



# The Florida Senate

*Interim Project Summary 2005-131*

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Committee on Government Efficiency Appropriations

Senator Jeffrey H. "Jeff" Atwater, Chair

## **APPLICATION OF THE TOURIST DEVELOPMENT TAX TO THE SALE OF DISCOUNTED HOTEL ROOMS OVER THE INTERNET AND TO HOTEL REWARDS POINTS PROGRAMS**

### **SUMMARY**

The sale of discounted hotel rooms over the Internet by such organizations as Priceline.com and Expedia.com has skyrocketed over the past several years. Internet intermediaries contract to pay discounted rates to hotels for rooms that are then sold over the Internet to the intermediaries' customers at higher prices. Under current practices, state and local sales tax and local tourist-related taxes are collected and remitted by the hotels on the discounted rates paid by the Internet intermediaries to the hotels and not on the higher amounts paid by the customers occupying the rooms. As a result, state and local governments are not receiving both sales tax and tourist-related tax revenues on the intermediaries' facilitation fee.<sup>1</sup> During the 2004 Legislative Session, an informal workgroup representing the Florida Hotel and Motel Association, one Internet intermediary company, a major Florida theme park, the Florida Association of Counties, and legislative staff discussed this issue. In addition, the Department of Revenue participated as a source of information and support staff. As a result of these discussions, proposed legislation to ameliorate the problem was developed. The proposed legislation attempted to clarify the appropriate tax treatment of transactions in which an Internet intermediary of hotel rooms pays a hotel a discounted rate for a room that the intermediary then sells to a customer at a higher price. Workgroup members, except for the Internet intermediary, supported most of the proposed changes. The proposed legislation was not considered during the 2004 Legislative Session

The question of whether or not hotels should remit taxes when a guest who is a member of a hotel rewards points program redeems previously acquired points to

secure short-term lodging has been debated recently without resolution. Under a rewards points program, each hotel in the chain is contractually obligated to contribute a percentage of revenues received from guests who are program members to a central program fund. When a member redeems points to stay at a participating hotel, that hotel receives a credit against its monthly obligation to fund the rewards program. The hotels argue that there is no consideration paid by the member guest to the hotel when points are redeemed, and that no tax is therefore due on those stays. Local governments argue that the rewards points redeemed by the member guest have value and are consideration. Hotels have, until recently, accrued and remitted tax on that basis. After reassessing the applicable law, some hotels have submitted pending state and local refund requests. The Department of Revenue has not taken a binding position on this issue.

This project looked at the impact on both state and local sales tax and tourist development tax revenue collections of the current practice of selling hotel rooms over the Internet and calculating and remitting taxes on the discounted rate paid to the hotel instead of on the higher amounts actually paid by the hotel guest. In addition, this project analyzed the taxable status of the hotel rewards points program.

### **BACKGROUND**

#### **The Sale of Discounted Hotel Rooms Over the Internet**

The booking of discounted hotel rooms over the Internet by such organizations as Priceline.com and Expedia.com has skyrocketed over the past several years. Internet intermediaries contract to pay discounted rates to hotels for rooms that are then sold

<sup>1</sup> "Facilitation fee" is described by the Internet intermediary as a fee paid for "booking services."

over the Internet to the intermediaries' customers at higher prices. Under current practices, state and local sales tax and local tourist-related taxes are collected and remitted by the hotels on the discounted rates paid by the Internet intermediaries to the hotels and not on the higher amounts paid by the customers occupying the rooms. As a result, state and local governments are not receiving both sales tax and tourist-related tax revenues on the facilitation fee.

Transient rentals represent a revenue base for both state and local government. Transient rentals involve the rental or lease of any living quarters or accommodations in any hotel, apartment motel, rooming house, mobile home park, recreational vehicle park, or condominium for a term of 6 months or less. Section 212.03, F.S., imposes the state's 6 percent sales tax on transient rentals. Section 212.054, F.S., provides that local discretionary sales surtaxes apply to transactions that are subject to state sales tax. Section 125.0104, F.S., authorizes counties to impose tourist development taxes on transient rentals. Counties may collect and administer the tax themselves if they adopt an ordinance in accordance with s. 125.0104(10), F.S. There are four local option taxes which impose additional levies only on transient rentals. They are:

