Testimony of Mike Rodden
On behalf of the Pennsylvania Restaurant & Lodging Association
House Tourism & Recreational Development Committee
October 29, 2013

Good afternoon Chairman Stern, Chairman Kirkland and members of the House Tourism and Recreational Development Committee. Thank you for the opportunity to testify today regarding the package of bills, sponsored by Representative Day, that would ensure tax fairness and proper remittance of taxes by online travel companies for hotels accommodations booked in Pennsylvania. My name is Mike Rodden and I am the general manager at the Philadelphia Marriott West.

Let me begin by saying that the Pennsylvania Restaurant & Lodging Association supports this package of bills because it would close the OTC tax loophole currently benefitting out of state companies. Online travel companies (OTCs), such as Orbitz, Expedia, Priceline, etc., currently remit taxes on the wholesale cost of the rooms they sell. This package of bills would ensure online travel companies remit taxes on the retail cost their customers are paying.

At the end of July, this committee held a hearing on hotel taxes and the need for increased tourism funding. Closing the OTC tax loophole is a simple way to ensure that local tourism promotion agencies are receiving the full hotel tax revenue needed to promote the area they represent—at no additional cost to travelers/taxpayers. Let me refer you to the diagram on page 3 of my testimony to an example illustrating the discrepancy.

When a customer purchases a hotel room directly from a hotel or a hotel's online channel, he or she would pay $100 for the room, plus $10 in applicable taxes (assuming a 10% tax rate) for a total of $110. The hotel would remit the $10 in taxes that it collected from the customer back to the tax jurisdiction.

Now, let's say the same customer purchased the same hotel room from an online travel company. In this example, the customer is charged the same $100 retail price before taxes, which is governed by the hotel contracts with the OTCs. The wholesale rate offered by the hotel to the OTC is $80. To the customers, the OTCs assess 'taxes and fees' on the $100 retail rate but do not specify the breakdown of their markup. The OTCs have systematically chosen to base the tax they remit on the $80 wholesale rate the OTC pays the hotel, not on the $100 retail rate the customer pays the OTC. So they remit $88 to the hotel: the $80 wholesale rate and $8 in taxes.

The result is that for virtually identical transactions of booking a hotel room, two different amounts of taxes are remitted depending on the booking method: $10 in a hotel booking versus $8 in an OTC booking. The customer is paying the money, it is a matter of who gets to keep it, the OTCs or tax authorities.

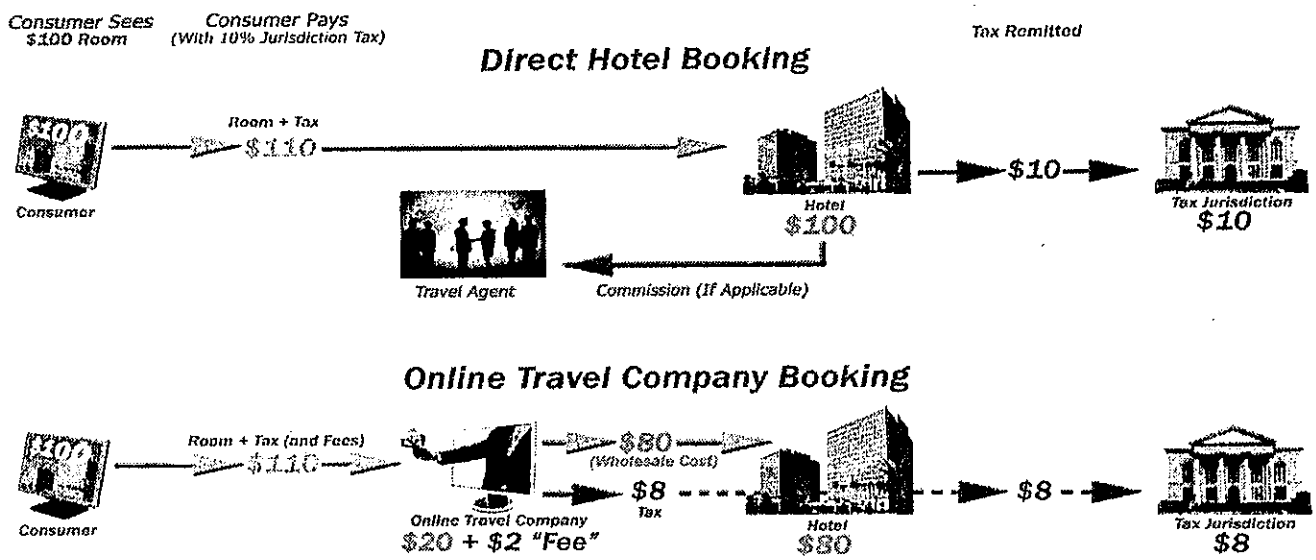
Let me point out that in no other wholesale to retail business model are taxes only remitted on the wholesale rate. If you were to purchase a television from Best Buy, the tax is assessed and remitted based on the retail price you, the consumer pays, not the wholesale price Best Buy paid the manufacturer.

Back to the diagram: we are looking at a $2 shortfall between what the hotel remits to the state and what the OTC remits. It was estimated by the Department of Community and Economic Development (DCED) in 2010 that if the OTC's remitted taxes based on the retail amount of the rooms they sell, the state could have received up to $5 million in additional sales and hotel tax revenue. That's millions of additional funds that tourism promotion agencies could use to market their respective areas and encourage more visitors

This summer, the Executive Committee Task Force on State and Local Taxation of the National Conference of State Legislators (NCSL) unanimously passed a resolution that says states should pass legislation clarifying tax laws to ensure OTC's remit taxes on their retail prices—which is exactly what Representative Day's legislation would do.

This package of bills levels the playing field by ensuring that taxes are remitted equitably and fairly based on the retail amount paid by the consumer. Adjusting the law is necessary to stop the OTC practice of choosing the basis on which they are remitting taxes and ensure consistency in hotel tax policy.

On behalf of the PRLA, I urge you to vote these pieces of legislation out of committee, close the OTC tax loophole and ensure that Pennsylvania receives the additional revenue to promote our destinations. Thank you for your time and I will be happy to take any questions.



- Online travel companies (OTCs) such as Expedia, Orbitz, and Travelocity advertise hotel rooms and charge customers the same (or higher) retail price as hotels do.
- The final price which includes "taxes and fees" that OTCs charge their customers is generally equal to (or greater than) the retail price plus tax charged by hotels.
- However, OTCs choose to remit tax only on their wholesale cost, not the retail price they charge and collect from their customers.
- States and localities throughout the country and Pennsylvania contend that OTCs are not remitting taxes they are charging and collecting.
- Because out-of-state OTCs have been engaging in this disputed practice, the state has imposed a higher effective tax rate on Pennsylvania hotels, creating two different tax treatments for identical transactions.
- Pennsylvania has been receiving less revenue from OTC transactions than it otherwise would, depriving Pennsylvania communities and convention and visitors bureaus of the ability to promote tourism and to make our communities better.
- A report from one of the many court cases against the OTCs found "a conscious and deliberate effort to avoid the payment of its full measure of occupancy taxes, in violation of state and local law."
- Another report found "a concerted effort by [OTCs]...to misrepresent, obfuscate, and mislead taxing authorities...in order to avoid application of occupancy tax statues and ordinances."