OHIO HOTEL & LODGING ASSOCIATION

Out of State Online Travel Companies Should Remit their Fair Share of Taxes -- Just as Ohio's Businesses Do.

- Online Travel Companies (OTCs) such as Expedia, Orbitz, and Travelocity advertise hotel rooms and charge customers the same or more as hotels do when they sell their rooms directly.

- However, OTCs choose to remit taxes only on the amount they pay to the hotels (wholesale rate), not the price they charge their customers (retail rate).

- As a result, hotels, which are often locally owned, are taxed at a higher rate than the OTCs for the same type of room, sold for the same amount, on the same day – identical transactions. That doesn't make any sense.

- **This is <u>not</u> a new tax**. Lodging tax has existed as far back as the 1950s; was included in the revised code in its current form in the 1960s; and was updated in the 1980s. Entities that sell accommodations in Ohio are already required to collect and remit lodging tax. This legislation merely removes ambiguity and clarifies that there should be tax parity between OTCs and hotels that sell their rooms directly.

- Ohio and its communities lose out on revenue needed for infrastructure, law enforcement, destination marketing and other priorities, and the burden to pay for them falls on Ohioans.

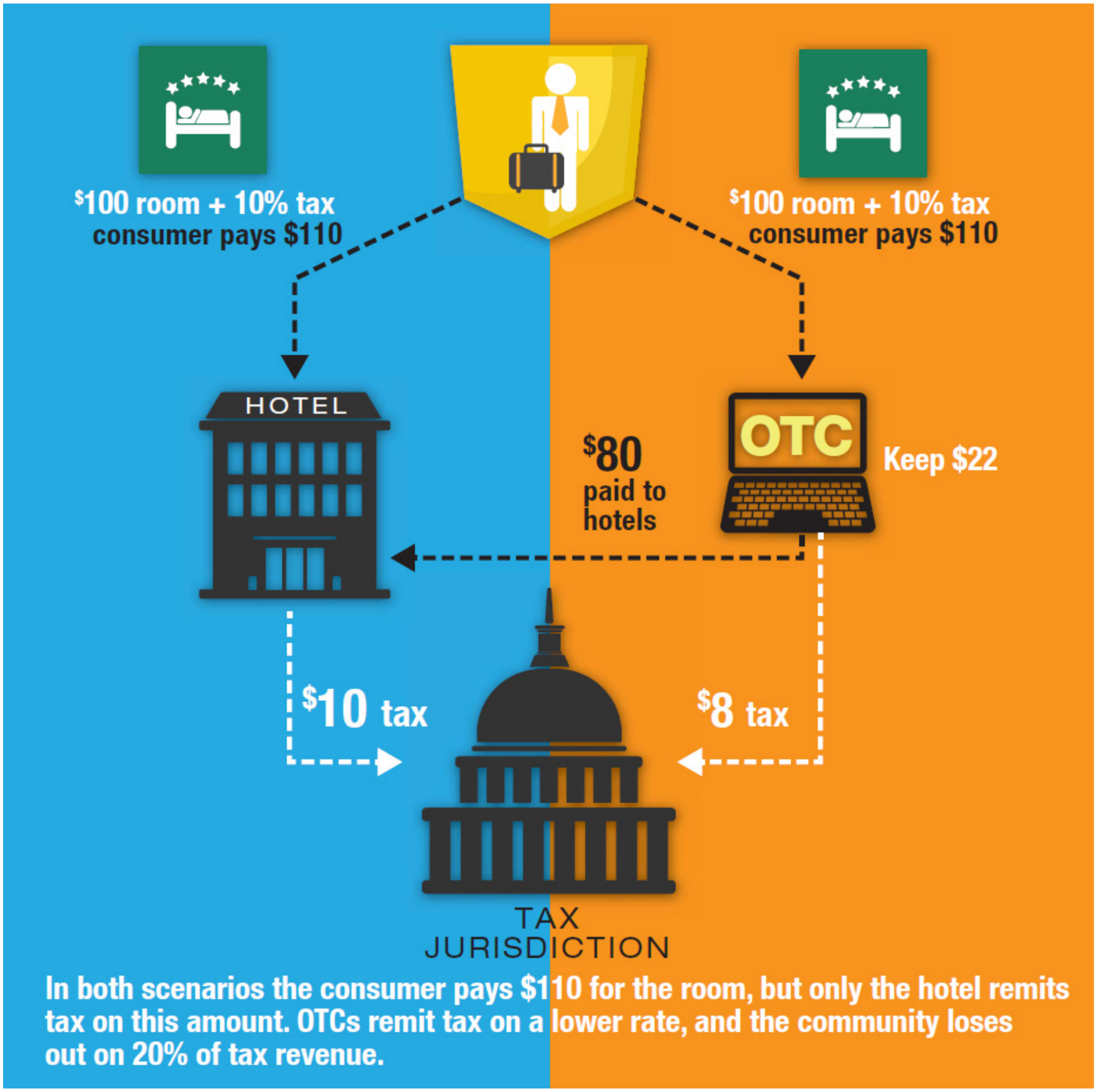
- Other states and localities throughout the country are taking action in legislatures and the courts since OTCs are not remitting their full taxes. The National Conference of State Legislatures has recommended that states clarify their laws to ensure that OTCs are paying the full amount.

