, now the ACE Center, a 117-room boutique hotel and  
15 conference resort just outside of Philadelphia.

16           I always find these discussions about  
17 hotel occupancy tax applying to travel agency's fees  
18 curious, because the agencies are providing a service to  
19 the hotel and the consumer and charging a fee for those  
20 services. That fee is not part of the room rate. It's  
21 on top of it. The same way an agency fee for booking an  
22 air ticket is on top of the airfare.

23           Agencies are not required to remit a  
24 federal excise tax on the air ticket fee, for example.  
25 Resort fees charged to hotel guests is another example.

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1 By the logic of some of these proposals, why would the  
2 occupancy tax not be applied to them, especially since  
3 the hotel is actually booking the revenue.

4 Fees for extra services rendered is the  
5 accepted new model for most segments of the travel  
6 industry, and I really don't understand what the  
7 confusion on this in some quarters is.

8 Let's look at some of the impacts were  
9 travel agency fees to be taxed. New taxes would be  
10 passed on to the end customer. On this, there's little  
11 to debate. Travel and meeting managers, procurement  
12 officials, including state government travel offices and  
13 state universities, watch every penny of their travel  
14 spent. Any competent evaluation of alternative meeting  
15 venues includes an analysis of taxes to be paid.

16 The Global Business Travel Association  
17 does an annual study of tourism taxes for the top 50 U.S.  
18 markets, travel markets, to assist travel managers in  
19 identifying cost effective meeting venues. In its study  
20 for 2011, differences in tax rate levels among competing  
21 destinations ranged between 56 and 80 percent.

22 The rising cost of meetings and events is  
23 of deep concern to planners and as such increased taxes  
24 can drive business away and cause lost local economic  
25 activity, including multiplier effects for communities

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1 and regional economies. I would argue that that lost  
2 business would quickly erode that \$5 million figure that  
3 was bantered about earlier.

4           Some occupancy tax proposals that I have  
5 analyzed would drive up administrative costs by orders of  
6 magnitude for all sizes of travel agencies. Online as  
7 well as brick and mortar, they are absolutely impacted by  
8 proposals such as the one we're discussing today.

9           There are legal obligations, accounting  
10 complexities, and audit and compliance requirements  
11 associated with these tax proposals. All of these  
12 administrative costs would be on top of the new taxes and  
13 would be translated into higher transaction fees from the  
14 travel agency to the customer.

15           So the customer has a double incentive to  
16 choose a less expensive destination if possible. If not  
17 possible, there would be less money to spend at the venue  
18 on restaurants and entertaining, hurting jobs and  
19 diminishing economic activity.

20           Smaller travel agencies simply do not have  
21 the infrastructure to handle these kinds of requirements  
22 and many would not be able to compete with the larger  
23 agencies that do. So the playing field gets tilted in  
24 favor of the larger travel agencies.

25           I can also say as a former hotelier that

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1 the thousands of smaller and often unaffiliated hotels  
2 across the country, because of the merchant model and the  
3 visibility and promotion provided their properties, are  
4 able to compete with the big chains on a level  
5 competitive playing field. Maybe the mega hotel  
6 companies and brands don't like that, but these smaller  
7 hotels, like the smaller travel agencies, provide jobs  
8 and vital revenues to local communities and governments.

9           These occupancy tax proposals are a bad  
10 idea that can result in fewer meetings and diminished  
11 revenues and taxes for communities, while disadvantaging  
12 smaller travel agencies and independent hotels, not to  
13 mention the negative impact on consumers.

14           I look forward to your questions at the  
15 end.

16           CHAIRMAN PRO TEM DENLINGER: Very good.

17           Mr. Peck.

18           MR. PECK: Good afternoon, Chairman pro  
19 tem Denlinger, Chairman Kirkland, distinguished members  
20 of the committee. Thank you for allowing me to testify  
21 today. My name is Eben Peck. I'm the Vice President of  
22 Government Affairs at the American Society of Travel  
23 Agents, ASTA.

24           ASTA represents travel agents of all  
25 shapes and sizes, from the smallest home-based agent to



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1 traditional brick and mortar agencies like MTS Travel in  
2 Ephrata to the large travel management companies like  
3 American Express Travel, as well as the prominent online  
4 companies like Expedia, Orbitz, and Travelocity. At last  
5 count there are almost 8,000 travel agency businesses in  
6 all 50 states employing about 105,000 people, including  
7 3,127 in Pennsylvania alone.

