What Should Be the Appropriate Tax Base for OTCs’ Hotel Room Sales?

by James Mak

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The author thanks Andrew Kato, Bill Fox, Fred DeKay, and Roger Blair for helpful comments and suggestions.

I. Introduction

The Internet spurred the creation of e-commerce, which has experienced spectacular growth over the past two decades. In the travel industry, consumers increasingly find it beneficial to book their hotel rooms with online travel companies (OTCs) — also referred to as online travel agencies (OTAs) — such as Expedia, Hotels.com, Orbitz, and Travelocity rather than booking directly with hotels or with traditional bricks-and-mortar travel agencies. In a 2012 study, Cindy Estis Green and Mark V. Lomanno found that the growth of OTCs has benefited both consumers and hoteliers.1 But there is a downside as well. That involves a reduction in tax revenue for many state and local governments.

In recent years many state and local governments in the United States have sued OTCs for allegedly not remitting the correct amount of hotel occupancy tax revenue on their hotel room bookings or sales. In 2004 Los Angeles was one of the first cities to file suit against OTCs, followed quickly by San Diego, San Francisco, and Anaheim.2 By March 1, 2010, state and local governments from 22 states had initiated litigation against the OTCs demanding the OTCs pay alleged back taxes owed.3 In March 2011 the District of Columbia and Hawaii became the latest jurisdictions to pursue OTCs for alleged unpaid hotel occupancy taxes.4 To date there have been more than 70 litigations and most of them are either on appeal or still at the trial level.5 In those lawsuits, local governments claim that the OTCs should have remitted hotel occupancy taxes based on the total “retail prices” paid by their customers rather than the lower “wholesale prices” that OTCs pay to hotel suppliers. OTCs disagree.

OTCs through their trade association, the Interactive Travel Services Association (ITSA), say that the price that they charge their customers for a hotel booking includes the discounted price of the room they have negotiated directly with the hotel, an added margin that constitutes a markup and a separate service fee (called fees) as the facilitator of the transaction, and applicable taxes (called the tax recovery charge). Taxes and fees are not separately itemized.6 OTCs argue that since they neither own OTCs pay alleged back taxes owed.3 In March 2011 the District of Columbia and Hawaii became the latest jurisdictions to pursue OTCs for alleged unpaid hotel occupancy taxes.4 To date there have been more than 70 litigations and most of them are either on appeal or still at the trial level.5 In those lawsuits, local governments claim that the OTCs should have remitted hotel occupancy taxes based on the total “retail prices” paid by their customers rather than the lower “wholesale prices” that OTCs pay to hotel suppliers. OTCs disagree.

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nor operate hotels, they should not be taxed under state and local hotel room tax statutes. They note that traditional travel agents do not pay hotel room occupancy taxes on their commissions, neither should they have to pay occupancy taxes on the value of their services. In cases that have been decided to date, both sides have earned victories. The outcomes in those cases have been decided by the courts’ interpretations of the wordings of local hotel occupancy statutes. The current status of the cases that have or are still under litigation as of early 2011 can be seen in Reagan.

For cash-strapped state and local governments, the potential tax revenue lost from untaxed OTC markups and service fees are substantial. Green and Lomanno estimate that in 2010 the difference between the amount consumers paid to the OTCs at retail room rates and the amount that OTCs paid to hoteliers at negotiated (wholesale) rates was $2.7 billion ($10.4 billion minus $7.7 billion). The difference in tax revenue collectively amounts to roughly $340 million, which was the average tax rate in the United States in 2008.

OTCs have taken the dispute to a higher level. They are lobbying Congress to enact national legislation that would prohibit state and local governments from imposing hotel occupancy taxes on bookings with them. Their proposal is opposed by the American Hotel & Lodging Association as well as a coalition of state and local government organizations that include the Federation of Tax Administrators, the National Association of Counties, the National League of Cities, the National Governors Association, and the U.S. Conference of Mayors. Hoteliers regard this as a tax equity question. They fear that an exemption for the OTCs might result in a shift of the tax burden to them. State and local governments argue that an exemption would pre-empt their taxing powers.