- The OTCs argue that part of the price paid by customers is the OTC service fee, and so the occupancy tax should not apply to that amount, but that argument does not reflect reality. Hotels take the same steps, and incur the same costs, in marketing and selling a hotel room to the public through a hotel website or other avenues, as the OTCs do in selling a room. The OTCs are simply a different channel of distribution, and should not be taxed at a different rate.

- As long as the Ohio tax laws continue to illogically pick winners and losers in the travel industry, Ohio taxpayers will continue to be the victims.

- We should clarify our laws so that identical transactions are taxed equally, and ensure that OTCs pay what they owe already.

Online Travel Companies Remit their Taxes at a Lower Rate than Others -- and Cost Ohio, its Communities, and Taxpayers in the Process



Graphic: American Hotel & Lodging Assn.

OH&LA
OHIO HOTEL & LODGING ASSOCIATION

IT'S TIME TO CLOSE THE LOOPHOLE AND GIVE BACK TO OHIO

The travel and tourism industry is a key driver of the economy in Ohio. New hotel properties are being built all over our state. In 2014, Ohio hotels, motels, resorts, and lodges generated $1 billion in tax revenue for local and state governments. More importantly, the 1,385 lodging properties and 125,625 guest rooms in the state support roughly 33,545 jobs and are responsible for $787 million in annual wages to hardworking men and women. With every new job and every new hotel room, our industry is further investing in the people of Ohio.

At present, the hotel industry in Ohio finds itself on an uneven playing field with online travel companies, including well-known booking sites like Expedia and Orbitz. This is because the state's tax code, written before the advent of Internet commerce, needs to account for the way hotel rooms are booked today. In April, State Representatives Cheryl Grossman and Gary Scherer introduced legislation in the General Assembly, House Bill 150, to end the disparities between bookings made directly with Ohio's hotels and those made with online travel companies.

We strongly support this move because this legislation will <u>not</u> create a new tax. It just closes a loophole. It will simply require the online companies to remit the tax they collect in the same manner as hotels have for decades. It will not create an impediment to business for the online companies, because they already collect and remit a portion of the taxes they owe. It's simply time to require these companies to fully comply, as do hotels, inns, cabins, lodges, villas, many B&Bs, and other lodging establishments across the state

Unlike hotels, which must calculate local and state taxes on room rentals based on the total price charged to customers, online travel companies typically calculate these taxes based on just the smaller portion of their sales price. This means that Ohio's hotels pay more in sales taxes than online travel companies when selling the same room at the same price.

By not remitting sales taxes based on the final total room rates, online travel companies gain an unfair competitive edge, shortchange the taxpayers of Ohio, and leave the state with fewer resources for infrastructure, law enforcement and supporting our important travel and tourism economy.

By not remitting their full taxes for rooms in Ohio booked online, online travel companies are receiving a dividend from the state of Ohio. They can then end up using those funds to market other locales in direct competition with Ohio's destinations. This stands in stark contrast to the significant investment hotels on the ground in Ohio have made in marketing this state and its great attractions.

Online Travel Companies Tax Obligations in Ohio: Myths vs. Facts

Myth: ✗ *Requiring Online Travel Companies (OTCs) to remit sales and occupancy taxes based on the retail rate they collect from consumers constitutes a "new tax."*

Facts: ✓ Lodging tax has existed as far back as the 1950s; was included in the revised code in its current form in the 1960s; and was updated in the 1980s.