Tourist Development Tax - imposes a tax on transient rentals at a maximum rate of 6 percent. All counties are eligible to impose the tourist development tax. As of January 1, 2004, 53 counties levied tourist development taxes, with 38 self-administering the tax;

Tourist Impact Tax – a 1 percent tax restricted to areas of critical state concern. Only Monroe County imposes the tourist impact tax;

Convention Development Tax - imposes a tax on transient rentals at the maximum rate of 3 percent. The convention development tax is limited to Miami-Dade County, Duval County and Volusia County. All three counties levy the tax and self-administer the tax; and

Municipal Resort Tax – authorized and levied in just three cities, Miami Beach, Bal Harbour, and Surfside, at the maximum rate of 4 percent on transient rentals. No other tourist development taxes may be imposed in municipalities levying the municipal resort tax.

Total local tourist tax revenue collections in fiscal year 2002-03 were \$353.5 million.<sup>2</sup>

During the 2004 Legislative Session, an informal workgroup representing the Florida Hotel and Motel Association, one Internet intermediary company, a major Florida theme park, the Florida Association of Counties, and legislative staff discussed the issue. In addition, the Department of Revenue (DOR) participated as a source of information and support staff. As a result of these discussions, proposed legislation to ameliorate the problem was developed. The proposed legislation attempted to clarify the appropriate tax treatment of transactions in which an Internet intermediary of hotel rooms pays a hotel a discounted rate for a room that the intermediary then sells to a customer at a higher price. Workgroup members, except for the Internet intermediary, supported most of the proposed changes. The Senate Finance and Taxation Committee held a workshop on April 13, 2004, to discuss the proposal to clarify the application of the tourist development tax for on-line sales of hotel rooms. The proposed legislation was not considered during the 2004 Legislative Session.

### **The Hotel Rewards Points Program**

The question of whether or not hotels should remit taxes when a guest who is a member of a hotel rewards points program redeems previously acquired points to secure short-term lodging has been debated recently without resolution. Rewards points program members earn points each time they stay at a participating hotel. When the member earns a sufficient number of points, they can be exchanged for lodging at any hotel participating in the program. Under most rewards points programs, each hotel in the chain is contractually obligated to contribute, on average, about 4 percent of revenues received from program member guests to a central program fund. Such contribution is made on a monthly basis. The program fund is used to promote the program and to compensate the chain that owns or franchises the participating hotels for services and expenses incurred for managing the program. When a member redeems points to stay at a participating hotel, that hotel receives a credit against its monthly obligation to fund the reward program.

The hotels argue that there is no consideration paid by the member guest to the hotel when points are redeemed, and that no tax is therefore due on those stays. Local governments argue that the rewards points redeemed by the member guest have value and are consideration, with the value of the consideration received by the hotel measured by the reimbursement received from the central fund in the form of a reduced contribution requirement for the month. Hotels have

<sup>2</sup> Source: Department of Revenue, Research and Analysis

until recently accrued and remitted tax on that basis. After reassessing the applicable law, some hotels have submitted pending state and local refund requests. The Department of Revenue has not taken a binding position on this issue.

## **METHODOLOGY**

Applicable state statutes were reviewed and documented on the taxation of transient rentals and complimentary rooms issued through the hotel rewards points program. Researched pertinent documents on the sale of discounted hotel rooms over the Internet and the rewards points program and researched the application of taxes on transient rentals to rooms sold over the Internet and to rewards points programs by other states. Obtained rewards points refund information from the Department of Revenue, certain counties and Grant Thornton. Provided a draft copy of the interim report to members of the workgroup and other interested parties, to evaluate the data and provide comments.

## **FINDINGS**

### **The Sale of Discounted Hotel Rooms Over the Internet**

The issue of on-line booking of discounted hotel rooms by Internet intermediaries has surfaced as a result of two main factors: 1) the increase since 2002 in sales of discounted hotel rooms over the Internet; and 2) tax laws that were adopted before the existence of Internet intermediaries. On-line sales of hotel rooms have been soaring as discount sites attract millions of customers. According to PhoCusWright, Inc., a travel intelligence organization that specializes in strategy, research and forecasting for the travel, tourism and hospitality industries, on-line hotel bookings will grow to nearly one-third of total gross bookings by 2006.<sup>3</sup>

In Florida, the sales tax on transient rentals is due on the total rental charged for the transient rental. Specifically, the transient rental tax states: "... a tax is hereby levied in an amount equal to 6 percent of and on the total rental charged for such living quarters or sleeping or housekeeping accommodations by the person charging or collecting the rental."(Section 212.03(1), F.S.)