8 I'm here today to share our concerns about  
9 Pennsylvania House Bills 871 through 875. Legislation  
10 that, read literally, will apply new taxes to the fees  
11 charged by travel agents for facilitating hotel bookings.

12 As you probably know, the debate over  
13 the appropriate tax base for hotel occupancy taxes has  
14 been raging across the country for many years.  
15 Legislators are usually told that these proposed laws  
16 simply close a loophole that allows big out-of-state  
17 companies to cheat state and local governments out of tax  
18 revenue and that these proposals would have no impact on  
19 traditional brick and mortar travel agencies who are the  
20 vast majority of ASTA members. This is simply not the  
21 case.

22 The language in these bills is quite  
23 clear. It would levy taxes on hotel intermediaries,  
24 defined as a person who facilitates the booking of hotel  
25 reservations who is not a hotel operator. This is what

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1 travel agents in Pennsylvania and elsewhere do every  
2 single day.

3 Under this legislation any fees that those  
4 agents charge their customers for Pennsylvania hotel  
5 bookings will be subject to state, county, and in some  
6 cases municipal occupancy taxes. This is regardless of  
7 whether the agency is located in Pennsylvania or not.

8 This is important because as our industry  
9 has evolved, travel agents are relying less and less on  
10 commissions provided by travel suppliers like hotels and  
11 airlines and more on professional fees agents charge to  
12 their customers. Commissions have never been subject to  
13 hotel occupancy tax as has been discussed today while  
14 fees would be under the bills we're talking about today  
15 and others like them.

16 According to ASTA's research in 2011 while  
17 booking about \$12 billion worth of hotel rooms  
18 nationwide, 44 percent of travel agents reported charging  
19 their clients a professional fee for hotel bookings. 50  
20 percent of agents charged a fee for an air, hotel, and  
21 car package.

22 These fees are charged for a service,  
23 saving consumers time and money by helping them navigate  
24 a marketplace that offers an overwhelming number of  
25 options and choices. We fear that taxing this revenue,

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1 which is already subject to federal and state income  
2 taxes, creates a disincentive for travel agents to spend  
3 their time arranging travel for people to come to  
4 Pennsylvania.

5           Beyond taxes, this legislation would  
6 impose new administrative burdens on travel agents.  
7 Agents would have to register with state, county, and,  
8 where applicable, municipal taxing authorities and go  
9 through detailed accounting and recordkeeping measures  
10 for each and every hotel transaction. How else would the  
11 tax be collected and calculated? This will be a heavy  
12 financial burden on the vast majority of travel agencies,  
13 98 percent of whom are U.S. Small Business Administration  
14 eligible small businesses.

15           The bottom line is we would risk a  
16 situation where travel agents around the country begin to  
17 view Pennsylvania negatively as a place to promote to  
18 travelers if the difficulty of doing business here  
19 overshadows the excellent work the Commonwealth and the  
20 local CVBs have done to promote travel here.

21           Like other small business owners, our  
22 members work long hours to sustain and grow their  
23 businesses, even in the midsts of the recent economic  
24 downturn. With travel to Pennsylvania reaching record  
25 levels in 2012, according to the Commonwealth's tourism

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1 office, I would respectfully suggest to the committee  
2 that this is the exact wrong time to impose additional  
3 taxes on the travel and tourism industry.

4 I appreciate the opportunity to testify on  
5 behalf of our part of the travel industry and the time  
6 you've taken to listen to my concerns. I would be happy  
7 to answer any questions you might have.

8 MR. SHUR: Thank you.

9 Mr. Chairman, distinguished members of the  
10 committee, thank you for the opportunity to speak with  
11 you today. I would also like to specifically thank  
12 Representative Day for bringing attention to this  
13 important issue and for affording me the opportunity to  
14 be here. My name is Steve Shur. I'm the President of  
15 the Travel Technology Association. On a personal note, I  
16 grew up just five miles from here and I still consider  
17 Philadelphia to be my home city, so it's a thrill and an  
18 honor to meet with you today here at the Constitution  
19 Center.

20 Travel Tech as we are known is the trade  
21 association for online travel companies and global  
22 distribution systems. Our members include well-known  
23 companies such as Expedia, Orbitz, Priceline, and  
24 Travelocity. On behalf of these companies I very much  
25 appreciate the opportunity to clarify how our industry

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1 works, our business model, and to address the proposals  
2 that would apply state and local taxes to travel services  
3 in the Commonwealth.

