

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

by James Mak

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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

³Joseph Henchman, “Cities Pursue Discriminatory Taxation of Online Travel Services,” *State Tax Notes*, Mar. 1, 2010, p. 631, *Doc 2010-3414*, or *2010 STT 39-3*.

⁴Michael Neibauer, “D.C. Will Sue Online Travel Companies,” *Washington Business Journal*, Mar. 22, 2010, available at http://www.bizjournals.com/washington/blog/2011/03/dc-will-sue-online-travel-companies.html?ed=2011-03-22&s=article_du&ana=e_du_pap (accessed on Mar. 22, 2011). Hawaii Reporter (2011), “State Pursues \$170 Million in Unpaid Hotel Room Taxes from Online Travel Companies,” *Hawaii Reporter*, Mar. 23, 2011, available at <http://www.hawaiireporter.com/state-pursues-170-million-in-unpaid-hotel-room-taxes-from-online-travel-companies/123> (accessed on Mar. 24, 2011).

⁵Jess Reagan, “Update on Online Travel Company Litigation,” Indianapolis: Office of the Indiana Attorney General, June 13, 2011, available at http://www.taxadmin.org/fta/meet/11am/PPTs/Reagan_061211.pdf (accessed on Sept. 14, 2011).

⁶Michael Mazerov, “State and Local Governments Should Close Online Tax Loophole and Collect Taxes Owed,” Washington: Center on Budget and Policy Priorities, Apr. 12, 2011, available at <http://www.cbpp.org/files/4-12-11sfp.pdf> (accessed on Feb. 25, 2012). Figure 1, page 3 provides the following comparison of prices for a standard two-queen

(Footnote continued on next page.)

¹Cindy Estis Green and Mark V. Lomanno, “Distribution Channel Analysis: A Guide for Hotels,” an AH&LA and STR special report published by the HSMIAI Foundation, Jan. 2012, available at http://www.ahla.com/uploadedFiles/_Comm on/pdf/Distribution_Analysis.pdf (accessed on Feb. 1, 2012).

²Jim Butler and Jim Abrams, “Hotel Occupancy Tax Alert,” *Hotel Online*, Nov. 3, 2009, available at http://www.hotel-online.com/News/PR2009_4th/Nov09_TaxAlert.html (accessed on Jan. 16, 2011).

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.⁷ In cases that have been decided to date, both sides have earned victories.⁸ 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.⁹

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).¹⁰ The difference in tax revenue collectively amounts to roughly \$340 million, assuming an average hotel occupancy tax rate of 12.62 percent, which was the average tax rate in the United States in 2008.¹¹

OTCs have taken the dispute to a higher level. They are lobbying Congress to enact national legis-

lation that would prohibit state and local governments from imposing hotel occupancy taxes on bookings with them.¹² 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.¹³ State and local governments argue that an exemption would preempt 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

bedroom at the Courtyard Marriott Hotel in downtown Silver Spring, Md. (check-in on Apr. 15, 2011): Hotel website: \$139.00 (retail room charge) + \$18.07 (taxes at 13 percent) = \$157.07 (total cost to consumer). Expedia website: \$111.20 (Expedia's "wholesale" room cost) + \$27.80 (markup, assuming Expedia marks up by 25 percent) = \$139.00 (Expedia's basic room charge shown to consumer) + \$18.84 ("Taxes and Service Fees" shown to consumer) = \$157.84 (total cost to consumer). The amounts of the OTC markup and service fees are not separately shown to the consumer. Both Marriott and Expedia's websites display the same basic room rate of \$139. Expedia's total (tax and service fee inclusive) price to the consumer is 77 cents more.

⁷See http://www.interactivetravel.org/IndustryBackground/Hotel_Occupancy_Taxes.asp (last accessed on Nov. 23, 2011). See also Danny King, "After Six Years of Rulings, OTA Hotel Tax Issue Still Clouded," *Travel Weekly*, Nov. 14, 2011, available at <http://www.travelweekly.com/Travel-News/Online-Travel/After-six-years-of-rulings,-OTA-hotel-tax-issue-still-clouded/> (accessed on Nov. 15, 2011). OTCs have also raised the question of constitutional nexus as a reason for not taxing their margins, but they have not prevailed in court (Commonwealth of Virginia, Department of Taxation, "Study of the Feasibility of Implementing Senate Bill 452," Dec. 2, 2012, available at http://www.tax-virginia.gov/Documents/OTC_Study-Final-12-02-2012.pdf (accessed on Mar. 1, 2012)).

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.

¹¹American Hotel & Lodging Association, press release, "2008 Study on Hotel Room Taxes Qualifies Economic Impact," June 19, 2008, available at <http://www.ahla.com/pressrelease.aspx?id=22524> (last accessed on Feb. 4, 2012).