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This report has two objectives. First, it describes how OTCs operate, and then, in Section II, it shows why the emergence of merchant model OTCs led to the current tax dispute between state and local governments, hoteliers, and the OTCs.

Second, and more importantly, this report looks beyond the current tax dispute to provide an economic rationale for what should be the tax base for OTC hotel room sales (Section III). Although the solution to the governments’ current fiscal dilemma is to rewrite their hotel occupancy statutes in more specific language as a few jurisdictions have already

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8Reagan, supra note 5; Commonwealth of Virginia, 2010; and ITLA’s website at http://www.interactivetravel.org/.

9Reagan, supra note 5.

10Green and Lomanno, supra note 1, exhibits 17 and 18, pp. 37-38.


done, it is still necessary to provide sound theoretical justification for the change. This report finds no convincing rationale for the preferential tax treatment of OTCs. Instead, it argues that the appropriate tax base should be the full (retail) prices, inclusive of the OTC markups and fees, and not the wholesale prices paid by the OTCs to hotel suppliers. Section IV concludes the article.

II. OTC Merchant Model of Hotel Distribution and the Tax Dispute

The Internet has spawned a tremendous increase in electronic travel distribution. In the U.S. lodging industry, Internet-based travel distribution companies or third-party distributors, travel agents, and hotels compete to direct hotel bookings to their own websites. OTCs such as Travelocity, Expedia, and Orbitz did not even exist before 1996.

The timing of the emergence of OTCs as a major hotel distribution channel has been attributed to the sharp decline in travel and the rise in hotel vacancy rates following the September 11, 2001, terrorist attacks. At the time many hotel operators did not have their own websites. In 2000 Internet sites accounted for only 1 to 2 percent of hotel bookings. OTCs provided another market outlet for a perishable commodity. The senior research director of PhoCusWright said that currently OTCs “Generally . . . have a countercyclical role.” Hotels pick up market share on their own distribution channels when the economy is strong, but during slow business periods, OTCs offer improved sales opportunities to hoteliers. Thus, hoteliers and OTCs both benefit from their relationship.

OTCs work with two distinct business models, the agency model and the merchant model. Under the agency model, OTCs act as brokers and receive a commission from hotels when they book a room on behalf of their clients. Under the merchant model, OTCs are principals; they buy rooms from hotels at large discounts and resell them at marked-up prices to consumers. Commissions earned by OTCs working as brokers are not included in state and local hotel occupancy taxes. At dispute is what portion of the merchant model OTC room revenue is subject to hotel taxes.

OTCs prefer to do business under the merchant model because it is far more profitable than the agency model. Green and Lomanno estimate that the traditional agency model provides discounts of 10 to 17 percent versus 15 to 35 percent for the merchant model. In 2005 a hotel industry official wrote:

In the last several years, the final selling price on a merchant model room has averaged approximately 25 percent to 40 percent above the net rate amount paid to the hotel operator. That is an extraordinary return on the distribution of rooms when compared with the 10 percent return received under the traditional travel agent commission model.

The July 2011 U.S. District Court of San Antonio’s Findings of Fact and Conclusions of Law in a lawsuit brought by the city of San Antonio and 172 other Texas cities against the OTCs (United States District Court Western District of Texas, San Antonio Division, 2011 hereafter referred to in this report as SA v. Hotels.com et al.), cited a witness from Travelocity who testified that the company easily doubles its revenue under the merchant model. A witness from Hotels.com testified that profitability under the merchant model is approximately 18 to 22 percent, compared with 8.93 percent under the

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15 Green and Lomanno recently published the most comprehensive comparative study to date of hotel distribution channels in the United States, supra note 1.

16 Id.

17 King, supra note 7.


19 Green and Lomanno, supra note 1, differentiate three models: the retail (traditional agency) model, the merchant (Footnote continued in next column.)
agency model.\textsuperscript{22} In 2010 the agency model accounted for 12.1 percent of room nights sold by OTCs, according to Green and Lomanno.\textsuperscript{23}

The best comparison of the OTCs’ methods of operation under the two models can be found in the factual findings from the San Antonio lawsuit.