Florida's tourist development tax is collected and remitted based on the total consideration charged for the lodging. Specifically, the tourist development tax states: "*The tourist development tax shall be levied, imposed, and set by the governing board of the county at a rate of 1 percent or 2 percent of each dollar and major fraction of each dollar of the total consideration charged for such lease or rental.*"(Section 125.0104(3)(c), F.S.)

The Internet intermediaries argue that the tourist development tax is measured by the amount paid to the hotel operator and that the facilitation fee is not subject to tax because it is not an amount paid to the hotel operator.

Internet intermediaries interact with their customers in one of two ways: as agents or merchants. As agents, they act as a middle-man between the customer and the hotels to reserve rooms. The customer reserves a room using a credit card, which the customer uses to pay the hotel bill at check-out. Taxes are charged on the total hotel bill at check-out. In these circumstances, the Internet customer is typically advised that taxes may or may not be included in the total cost listed on the web site. Agents do not arrange in advance of the customer's transaction to purchase room inventory at the hotel.<sup>4</sup>

Merchants, buying blocks of rooms at wholesale prices from a hotel and selling them to consumers at higher prices, make far more money than agents. When acting as a merchant, the Internet intermediary charges its customers what it identifies as "taxes and fees." But because the tax paid by the Internet intermediary is based on the wholesale rate, not the retail rate, the fee portion is much larger than it might seem. Because Internet intermediaries lump together what they charge in taxes and fees, consumers do not know how much they are paying for each.<sup>5</sup>

The rationale given by Internet intermediaries for not breaking out taxes and fees is that other on-line booking services would know what type of deals they made with lodging chains. The standard facilitation fee on such Internet room rates is 25 percent. Given that, the following exercise will demonstrate the estimated loss in tax revenue to both state and local governments from an Internet hotel reservation made through

<sup>3</sup> [www.traveldailynews.com](http://www.traveldailynews.com), "PhoCusWright: 1/3 of All Hotel Sales to be Made Online by 2006," September 2, 2004.

<sup>4</sup> Gretchen Morgenson, "Web Site Financial Disclosure, the Barry Diller Way," *The New York Times*, August 10, 2003, Sec. 3, p. 10, col. 1.

<sup>5</sup> *Ibid.*, col. 2.

Expedia.com for the Wyndham Orlando Resort. Table 1 shows an actual reservation quote from Expedia.com.

**Table 1  
Expedia.com**

**Wyndham Orlando Resort**

Guests: 2 adults	
Room rate 9/25:	\$99.00 per night
Taxes & service fees:	\$14.54 per night
What are Taxes & Service Fees?	The taxes are tax recovery charges Expedia pays to its vendors (e.g. hotels); The service fees cover Expedia's costs in servicing your reservation.
Total room cost:	\$113.54
	Expedia Special Rate

Source: Expedia.com, September 14, 2004.

Table 2 calculates state and local taxes lost on the on-line reservation made in Table 1 as a result of the current practice of Internet intermediaries remitting tax on the discount hotel room rate instead of the actual rate charged the customer.

**Table 2**

Advertised Room Rent	\$ 99.00
Advertised Taxes & Fees	14.54
Total Room Rent	\$113.54
Estimated Discounted Rate (25%)	\$74.25
6% State Sales Tax	4.46
0.5% School Capital Outlay Surtax	.37
5% Orange Co. Tourist Dev. Tax	3.71
Total Taxes	8.54
Total Remitted to Hotel	\$82.79
Taxes Due on Total Room Rent	\$13.06
Taxes on Est. Discount Room Rate	8.54
Total Tax Loss	(\$ 4.52)
Profit to Expedia.com	\$ 4.52
% Increase in Profits	6.1%

Local governments are concerned about the loss of tax revenues, primarily tourist-related tax revenues, as a result of the practice of Internet intermediaries remitting tax on the discount hotel room rate instead of on the actual rent paid by the customer. The Florida Department of Revenue (DOR) has not taken an official position on this matter. The Florida Hotel and Motel Association has expressed their concern that if

the DOR should decide that tax is due on the actual rent paid by the customer for the hotel room instead of on the discount rate paid to the hotel by the Internet intermediaries, that the hotels may be liable for back taxes.