4           On the surface, such proposals would only  
5 impact online travel companies like those that are  
6 members of my association. However, if enacted, they  
7 would impact hundreds of Pennsylvania businesses, such as  
8 travel agents, wedding planners, tour operators, and  
9 educational companies operating in Pennsylvania. These  
10 businesses would face new tax obligations with all the  
11 recordkeeping burdens and audit compliance risks that  
12 come with them.

13           But I'm here today representing Travel  
14 Tech and would like to spend my time clarifying what  
15 online travel companies do and how these proposals will  
16 impact Pennsylvania specifically. I would like to  
17 address some myths that may exist about our industry.

18           The first myth has to do with our business  
19 model. Online travel companies do not buy up blocks of  
20 rooms at a wholesale rate, mark them up, and turn around  
21 and resell them at a retail rate. In fact, online travel  
22 companies don't buy hotel rooms at all. Terms like  
23 retail and wholesale are meaningless here.

24           Online travel companies also don't operate  
25 hotels, exercise any control over hotel rooms, or bear

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1 any inventory risk in the event that hotel rooms go  
2 unsold. We operate websites. These websites help hotels  
3 market their inventory to customers they might not  
4 otherwise be able to reach. In doing so, we market  
5 Pennsylvania across the globe.

6 Our hotel partners value this service.  
7 They knowingly and willingly enter into contracts with  
8 our member companies for this marketing service,  
9 especially independent hotels which might not have the  
10 marketing budgets that would give them the kind of  
11 exposure we can give them in dozens of countries,  
12 languages, and currencies.

13 A recent study by Chris Anderson, Ph.D.,  
14 at Cornell University's prestigious hotel school found  
15 that a hotel's listing on Expedia increased total  
16 reservation volume by seven and a half to 26 percent,  
17 depending on the hotel. This number excluded  
18 reservations processed through the OTA itself.

19 Let me say that again. Just by being  
20 listed on Expedia's site, the study found that those  
21 hotels saw an increase in bookings on their own direct  
22 site by an average of seven and a half to 26 percent.

23 This larger and more exhaustive study  
24 analyzes the billboard effect, as they call it, on  
25 booking behavior related to 1,720 reservations for

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1 InterContinental Hotel brands for the month of June,  
2 July, and August in the years 2008, 2009, 2010.

3           The analysis determined that for each  
4 reservation an IHG hotel receives at Expedia, the  
5 individual brand website receives between three and nine  
6 additional reservations. Although these reservations are  
7 made through "Brand.com," meaning the individual's brand  
8 site, they are directly created or influenced by the  
9 listing at the online travel agent. This is testament to  
10 the marketing service that our members provide hotels.

11           In addition to this marketing service, we  
12 also provide service to consumers. This takes the form  
13 of performing research for them, saving them time, and  
14 otherwise acting as their travel agent and advisor. A  
15 good analogy of this model is the airline industry. When  
16 a traveler books a flight via a travel agent or an online  
17 travel company, the reservation is being made with  
18 United, Delta, USAirways, not with the service provider  
19 or intermediary.

20           Under this model, instead of being paid by  
21 the hotel in the form of a commission check, we charge  
22 our travelers a service fee, which we pay taxes on at the  
23 federal level and as business income in the states of  
24 incorporation.

25           This leads me to the second myth which is

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1 that taxes are somehow going unpaid under this fee for  
2 service model. Not so. When the hotel sends our members  
3 an invoice after a customer has completed their stay, we  
4 pass on to the hotel the negotiated room rate we've  
5 collected from the customer upfront, plus any taxes due  
6 on the hotel stay, so that the hotel can then remit it to  
7 state and/or county authorities as required by law.

8 As for any claim that online travel  
9 companies are collecting tax money from consumers and  
10 preventing it from being remitted, all I can say is that  
11 is simply untrue, and that every single court that has  
12 ever considered this question has found it to be untrue.

13 The final myth I'll address today is the  
14 notion that advances in online technology have rendered  
15 the tax system out of date. Again, this claim is based  
16 on flawed understanding of the travel industry and its  
17 history.

