

NCSL Task Force on State and Local Taxation

Principles for the Taxation of Online Travel Companies and Short-Term Rental Marketplaces

With the emergence of the digital economy, state and local tax codes ~~continue to have difficulty keeping up with rapidly advancing technology~~ must keep up with new forms of commerce, including ~~One challenge states and localities face is~~ the taxation of online travel companies (OTCs) and short-term rental (STR) marketplaces. ~~OTCs and STRs which~~ act as intermediaries between customers and operators of short-term lodging, such as hotels, motels, inns, ~~and bed and breakfasts,~~ and private residences (such as apartments, condominiums, and houses, or individual rooms within such residences available for short-term rental).

Online Travel Companies

NCSL recognizes that the OTC business model is to contract with the businesses in the lodging industry to market rooms, allowing those businesses to fill rooms they otherwise might not. The OTCs sell the rooms to consumers/customers at a retail price that is equal to or higher than what the customer would pay if they purchased the same room directly from that business. The OTCs then remit to the business a pre-negotiated contracted wholesale rate for the room and taxes ~~due~~ collected on the wholesale rate, retaining the difference as profit (the compensation for marketing the room). The OTCs have complete control over the transaction, including the collection and remittance of taxes.

States and localities contend that this business model of only remitting taxes on the wholesale price OTCs pay the lodging business, rather than on the retail room rate the customer is paying (as is the norm for traditional lodging), results in a shortage of revenue remitted from the sales/occupancy taxes charged. In addition, a higher effective tax rate is imposed on hotels that remit taxes based on the retail rate customers are paying. The OTC business model also raises concerns about transparency and clarity of charges to the customer. As courts continue to hear lawsuits regarding OTC tax remittance practices, states continue to examine possible legislative statutory solutions to ensure codes are clear and factor the relatively new role OTC²s play in the marketplace.

Short-Term Rental Marketplaces

NCSL recognizes that the STR marketplace business model is to act as an intermediary between customers and property owners, and that STR marketplaces do not own the properties that are listed on their websites. For the property owner who occasionally rents out a room on a marketplace, registering, collecting, and remitting tax can be a burdensome process that discourages voluntary compliance. Ensuring full compliance on the part of property owners also imposes significant administrative costs on state and local governments. The expansion of STR marketplaces that act as financial intermediaries provides the opportunity for a solution that eases burdens on property owners and supports compliance with tax laws in a simple and efficient way.

The best option to create a system of tax parity is to ensure that all types of short-term lodging entities and providers are required to collect and remit applicable taxes—in this case, hotel, lodging, bed, and other related taxes (and in some states and localities, sales tax).

State and local governments can solve challenges with taxes on these short-term rentals for both owners and taxpayers by clarifying that STR marketplaces are responsible for collecting and remitting applicable taxes on short-term rentals facilitated through those marketplaces when they act as a financial intermediary. Clarifying that lodging marketplaces are responsible for collecting and remitting applicable taxes is a simple and efficient solution which ensures that legally-owed taxes are collected and remitted in the least burdensome manner.

Principles of Taxation

The National Conference of State Legislatures' Executive Committee Task Force on State and Local Taxation has studied online travel companies and short-term rental marketplaces and has developed the following principles that states should consider when addressing taxation of lodging accommodations:

1. To promote tax parity, states should consider legislation that requires short-term rental marketplaces that act as a financial intermediary to collect and remit applicable taxes on short-term rentals facilitated through those marketplaces, similar to the way applicable taxes are collected on accommodations booked from an OTC.

~~1.2.~~ To promote transparency for taxpayers, states should consider legislation that requires online travel companies, ~~and~~ hotel websites, and short-term rental marketplaces to:

- A) Publicly and explicitly display the charges, and resort fees, ultimately leading to the final price to the user.
- B) Require that taxes, fees, and service charges be separately stated instead of bundling them together.

C) If a business does not comply with ~~24.~~ (A) or (B) then impose tax on the entire bill.

~~⊖~~ Require OTCs and STR marketplaces to provide sufficient information to the tax authorities to ensure that taxes due have been appropriately collected and remitted. Tax authorities should also be able to audit pertinent records held by OTCs and STR marketplaces as is the case for all other state and local taxes.

3. To ensure full collection of taxes that are due and to promote equity and fairness in the tax code, states should consider requiring OTCs to remit taxes based on the rental price paid by the user. Similarly, states should consider legislation in which taxes are imposed on the full amount the renter pays to rent a property via an STR marketplace, including any service fees or charges levied by the STR marketplace as part of the cost of renting the property. The proper tax base is the full amount the renter pays to rent the property.

~~2.4.~~ To ensure that taxation is efficient, states should consider:

- A) Imposing any tax on online travel companies and short-term rental marketplaces through statutory impositions and not through administrative regulation or confidentially-negotiated agreements between private companies and state or local governments; and;
- B) Carefully devising definitions so that there is clarity to buyers and sellers of hotel rooms and other short-term lodging.

Adopted by the NCSL Executive Committee Task Force on State and Local Taxation ~~August 12,~~ 2013 [new date].