¹²Michael Mazerov, "Banning Taxation of Online Hotel Reservations Is Unwarranted and Could Cost States and Localities Billions of Dollars," Washington: Center on Budget and Policy Priorities, Sept. 18, 2009, available at <http://www.cbpp.org/cms/index.cfm?fa=view&id=2903> (accessed on Jan. 16, 2011). John Buhl, "NCSL Panelist Debate Taxation of Online Travel Companies," *State Tax Notes*, July 27, 2009, p. 205, *Doc 2009-16407*, or *2009 STT 137-3*.

¹³Barbara De Lollis, "Why You Won't Find a Hotel Room in Columbus, Ga. on Expedia, Travelocity or Orbitz," *USA Today*, Mar. 13, 2010, available at <http://www.travel.usa.today.com/hotels/post/2010/03/why-you-wont-find-a-hotel-room-in-columbus-ga-on-expedia-travelocity-or-orbitz/83536/1> (accessed on Sept. 8, 2011). Marlene Colucci reports that San Francisco is suing hotels for room taxes that it believes the OTCs have collected from consumers but have not remitted the full amounts. "The Battle Continues, Despite Winning the OTC Issue on Capitol Hill, Hoteliers Should Be Concerned," *Lodging*, July 2011, pp. 22-23, available at <http://www.lodgingmagazine.com/PastIssues/PastIssues/The-Battle-Continues-2254.aspx>. (accessed on Oct. 13, 2011).

done,¹⁴ 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.¹⁵ 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.¹⁶ OTCs provided another market outlet for a perishable commodity. The senior research director of PhoCusWright said that currently OTCs “Generally . . . have a countercyclical role.”¹⁷ 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.¹⁸ Thus, hoteliers and OTCs both benefit from their relationship.

OTCs work with two distinct business models, the agency model and the merchant model.¹⁹ 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.²⁰ 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.²¹

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

¹⁴More on this subject in the concluding section of this report. In the current highly polarized political environment, raising taxes is not easily achieved. Kate Rice reports that attempts to increase taxes on OTCs in Tennessee, Connecticut, Oregon, Virginia, Texas, Pennsylvania, Utah, and Massachusetts so far have failed. “Connecticut, Tennessee Drop Efforts to Tax Travel Agents on Hotel Bookings,” *Travel News*, Apr. 10, 2012, available at <http://www.travelpulse.com/connecticut-tennessee-drop-efforts-to-tax-travel-agents-on-hotel-bookings.html> (accessed on Apr. 28, 2012).

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

¹⁶*Id.*

¹⁷King, *supra* note 7.

¹⁸See, for example, Danielle Douglas, “Hotels Handing Fewer Rooms to Online Travel Agencies,” *The Washington Post*, May 8, 2011, available at http://www.washingtonpost.com/business/capitalbusiness/hotels-handing-fewer-rooms-to-online-travel-agencies/2011/05/05/AF2QSsRG_story.html (accessed on Jan. 31, 2012).

¹⁹Green and Lomanno, *supra* note 1, differentiate three models: the retail (traditional agency) model, the merchant

(Footnote continued in next column.)

model, and the opaque (auction) model. In the opaque model, the consumer bids on a room based on a hotel’s general location but may not know the hotel’s brand or name. Opaque purchases are not refundable. Like their merchant model OTCs, the OTC vendor using the opaque model purchases rooms from hotels at discounted (wholesale) rates and resells them to consumers at (higher) retail rates. The vendor is the merchant of record. The tax base question discussed in this report applies to both their merchant and opaque models. The U.S. District Court Western District of Texas, San Antonio Division (2011) distinguishes between only two models, the agency model and the merchant model.

²⁰*Id.* at pp. 75 and 95. Auction sites like Priceline.com sell rooms at cut-rate prices and typically keep between 30 and 50 percent of the revenue. In 2010 opaque room sales accounted for 2.3 percent of total U.S. hotel room nights booked but only 1.3 percent of total hotel room revenue.

²¹Beth Anne Stanford, “State and Local Efforts to Collect Additional Tax on Hotel Rooms Booked Online,” *State Tax Notes*, Jan. 31, 2005, p. 319, *Doc 2005-384*, or *2005 STT 19-1*.

agency model.²² In 2010 the agency model accounted for 12.1 percent of room nights sold by OTCs, according to Green and Lomanno.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 *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." Under the merchant model, the OTCs negotiate discounted room rates (called net rates) in advance with individual hotels and hotel chains.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.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." 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.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."²⁷

OTCs collect all the money for the rooms and taxes from their customers in advance, that is, at the time of booking.²⁸ Under the merchant model, the OTC — and not the hotel — calculates and is responsible for collecting the occupancy tax from the consumer. In *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."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

²²U.S. District Court Western District of Texas, San Antonio Division, *City of San Antonio, Texas on behalf of itself and all other similarly situated Texas Cities (Plaintiff) v. Hotels.com, et al. (Defendants)*, CIVIL NO. SA-06-CA-381-OG, Findings of Fact and Conclusions of Law, July 1, 2011, available at http://www.hotelnewsnow.com/media/File/PDFs/Misc/20110712_OTAruling.pdf (accessed on Sept. 6, 2011).

²³Green and Lomanno, *supra* note 1.

