

ITSA NEWS RELEASE

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SAN ANTONIO'S LAWSUIT AGAINST THE ONLINE TRAVEL COMPANIES IS WRONG ON THE FACTS AND THE LAW

Why Is San Antonio Plunging into Costly and Baseless Litigation Before Discussion or Audit?

The City of San Antonio's ill-conceived class action lawsuit for hotel occupancy taxes is wrong on the facts and the law. The City is getting all taxes due to it. Despite the dramatic rhetoric from City officials and their hired plaintiffs' class action lawyers, Online Travel Companies (OTCs) do not collect hotel occupancy taxes on the gross amount, which includes the OTCs' service fees, while only remitting on the net rates, nor do these taxes even apply to the OTCs' service fees. Occupancy taxes are payable by hotel operators, not OTCs. Also, occupancy taxes are due only on the rent paid for a hotel room, not on the OTCs' fees.

Why don't the occupancy taxes apply to the OTCs' service fees? For a number of reasons, but primarily because OTCs don't operate hotels, don't buy and resell hotel rooms, and don't charge rent. Instead, the OTCs are intermediaries who add value by creating a marketplace that brings hotels and consumers together. With the click of a mouse, consumers can find hotels in San Antonio and other locations, and compare them on price, location, amenities and more. Hotels, especially the smaller ones who don't have the name recognition or resources to drive traffic to their own websites, use the OTCs to gain instant access to millions of consumers. OTCs charge consumers service fees for facilitating bookings for the hotel operators. What the OTCs are not required to do, and do not do, is collect taxes on their services fees.

OTCs do, however, pass through a tax recovery amount to the hotels, which then pay the tax authorities. The hotels pay all tax that is due, which is what is required under the City's ordinance. Simply put, the City of San Antonio is getting all of the tax dollars that it is entitled to under its tax ordinance. The same is true in Dallas, Austin, Houston and in other Texas cities. In fact, the Houston City Controller recognized as much in a recent letter to the Mayor of Houston and the Houston City Council, indicating that it was her belief that the tax "should apply to the actual cost of the room, not the markup applied by the Internet sites."

“It’s distressing that San Antonio has turned to aggressive, expensive and time-consuming litigation before even talking to the OTCs about their business activities, let alone conducting audits or assessments,” said Art Sackler, ITSA’s Executive Director. “This ready-shoot-aim approach favors speculative litigation over normal and responsible administrative processes,” Sackler continued. “The OTCs have previously offered to meet with the City and would welcome the opportunity to share the facts about how their business works. If the City is convinced the taxes are due, they have only to follow their existing administrative process to investigate the matter. As the facts come out, however, they will show that the OTCs are not failing to pay any tax. In the meantime, the City may have missed an opportunity to demonstrate that it treats businesses fairly.”

ITSA urges the City to reconsider, withdraw the suit, and talk to the OTCs. The OTC members of ITSA have been, and continue to be, available at any time to talk with the City Attorney and City Council and would prefer to focus their attention on promoting tourism in San Antonio, rather than on senselessly fighting with the City in court on a tax that is not owed.

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