Under the agency model, a consumer who wants to book a room at a hotel can call up the hotel to make a reservation, and at checkout pay for the room and applicable occupancy taxes to the hotel based on the retail price of the room. (It is assumed throughout this article that the room tax is an ad valorem tax expressed as a percentage of the rental price.) The hotel remits the collected taxes to the local tax authority. Alternatively, the consumer can book a room through a traditional travel agent using the agency model. At checkout the consumer again pays for the room at the price set by the hotel plus applicable taxes to the hotel; the hotel pays a commission to the travel agent from the room revenue received. Whether the consumer books directly with the hotel or via a travel agent working on commission, the amount of the occupancy tax is calculated as the product of the statutory tax rate and the price of the room paid by the consumer. Thus, under the agency model, the hotel occupancy tax base is the same whether the room is booked directly with the hotel or through a travel agent. The hotel is the merchant of record and is the responsible party for calculating and collecting the occupancy tax from the guest and then remitting the revenue to the government.

Under the merchant model used by the OTCs, the OTCs (and not the hotels) are the merchants of record when they sell hotel rooms to consumers. In 
\textit{SA v. Hotels.com, et al.}, the Court finds that “The merchant model is a uniform, nationwide model that operates the same for all OTC’s in all jurisdictions.”\textsuperscript{27} Under the merchant model, the OTCs negotiate discounted room rates (called net rates) in advance with individual hotels and hotel chains.\textsuperscript{24} With rare exceptions, the contracts between the OTCs and hotels include a “most favored nation” clause meaning that the hotels guarantee that an OTC will receive at least as favorable a price as any other OTC. Thus, according to the court “the various OTC’s have the same wholesale or ‘net’ rate with the hotels and/or hotel chains.” The contracts allow OTCs access to the hotels’ room inventories on a “nonexclusive basis,” and they are not required to purchase a minimum number of rooms.\textsuperscript{25}

In their Securities Exchange Commission filings, Expedia and Hotels.com said that the OTC “acts as a principal and not as an agent or broker, and assumes the risks and rewards of its hotel reservation transactions with customers.”\textsuperscript{26} Expedia’s 2001 filings with the SEC stated: “Under the merchant model we are the merchant in the transaction. Our suppliers make inventory available to us at wholesale or net rates. We then determine the retail price that the customer pays and we then process the transaction by buying the inventory and selling it to the customer.” Similarly, according to Travelocity, “Travelocity negotiates with hotels for rooms on a net basis. This means we pay the hotel a flat rate for each room sold. We then have control over the price we offer to the customer and, therefore, control the profit we make from the markup.” In actual practice, OTCs purchase the rooms from the hotels only after they are sold.\textsuperscript{26} In the San Antonio case, the Court concludes: “While ‘facilitator’ or ‘intermediary’ may accurately describe the OTC’s role under the agency model, it does not accurately describe the role under the merchant model.”\textsuperscript{27}

OTCs collect all the money for the rooms and taxes from their customers in advance, that is, at the time of booking.\textsuperscript{28} Under the merchant model, the OTC — and not the hotel — calculates and is responsible for collecting the occupancy tax from the consumer. In 
\textit{SA v. Hotels.com, et al.}, the Court notes that “as part of their contracts [with individual hotels/hotel chains], the OTCs also agree to collect occupancy taxes on the rooms they sell at the rate they determine.” Thus, “the collection of hotel occupancy tax is a fundamental part of the OTC’s business practice under the merchant model.”\textsuperscript{29}

OTCs have “sole discretion in determining whether to apply the tax to the wholesale rate . . . as opposed to the retail rate.” At checkout, the hotel does not bill the occupant for the room or the occupancy tax. It only collects from the guest payment for incidental (non-lodging) items such as long-distance telephone calls, pay-to-view premium

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\textsuperscript{23}Green and Lomano, supra note 1.