²⁴Rex S. Toh, Charles F. DeKay, and Peter Raven, "Selling Rooms: Hotels vs. Third-Party Websites," *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.

²⁵John A. Swain, "Internet Travel Companies — Taxing the Middleman," *State Tax Notes*, Feb. 14, 2005, p. 477, *Doc 2005-1128*, or *2005 STT 29-3*.

²⁶Toh et al., *supra* note 24.

²⁷*SA v. Hotels.com et al.*, *supra* note 22.

²⁸The merchant model is sometimes referred to as a prepaid model.

²⁹*SA v. Hotels.com et al.*, *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.”³⁰

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.³¹ 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.³² 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.³³ 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.³⁴

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.³⁵ 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

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.

³¹Henchman, *supra* note 3. Hotel occupancy tax statutes in most local jurisdictions were enacted long before the arrival of OTCs. In 1946 New York City became the first locality to levy a hotel occupancy tax; by 1983, every state except Wyoming had hotel occupancy taxes either at the local or state level, or both. *See also*, Tom Knipe (2011), “Bed Taxes and Local Tourism Development: An Outline and Annotated Bibliography,” summarized in *Restructuring Local Government*, Ithaca, N.Y.: Cornell University Department of City and Regional Planning, available at <http://government.cce.cornell.edu/doc/summary.asp?id=knipe2011> (accessed on Feb. 2, 2012). Now every state except Alaska, California, and Nevada — and thousands of cities and counties in every state except Connecticut, Delaware, Hawaii, Maine, and New Hampshire — taxes hotel room rentals. Mazerov, *supra* note 6.

³²It 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.)

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

³³Carol Kokinis-Graves, “Online Travel Companies v. Local Jurisdictions Litigation, Legislation, and Draft Statutes,” *State Tax Review*, Nov. 30, 2009, pp. 12-18.

³⁴Carl Bonham, Eric Im, Edwin Fujii, and James Mak, “The Impact of the Hotel Room Tax: An Interrupted Time Series Analysis,” *National Tax Journal*, Vol. 45, No. 4, 1992, pp. 433-442. *See also*, James Mak, “Taxation of Travel and Tourism,” in Larry Dwyer and Peter Forsyth, eds., *International Handbook on the Economics of Tourism*, Northampton, Mass., 2006; Edward Elgar, pp. 251-265. James Mak, “Tourist Taxes,” in Joseph J. Cordes, Robert D. Ebel, and Jane G. Gravelle, *The Encyclopedia of Taxation and Tax Policy*, second edition, Washington, 2005: Urban Institute Press, pp. 441-443. Swain, *supra* note 25.

³⁵Ronald C. Fisher, *State & Local Public Finance*, third edition, Mason, Ohio: Thompson South-Western (2007).

tax competition among taxing jurisdictions.³⁶ In the short run, they surmise that the most likely effect of switching from one tax principle to the other changes the distribution of tax revenue between taxing jurisdictions. Thus, a switch from, say, origin to destination taxation redistributes tax revenue from where the goods are purchased to where they are delivered. In the long run, and assuming that firms are mobile, Behrens et al. conclude that a switch from destination to origin taxation encourages governments to engage in harmful tax competition in a race to the bottom as they compete to lower their tax rates to attract firms, resulting in an erosion of tax revenue. Unsurprisingly, U.S. state and local sales taxes are consumption taxes based on the destination principle. Hence, sales taxes are levied on goods consumed in the taxing jurisdiction but are not applied to goods delivered to buyers in other jurisdictions; however, a use tax at the same rate is applied to goods imported into the taxing jurisdiction.³⁷ Taxation of hotel room rentals also follows the destination principle.

In the destination market, should goods be taxed at uniform rates or at different rates? How about the same good purchased from different sales channels? The theory of optimal commodity taxation argues that, generally, neutral taxation — that is, taxation of all goods and services at the same rate — is inefficient.³⁸ To minimize distorting consumer behavior, the Ramsey rule — also known as the “inverse elasticity rule” — requires that if goods are unrelated in consumption, higher tax rates should be set on goods that are relatively more price inelastic. Higher taxes on inelastic goods induce less drastic changes in consumer behavior and thus minimize total excess burden. Theoretically, the Ramsey rule opens the possibility for hotel rooms sold by hoteliers and OTCs to be taxed differently, provided restrictive conditions in the theory are met.

For optimal tax theory to apply, goods must be unrelated in consumption. In other words, they have to be different goods. In the distribution of hotel rooms, is a room booked by a consumer directly from a hotel chain through its telephone reservation system a different good than the same room purchased from a merchant model OTC? If the goods are

different, firms can treat each distribution channel as a totally separate market without any connection between them.³⁹ (Two goods are in the same market if they are close substitutes.) That premise allows firms in one channel to freely make decisions on advertising and pricing without regard to how firms in other channels might respond. Not so in the distribution of hotel rooms. Contracts between hoteliers and merchant model OTCs specify agreed-on OTC markups over the negotiated net rates to ensure rate parity (that is, similar room rates) among distribution channels.⁴⁰ Toh et al. note that “the larger hotel chains therefore typically insist on rate parity among all the channels.” The tax dispute between hoteliers and OTCs provides further evidence that hoteliers and OTCs do not operate in separate markets.