✓ Entities that sell accommodations in Ohio are required to collect and remit lodging tax. Online travel companies have always been liable for this tax.

✓ The problem is OTCs exploit ambiguity in the code. The ambiguity exists because when the codes were written, online commerce was not even conceived. This legislation merely removes ambiguity and clarifies that there is tax parity between OTCs and hotels that sell their rooms directly.

Myth: ✗ *Requiring OTCs to remit taxes on the retail rate is a "service tax."*

Facts: ✓ Although OTCs call their markup many things, it is nothing more than a retail markup of a wholesale price they negotiate with the hotel.

✓ The service OTCs provide is no different than what hotels or travel agents provide when they facilitate and execute a booking for a hotel stay. Hotels deliver the same marketing and room booking services as OTCs, but are not allowed to deduct their service costs from the amount taxed.

Myth: ✗ *Requiring OTCs to remit taxes on the retail rate will lead to "higher cost for travelers."*

Facts: ✓ OTCs are unlikely to charge consumers more as a result of closing this loophole – their price is already marked up enough to cover the full amount of the tax—and passing along the cost would make their pricing less competitive in the marketplace.

✓ The consumer is already paying the money. It is a matter of who gets to keep it, the OTCs or the jurisdictions owed the tax.

Myth: ✗ *Sales and occupancy taxes cannot apply to OTCs because they lack nexus.*

Facts: ✓ Court decisions in other jurisdictions have concluded that the OTCs have substantial nexus to state and local taxing jurisdictions.

✓ OTC employees & representatives visit the states where they do business, and the OTCs voluntarily enter into contracts to sell hotel rooms physically located in those states.

Myth: ✗ *This bill would add a tax burden on brick-and-mortar travel agencies.*

Facts: ✓ The effort to remove ambiguity exploited by Online Travel Companies will not affect travel agents.

✓ The commissionable travel agent model is entirely different than the OTC buy-at-wholesale/sell-at-retail model -- travel agents charge a commission on the retail rate paid by guests.

April 23, 2015

Representative Cheryl Grossman
77 S. High St.
13th Floor
Columbus, OH 43215

Representative Gary Scherer
77 S. High St.
13th Floor
Columbus, OH 43215

RE: Support for HB 150 - Lodging Tax Remittance Legislation

Dear Representatives Grossman and Scherer,

The hotel industry, with roughly 33,000 employees in Ohio at nearly 1,400 properties statewide, strongly supports House Bill 150, legislation that would close an unfair tax loophole exploited by online travel companies at the expense of Ohio taxpayers. We thank you both for your leadership in addressing this issue and sponsorship of this bill.

As in many states, consumers in Ohio are required to pay certain sales and occupancy taxes when they stay in a hotel. These taxes support infrastructure and tourism promotion, generate funding for event venue construction, as well as provide general revenue for the state and its counties. Hotels collect sales and occupancy taxes from guests based on the rate charged for use of a room, regardless of the method of booking, and remit that sum to tax authorities.

In contrast, online travel companies like Expedia, Orbitz and Travelocity remit sales and occupancy taxes based on just the portion of their charges they turn over to hotels – not the final price they charge consumers. This means a hotel ends up paying more in sales taxes than an online travel company when selling the same room to a guest at the same rate. Online travel companies have taken this unorthodox approach in order to lower their tax bills, resulting in a loss of revenue for the state while placing brick-and-mortar hotels at a competitive disadvantage.

Governments across the country have come to the conclusion that this unfair difference in tax remittance needs to be addressed. In fact, the **National Council of State Legislatures** issued guidance in 2014 which stated: "To ensure full collection of taxes that are due and to promote equity and fairness in the tax code, states should consider requiring online travel companies to remit taxes based on the rental price paid by the user."

We understand your legislation accomplishes this goal, consistent with model legislation developed by the **Multistate Tax Commission.** It would clarify Ohio's sales tax code to require online travel companies to remit sales taxes based on the final price they charge consumers to book hotel rooms. This will reclaim lost revenue for the state, establish a level playing field for local hotels and close an unfair tax loophole.

