

The NetChoice Coalition

Promoting Convenience, Choice, and Commerce on The Net

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Rep. Harvey Hilderbran, Chair
Rep. John Otto, Vice Chair
Texas House Legislature
House Ways & Means Committee
Room E2.116
Austin, TX 78768-2910

RE: **Opposition to HB 1454 – Relating to the Hotel Occupancy Tax on the Price Paid for a Hotel Room**

Dear Chairman Hilderbran and Vice Chairman Otto:

We write to encourage you to reject HB 1454, which would impose an unworkable new tax regime on valuable services provided by travel agents and online travel companies. HB 1454 is a misguided attempt to obscure the distinction between *hotel room charges* and *services* that travel agents provide when they research, compare, and book rooms for travelers.

HB 1454 Hurts Only Texans and Fails to Help the State Treasury

HB 1454 increases taxes only on travelers to and within Texas and imposes new burdens on Texas travel agents. What's more, HB 1454 could not compel out-of-state travel agents and online services to collect Texas's new tax.

A Texas Legislative Budget Board found under HB 1454 "no fiscal implication to the State is anticipated"¹ meaning no increase in tax revenue from HB 1454. Every state, city, and county that has enacted a similar law failed to get the anticipated tax revenue and many found themselves spending taxpayer money defending their law in court.

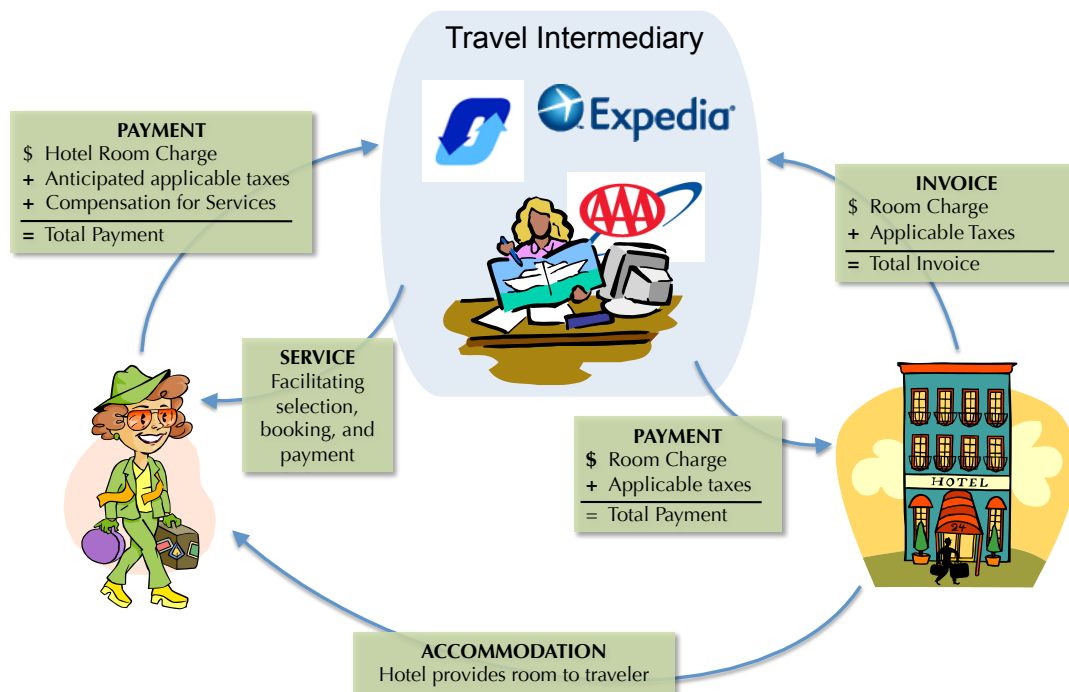
How Online Travel Companies Serve Travelers (and Why HB 1454 Won't Work)

Today, nearly all travel agents and travelers rely upon online services to research, compare, and book reservations.

In NetChoice's work on this issue in states and at ALEC and NCSL, we've seen a real need for education about differences in business models, transaction terms, and tax regimes. To help meet that need, we created a chart (below) to show the flow of services and payments in a typical transaction where a traveler uses an agent or online travel company to research and book a hotel reservation.

As shown in the chart, travel agents and online travel companies are providing a service to travelers, showing comparisons of rates and amenities at multiple hotels competing for their travel dollars.

¹ See Report from John S O'Brien, Director, Legislative Budget Board to Honorable Harvey Hilderbran, Chair, House Committee on Ways & Means, IN RE: HB1454 by Murphy (Relating to the hotel occupancy tax on the price paid for a hotel room.), As Introduced, Mar. 25, 2011.



Services model:

- Tax service and accommodation separately.
- Source to where customer receives the service.

MTC proposal:

- Tax service as part of the accommodation.
- Source everything to the hotel location.

Clearly, this facilitation service is distinct from the room provided by the hotel where the traveler eventually stays. HB 1454 crosses a line by ignoring the difference between a hotel room and a service. The overwhelming majority of courts that have examined this issue concluded that online travel company service fees are not subject to hotel occupancy taxes. Moreover, the chart shows that occupancy taxes due are fully paid on the amount received by hotels when a traveler uses an agent or online travel company.

As compelling as we believe our chart is, it has not been completely persuasive with local taxing authorities, whose goal is to maximize tax collections – no matter the facts of the transaction.

Help Texas and Vote “No”

By opposing HB 1454, your committee can help Texas’s travel and tourism industry focus on serving travelers and creating jobs – not on collecting new taxes. A “no” vote on HB 1454 also saves Texas millions in attorneys’ fees and court costs from lawsuits to defend the legality of HB 1454 and unsuccessful suits to collect taxes.

We appreciate your consideration of our views, and please let me know if I can provide further information.

Sincerely,

Steve DelBianco
Executive Director
NetChoice

cc: Members of the Committee

NetChoice is a coalition of trade associations and e-Commerce businesses who share the goal of promoting convenience, choice and commerce on the Net. More information about NetChoice can be found at www.netchoice.org