The informal workgroup members consisted of representatives from the Florida Hotel and Motel Association, the Florida Association of Counties, legislative staff, a major Florida theme park, and one Internet intermediary company. In addition, the Department of Revenue participated as a source of information and support staff. Although not all of the proposed changes were embraced by all of the members of the workgroup, it was the consensus of the workgroup that if legislation was proposed to require Internet intermediaries to collect and remit tax on the total room rent charged the customer, instead of on the discount room rate, then the change would be prospective only. If certain conditions were met, no back taxes would be assessed. The Senate Finance and Taxation Committee held a workshop on April 13, 2004, to discuss the proposal to clarify the application of the tourist development tax for on-line sales of hotel rooms. No action was taken by the Legislature on the proposal.

**The Hotel Rewards Points Program**

Until recently, hotels in Florida collected and remitted both state and local sales taxes as well as tourist-related taxes on free lodging as the result of a guest redeeming hotel rewards points for a free stay. The hotels treated their reimbursements from the reward fund in the same manner as other room revenue. Since no guest was paying tax, the hotels self-accrued tax on the reimbursement amount and submitted it monthly with their regular sales tax return. The accounting firm of Grant Thornton LLP was retained by certain hotel chains to review the tax treatment of rewards points programs nationwide, focusing on high redemption states such as Florida.

Under most hotel rewards points programs, when a hotel guest provides a hotel a rewards point card at check-in, the guest is earning points towards a free stay or other amenities with the hotel. At the time of check-in, the hotel records an expense of between 2 percent and 6 percent of the nightly room rate, depending on the specific program. All taxes are paid on the total amount paid by the guest for the room, which includes the amount expensed. When a guest redeems rewards points for a free stay at the hotel, the guest redeems the points with the program's redemption center. The

redemption center removes the points from the member's account and makes the reservation at the hotel chosen by the rewards points' member. When a guest checks into the hotel, the guest provides the hotel with either a certificate for a free room, which the guest received from the redemption center, or a confirmation number.

Each hotel in a chain that offers a rewards points program is required to participate in the program by terms of its management agreement. Each hotel pays on average, about 4 percent of room revenues from guests who are members of the rewards points program into a central fund every month. The 4 percent is taxed as part of the room charge, but is transferred to the central fund for payment of rewards stays at a later date and to cover the costs of administering the fund. For example, if a rewards guest pays \$200 per night for the room, the hotel retains \$192 but remits the transient rental and tourist development tax on the full \$200. The hotel's account is credited a certain amount when rewards points are used at their hotel for a free night's stay. The credit is a set amount that is designed to cover the expenses the hotel will incur for the free room. Each hotel has a balance in the central fund directly related to its contributions and credits. If the amount of credit to a hotel exceeds the amount due from that hotel to the central fund in any particular month, the credit is carried forward and applied against the hotel's obligation to pay in the following month

There are two sides to the debate of the application of the tourist development tax to the hotel rewards points program. The hotels, through the accounting firm of Grant Thornton LLP, have taken the stand that there is no consideration paid by the guest to the hotel for the room when the guest redeems his or her rewards points through the central fund for a free room certificate, thus no tax is due. On the other hand, some local governments believe that the rewards points program provides for the transfer of consideration to a hotel when points are redeemed and used for lodging at the particular property. The hotels have debts to the program that are reduced by the redemption of rewards points. Thus, the use of the points results in a transfer of value or consideration and is taxable.

On April 2, 2004, the Florida Department of Revenue hosted a public meeting in Orlando, Florida to gather information on the rewards points programs and the tax treatment of such programs. Attendees represented both the public and private sectors.

No Consideration Paid by the Guest to the Hotel, So No Tax Due:

Section 212.03(4), F.S., states that "...no tax shall be imposed upon rooms provided guests when there is no consideration involved between the guest and the public lodging establishment." Rule 12A-1.061(3)(f), F.A.C., states that "owners or owners' representatives of transient accommodations who provide transient accommodations to guests or tenants for no consideration, are not required to collect tax from the guest or tenant or pay tax on the value of the accommodation.

