

2009 CA 4319

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,  
IN AND FOR LEON COUNTY, FLORIDA

**FILED**

2012 MAY -8 P 12: 36

LEON COUNTY, et al.,

Plaintiffs,

v.

EXPEDIA, INC., et al.,

Defendants.

CASE NO.: 2009CA4319

C-04  
BOB INZER  
CLERK CIRCUIT COURT  
LEON COUNTY, FLORIDA

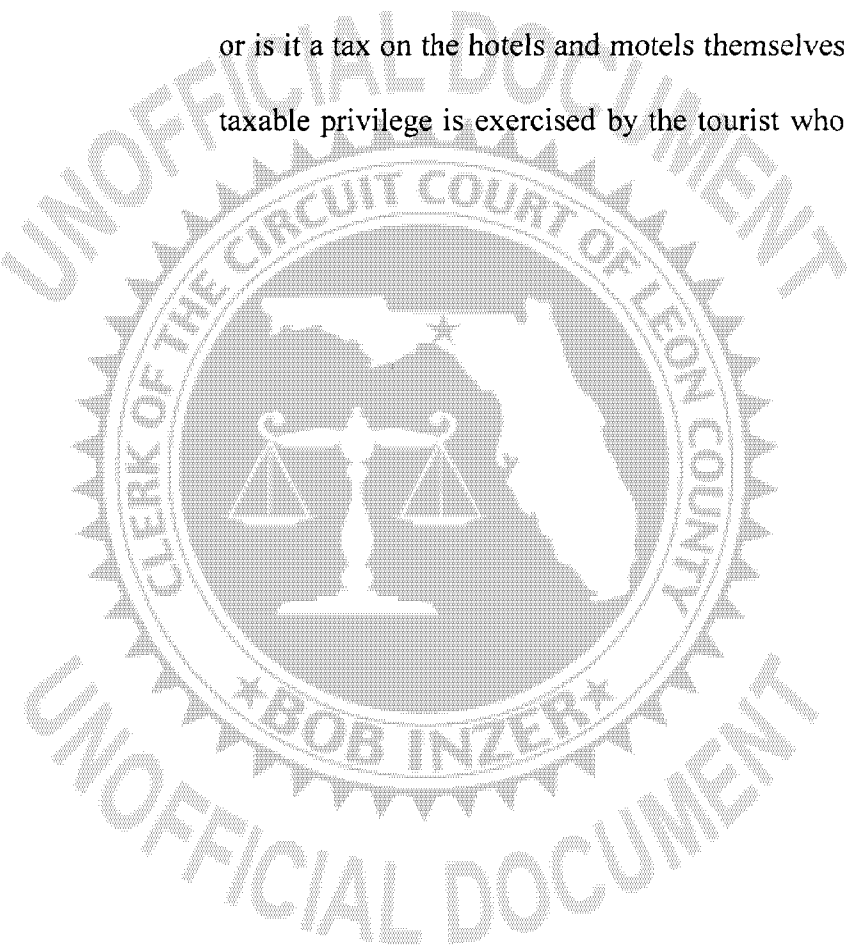
**SUMMARY FINAL JUDGMENT**

THIS CAUSE came before the Court on Defendants' Motion for Summary Judgment and Plaintiffs' Motion for Partial Summary Judgment. The parties have filed response briefs to each motion, and the Court heard argument on the motions on February 28, 2012; April 3, 2012; and April 19, 2012.

THE COURT has read the briefing of the parties and considered the evidence filed in support of and against each of the motions. The Court has reviewed the pertinent portions of the record, is fully advised in the premises, and finds that there exists no genuine issue of material fact in this case that would preclude the entry of summary judgment. Therefore, the Court at this time shall rule on both Plaintiffs' Motion for Partial Summary Judgment and Defendants' Motion for Summary Judgment.

**Findings:**

To decide this case the Court must first determine who and what the Legislature intends to tax. Is the Tourist Development Tax (TDT) a tax on the tourist who utilizes our hotels and motels, or is it a tax on the hotels and motels themselves for the privilege of doing business here? If the taxable privilege is exercised by the tourist who spends the night in a hotel room, then the full



amount paid by that tourist to the Online Travel Company (OTC) is subject to the tax and the OTC must collect and remit the tax. If the privilege the Legislature seeks to tax is the opportunity of operating a hotel in Florida, which was the Legislature's clear intention in 1949 when it passed the Transits Rental Tax under Florida Statute 212.03, then the hotel in which the tourist stays must collect the tax on the lesser amount that the hotel receives for the room and submit that lesser amount of tax to the counties.

The tax is currently paid on the amount received by the hotel. The OTC's do not pay a tax on their mark-up realized under their "Merchant Model" of doing business. The plaintiff counties ask that the Court declare this untapped stream of revenue is taxable and declare that the OTC's are the taxpayer. For the reasons expressed below, the Court must decline to extend the TDT into this relatively new method of doing business.

If the mark-up under the Merchant Model is to be subjected to the TDT in the future the Legislature, not the Court, must by statute clearly inform the OTC's of what is to be taxed and that the OTC's are responsible for collecting and remitting the tax to the counties. The Enabling Statute, Florida Statute 125.0104, as currently written does not clearly impose the TDT on the amount that the OTC's charge to their customers. Whether the method of doing business utilized by the OTC's is within the net cast by the statute is unclear. The ambiguity that is found in Florida Statute 125.0104 must be resolved in favor of the OTC's and against extending the reach of the taxing authority.

The Plaintiff counties argue that the OTC's, by changing their method of doing business from the "agency model" to the "merchant model" have morphed from a pure service provider matching the tourist with a hotel owner into a taxpayer who actually "rents, leases or lets" the rooms to the

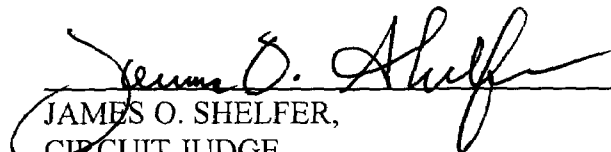


tourist as defined by the statute. The counties argue that the Court would not be imposing a "new tax", but rather recognizing the realities of today's hotel booking business.

The OTC's may have brought themselves within the reach of the TDT as the counties claim but the Legislature and the Florida Department of Revenue (tasked with collecting the tax on behalf of some of the counties) have not, as yet, acted to declare that the OTC's are subject to the TDT or to clarify the ambiguities that exist in the statute. At the end of the day, it is a Legislative Branch function to decide what revenues are taxed and it is an Executive Branch function for enforcement of the taxing statutes. Both branches have been asked to bring some clarity to this issue. Unless and until they do so, the Court should not expand the scope of the taxing authority by assuming that the Legislature intends to include this completely new method of doing business under the currently existing taxing scheme.

Accordingly, it is hereby ORDERED and ADJUDGED that Defendants' Motion for Summary Judgment is GRANTED and that Plaintiffs' Motion for Partial Summary Judgment is DENIED. Plaintiffs shall take nothing by this action, Final Judgment is hereby entered in favor of Defendants, and Defendants shall go hence without day. The Court reserves jurisdiction to award costs to the Defendants as well as any other appropriate remedy.

DONE and ORDERED in Chambers at Tallahassee, Leon County, Florida this 7<sup>th</sup> day of May, 2012.

  
JAMES O. SHELFER,  
CIRCUIT JUDGE

copies furnished to:

All Counsel of Record

