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Mark C. Haskins  
Policy Development Director  
Virginia Department of Taxation  
Post Office Box 27185  
Richmond, VA 23261-7185

Dear Mr. Haskins:

VACo and VML offer the following comments to the Department's "Study on the Feasibility of Implementing Senate Bill 452."

The online travel companies' (OTCs) business model serves to disadvantage the consumer and traditional hotels. The model avoids important transparency, auditing and consumer protection controls by failing to itemize specific costs and associated taxes. The OTCs' exemption of service fees or charges from state and local taxation disadvantages traditional hotels. OTCs continue to avoid remitting the proper amount of tax while traditional hotels, including good Virginia companies, remit the proper or entire amount of tax. The unintended consequence of the OTCs' actions is that traditional hotels may, one day, replicate the OTC's business model and convert room costs to service charges and fees, seriously disrupting both state and local revenues. We suggest that the Commonwealth must strive to help protect consumer interests and close an unanticipated tax loop hole. Therefore, legislation similar to SB 452 (Sen. Whipple) is imperative.

Specific comments about the report:

**Page iii:** "To date, New York and North Carolina are the only states that have enacted legislation taxing the OTCs mark-up fees, and neither of these bills has taken effect."

Comment: This statement should be revised to state that New York's legislation took effect on September 1, 2010.

**Page 1:** We suggest the following changes to more accurately reflect current practices:

The OTC collects ~~the required~~ state and local taxes on the room rate and associated charges, but ~~does it has not been clear whether or not~~ the OTCs charge or collect tax on the separate charge for providing the online reservations.

Comment: It is often unclear to the on-line customer what tax and taxes are collected by the OTC and to what amount(s) the tax or taxes are applied.

**Page 6:** An important part of SB 452 is the requirement that both accommodation providers (A-1, lines 187 & 188) and accommodation intermediaries (A-1, Lines 544 & 545) separately state the amount of the tax/charges so that the consumer is fully informed. We recommend changing line 2 to read:

... would have required accommodations providers and intermediaries ...

**And Page 9:** Last paragraph, change to:

Finally each bill ~~would have~~ sets forth the same requirements for collecting, ~~and~~ remitting, and separately stating local transient taxes ...

**Page. 30:** Total State and Local Impact: "Sales transacted through OTCs make up approximately 10.3 percent of all hotel transactions in Virginia."


Comment: While recognizing that a lack of consistent national data exists regarding the actual percentage, we respectfully suggest that the 10 percent booking figure should be revisited. We would be pleased to assist you in this work; for starters, we can contact our national organizations for advice (NACo and NLC).


**Page 32:** The OTCs already collect and pay taxes in all state and local jurisdictions in which they choose to purchase and book rooms. SB 452 would not change their current administrative process, rather, it would change the amount of money sent to tax authorities.

**General comment regarding nexus:** Without specifically addressing the various and numerous legal cases regarding the issue, suffice it to say, when the nexus issue has been raised in litigation, the OTCs have not prevailed. We surmise this is because the OTCs are already collecting and remitting taxes on transactions.

Thank you for the opportunity to comment.

Sincerely,

  
Neal Menkes  
VML

  
Michael L. Edwards  
VACo