On two separate occasions, the accounting firm of Grant Thornton LLP submitted a request for a Letter of Technical Advice (LTA)<sup>6</sup> to the DOR on behalf of two different brand hotels having rewards points programs to ask about the taxability of the program. In addition, on behalf of the Monroe County Clerk of the Circuit Court, a request for a LTA was issued on the same question of taxability of the rewards points program.

On each separate occasion, the department responded with a LTA making the following determination:

Section 212.03(4), F.S., expressly prohibits the imposition of tax on rooms when there is no consideration between the guest and the hotel. Therefore, even though the hotel may receive some reimbursement for lost revenue or expenses from a central fund, this reimbursement does not constitute consideration from the guest.

There is no tax (state or local) on the free rooms provided to/redeemed by guests, or on the compensation from the central fund for the use of those rooms.

Rewards Points Redeemed by Member Guests Have Value and Are Taxable

Section 125.0104(3)(a), F.S., provides that every person who rents, leases or lets for consideration living quarters or accommodations in any hotel...for a term of six months or less is exercising a privilege which is subject to taxation, unless the transaction is exempt under the provisions of Chapter 212. (Rule 12A-

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<sup>6</sup> A Letter of Technical Advisement is a written response based upon the facts and circumstances of a specific situation, as presented, and is not an official statement or opinion of the Department of Revenue but, instead, represents the opinion of the writer.

1.061(1), F.A.C. It is the intent of the legislature to tax each and every rental unless it is specifically exempt. Rental charges on room rates for the use or possession, or the right to the use or possession, of transient accommodations are subject to tax, whether received in cash, credits, property, goods, wares, merchandise, services, or other things of value. (Section 212.21(2), F.S. and Rule 12A-1061(3), F.A.C.)

On behalf of Orange County, Usher L. Brown of Brown, Salzman, Weiss & Garganese, P.A., was asked to answer the question of whether or not the use of rewards points to secure short-term lodging is “consideration” subject to the tourist development tax.

As discussed above in Rule 12A-1.061(3), F.A.C., the DOR has defined “taxable consideration” to include “credits” and “anything of value.” Consideration is defined in a variety of ways. One definition is, “the cause, motive, price or impelling influence which induces a contracting party to enter into a contract.” Further, credit is defined in relevant part, “the correlative of debt; that is, a debt considered from the creditor’s standpoint of that which is incoming or due to one. That which is due to a person as distinguished from debit, that which is due by him.” (Black’s Law Dictionary, 6<sup>th</sup> Edition)

Mr. Usher concluded that reward points are redeemed as consideration for the lodging because:

- Hotel taxpayers are contractually required to contribute money to the central rewards program fund.
- The obligation to the rewards program is a debt of the hotel taxpayers.
- When a guest redeems points in consideration of lodging the hotel taxpayers, by virtue of the redemption, receives a benefit (value) in the form of a credit against its debt obligation to the monthly rewards program.
- This redemption in debt is through the use of “credits” and is something of “value” in consideration of short-term rental accommodations, and as such, is taxable.

Since the rewards points are redeemed as consideration for lodging, then is the consideration paid from the customer to the hotel taxpayers?

Pursuant to s. 212.03(2), F.S., the same duties imposed by chapter 212 upon dealers in tangible personal property with respect to “...the collection and

remission of tax...shall apply to and be binding upon all persons who manage or operate hotels, apartment houses, rooming houses, tourist and trailer camps, and the rental of condominiums, and to all persons who collect or receive such rent on behalf of such owner or lessor taxable under chapter 212.”

Rule 12A-1.060, F.A.C., provides for the registration of sales tax dealers. Any person exercising a taxable privilege of engaging in the business of renting, leasing, letting, or granting licenses to others to use transient accommodations is required to register as a sales tax dealer and must obtain a separate dealer’s certificate of registration for each place of business where transient accommodations are provided. Any agent, representative, or management company may collectively register transient accommodations under the following conditions:

- Holds a valid dealer’s certificate of registration for each place of business;
- Authorized by means of a written agreement with the property owner to collect rental charges or room rates due on any transient accommodations; and
- The written agreement provides that:
  - The property owner is ultimately liable for any sales tax due the state on rentals, leases, lets, or licenses to use the owner’s property; and
  - In the event that the state is unable to collect any taxes, penalties, and interest due, a warrant for such uncollected amount will be issued and will become a lien against the owner’s property until satisfied.

