

Duff on Hospitality Law

## **OTA & Travel Distribution Update – Dec. 16th, 2016**

By Greg Duff on 1.4.17 | Posted in OTA Update

This week's OTA and Travel Distribution Update for the week ending December 16, 2016 is below. This week's Update contains an update on one important recent court decision involving OTAs.

**California Supreme Court Issues a Potentially Troubling Opinion [OTA / Tax].** Although I don't often comment on the multitude of OTA tax decisions issued across the country, I felt that the recent California Supreme Court decision finding (once again) in favor of OTAs warranted some discussion. Although the California Court, like so many courts before it, based its decision on the rather uncontroversial conclusion that the OTAs were not "Operators" (the party expressly obligated to collect the occupancy tax under the applicable San Diego Municipal Code) of the subject hotels, language found elsewhere in the decision caught our attention.

Specifically, in at least three sections of the Court's decision, the Court indicates that California hoteliers (not OTAs) could be held liable for occupancy taxes calculated on the full sell rate (as opposed to the net rate) to the extent that hoteliers set the sell rate (e.g. via mandatory markups or margins added to the net rate). In other words, hoteliers that seek to control the ultimate sell or retail rate for their rooms could be opening themselves up to tax liability on that sell or retail rate. While language found in most negotiated OTA contracts requiring the OTA to indemnify the hotelier for claims regarding unpaid tax liability would appear to protect California hoteliers from the effects of this recent decision, it may be time to take a close look at your contract's indemnity provision.

### **Local governments can't collect taxes from online travel firms**

In a loss for local governments, the California Supreme Court decided Monday that online travel companies such as Expedia Inc. are exempt from paying hotel occupancy taxes. The ruling came in one of several lawsuits filed by California cities and counties against the online firms.

LA Times – Orange County on Dec 13, 2016