18 The fee-for-service business model has  
19 been around for decades, well before the Internet was  
20 created. That's one reason brick and mortar travel  
21 agents, who invented this model and still use it today,  
22 join us in opposing this tax which would equally apply to  
23 them.

24 It's instructive to look at what other  
25 states have done when invited to change their tax laws in



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1 this way. In the past year every state that considered a  
2 similar proposal rejected it. Texas, Virginia, New  
3 Mexico, and Connecticut, to name a few. And the one  
4 state that did pass similar legislation is now in  
5 litigation.

6 Speaking more broadly, I would suggest to  
7 you that the way to grow tourism in Pennsylvania is not  
8 to add new layers of cost and complexity to the tourism  
9 promotion business. As noted in the Cornell study,  
10 online travel companies increase direct bookings for  
11 Pennsylvania hotels.

12 Instead, a better approach is to help  
13 ensure that Pennsylvania is able to compete in a highly  
14 competitive and price sensitive domestic tourism market,  
15 in which 46 out of 50 states in this country do not apply  
16 lodging taxes to travel services.

17 In closing, when travel agencies, both  
18 online and in your communities, compete against each  
19 other for the chance to help hotels fill inventory and  
20 bring people to Pennsylvania to spend money here, the tax  
21 base grows and the Pennsylvania tourism industry is best  
22 able to grow and thrive.

23 I respectfully urge you not to go down  
24 this uncertain path of passing a new tax on services in  
25 Pennsylvania. Thank you for your time.

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1 CHAIRMAN PRO TEM DENLINGER: Very good,  
2 Gentlemen. Thank you each for your testimony.

3 I want to just throw out an initial  
4 question here and I'll invite whoever wants to respond.

5 As was shared in the previous panel, NCSL,  
6 Conference of State Legislatures, has given an  
7 encouragement to those of us that are in the policy-  
8 making business to try to standardize policy nationally,  
9 and you did, Steve, address that to some degree.

10 What advice do you have for us short of  
11 obviously moving in this direction, to try to bring some  
12 standardization to the tax footprint that you all in this  
13 industry have to deal with?

14 MR. SHUR: The first point I would make on  
15 any standardization is making sure that there's broad  
16 understanding of the business model as I've described in  
17 my testimony today. What I want to make clear is, again,  
18 that online travel companies and travel agents do not  
19 buy, sell, or operate hotel rooms, and, therefore,  
20 provide a service. That's the foundation for any  
21 discussion on occupancy taxes applied to services needs  
22 to start there.

23 With regard to the NCSL resolution, it's  
24 my understanding that that resolution was passed without  
25 the input of travel agents and online travel companies,

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1 and we look forward to having this discussion, as we have  
2 in many states on a one-on-one basis, to make sure that  
3 our business model is clearly understood before  
4 proceeding down this path.

5 CHAIRMAN PRO TEM DENLINGER: Very good.

6 MR. PECK: I would just add, to back up  
7 Steve's point, just clarity in the statute. The debate  
8 is almost always about online travel companies, but you  
9 can see that a lot of our members would be impacted as  
10 well by the clear, clear reading of it, so drawing as  
11 bright lines as possible.

12 CHAIRMAN PRO TEM DENLINGER: Very good.

13 And, Eben, I'm going to ask a follow-up  
14 for you if I may. You zeroed in on some constituents of  
15 mine and that was well stated.

16 Can you share for this committee what the  
17 more localized impacts would be? We know the big names  
18 that are out there, but your membership, what are we  
19 talking about in terms of more local district-by-district  
20 impact in terms of numbers.

21 MR. PECK: Sure. Well, there's several  
22 hundred what you would call brick and mortar travel  
23 agencies in Pennsylvania today, and I suspect their  
24 business models range from pure commission to pure  
25 service fees or professional fees.

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1           So our fear is that if this was to be  
2 passed into law, that for each and every hotel booking,  
3 depending on which county it was in, which city it was  
4 in, they would have to go through, okay, calculate the  
5 taxes, collect the taxes, remit the taxes, and that this  
6 could have kind of a chilling effect. That's just within  
7 Pennsylvania.

8           We've -- we're facing this in a small  
9 number of other states where it was the same pattern  
10 where it was supposed to be about the online companies  
11 but the plain reading of the bill says it would apply to  
12 all travel agents, and we just don't want to inject any  
13 kind of uncertainty into the travel industry at this  
14 point is what I would say.