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There are a few particularly interesting examples of interdependence between hotel distribution channels, both on the demand side and on the supply side.⁴¹ 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

³⁹Ethan Lieber and Chad Syverson, “Online vs Offline Competition,” Jan. 2011, available at <http://home.uchicago.edu/syverson/onlinevsoffline.pdf>; forthcoming in Peitz, Martin and Joel Waldfogel, eds. (2012). *The Oxford Handbook of the Digital Economy*, New York: Oxford University Press, Aug., pp. 189-223 (PDF version accessed on July 18, 2012).

⁴⁰Toh et al., *supra* note 24, and Scott W. Anderson, “Online Hotel Sales and Third Parties, A Review and Analysis,” Oct. 22, 2003, available at http://www.hsmai.org/docs/Online_Hotel_Sales_and_3rd_Parties.pdf (accessed on Jan. 17, 2011).

⁴¹*Id.* See also, Green and Lommano, *supra* note 1. Gary M. Thompson and Alexandra Failmezger, “Why Customers Shop Around: A Comparison of Hotel Room Rates and Availability across Booking Channels,” *CHR Reports*, Vol. 5, No. 2, 2005. Ithaca, N.Y.: The Center for Hospitality Research at Cornell University, available at <http://www.chr.cornell.edu> (accessed on Apr. 11, 2011). Anderson, *supra* note 40. Bill Carroll and Judy Siguaw, “Evolution in Electronic Distribution: Effects on Hotels and Intermediaries,” *CHR Reports*, Vol. 3, No. 5, 2003. Ithaca, N.Y.: The Center for Hospitality Research at Cornell University, available at <http://www.chr.cornell.edu> (accessed on Apr. 11, 2011). Rex S. Toh, Charles F. DeKay and Peter Rowen, “Travel Planning: Searching for and Booking Hotels on the Internet,” *Cornell Hospitality Quarterly*, 52(4)m, 2011a, pp. 388-398.

³⁶Kristian Behrens, Jonathan H. Hamilton, Gianmarco I.P. Ottaviano, and Jacques-Francois Thisse, “Commodity Tax Competition and Industry Location Under the Destination and the Origin Principle,” *Regional Science and Urban Economics*, (39), 2009, pp. 422-433.

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

³⁸See 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.

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.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.⁴³ Thus, hoteliers have come to recognize the advantage of "technological complementary" between offline and online sales technology and expand into online distribution.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.

Optimal tax theory cannot be invoked as justification to give OTCs preferential tax treatment in the sale of hotel rooms.

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.⁴⁵ In the United States, most consumers who purchase goods online pay no state and local sales taxes. Since sales taxes increase consumer prices,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.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."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.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.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.'"⁵¹ 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

⁴²Thompson and Failmezger, *id.*, found that calling the hotel is the best way to ascertain room availability.

⁴³Carroll and Siguaw, *supra* note 41.

⁴⁴Lieber and Syverson, *supra* note 39.

⁴⁵Donald Bruce, William Fox, and Mathew Murray, "To Tax or Not to Tax? The Case of Electronic Commerce," *Contemporary Economic Policy*, Vol. 21, No. 1, Jan. 2003, pp. 25-40. George R. Zodrow, "Optimal Commodity Taxation of Traditional and Electronic Commerce," *National Tax Journal*, LIX, No. 1, Mar. 2006, pp. 7-31.

⁴⁶Timothy J. Besley and Harvey S. Rosen, "Sales Taxes and Prices: An Empirical Analysis," *National Tax Journal*, June 5, 2012, pp. 157-178. James M. Poterba, "Retail Price Reactions to Changes in State and Local Sales Taxes," *National Tax Journal*, June 1996, pp. 165-176.

⁴⁷Austan Goolsbee, "In a World Without Borders: The Impact of Taxes on Internet Commerce," *The Quarterly Journal of Economics*, Vol. 115, No. 2, May 2000, pp. 561-576.

⁴⁸Bruce et al., *supra* note 45.

⁴⁹Zodrow, *supra* note 45.

⁵⁰Mazerov, *supra* note 6.

⁵¹Glenn Ellison and Sara Fisher Ellison show that firms often devise ways to disguise prices to stifle competition. "Search, Obfuscation, and Price Elasticities on the Internet," *Econometrica*, Vol. 77, No. 1, Mar. 2009, pp. 427-452.

our contracts with our suppliers.”⁵² Expedia describes its services 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.”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 *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.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 (referred to as “room remarketers”) to collect and remit occupancy taxes based on (total) retail room prices and not wholesale prices.⁵⁵ In the following year the New York State Legislature enacted Chapter 57 of the Laws of 2010 to ensure 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 law⁵⁶ requiring fees paid to OTCs be included in the gross receipts of hotel operators subject to sales and hotel occupancy taxes.⁵⁷ In 2011 the District of Columbia similarly revised its hotel tax law.⁵⁸ In 2011 Minnesota amended its sales tax statute⁵⁹ to require OTCs to collect the state’s sales tax “for services provided in connection with or for lodging located in this state.”⁶⁰ By contrast, Missouri passed

⁵⁵Expedia 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).