Mr. Brown agrees that the hotel rewards points program administrator acts as an agent for the hotel, and thus is a dealer granting a license to occupy the room, and is responsible to collect and remit the tax. If the agent fails to remit tax, the principal of the agent, (the hotel) is liable.

Mr. Brown concludes that there is consideration directly flowing between the guest and the hotel, because the redemption of rewards points, whether through an intermediary or not, results in a direct benefit to the property, by extinguishment or reduction of a debt otherwise owned by the hotel. And, it is the guest who chooses to redeem his valuable points for a “license” (or right) to stay at a particular hotel

The accounting firm of Grant Thornton LLP has filed refund requests on behalf of its clients for tourist development taxes paid on complimentary rooms issued through the rewards points program with the DOR, 31 counties and the cities of Miami Beach and Bal Harbour. (See Table 3 and Appendix F of the long report.) In addition, some hotel chains have also filed refund requests with the DOR and with counties. To date, \$1.6 million in refund requests have been made of the counties and cities and \$1.7 million of the DOR.

## **RECOMMENDATIONS**

### **The Sale of Discounted Hotel Rooms Over the Internet**

The sale of discounted hotel rooms over the Internet by Internet intermediaries such as Priceline.com and Expedia.com, has skyrocketed over the past several years. In 2006, such on-line hotel bookings are estimated to grow to nearly one-third of total gross bookings. As a result, both state and local governments could be losing significant amounts of revenue. During the 2004 Legislative Session, a work group of vested parties met to discuss the issue. As a result, Legislation was proposed to clarify the appropriate tax treatment of transactions in which an Internet intermediary of hotel rooms pays a hotel a discounted rate for a room that the Internet intermediary then sells to a customer at a higher price. The proposed legislation was not supported by the Internet intermediaries and the remaining workgroup members did not agree with all aspects of the proposed legislation.

In Florida, tax on transient rentals is due on the *total rental charged for the transient rental*. (Section 212.03(1), F.S.) Tourist development tax is collected and remitted based on the *total consideration charged for the accommodation*. (Section 125.0104(3)(c), F.S.) The current practice of Internet intermediaries remitting taxes on the discounted rate paid by the Internet intermediaries to the hotels and not on the higher amounts actually paid by the customer occupying the room is in violation of Florida law.

It is the recommendation of this report to submit for consideration the legislation developed by the workgroup that requires that tax be collected and remitted on the total rent charged the customer by the Internet intermediary for the hotel room. Specifically the legislation would:

- Apply all state and local taxes to the total rent paid by the customer to the Internet intermediary for the hotel room.

Provide two options for the remittance of the tax:

- Dual remittance – Internet intermediary collects tax from the customer on the total rent, remits tax to the DOR on the facilitation fee; remits the discount rate plus tax to the hotel hotel remits tax on the discounted rate to the DOR; or
- Hotel-only remittance – Internet intermediary would disclose the total rent charged the customer to the hotel and remit tax on the total rent to the hotel with the payment of the discounted rate; the hotel remits tax on the total rent to the DOR and self-administering counties. The hotel would be held harmless except for its obligation to report and remit total tax collected.
- A seller of vacation packages would be required to have its registration certificate or proof of exemption from registration with the DOACS under chapter 559.
- For audit purposes, a seller of vacation packages would need to maintain records documenting the prices paid for package components, the taxes paid to the sellers of those components, and the sale of packages that include those components without stating a separate price for them.
- Internet intermediaries can register as either a sales tax dealer or a seller of vacation packages; single registration is authorized, but not required.
- Consolidated returns would contain information to enable the DOR to distribute local tourist taxes to the proper jurisdictions.
- Internet intermediaries would be subject to audit by local governments that self administer tourist taxes only if the Internet intermediaries' Florida activity was limited to a single county, otherwise, audit authority rests with the DOR.
- Internet intermediaries registering with the DOR to pay taxes by a certain date and agreeing to prospective compliance will be held harmless for any past liability for tax on the facilitation fee over the rental paid to the hotel.