15           CHAIRMAN PRO TEM DENLINGER: Very good.  
16 So hundreds of local agencies, potential impact there.

17           MR. PECK: Indeed.

18           CHAIRMAN PRO TEM DENLINGER: And, Kevin,  
19 any other comments you want to add on those questions?

20           MR. MITCHELL: Just, you know, there are  
21 some enterprising individuals running around the country  
22 starting this up, and I think it's a bit of a Morton's  
23 fork for them to say, we need to harmonize tax laws.

24           As far as I know, the tax laws are pretty  
25 consistent across the country in terms of the money that

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1 the hotel takes in for the room is the money that is  
2 taxed. So we're sort of going through all this work for  
3 nothing in my view.

4 The other thing I would like to chime in  
5 on is that of course if Best Buy buys a wholesale, buys a  
6 cell phone to resell and sells it for \$100 to the  
7 customer, of course Best Buy is paying the tax on the  
8 \$100. They took the inventory risk and they operate Best  
9 Buy. The OTAs don't take any inventory risk and they  
10 don't operate hotels, so the analogy to Best Buy falls  
11 apart very quickly.

12 CHAIRMAN PRO TEM DENLINGER: Appreciate  
13 that point.

14 With that, our next questioner would be  
15 Representative Gabler.

16 REPRESENTATIVE GABLER: Thank you very  
17 much, and thank you all for your testimony.

18 I just wanted to zero in on a part of the  
19 testimony. This question should be for Mr. Sure.

20 You mentioned in your testimony that --  
21 that there were -- that no court of jurisdiction has  
22 decided against your industry. But in the previous panel  
23 we had heard some examples thrown out there about State  
24 Supreme Courts, I believe the examples given were Georgia  
25 and South Carolina.

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1 I just was wondering, it sounds like we  
2 were hearing two different versions. I'm just wondering  
3 if you could address specifically the cases that were  
4 referred to in the previous panel.

5 MR. SHUR: Right. I think in my testimony  
6 I referred to legislatures that took up the similar  
7 proposals in this year, in 2013, and so the states that I  
8 referenced addressed these issues and either didn't pass  
9 or ultimately decided not to move forward with the  
10 legislation.

11 And as far as the states that -- that are  
12 tied up in litigation right now, so the courts that have  
13 a -- I can provide this to the committee after the fact,  
14 but a list of over 30 judicial decisions in favor of the  
15 online travel companies, and so this has been -- the  
16 point to be made is that this issue has been tested in  
17 the courts at the local and state level all over the  
18 country.

19 And in an overwhelming majority of those  
20 cases the courts found in the favor of the online travel  
21 companies. And in those cases where they found in favor  
22 of the -- against the online travel companies, they are  
23 in appeal and litigation right now.

24 REPRESENTATIVE GABLER: Thank you.

25 CHAIRMAN PRO TEM DENLINGER:

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1 Representative Davidson.

2           REPRESENTATIVE DAVIDSON: I wanted to go  
3 back to the questions I had for the previous panel  
4 regarding discounts to consumers using online travel, and  
5 I want to thank you for your testimony and explaining the  
6 models, because I think there's been some confusion as  
7 you see from the panel as -- you know, different  
8 questions about how the online model works as it relates  
9 to hotel and purchasing of the rooms.

10           So if you could just kind of clarify, can  
11 a consumer get a discount quote lower than they might get  
12 on the brand hotel depending on what time of day?

13           MR. SHUR: Right. So I'll start with the  
14 basics. The hotels and the online travel companies  
15 negotiate the room rate behind the scenes. That's a  
16 proprietary transaction between online travel companies  
17 and the hotels, and in the case of the big chains, those  
18 are system-wide negotiations, and in the terms of  
19 independent hotel operators, they're one-on-one  
20 discussions.

21           As part of that, the hotels tell the  
22 online travel companies what they can charge for that  
23 room. The online travel companies do not get to set the  
24 rate. They are told what the rate is. And so it appears  
25 to me that from -- from your experience and the example

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1 that you provided, that, as you can tell, if you call the  
2 hotel on the phone, you may get a different rate than  
3 what you see on the brand's website.

4 But for the most part, and I believe the  
5 people who testified earlier suggested that you will see  
6 the same rate on the online travel company as you will on  
7 the brand site because that is dictated by the hotel  
8 during the transaction or the contract negotiation.