\textsuperscript{24}Rex S. Toh, Charles F. DeKay, and Peter Raven, “Selling Rooms: Hotels vs. Third-Party Websites,” \textit{Cornell Hospitality Quarterly}, 52(2), 2011, p. 183. OTCs are able to obtain more favorable discounts from smaller hotels than from large hotel chains because smaller hotels are more dependent on OTCs to gain exposure.


\textsuperscript{26}Ibid, supra note 24.

\textsuperscript{27}Ibid, supra note 22.

\textsuperscript{28}The merchant model is sometimes referred to as a prepaid model.

\textsuperscript{29}Ibid, supra note 22.
movies, room service, or drinks from the minibar purchased during the visit. After the hotel guest has checked out, the hotel invoices the OTC for the room at the negotiated wholesale price. The OTC “transfers the wholesale rate of the room and hotel occupancy tax on the wholesale rate to the hotel. The hotel then remits the taxes on the wholesale rate to the City.”

Thus, when a consumer books a hotel room directly with a hotel (either via its call centers or online) or with the assistance of a (traditional) travel agent, the hotel room tax base is the retail price of the room, but when the consumer books the same room at the same base rate with a merchant model OTC, the OTC remits tax revenue on the discounted wholesale rate. The reason for the discrepancy is because hotel tax statutes in the United States typically — but not in all tax jurisdictions — specify tax liabilities based on the room rental revenue hotels receive. Hotels receive the full retail room rates from their guests when guests book directly with the hotels or with traditional travel agents, but they receive only the lower net rates when rooms are sold to merchant model OTCs. Some state and local governments believe that OTCs should remit hotel occupancy taxes based on the higher retail room rates consumers pay to them and not on the lower wholesale rates. Instead, OTCs have elected to remit occupancy taxes based on the discounted wholesale prices. At issue in the current litigations pitting state and local governments against the OTCs is whether the language of local hotel occupancy tax statutes requires OTCs to remit taxes based on retail or wholesale room rates.

In summary, this section shows that the emergence of merchant model OTCs has dramatically changed the institutional landscape in the U.S. lodging distribution business. State and local governments find their hotel occupancy tax statutes, designed for an earlier era and a different set of institutions, no longer serve their original purposes and many believe the statutes should be changed. The next section examines the question what should be the appropriate tax base for hotel occupancy.

III. The Appropriate Tax Base on OTC Hotel Room Sales

The hotel occupancy tax has been viewed as a transaction tax. Economists view taxes as imposed either on consumption, capital, or wealth. Hotel occupancy taxes are meant to be borne by hotel guests. Indeed, research on hotel room tax incidence in the United States has shown that, regardless of whether the tax is levied directly on the consumer or on the hotel supplier, the burden of the tax falls largely on buyers rather than sellers; hence, it is a tax on consumption.

A consumption tax may be based on the origin principle, whereby the tax is determined by where the good is sold or purchased, or it may be based on the destination principle, whereby the tax is based on where the good is consumed. Under the destination principle, the same tax rate would apply to hotel room rentals. By contrast, under the origin principle, hotel room rentals would be subject to widely varying rates from 0 percent to well over 10 percent, depending on where the hotel rooms were booked.

Kristian Behrens et al. have studied the differential effects of origin versus destination taxation on hotel guests.

(accessed on Nov. 11, 2011). A recent settlement was reported between Expedia and Florida’s Orange County. King supra note 7.


30In SA v. Hotels.com et al., the court notes (p. 55) that recently in some cities OTCs are remitting occupancy taxes directly to the cities.


32 It has been alleged that some consumers purchasing rooms from OTCs have been charged occupancy taxes on the retail prices they paid for the rooms but that OTCs have remitted tax revenue on the wholesale prices. In a nationwide class action suit against Expedia filed in U.S. District Court in Washington State in August 2005 on behalf of consumers (rather than local governments), the plaintiffs claimed that hotel occupancy taxes were collected based on retail prices but Expedia remitted tax revenue based on wholesale prices. See http://www.hbsslaw.com/cases-and-investigations/expedia (Footnote continued in next column.)
The tax dispute between hoteliers and OTCs provides further evidence that hoteliers and OTCs do not operate in separate markets.