⁵⁶N.C. General Statutes, section 105-164.4.

⁵⁷See http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-164.4.pdf, pp. 1-2 (accessed on Feb. 26, 2012).

⁵⁸D.C. Act 18-715, titled “Payment of Full Hotel Taxes by Online Vendors Clarification Act of 2010” (Codification District of Columbia Official Code, 2011).

⁵⁹Laws of Minnesota for 2011, Ch.7, Art 3, p. 22.

⁶⁰Scot Russell, “Tax Changes for Online Hotel Booking Create Level Playing Field,” Minnesota Budget Project, Nov. 3, 2011, available at <http://minnesotabudgetbites.org/2011/11/03/tax-changes-for-online-hotel-booking-create-level-playing-field/> (accessed on Mar. 18, 2012). Russell notes that Minnesota’s new state law leaves questions unanswered regarding local hotel occupancy tax ordinances. When the Minnesota

(Footnote continued on next page.)

⁵²See http://www.travelocity.com/info/legal_popup/0,6735,a0lsv:EN,00.html (accessed on Mar. 24, 2012). This and the following two quotes can be found in McGee (2009).

⁵³Mazerov, *supra* note 6.

⁵⁴*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.⁶¹ In Florida, bills supporting opposite positions were introduced but did not pass.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.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.”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.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 catego-

ries 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.

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.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 *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.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.

References

- American Hotel & Lodging Association (2010), “Internet Booking Tax: Fact versus Fiction,” Apr., available at <http://www.ahla.com/content.aspx?id=30144> (last accessed on Feb. 2, 2012).
- American Hotel & Lodging Association. (2008), *Press Release: “2008 Study on Hotel Room Taxes Quantifies Economic Impact,”* June 19, 2008, available

Department of Revenue collects the lodging tax for the local unit of government, the new state law apparently would apply. If the lodging tax is collected locally, the state law may or may not apply depending on the wording of the local ordinance.

⁶¹Commonwealth of Virginia, *supra* note 7. Jeri Clausing, “New Missouri Law Says OTA Hotel Markups Are Tax Free,” *Travel Weekly*, July 13, 2012, available at http://www.travelweekly.com/hotels/article3_ektid217328.aspx (last accessed on July 13, 2010).

⁶²Commonwealth of Virginia, *supra* note 7.

⁶³Sarah Ross, “Senate Bill Considers Extending Tourism Tax to Online Travel Agencies,” Feb. 6, 2012, *Oregon Capitol News* at <http://oregoncapitolnews.com/blog/2012/02/06/senate-bill-considers-extending-tourism-tax-to-online-travel-agencies/> (accessed on Mar. 18, 2012).

⁶⁴Annie Johnson, “Tennessee Poised to Fight Online Travel Agencies,” *Nashville Business Journal*, Apr. 2, 2012, at <http://municipalinsider.com/news-stories/tennessee-poised-to-fight-online-travel-agencies/> (accessed on Apr. 27, 2012).

⁶⁵State of Utah, SB 70 Sales and Use Taxation of Short-Term Lodging, 2012 General Session, Feb. 9, 2012, at <http://le.utah.gov/~2012/bills/sbillint/sb0070.pdf> (accessed on Feb. 23, 2012). The language of the bill is unclear. According to the Utah Association of Counties, which opposes the bill, “SB 70 would give online travel companies the option of either remitting taxes based on the retail rate or remitting only the wholesale rate provided they disclose the various fees and taxes associated with the room rate.”

⁶⁶James Mak, “Taxing Hotel Room Rentals in the U.S.,” *Journal of Travel Research*, Vol. 27. No. 1 pp. 10-15.

⁶⁷New 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).