9 REPRESENTATIVE DAVIDSON: So there would  
10 be no difference to the consumer pricing if this law was  
11 enacted? Do you foresee any difference in consumer  
12 pricing if the law as proposed by Representative Day is  
13 enacted or the series of bills?

14 MR. SHUR: If hotel occupancy taxes are  
15 applied to travel service providers, really three things  
16 could happen: One, the cost will be passed on to the  
17 consumer, and then -- and because of what I just  
18 described, the cost will increase because the  
19 negotiations between the hotels and online travel  
20 companies will take into consideration the added taxes.

21 Two, the online travel companies could  
22 absorb the costs which ultimately means fewer marketing  
23 dollars are directed to a particular region.

24 Or, three, the online travel companies can  
25 choose to stop doing business in a state or a region,



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1 which has happened in the past.

2           And given the Cornell study that I cited,  
3 what we provide as a service to both the hotels but also  
4 to travel and tourism in your state is, in our opinion,  
5 something that is of great value, and from our  
6 perspective, why would the state want to jeopardize the  
7 incredible marketing power that the online travel  
8 companies provide to your travel and tourism industry.

9           REPRESENTATIVE DAVIDSON: Thank you.

10           Did you have something to say, too?

11           MR. PECK: Just that the 15 percent, let's  
12 say it's 15 percent tax that's always been applied on the  
13 hotel, the service fee side for an agent, that's their  
14 business income. If they were asked to absorb that cost,  
15 I suspect some or all of them would pass a lot of that on  
16 to the consumer.

17           MR. MITCHELL: Can I chime in for two  
18 quick points -- maybe just one point?

19           There's a Focusrite study, recent study,  
20 that shows that 68 percent of all consumers begin on the  
21 Internet when developing their plans to travel. 26  
22 percent of those then end up jumping to the supplier site  
23 and make the purchase, whether it's a hotel or an  
24 airline.

25           So part of what's in that fee that the

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1 hotel is paying the OTA is for that service. It's behind  
2 the scenes, but 26 percent are finding their ways back to  
3 the online -- the supplier site.

4 REPRESENTATIVE DAVIDSON: And my final  
5 question, are the OTCs prohibited from applying points  
6 to -- to the consumer who is booking with a brand name  
7 hotel that offers those kinds of points, are you  
8 prohibited from allowing them to receive those points?

9 MR. SHUR: I'm not aware of the individual  
10 contract requirements between the OTCs and the hotel  
11 chains, particularly the big brands, however, I can say  
12 from personal experience that when I book a trip on  
13 Orbitz or Expedia, I'm able to include my frequent flyer  
14 number, for example, and my hotel partnership number and  
15 have that applied.

16 REPRESENTATIVE DAVIDSON: Thank you.

17 CHAIRMAN PRO TEM DENLINGER:

18 Representative Moul.

19 REPRESENTATIVE MOUL: Thank you. I know  
20 the hour is getting late and I'll try and be brief.

21 Other states that did this, I heard South  
22 Carolina and Georgia. How many states did do this?

23 MR. SHUR: How many states did not or --

24 REPRESENTATIVE MOUL: How many states  
25 initiated the -- the online travel agencies to pay the

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1 full rate, how many states are not doing what we're  
2 doing? How many states initiated this legislation?

3 MR. SHUR: There have been many states who  
4 have had these proposals discussed. I have a short list  
5 here of a few states that have passed legislation or were  
6 mandated by court order to implement a hotel occupancy  
7 tax on travel service providers, and South Carolina is  
8 one of those cases. That was not through legislation,  
9 that was through court action.

10 In New York, which changed the state law  
11 at the behest of New York City, only had to go back and  
12 change the law due to constitutional problems. So the  
13 point about New York is that -- and we have discussed  
14 this in our testimony, the implementation of such  
15 proposals is quite challenging and complex and causes all  
16 kinds of problems for hotel operators, online travel  
17 companies, traditional brick and mortar travel agents,  
18 and other hotel or travel service providers in those  
19 states.

20 Minnesota has struggled for years to find  
21 ways to figure out basic implementation issues on these  
22 proposals.

23 And then that leaves North Carolina and  
24 Oregon which are both tied up in litigation right now,  
25 so...

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1 REPRESENTATIVE MOUL: So the ones that  
2 initiated this legislation, be it court decision or  
3 statute, did the cost go up to the consumer?

