



August 20, 2009

Via FedEx and Email

[www.travelocity.com](http://www.travelocity.com)

Roxanne Bland  
Multistate Tax Commission  
444 North Capitol Street, N.W., Suite 425  
Washington, D.C. 20001-1538

Re: Comments on MTC Proposal to Tax Accommodations Intermediaries

Dear Roxanne:

Travelocity.com LP appreciates the opportunity to comment on the draft "Model Statute on the Tax Collection Responsibilities of Accommodations Intermediaries" (the "Draft Proposal"), a proposal for imposing tax on services provided by travel intermediaries. While we are concerned by the MTC's apparent intent to impose new transactional taxes on travel intermediaries' charges for services, we are especially troubled by several significant departures from accepted tax practice in the Draft Proposal. Among our most significant concerns are: (1) the Draft Proposal's plan to tax travel intermediary charges as if they were charges for the rental of hotel rooms rather than for services; (2) the requirement that intermediaries remit tax amounts directly to thousands of local taxing authorities; and (3) the Draft Proposal's failure to explicitly exclude travel packages.

We respectfully suggest that the Draft Proposal fails to recognize adequately the distinction between a business that provides non-hotel services (which travel intermediaries do) and one that provides hotel accommodations (which hotels do). Travelocity is a travel intermediary that facilitates the making of reservations not only with hotels, but also with airlines, car rental companies, destination service providers, cruise lines, and other travel product and service providers. However, Travelocity is clearly not a hotel, an airline, a car rental company, or a cruise line. Although the Draft Proposal acknowledges that facilitation services are different from hotel accommodations (and makes clear, by definition, that an accommodations intermediary is not an accommodations provider), it nonetheless proposes to tax the service in the same manner and at the same rate as if the service were part of the hotel's rental charge – and to source the service transaction as if it were part of the hotel's transaction – even though such taxing and sourcing methodologies are inconsistent with the way in which other services are sourced and taxed. If the MTC were to approve a model statute for taxing the intermediaries' services, such a statute should be in the form of a state

sales tax statute that, consistent with Streamlined Sales and Use Tax Agreement, sources the transaction to the customer's address.

By suggesting that a hotel tax could be imposed on anyone "brokering, coordinating, or in any other way arranging" for hotel rooms, the draft statute suggests that not only online travel intermediaries, but also traditional brick-and-mortar travel agents, convention bureaus, consolidators, and even credit card companies, could somehow be swept into the category of businesses that are subject to hotel tax collection obligations. Clearly, these travel-related service providers are not hotels or airlines or car rental companies. None of these characterizations – or tax proposals based on any of these characterizations – would reflect the reality of the underlying service transactions.

In addition to attempting to impose a new tax on travel intermediaries' service charges, the Draft Proposal also attempts to impose on intermediaries the responsibility for collecting and remitting occupancy taxes in thousands of local jurisdictions with as many various tax rates and compliance requirements (to the extent the intermediaries have nexus with the relevant jurisdictions). However, local occupancy tax ordinances are designed to apply to hotel owners and operators that have physical premises in the various taxing jurisdictions. The task of managing the collection and remittance process would be a virtually insurmountable administrative burden for travel intermediaries. The better solution would be to require local hotels – which are already collecting and remitting local occupancy taxes – to keep the travel intermediaries informed of local tax rates and to themselves remit taxes on the discount room charge.

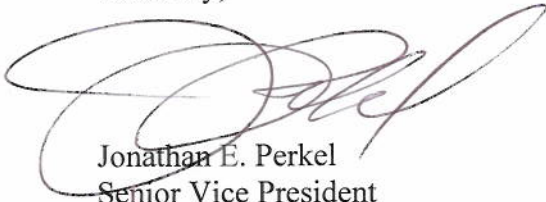
Also, the Draft Proposal does not explicitly exclude from the MTC's attempt to tax travel intermediary fees those intermediary charges for services provided in connection with travel packages. Travel intermediaries frequently combine multiple travel components (e.g., air fare and hotel) for a single price. Because there is no per-component mark-up, there is no amount that would fall within the current Draft Proposal definition of "accommodations fee." The Draft Proposal should be revised to explicitly exclude travel package fees from the proposed tax base. Such a revision is especially important in the travel packages context because federal law precludes state and local taxation of air transportation.

As one of the largest travel intermediaries in the country, as an employer of thousands of workers, and as a service provider to thousands more, Travelocity urges the MTC to consider carefully the disadvantages not only to taxpayers, but also to taxing jurisdictions, of the Draft Proposal, which could inaccurately, and confusingly, treat service providers as if they were hotels, responsible for hotel taxes.

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The enclosed short memorandum provides some additional comments. We appreciate your time and attention to the memorandum and to the important issues raised in the Draft Proposal, and look forward to responding to any questions you may have.

Sincerely,

A handwritten signature in dark ink, appearing to read 'J. Perkel', with a large, stylized flourish at the end.

Jonathan E. Perkel  
Senior Vice President  
& General Counsel



**TRAVELOCITY COMMENTS ON MTC PROPOSALS TO  
TAX HOTEL INTERMEDIARIES**

**AUGUST 20, 2009**

**A. Background**

Before the emergence of the online travel industry, a customer wishing to book a hotel room in a particular area might use a phone book and a map to determine which hotels were located in the area, contact hotels to determine availability and room rates, analyze the information to judge which facility was most appropriate, and then call the selected hotel and make a room reservation. The customer might also have made multiple calls regarding airline tickets or rental cars. Alternatively, a customer could have engaged a traditional travel agent.