There are a few particularly interesting examples of interdependence between hotel distribution channels, both on the demand side and on the supply side. On the demand side, consumers are known to search different distribution channels to find the best deals. Many are also known to use the Web to find the best rate at a hotel and then call the hotel to try to negotiate an even lower rate. Indeed, shopping

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However, there is widespread evasion in the payment of use taxes. See Harvey S. Rosen, Public Finance, seventh edition, Boston: McGraw-Hill Irwin (2005). My report focuses on hotel tax bases and not hotel tax rates. However, allowing OTCs to pay taxes on wholesale room prices amounts to taxing them at lower effective tax rates.


37However, there is widespread evasion in the payment of use taxes.


around is advisable because different channels may not provide the same information. For example, a hotel's telephone call center, its own website, and OTC websites may provide conflicting information on room availability.\textsuperscript{42}

On the supply side, hotels still maintain their telephone reservation systems at the same time that they have developed their own Internet websites to compete with other electronic distribution channels. Although the new online initiative may cannibalize some businesses from their call centers, hoteliers hope to divert even more customers from OTCs. Information gathered on customers online can also help hoteliers develop tailored marketing strategies to increase sales in both channels. Hoteliers also report that Web-informed customers spend less time when they call their telephone reservation systems for information or to book a room, thus increasing call center productivity.\textsuperscript{43} Thus, hoteliers have come to recognize the advantage of "technological complementarity" between offline and online sales technology and expand into online distribution.\textsuperscript{44}

In sum, evidence shows that offline and online hotel distribution channels do not operate in isolation. Hence, optimal tax theory cannot be invoked as justification to give OTCS preferential tax treatment in the sale of hotel rooms.

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Finally, in separate papers that relate to the hotel tax base issue, Donald Bruce et al. and George R. Zodrow examine whether electronic commerce should be granted preferential sales tax treatment compared with traditional commerce.\textsuperscript{45} In the United States, most consumers who purchase goods online pay no state and local sales taxes. Since sales taxes increase consumer prices,\textsuperscript{46} the de facto exemption of Internet purchases from sales taxes gives consumers the incentive to buy online rather than from traditional brick-and-mortar businesses. Indeed, Austan Goolsbee finds that consumers who live in states with high sales taxes are significantly more likely to make purchases online.\textsuperscript{47} After considering questions of efficiency, equity, and administrative and compliance (and noncompliance) costs, Bruce et. al. conclude that "The practical issue remains as to whether e-commerce should be favored through tax policy, and the assessments presented here suggests it is a particularly difficult case to make."\textsuperscript{48} Zodrow extends Bruce et al.'s analysis, using more rigorous methods and taking an even stronger stance in support of neutral taxation. He writes:

The analysis concludes that tax exemption of electronic commerce is unlikely to be even close to optimal, with the optimal tax differentials calculated suggesting that the traditional prescription of uniform taxation of traditional and electronic commerce should not be overridden by optimal taxation concerns.\textsuperscript{49}

The two articles also provide strong support for uniform tax treatment of hotel rooms sold through hotel telephone reservation systems, hotel websites, OTCS, and other electronic distributors.

In an earlier study, Mazerov argues that the hotel occupancy tax should be imposed on OTC markups but not on the separate service fees.\textsuperscript{50} It is unclear what are OTCS' service fees in merchant model room sales and why they are not included the basic retail room rates because those services are not (and cannot be) sold separately. Testimony in SA v. Hotels.com et al. indicates that in the past service fees have been referred to as a "surcharge or processing fee." Further testimony says that "in merchant model transactions, the OTC's bundle the taxes and fees as a way to keep the wholesale rate of the room 'opaque.'" Travelocity's website describes the company's service fee as a "processing service fee" and explains its purpose as follows: "Certain service fees are charged for processing your travel reservation through our system. These are often bundled into the Taxes and Fees amount in order to maintain the opaque nature of the 'prepaid rate' as required by