4 MR. SHUR: I don't actually have data for  
5 you to comment on that question right now. But I can  
6 tell you that it's a combination of the three options  
7 that I presented earlier, which is the cost gets passed  
8 on to the consumer, the online travel company absorbs the  
9 cost, which means they're dedicating fewer marketing  
10 resources to that state, or they stop doing business in  
11 those jurisdictions.

12 REPRESENTATIVE MOUL: Have you seen any  
13 hotel stays in those states go down because of the  
14 legislation or court order?

15 MR. SHUR: Again, I don't have data on  
16 that.

17 REPRESENTATIVE MOUL: Would you really  
18 stop service to those states or areas?

19 MR. SHUR: Well, it remains an option for  
20 the online travel companies, and it has happened in some  
21 smaller jurisdictions.

22 REPRESENTATIVE MOUL: Not statewide but  
23 regional?

24 MR. SHUR: Correct.

25 REPRESENTATIVE MOUL: And would you really

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1 stump on your own toe to spite your foot or to make an  
2 example?

3 MR. SHUR: Well --

4 REPRESENTATIVE MOUL: Statewide, I mean,  
5 really, would you really take out 1/52nd of your  
6 business?

7 MR. SHUR: Well, in the practical reality  
8 of that, I'd have to leave up to my member companies,  
9 although I will tell you that it remains an option, you  
10 know, and as we see, you know, we would look at all the  
11 business opportunity and the realities of how online  
12 travel companies are being treated and make those -- and  
13 each individual company would have to make that decision.

14 As the association executive, I can't  
15 speak for the individual companies in that regard because  
16 that's a business decision, but certainly collectively  
17 the association representing those companies feels that  
18 applying hotel occupancy taxes to travel service  
19 providers is both unfair and misguided.

20 REPRESENTATIVE MOUL: What's your  
21 organization's position when county by county, wherever  
22 it may be, raises their own local hotel tax?

23 MR. SHUR: Well, it gets back to our  
24 business model. Online travel companies are not the  
25 remitters of occupancy taxes. And so, therefore, the

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1 hotel where the actual customer stays for the night is  
2 responsible for remitting those taxes.

3 So if -- to answer that question  
4 specifically, that is really a function of the hotel and  
5 not the online travel company.

6 REPRESENTATIVE MOUL: But you collect it  
7 for them?

8 MR. SHUR: We --

9 REPRESENTATIVE MOUL: And pass it back?

10 MR. SHUR: That's correct.

11 REPRESENTATIVE MOUL: So it's at a higher  
12 rate but you still perform the same function?

13 MR. SHUR: That's correct.

14 REPRESENTATIVE MOUL: Thank you.

15 Thank you, Mr. Chairman.

16 CHAIRMAN PRO TEM DENLINGER: Thank you.

17 And one last quick question from Representative Heffley.

18 REPRESENTATIVE HEFFLEY: Just back to the  
19 point for one minute. So if an on-line service provides  
20 a room and, say, you sell it for \$100 and the hotel is  
21 charging \$80, and you're -- and that person has a points  
22 card for that hotel, and they honor that, would they get  
23 the points awarded for the \$80 or the 110 -- or the  
24 \$100?

25 MR. SHUR: I can't answer that because

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1 that is a function of the customer's relationship with  
2 the hotel chain or the hotel provider.

3 CHAIRMAN PRO TEM DENLINGER: Okay. Any  
4 other comments on that? Okay.

5 Thank you all. I think it's been a really  
6 good dialogue today. Very interesting hearing.

7 And I encourage everyone that presented to  
8 stay engaged with Chairman Stern, Chairman Kirkland, and  
9 the members of this committee, and also obviously  
10 Representative Day.

11 So thank you again, and we are adjourned.

12 (The hearing concluded at 2:53 p.m.)

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CERTIFICATION

I, KATHLEEN MCHUGH, a Registered Professional Reporter and Commissioner of Deeds, hereby certify that the foregoing is a true and accurate transcript of the deposition of said witness who was first duly sworn by me on the date and place herein before set forth.

I FURTHER CERTIFY that I am neither attorney nor counsel for, not related to nor employed by any of the parties to the action in which this deposition was taken; and further that I am not a relative or employee of any attorney or counsel employed in this action, nor am I financially interested in this case.



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KATHLEEN MCHUGH  
Registered Professional Reporter  
and Commissioner of Deeds