- at <http://www.ahla.com/pressrelease.aspx?id=22524> (last accessed on Feb. 4, 2012).
- Anderson, Scott W. (2003), "Online Hotel Sales and Third Parties, A Review and Analysis," Oct. 22 available at http://www.hsmmai.org/docs/Online_Hotel_Sales_and_3rd_Parties.pdf (accessed on Jan. 17, 2011).
- Behrens, Kristian; Jonathan H. Hamilton, Gianmarco I.P. Ottaviano, and Jacques-Francois Thisse (2009), "Commodity Tax Competition and Industry Location Under the Destination and the Origin Principle," *Regional Science and Urban Economics*, (39), pp. 422-433.
- Besley, Timothy J., and Harvey S. Rosen (1999), "Sales Taxes and Prices: An Empirical Analysis," *National Tax Journal*, June, 52 (2), pp. 157-178.
- Bonham, Carl; Eric Im, Edwin Fujii, and James Mak (1992), "The Impact of the Hotel Room Tax: An Interrupted Time Series Analysis," *National Tax Journal*, Vol. 45, No. 4, pp. 433-442.
- Bruce, Donald; William Fox, and Mathew Murray (2003), "To Tax or Not to Tax? The Case of Electronic Commerce," *Contemporary Economic Policy*, Vol. 21, No. 1, Jan., pp 25-40.
- Buhl, John, (2009) "NCSL Panelists Debate Taxation of Online Travel Companies," *State Tax Notes*, July 27, p. 205, *Doc 2009-16407*, or *2009 STT 137-3*.
- Butler, Jim, and Jim Abrams (2009), "Hotel Occupancy Tax Alert," *Hotel Online*, Nov. 3, available at http://www.hotel-online.com/News/PR2009_4th/Nov09_TaxAlert.html (accessed on Jan. 16, 2011).
- Carroll, Bill, and Judy Siguaw (2003), "Evolution in Electronic Distribution: Effects on Hotels and Intermediaries," *CHR Reports*, Vol. 3, No. 5, Ithaca, N.Y.: The Center for Hospitality Research at Cornell University, available at <http://www.chr.cornell.edu> (accessed on Apr. 11, 2011).
- Clausing, Jeri (2010), "New DC law Requires OTAs to Pay Tax on Retail Hotel Rates," *Travel Weekly*, Dec. 22, available at http://www.travelweekly.com/hotels/article3_ektid226144.aspx?rbp=1 (accessed on Dec. 22, 2010).
- Clausing, Jeri (2010a), "New Missouri Law Says OTA Hotel Markups Are Tax-Free," *Travel Weekly*, July 12, available at http://www.travelweekly.com/hotels/article3_ektid217328.aspx (accessed on July 13, 2010).
- Codification District of Columbia Official Code (2011), *D.C. Act 18-715*, Jan. 27, available at <http://www.dcregs.dc.gov/Gateway/NoticeHome.aspx?noticeid=706662> (accessed on Feb. 26, 2012).
- Colucci, Marlene (2011), "The Battle Continues, Despite Winning the OTC Issue on Capitol Hill, Hoteliers Should Be Concerned," *Lodging*, July, pp. 22-23, available at <http://www.lodgingmagazine.com/PastIssues/PastIssues/The-Battle-Continues-2254.aspx> (accessed on Oct. 13, 2011).
- Commonwealth of Virginia, Department of Taxation (2010), "Study on the Feasibility of Implementing Senate Bill 452," Dec. 2, available at http://www.tax.virginia.gov/Documents/OTC_Study_Final_12-02-2010.pdf (accessed on Mar. 1, 2012).
- De Lollis, Barbara (2010), "Why You Won't Find a Hotel Room in Columbus, Ga. on Expedia, Travelocity or Orbitz," *USA Today*, Mar. 13, available at <http://travel.usatoday.com/hotels/post/2010/03/why-you-wont-find-a-hotel-room-in-columbus-ga-on-expedia-travelocity-or-orbitz/83536/1> (accessed on Sept. 8, 2011).
- Douglas, Danielle (2011), "Hotels Handing Fewer Rooms to Online Travel Agencies," *The Washington Post*, May 8, available at http://www.washingtonpost.com/business/capitalbusiness/hotels-handing-fewer-rooms-to-online-travel-agencies/2011/05/05/AF2QSSRG_story.html (accessed on Jan. 31, 2012).
- Ellison, Glenn, and Sara Fisher Ellison (2009), "Search, Obfuscation, and Price Elasticities on the Internet," *Econometrica*, Vol. 77, No. 1, Mar., pp. 427-452.
- Fisher, Ronald C. (2007), *State & Local Public Finance*, Third Edition, Mason, Ohio: Thompson South-Western.
- Goolsbee, Austan (2000), "In a World Without Borders: The Impact of Taxes on Internet Commerce," *The Quarterly Journal of Economics*, Vol. 115, No. 2, May, pp. 561-576.
- Green, Cindy Estis, and Mark V. Lomanno (2012), "Distribution Channel Analysis: A Guide for Hotels," An AH&LA and STR Special Report Published by the HSMIA Foundation, Jan., available at http://www.ahla.com/uploadedFiles/_Common/pdf/Distribution_Analysis.pdf (accessed on Feb. 1, 2012).
- Hawaii Reporter (2011), "State Pursues \$170 Million in Unpaid Hotel Room Taxes from Online Travel Companies," *Hawaii Reporter*, Mar. 23, available at <http://www.hawaiireporter.com/state-pursues-170-million-in-unpaid-hotel-room-taxes-from-online-travel-companies/123> (accessed on Mar. 24, 2011).
- Henchman, Joseph (2010), "Cities Pursue Discriminatory Taxation of Online Travel Services," *State Tax Notes*, Mar. 1, 2010, p. 631, *Doc 2010-3414*, or *2010 STT 39-3*.
- Interactive Travel Services Association, (2010), "Open Letter to the Hotel Industry on Occupancy Taxes," Mar. 12, available at http://www.interactivetravel.org/IndustryBackground/IB_MoreInformation.asp?IB=Hotel%20Occupancy%20Taxes&IndustryBackground=10006 (accessed on Mar. 11, 2011).