As you well know, this legislation will not increase prices for consumers, or otherwise discourage tourism to the state. As has been noted by courts around the country, online travel companies are already collecting from consumers the same total amount of money as hotels – they simply remit less in taxes. Although the online travel companies claim otherwise, we see no reason to believe that this provision would harm the competitiveness of Ohio's travel and tourism industry, and we clearly would have no incentive to support any policy that had such a consequence.

Again, we thank you for spearheading this equitable clarification of tax laws in Ohio, and hope that your colleagues support the measure as well. Please let us know if we can provide any further information or assistance to you as this process moves forward.

Sincerely,

American Hotel & Lodging Association
Asian American Hotel Owners Association
Best Western International
Hilton Worldwide
Host Hotels & Resorts, Inc.
InterContinental Hotels Group
La Quinta Inns & Suites
Loews Hotels
Marriott International, Inc.
Ohio Hotel & Lodging Association
Starwood Hotels & Resorts Worldwide, Inc.

NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

February 4, 2014

Dear Senator Gardner,

On behalf of the National Conference of State Legislatures Executive Committee Task Force on State and Local Taxation, we are pleased to send you this letter regarding the issue of the taxation of online travel companies (OTC) and have also attached principles for the tax treatment of OTCs. These principles were developed by the Task Force after an extensive review of the OTC industry over the past 18 months.

We realize that with the rapid growth of the digital economy, state and local tax codes have difficulty keeping up with new technology. One challenge is the taxation of online travel companies (OTC), intermediaries between customers, and lodging retailers. OTCs sell rooms at a retail price, which includes bundled "taxes and fees." However OTCs only remit occupancy tax on the wholesale rate they pay to the retailer, retaining the difference. This practice could result in reduced revenue for states and raises concerns of transparency and clarity of real costs to the consumer.

The Task Force principles ensure transparency for taxpayers by requiring OTCs to display all taxes, fees, and service charges on their websites and not bundle those charges so the charges are hidden from the consumer. The Task Force also recommends that OTCs be required to remit taxes based on the total rental price paid by the consumer, not just on the wholesale rate OTCs pay to hotel retailers.

Currently, court cases are pending across the country that would compel OTCs to pay back millions in back taxes. The Task Force realizes that the only way to solve this problem is through state legislation. The Task Force believes that to promote efficiency, states should impose this tax through statutory means and not through administrative regulation. We contend that any law enacted must clarify that the retail price advertised and charged by OTCs must receive the same tax treatment as room reservations made directly through lodging retailers.

If you have any questions on this issue, please contact Max Behlke in NCSL's Washington DC office (202) 624-3586, max.behlke@ncsl.org.

Sincerely,

Pamela J. Althoff

Senator Pam Althoff, Illinois

Shelia E. Hixson

Delegate Shelia Hixson, Maryland

Co-Chairs, NCSL Executive Committee Task Force on State and Local Taxation

ATTACHMENT:

TITLE: **Online Travel Company Principles**

COMMITTEE: **Executive Committee Task Force on State and Local Taxation**

TYPE: **Resolution**

With the emergence of the digital economy, state and local tax codes continue to have difficulty keeping up with rapidly advancing technology. One challenge states and localities face is the taxation of online travel companies (OTC), which act as intermediaries between costumers and operators of short-term lodging, such as hotels, motels, inns and bed and breakfasts.

NCSL recognizes that the OTC business model is to contract with the businesses in the lodging industry to market rooms, allowing those businesses to fill rooms they otherwise might not. The OTCs sell the rooms to consumers/customers at a retail price that is equal to or higher than what the customer would pay if they purchased the same room directly from that business. The OTCs then remit to the business a pre-negotiated contracted wholesale rate for the room and taxes due on the wholesale rate, retaining the difference as profit (the compensation for marketing the room). The OTCs have complete control over the transaction, including the remittance of taxes.

States and localities contend that this business model of only remitting taxes on the wholesale price OTCs pay the lodging business rather than on the retail rate the customer is paying, results in a shortage of revenue remitted from the sales/occupancy taxes charged. In addition, a higher effective tax rate is imposed on hotels that remit taxes based on the retail rate customers are paying. The OTC business model also raises concerns about transparency and clarity of charges to the customer. As courts continue to hear lawsuits regarding OTC tax remittance practices, states continue to examine possible legislative statutory solutions to ensure codes are clear and factor the relatively new role OTC's play in the marketplace.