### **The Hotel Rewards Points Program**

Until recently, hotels in Florida collected and remitted both state and local sales taxes as well as tourist-related taxes on free lodging as the result of a guest redeeming hotel rewards points for a free stay. The hotels treated their reimbursements from the reward fund in the same manner as other room revenue. This all changed when the accounting firm of Grant Thornton LLP was

retained by certain hotel chains to review the tax treatment of rewards points programs nationwide.

There are two sides to the debate of the application of the tourist development tax to the hotel rewards points program. The DOR hosted a meeting on April 2, 2004, in Orlando, offering a forum for interested parties to present their opinions on the issue. The hotels, primarily through the accounting firm of Grant Thornton LLP, have taken the stand that there is no consideration paid by the guest to the hotel for the room when the guest redeems their rewards points through the central fund for a free room certificate. As a result, no tax is due. On the other hand, most local governments believe that the rewards points program provides for the transfer of consideration to a hotel when points are redeemed and used for lodging at a particular hotel. The hotels have debts to the program that are reduced by the redemption of rewards points. Thus, the use of rewards points results in a transfer of value or consideration and is taxable.

The question of whether consideration is paid by the guest to the hotel for the complimentary room when the guest redeems their rewards points through the central fund is moot. Since all applicable state and local sales tax and tourist-related taxes are paid on the percentage of room revenues paid into the central fund from hotel rewards points members, tax is not due when such funds are redeemed. To do so would result in pyramiding of taxes. Since the reimbursement received by the hotel from the central fund is money previously paid to the fund by the hotel, the hotel is, in effect, paying itself for the free room or upgrade. In any given month, when a hotel pays more into the fund than reimbursed by the fund, the hotel does not owe any tax, because the hotel has already paid tax on the funds. However, if in any given month, a hotel is reimbursed more than was paid into the fund by the hotel, tax is due on the amount of money not paid to the fund that month. When an excess occurs, it reflects that more rewards points earned outside of Florida are being redeemed in Florida, thus tax is due. This is the approach used by the State of Texas. and would not cause an administrative hardship on hotels because it follows the monthly record keeping required for the rewards points program.

If policy makers determine that tax is due only when a hotel is reimbursed more than was paid into the fund by the hotel in any given month, a decision needs to be made on how to deal with current refund requests. One approach would be to treat the taxable status of the rewards points program retroactive to the date of the

first refund request. Refund requests submitted prior to a date certain would need to be re-filed to reflect each hotels' monthly contributions to the central fund v. the hotels' monthly reimbursement. Counties and the DOR would owe refunds to hotels when the hotel's monthly contributions to the central fund exceeded their monthly reimbursements. When the hotel's monthly reimbursements from the central fund exceeded their monthly contributions, tax would have been owed on the amount not paid into the fund that month, so no refunds would be owed the hotel.

The question of whether or not hotels should remit taxes when a guest receives a complimentary room through redemption of rewards points can only be answered by policy makers. Local governments do not want to forgo any tourist development taxes, because they utilize the revenues to promote tourism. Increased tourism results in increased tourist development tax collections. While it is understandable that local governments want and need as much tourist development tax revenues as possible, it is important to put this issue into perspective. The impact of refund requests on the ten counties representing 75 percent of total tourist development taxes collected over the four year period of July 1, 1999 through June 30, 2003, represents only 0.14 percent of total tourist development tax collections over the four years for the ten counties. (See Table 4 of the long report.) The refunds cover the dates of August 1997 through March 2004, and if the refunds were able to be broken out by all seven fiscal years, the percentage would be even lower than the 0.14 percent.

The fiscal impact for both state and local governments of declaring that complimentary rooms provided through the hotel rewards points program are not taxable, could be ameliorated if the interpretation that tax is due on the total rent charged customers by the Internet intermediary for a hotel room instead of on the discount rate paid by the Internet intermediary to the hotels is adopted. Just a 1 percent increase in tourist development taxes as a result of Internet intermediaries remitting tax on the total rent charged the customer for the hotel room instead of on the discount rate, could realize an increase in overall tourist development taxes to local governments, even given the loss of tax on complimentary rooms. Like wise, the state could also realize an increase in state sales tax collections.<sup>7</sup>

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<sup>7</sup> \$492.2 million was collected in FY 2002-03 in sales tax on transient rentals.