- Johnson, Annie (2012), "Tennessee Poised to Fight Online Travel Agencies," *Nashville Business Journal*, Apr. 2, available at <http://municipalinsider.com/news-stories/tennessee-poised-to-fight-online-travel-agencies/> (accessed on Apr. 27, 2012).
- King, Danny (2011), "After Six Years of Rulings, OTA Hotel Tax Issue Still Clouded," *Travel Weekly*, Nov. 14, available at <http://www.travelweekly.com/Travel-News/Online-Travel/After-six-years-of-rulings,-OTA-hotel-tax-issue-still-clouded/> (accessed on Nov. 15, 2011).
- Knipe, Tom (2011), "Bed Taxes and Local Tourism Development: An Outline and Annotated Bibliography," summarized in *Restructuring Local Government*, Ithaca, N.Y.: Cornell University Department of City and Regional Planning, available at <http://government.cce.cornell.edu/doc/summary.asp?id=knipe2011> (accessed on Feb. 2, 2012).
- Kokinis-Graves, Carol (2009), "Online Travel Companies v. Local Jurisdictions Litigation, Legislation, and Draft Statutes," *State Tax Review*, Nov. 30, pp. 12-18.
- Lieber, Ethan, and Chad Syverson, (2011), "Online vs Offline Competition," Jan., available at <http://home.uchicago.edu/syverson/onlinevsoffline.pdf>; forthcoming in Peitz, Martin and Joel Waldfogel, eds. (2012). *The Oxford Handbook of the Digital Economy*, New York: Oxford University Press, Aug., pp. 189-223. (PDF version accessed on July 18, 2012.)
- Mak, James (2006), "Taxation of Travel and Tourism," in Larry Dwyer and Peter Forsyth, eds., *International Handbook on the Economics of Tourism*, Northampton, Mass: Edward Elgar, pp. 251-265.
- Mak, James (2005), "Tourist Taxes," in Joseph J. Cordes, Robert D. Ebel, and Jane G. Gravelle, *The Encyclopedia of Taxation and Tax Policy*, second edition, Washington: Urban Institute Press, pp. 441-443.
- Mak, James (1988), "Taxing Hotel Room Rentals in the U.S." *Journal of Travel Research*, Vol. 27, No. 1, pp. 10-15.
- Mazerov, Michael (2009), "Banning Taxation of Online Hotel Reservations is Unwarranted and Could Cost States and Localities Billions of Dollars," Washington: Center on Budget and Policy Priorities, Sept. 18, available at <http://www.cbpp.org/cms/index.cfm?fa=view&id=2903> (accessed on Jan. 16, 2011).
- Mazerov, Michael (2011), "State and Local Governments Should Close Online Tax Loophole and Collect Taxes Owed," Washington, D.C.: Center on Budget and Policy Priorities, Apr. 12, available at <http://www.cbpp.org/files/4-12-11sfp.pdf> (accessed on Feb. 25, 2012).
- McGee, Bill (2009), "Hotel Taxes Make Online Comparison Shopping Tricky," *USA Today*, Feb. 25, available at http://www.usatoday.com/travel/columnist/mcgee/2009-02-25-hotel-taxes_N.htm (accessed on Jan. 15, 2011).
- Neibauer, Michael (2011), "D.C. Will Sue Online Travel Companies," *Washington Business Journal*, Mar. 22, available at http://www.bizjournals.com/washington/blog/2011/03/dc-will-sue-online-travel-companies.html?ed=2011-03-22&s=article_du&ana=e_du_pap (accessed on Mar. 22, 2011).
- NYC Department of Finance (2009), "Finance Memorandum: Tax on Hotel Room Occupancy Expanded to Include Additional Rent Charged by Room Remarketers," Aug. 14, available at http://www.nyc.gov/html/dof/html/pdf/09pdf/hotel_room_occupancy081409.pdf (accessed on Feb. 26, 2012).
- NYC Department of Finance, Audit Division (2009), *HTX-2009-01*, "Statement of Audit Procedure," Sept. 1, available at http://www.nyc.gov/html/dof/html/pdf/sap/htx_2009-01.pdf (accessed on Feb. 26, 2012).
- NYC Department of Finance, Office of Tax Policy (2010), "Summary of 2010 New York State and New York City Legislation Affecting City Taxes and Department of Finance Programs," Dec. 30, available at http://www.nyc.gov/html/dof/html/pdf/10pdf/legislative_summary_2010.pdf (accessed on Feb. 26, 2012).
- New York State Department of Taxation and Finance, Office of Tax Policy Analysis, Taxpayer Guidance Division (2010), "Amendments Affecting the Application of Sales Tax to Rent Received for Hotel Occupancy by Room Remarketers," *TSB-M-10(10)S*, Aug. 13, available at http://www.tax.ny.gov/pdf/memos/sales/m10_10s.pdf (accessed on Feb. 26, 2012).
- Poterba, James M. (1996), "Retail Price Reactions to Changes in State and Local Sales Taxes," *National Tax Journal*, June, 49,(2), pp. 165-176.
- Reagan, Jess (2011), "Update on Online Travel Company Litigation," Indianapolis: Office of the Indiana Attorney General, June 13, available at http://www.taxadmin.org/fta/meet/11am/PPTs/Reagan_061211.pdf (accessed on Sept. 14, 2011).
- Rice, Kate (2012), "Connecticut, Tennessee Drop Efforts to Tax Travel Agents on Hotel Bookings," *Travel News*, Apr. 10, available at <http://www.travelpulse.com/connecticut-tennessee-drop-efforts-to-tax-travel-agents-on-hotel-bookings.html> (accessed on Apr. 28, 2012).
- Rosen, Harvey S. (2005), *Public Finance*, Seventh Edition, Boston: McGraw-Hill Irwin.
- Russell, Scott (2011), "Tax Changes for Online Hotel Booking Create Level Playing Field," Minnesota Budget Project, Nov. 3, available at <http://minnes>