\textsuperscript{42} Thompson and Faulmezger, id., found that calling the hotel is the best way to ascertain room availability.
\textsuperscript{43} Carroll and Siguaw, supra note 41.
\textsuperscript{44} Lieber and Siverson, note 39.
\textsuperscript{48} Bruce et al., supra note 45.
\textsuperscript{49} Zodrow, supra note 45.
\textsuperscript{50} Mazerov, supra note 6.
our contracts with our suppliers.\textsuperscript{52} Expedia describes its service fee “as compensation in servicing your travel reservation. Our service fees vary based on the amount and type of hotel reservation.” Orbitz describes its service fee as “a fee we charge and retain in exchange for the services we provide in facilitating your transaction with the hotel suppliers.” To the extent that service fees represent the cost of services that OTCs provide to consumers, such as “helping consumers identify particular hotels, compare prices, and reserve rooms,” Mazerov argues that on theoretical tax policy grounds one can make a case for taxing OTC service fees at the typically lower general sales tax rates instead of the higher hotel occupancy tax rates, and a jurisdiction that does not tax services can decide not to tax OTC service fees at all. He concludes that the fees “appear to be very small” and “attempting to do so [that is, to tax them] is not worth the trouble.”\textsuperscript{53} I disagree.

### The appropriate tax base on the sale of hotel rooms by hoteliers and merchant model OTCs should be the full amounts (that is, total retail price) paid by consumers to occupy their hotel rooms.

In \textit{SA v. Hotels.com et al.}, the court says:

The OTC’s markup and service fees are part of the total retail amount paid by the consumer to the OTC for the right to occupancy. If the consumer refuses to pay any part of the retail amount charged by the OTC, he would not have a prepaid reservation and he would not have the right to occupy the room.\textsuperscript{54}

Thus, all the components of the total retail rental price should be taxed. That would require OTCs to unbundle their service fees and taxes into separate components.

### IV. Conclusion

Controversy rages over what should be the appropriate tax base for hotel rooms sold by OTCs. In this report, I argue that the goal should be to achieve tax neutrality. That means that the appropriate tax base on the sale of hotel rooms by hoteliers and merchant model OTCs should be the full amounts (that is, total retail price) paid by consumers to occupy their hotel rooms, inclusive of OTC margins. For many state and local governments, it means that they would have to rewrite their outdated tax statutes. Failure to do so could result in the further erosion of their tax bases.

A few jurisdictions have already amended the language of their statutes to clarify the intended tax bases. In 2009 New York City amended its hotel room occupancy tax law (Local Law 43 of 2009) to require OTCs to collect and remit occupancy taxes based on (total) retail room prices and not wholesale prices.\textsuperscript{55} In the following year the New York State Legislature enacted Chapter 57 of the Laws of 2010 to require that state and local sales taxes are paid on the retail room rates for hotel occupancy in New York State (New York State Department of Taxation and Finance, Office of Tax Policy Analysis, Taxpayer Guidance Division, 2010). It also amended New York City’s locally administered hotel room occupancy tax to conform it to the provisions of the state tax on room remarketers (NYC Department of Finance, Office of Tax Policy, 2010). In the same year, lawmakers in North Carolina amended the state’s sales tax law\textsuperscript{56} requiring fees paid to OTCs be included in the gross receipts of hotel operators subject to sales and hotel occupancy taxes.\textsuperscript{57} In 2011 the District of Columbia similarly revised its hotel tax law.\textsuperscript{58} In 2011 Minnesota amended its sales tax statute\textsuperscript{59} to require OTCs to collect the state’s sales tax “for services provided in connection with or for lodging located in this state.”\textsuperscript{60} By contrast, Missouri passed

\textsuperscript{52}Expedia and several other major OTCs filed a lawsuit against New York City alleging that the city’s Local Law No. 43 (2009) violates the New York State Constitution. In October 2010 the New York County Supreme Court dismissed the lawsuit. On appeal, the dismissal was overturned on Nov. 29, 2011. The appeals court ruled that “the enabling legislation did not clearly and unambiguously provide the City with broad taxing powers with respect to imposing a hotel occupancy tax.” Rather, it permitted the City to impose the tax on “hotel occupants.” To extend the law to permit taxation of OTC service or booking fees would require action by the State Legislature, available at http://www.nycourts.gov/reporter/3dseries/2011/2011_08648.htm (accessed on July 31, 2012).

