



Williams Mullen Assists with Significant Appellate Court Victory

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Interactive Travel Services Association Press Release:

WASHINGTON -- The Interactive Travel Services Association (www.interactivetravel.org) today announced that a federal appellate court has affirmed the dismissal of a suit brought by Pitt County, NC which claimed that online travel companies, including Hotels.com, Expedia (EXPE: 9.08, -0.38, +4.4%), priceline.com (PCLN: 72.43, +3.38, +4.9%), Orbitz OWW 3.46, +0.17, +5.2%) , and Travelocity, are responsible for paying the County's hotel occupancy tax.

The U.S. Court of Appeals for the Fourth Circuit's decision rejecting Pitt County's tax claims is the first appellate decision by any federal or state court nationwide on the merits of the occupancy tax issue. In rejecting Pitt County's appeal, the court ruled that under the clear language of the County's occupancy tax ordinance and North Carolina's state sales tax statute (G.S. 105-164.4), the online travel companies are not lodging "retailers" subject to the tax. The Court concluded: "The online companies, as the allegations in the County's complaint recognize, have no role in the day-to-day operation or management of the hotels." As a result, the Court held that "they cannot be said to operate the hotels." The Court also rejected the argument that online travel companies were "similar type businesses" to hotels and thus could be considered "retailers." The Court held that "A business that arranges for the rental of hotel rooms over the internet, but that does not physically provide the rooms, is not a business that is of a similar type to a hotel, motel, or tourist camp" and thus is not subject to the Pitt County occupancy tax.

Citing a long standing legal principle, the Court held that it "may not expand the [tax] statute's reach beyond what its plain language will bear." The Court further concluded that even if there were ambiguity in the Ordinance's language, tax law requires that the ambiguity be resolved strictly against the taxing authority.

"We are pleased that the Court of Appeals recognized what we have maintained all along: that the County's tax ordinance by its terms simply does not apply to online travel companies," said Art Sackler. "Online travel companies work hard to bring visitors and tourism dollars to cities and hotels around the country. Since they do not manage or operate hotels, motels or other lodging establishments, the online travel companies are not liable for occupancy taxes on the reservation services they provide to the local tourism industries."

The Interactive Travel Services Association (ITSA) is the association for the nation's online travel merchants and global distribution systems. Among its members or their subsidiaries are: CheapTickets (www.cheaptickets.com), Expedia.com (www.expedia.com), Hotels.com (www.hotels.com), Hotwire.com (www.hotwire.com), Orbitz (www.orbitz.com), priceline.com (www.priceline.com), and Travelocity (www.travelocity.com). A full membership list can be found on ITSA's website, www.interactivetravel.org.

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Charles B. Neely, Jr., Nancy S. Rendlemen and Robert W. Shaw served as local counsel to defendants online travel providers during the dispute.

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