- otabudgetbites.org/2011/11/03/tax-changes-for-online-hotel-booking-create-level-playing-field/ (accessed on Mar. 18, 2012).
- Ross, Sarah (2012), "Senate Bill Considers Extending Tourism Tax to Online Travel Agencies," Feb. 6, *Oregon Capitol News*, available at <http://oregoncapitolnews.com/blog/2012/02/06/senate-bill-considers-extending-tourism-tax-to-online-travel-agencies/> (accessed on Mar. 18, 2012).
- Stanford, Beth Anne (2005), "State and Local Efforts to Collect Additional Tax on Hotel Rooms Booked Online," *State Tax Notes*, Jan. 31, 2005, p. 319, *Doc 2005-384*, or *2005 STT 19-1*.
- Starkov, Max and Jason Price (2005), "The End of the Merchant Model as We Know It." New York: HeBS, Mar., available at <http://www.hospitalitybusiness.com/articles/pdf/2005/The%20End%20of%20the%20Merchant%20Model%20as%20We%20know%20It.pdf> (accessed on Jan. 18, 2011).
- State of Minnesota, Office of the Revisor of Statutes (2011), *Laws of Minnesota for 2011*, Ch.7, Art 3, pp. 21-22, available at <https://www.revisor.mn.gov/bin/showPDF.php> (accessed on Mar. 18, 2012).
- State of Utah, (2012), SB 70 Sales and Use Taxation of Short-Term Lodging, 2012 General Session, Feb. 9, available at <http://le.utah.gov/~2012/bills/sbillint/sb0070.pdf> (accessed on Feb. 23, 2012).
- Swain, John A. (2005), "Internet Travel Companies — Taxing the Middleman," *State Tax Notes*, Feb. 14, 2005, p. 477, *Doc 2005-1128*, or *2005 STT 29-3*.
- Thompson, Gary M. and Alexandra Failmezger (2005), "Why Customers Shop Around: A Comparison of Hotel Room Rates and Availability across Booking Channels," *CHR Reports*, Vol. 5, No. 2, Ithaca, N.Y.: The Center for Hospitality Research at Cornell University, available at <http://www.chr.cornell.edu> (accessed on Apr. 11, 2011).
- Toh, Rex S., Peter Raven, and Frederick DeKay (2011), "Selling Rooms: Hotels vs. Third-Party Websites," *Cornell Hospitality Quarterly*, 52 (2), pp. 181-189.
- Toh, Rex S., Charles F. DeKay and Peter Raven (2011a), "Travel Planning: Searching for and Booking Hotels on the Internet," *Cornell Hospitality Quarterly*, 52 (4), pp. 388-398.
- U.S. District Court Western District of Texas, San Antonio Division (2011), *City of San Antonio, Texas on behalf of itself and all other similarly situated Texas Cities (Plaintiff) v Hotels.com, et al. (Defendants)*, CIVIL NO. SA-06-CA-381-OG, *Findings of Fact and Conclusions of Law*, July 1, available at http://www.hotelnewsnow.com/media/File/PDFs/Misc/20110712_OTAruling.pdf (accessed on Sept. 6, 2011).
- Utah Association of Counties (2012), "SB70-Sales and Use Taxation of Short-Term Lodging," available at http://www.uacnet.org/wp-content/files_flutter/1329435368SB70BulletSheet.pdf (accessed on Feb. 23, 2012).
- Virginia Department of Taxation (2011), "Summary of Online Travel Company Taxation in Other States," May 19, available at <http://www.tax.virginia.gov/site.cfm?alias=SummaryOnlineTravelCo> (accessed on Mar. 1, 2012).
- Zodrow, George R. (2006), "Optimal Commodity Taxation of Traditional and Electronic Commerce," *National Tax Journal*, LIX, No. 1, Mar., pp. 7-31. ☆