\textsuperscript{53}See http://www.travelocity.com/info/legal_popup/0,6735,alsvc:EN,00.html (accessed on Mar. 24, 2012). This and the following two quotes can be found in McGee (2009).

\textsuperscript{54}Mazerov, supra note 6.

\textsuperscript{55}SA v. Hotels.com et al., supra note 22.
legislation in 2010 stipulating that hotel occupancy taxes can be levied only on revenue actually received by the hotels.\textsuperscript{61} In Florida, bills supporting opposite positions were introduced but did not pass.\textsuperscript{62} Several other jurisdictions have proposed changes to their hotel occupancy tax law. In 2012 a bill was introduced in the Oregon General Assembly to tax OTC margins on merchant model room sales but faced opposition from the Independent Lodging Industry Association, which argued that the proposed bill will hurt small and independent hotels that are more reliant on online travel companies to market their unsold rooms.\textsuperscript{63} Similarly, in Tennessee a proposed amendment to SB 2663 attempts to clarify that the amount of hotel occupancy taxes owed by OTCs would be based on “the amount of consideration charged to the public.”\textsuperscript{64} In Utah SB 70 proposes a hybrid plan that uses different tax bases depending on whether the room seller discloses separately the individual components of the selling price.\textsuperscript{65} In the current antitax political environment, it is difficult to raise taxes. However, the question of how best to tax OTC merchant model hotel room sales remains alive.

One option in taxing hotel occupancy is to replace the ad valorem tax with a flat per diem (that is, per unit) tax. Tax rates would be set at specific dollars per night per occupied room to be collected by the hotel from the occupant at the time of checkout and remitted to the government treasury. Several rates could be set based on the price range/quality category of the hotel rooms. For example, new hotel room taxes imposed in the Italian cities of Rome, Florence, and Venice beginning in 2011 are per diem taxes with daily rates that vary by type and location of the accommodations.

\textbf{That hotel room taxes in the United States are overwhelmingly ad valorem taxes suggests that there are significant disadvantages to per diem taxes.}

However, that hotel room taxes in the United States are overwhelmingly ad valorem taxes suggests that there are significant disadvantages to per diem taxes.\textsuperscript{66} The per diem tax is less desirable for administrative reasons. In theory one can find per unit tax rates that would generate the same amount of revenue as the ad valorem rate. In practice setting the correct per diem rates \textit{ex ante} and later adjusting the rates to reflect changing market conditions is not simple. Also, per diem taxes are often deemed to be unfair. But there are some advantages. First, if it adopts a per unit tax, the taxing jurisdiction no longer requires precise information on retail room rates. That eliminates the need to separate out the retail prices of accommodations in prepaid tour packages that bundle several items together (for example, airfare, lodging, meals, entrance to tourist attractions, and so on) and resold at a single price.\textsuperscript{67} Second, it also eliminates the dispute between state and local governments and the online travel companies on whether the hotel occupancy tax base should be the wholesale price or the retail price. The tax base becomes the number of occupied room nights. Finally, the per diem tax option becomes more compelling if the OTCs succeed in persuading Congress to pass legislation that would prohibit state and local government from taxing them and other travel distribution businesses on their hotel bookings.

\section*{References}


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\begin{tabular}{|c|c|}
\hline
\textbf{Property Type} & \textbf{Description} \\
\hline
Hotel & A business that provides accommodations to paying guests. \\
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\footnotesize{\begin{thebibliography}{9}
\item \textsuperscript{63}James Mak, “Taxing Hotel Room Rentals in the U.S.,”\textit{Journal of Travel Research}, Vol. 27, No. 1 pp. 10-15.
\item \textsuperscript{64}New York City recognized this “unbundling” problem when it began to implement Local Law 43 of 2009 and issued guidelines on how to estimate room rent for tax purposes (NYC Department of Finance, Audit Division, 2009).
\end{thebibliography}


