

Online Travel Companies Do Not Collect and Fail to Remit Taxes

Virtually every court that has addressed the claims that online travel companies (“OTCs”) have collected but failed to remit taxes has rejected them. Those courts have instead found that hotel tax is due only on the net rate charged by the hotel, not the margin and service fees charged and retained by the OTCs, and that tax is properly being collected and remitted on the net rate.

| Case | Result on this issue |
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| <i>City of Findlay v. Hotels.com</i> , 2010 WL 4806850 (N.D. Ohio Nov. 18, 2010). | For OTCs: As to “whether [OTCs] have deceived consumers by pocketing amounts charged as taxes,...there is no evidence [OTCs] have done so here.” (<u>Court found no evidence that OTCs collect but do not remit taxes even after giving plaintiffs two years to conduct discovery on that claim.</u>) |
| <i>City of Columbus, et al. v. Hotels.com, L.P.</i> , 693 F.3d 642 (6th Cir. 2012). | For OTCs: “[I]t is also undisputed that a portion of that combined charge was actually remitted to the hotels as a tax due on the wholesale value of the hotel room. The localities have not come forward with evidence suggesting that the online travel companies labeled charges as taxes when, in fact, the money collected was not remitted as a tax.” |
| <i>Expedia v. City of Anaheim</i> , No. JCCP 4472, 2010 WL 8721517 (Cal. Sup. Ct. Feb. 1, 2010), <i>affirmed by</i> No. B230457 (Cal. Ct. App. Nov. 1, 2012), <i>pet. denied by</i> No. S207192 (Cal. Jan. 23, 2013). | For OTCs: “OTCs use the net rate to calculate the transient occupancy tax...” |
| <i>City of Atlanta v. Hotels.com</i> , 710 S.E. 2d 766 (Ga. May 16, 2011). | For OTCs: “OTCs calculate the hotel occupancy tax amount based on the wholesale rate the OTC negotiates with hotels...and not on the retail room rate the OTC charges the customer.” |
| <i>Travelscape, LLC v. South Carolina DOR</i> , 705 S.E.2d. 28 (S.C. Jan. 18, 2011). | For OTCs: “The tax recovery charge, which is based on the net room rate, correspond with the sales tax owed by the hotel.” |

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| <p><i>City of Philadelphia v. City of Philadelphia Tax Review Board</i>, 37 A.3d 15 (Pa. Cmwlth. 2012), <i>alloc. denied</i>, 50 A.3d 1253 (Pa. 2012).</p> | <p>For OTCs: “When a customer made a hotel reservation on Expedia’s website, the customer was charged the discounted room rate, plus a facilitation fee, a service fee, a tax recovery charge, and an amount equal to the City’s Hotel Tax. Expedia calculated the Hotel Tax solely on the room rate and did not include any fees in this calculation.”</p> |
| <p><i>Orange County, FL v. Expedia et al</i>, Case No. 48-2006-CA-2104-O, Ninth Judicial Circuit Court, Orange County, FL (Jan. 20, 2011).</p> | <p>For OTCs: “In calculating the amount of taxes owed, the contracts between the Defendants and the hotels call for calculation and payment of taxes on the ‘wholesale’ price of the room, not the ‘retail’ price paid by the ultimate consumer.”</p> |
| <p><i>City of Gallup v. Hotels.com</i>, No. 2:07-cv-00644-JEC-RLP (D.N.M. Mar. 29, 2013).</p> | <p>For OTCs: “Plaintiff has offered insufficient evidentiary support for its sole remaining collected-but-unremitted theory and the claim will be dismissed.”</p> |
| <p><i>Wake County, et al. v. Hotels.com, L.P., et al.</i>, No. 06-CVS-16256, 2012 WL 6673127 (Gen. Ct. of Justice, N.C. Dec. 19, 2012), <i>affirmed by</i> 762 S.E.2d 477 (N.C. Ct. App. 2014), <i>pet. rev. denied</i>.</p> | <p>For OTCs: “[The counties] have been unable to direct this Court to any binding legal precedent to support a ‘collected-but-not-remitted’ theory of recovery.”</p> |
| <p><i>City and County of San Francisco, California v. Hotels.com, L.P.</i>, No. JCCP 4472, Notice of Ruling on Online Travel Companies Motion for Summary Adjudication (Los Angeles Superior Court Feb. 28, 2013).</p> | <p>For OTCs: “Any consideration received by the O.T.C.’s above a net rate must consequently be for services other than providing the use or possession or the right to use or possess a room.”</p> |
| <p><i>City of Los Angeles, California v. Hotels.com, L.P.</i>, No. JCCP 4472, Notice of Rulings from April 18, 2013 (Los Angeles Superior Court April 23, 2013).</p> | <p>For OTCs: “The online travel companies should not be held liable for markups, fees, commissions, and profits above the amounts that are received from the consumer and turned over to the hotel for the net rate for occupancy.”</p> |
| <p><i>Hamilton County, OH v. Hotels.com, L.P.</i>, 2013 U.S. Dist. LEXIS 124507, 2013 WL 4679942 (N.D. Ohio Aug. 30, 2013).</p> | <p>For OTCs: “Plaintiffs have not pointed to any evidence showing that Defendants failed to remit money they collected as taxes... Each of Plaintiffs’ 30(b)(6) witnesses testified that they could not identify a specific instance where any of the Defendants collected but did not remit taxes.”</p> |

Rome v. Hotels.com, L.P., et al., 549 Fed. Appx. 896 (11th Cir. 2013).

For OTCs: “While the Localities offer facts that they hope raise the Court's eyebrows, they, after years of discovery, have failed to present sufficient evidence that raises a genuine question that the OTCs, in fact, collected any taxes above the wholesale rate.”