Travelocity provides its customers with an efficient, convenient, alternative means of comparing hotels and making a hotel room reservation and other travel arrangements, including airline and car reservations. The issue the MTC focuses on is whether these services provided by Travelocity and its competitors, including traditional travel agents, should be subject to tax, and if so, how the tax should be imposed.

**B. The Two Transactions Involved When a Guest Books through Travelocity**

Travelocity provides services by accessing databases of hotel rooms and rates made available by hotels, primarily through a “global distribution system” or “GDS.” When a customer makes a hotel reservation using Travelocity’s website, Travelocity’s computers make that reservation through the GDS, and transmit the customer’s information to the hotel. Travelocity does not – and cannot – assign customers to particular rooms or furnish the actual hotel accommodations. Those tasks are performed only by the hotel itself. Nor does Travelocity “buy” hotel rooms in advance and then “resell” those rooms to customers. At all times, the hotels own and control their hotel and their hotel rooms. Travelocity serves as an intermediary between hotels and hotel guests. Accordingly, two transactions are necessarily involved:

1. The Facilitation Transaction by Travelocity: Travelocity facilitates the customer’s request for a reservation with a specific hotel in exchange for amounts charged and retained for services. This facilitation transaction takes place between Travelocity and the customer, not the hotel. Travelocity and the customer are generally not in the same taxing jurisdiction as the hotel.

2. The Furnishing Transaction by the Hotel: The hotel furnishes the accommodation to the consumer and receives payment for the room rate, as set by the hotel. The hotel reservation is booked in the name of the customer, and Travelocity is not involved in the hotel’s actual provision of accommodations to the consumer. Instead, only the hotel is responsible for providing the room.

## C. Problems with the Draft Proposal

1. The Draft Proposal could allow a hotel tax to be based on a deemed transaction rather than an actual transaction.

The online travel companies do not provide hotel rooms, just as they do not provide airline flights or rental cars. However, the draft proposal, unlike a sales tax on services, is designed to treat charges for services provided by an unrelated third-party travel intermediary as if they were part of the amount paid for a hotel room.

In its current form, the Draft Proposal, dated May 7, 2009, suggests that fees charged by travel intermediaries should be taxed – not as services subject to sales tax – but as if the services were a component part of the hotel room. The draft thus appears designed to allow local jurisdictions to impose hotel taxes on the intermediaries' fees for their services. However, this approach would create serious problems for both taxpayers and taxing jurisdictions – particularly as compared to a sales tax imposed on services.

By suggesting that a hotel tax could be imposed on anyone “brokering, coordinating, or in any other way arranging” for hotel rooms, the draft statute suggests that not only online travel intermediaries, but also traditional brick-and-mortar travel agents, convention bureaus, consolidators, and even credit card companies, could somehow be swept into the category of businesses that are subject to hotel tax collection obligations. Clearly, these travel-related service providers are not hotels or airlines or car rental companies. None of these characterizations – or tax proposals based on any of these characterizations – would reflect the reality of the underlying service transactions.

2. The Draft Proposal would create virtually insurmountable administrative burdens for taxpayers and taxing jurisdictions – directly contrary to the goal, shared by the Streamlined Sales and Use Tax Agreement, to simplify and make uniform the sales and use tax obligations.

The Draft Proposal appears designed to require online travel companies, as well as travel agents, consolidators and others, to comply with the tax and reporting requirements of literally thousands of hotel tax jurisdictions (to the extent the travel intermediaries have nexus with the jurisdictions), each of which has its own tax rates, return filing requirements, due dates and other requirements. Particularly in an era when the Streamlined Sales and Use Tax Agreement focuses on uniform definitions and procedures, and on state-level taxation, good tax policy is better served by state taxes on services than by a highly localized, inconsistent set of requirements.

Local occupancy tax ordinances are typically designed to apply to hotel owners and operators with business locations in the various taxing jurisdictions. Such ordinances commonly impose obligations that require a physical presence, such as the posting of signs. In the hotel tax context contemplated by the Draft Proposal, a local hotel can be expected to know the tax rates and requirements for the jurisdiction in which it does business; by contrast, a travel service provider is not easily (if at all) able to track the varying rates of thousands of local jurisdictions across the country. Compliance with thousands of hotel tax jurisdictions would be further complicated – and compromised – by the fact that there are no software programs that provide the information necessary for compliance. The Draft Proposal's attempt to impose collection



and remittance obligations on travel intermediaries imposes virtually insurmountable administrative burdens with which travel intermediaries cannot comply.

3. The Draft Proposal does not explicitly exclude travel packages.

The Draft Proposal fails to explicitly exclude travel packages from its attempts to tax travel intermediary service charges. In addition to reservations for just hotel rooms (referred to in the travel industry as “stand-alone” hotel reservations), travel intermediaries frequently facilitate the booking of travel packages comprised of multiple components (for example, air fare and hotel) for a single price. In those instances, travel intermediaries typically combine travel components. Because there is no per-component mark-up, no amount in the travel package context falls within the definition of “accommodations fee.” The Draft Proposal should be amended to explicitly exclude travel intermediary charges for services in connection with travel packages from the proposed tax language. Such a change is particularly important in the travel packages context because federal law precludes state and local taxation of air transportation.