The National Conference of State Legislatures' Executive Committee Task Force on State and Local Taxation has studied online travel companies and has developed the following principles that states should consider when addressing taxation of lodging accommodations:

1. To promote transparency for taxpayers, states should consider legislation that requires online travel companies, and hotel websites to:
   A) Publicly and explicitly display the charges, and resort fees, ultimately leading to the final price to the user.
   B) Require that taxes, fees, and service charges be separately stated instead of bundling them together.
   C) If a business does not comply with 1. (A) or (B) then impose tax on the entire bill.

2. To ensure full collection of taxes that are due and to promote equity and fairness in the tax code, states should consider requiring OTCs to remit taxes based on the rental price paid by the user.

3. To ensure that taxation is efficient, states should consider:
   A) Imposing any tax on online travel companies through statutory impositions and not through administrative regulation;
   B) Carefully devising definitions so that there is clarity to buyers and sellers of hotel rooms.

Adopted by the NCSL Executive Committee Task Force on State and Local Taxation August 12, 2013

The Washington Post
AN INDEPENDENT NEWSPAPER

EDITORIALS

A fairer way on hospitality

Online travel agencies fight a Md. bill closing a tax loophole.

FOR YEARS, states have given online travel agencies such as Travelocity and Expedia a nice tax break — and an undeserved windfall. Rather than collect sales taxes from the agencies based on the actual prices they charge customers for hotel rooms, most states have accepted a reduced payment based on bargain room prices the agencies manage to negotiate with hotels. The companies, which mark up the room rate for customers, have pocketed the difference.

Nice work if you can get it, and no wonder the online agencies have scratched and clawed to retain what amounts to a sweetheart subsidy, courtesy of state taxpayers.

You can't blame them for trying, but logic and equity are on the side of states that demand, justly, that online agencies remit taxes on the full payments they receive for room sales, not the discounted prices.

Maryland lawmakers moved this year to correct this anomaly, which took root owing largely to legislative language that predated the Internet. Backers of the measure noted, correctly, that it would put hotel chains such as Marriott, whose headquarters is in Maryland, on an even competitive footing with online agencies. The hotel chains charge customers Maryland's full 6 percent sales tax on hotel rooms and pass those payments along to the state.

The online agencies have cried foul with backing from their much smaller brick-and-mortar kin and with amplification provided by legions of Annapolis's highest-priced lobbyists. They claim, disingenuously, that the bill amounts to a job-killing tax hike, thereby tailoring their message to appeal to Gov. Larry Hogan, a Republican who ran on an anti-tax platform.

Predictably, doctrinaire anti-tax groups have also leaned on Mr. Hogan, warning him that signing the measure would be an act of heresy. Most Republicans in the General Assembly kowtowed to that message and opposed the bill in the Democrat-dominated legislature. So far Mr. Hogan has not tipped his hand.

KATHERINE FREY/THE WASHINGTON POST

The headquarters of the Marriott hotel chain in Bethesda.

He should sign the bill. The financial stakes are small — it would yield just $3 million to $4 million or so annually for the state coffers. But those millions would otherwise come out of the pockets of taxpayers, who until now have been subsidizing travel agents, for no good reason. That's unfair.

The bottom line is that travel agents are collecting a sales tax from customers, although they prefer to muddy the waters by calling it a booking fee. Most other businesses are required to remit the taxes they collect on their sales to the state. Why should travel agents be exempt?

The agents may have become used to this comfy arrangement. That doesn't make it right or equitable. It's just a loophole.

THE BALTIMORE SUN

A room with a tax

Why not require online hotel bookings to be taxed the same as any other hotel booking?

February 18, 2015

Imagine if a discount retailer, a Costco or Sam's Club or the equivalent, bought excess inventory from a manufacturer and then sold those items at a higher price. How would Maryland's sales tax be applied when the goods were sold to actual customers — toward the wholesale price or the retail? That might be the easiest tax question ever posed: Of course it would be applied to the retail price, as it is every day in every store in this state.

Yet online travel companies, Travelocity, Expedia, Orbitz and Priceline to name the most prominent examples, don't see it that way. When they book blocks of hotel rooms at a discount rate and resell them to online customers, they've applied Maryland's sales tax to their wholesale purchase price, not their retail sales price.

The practice has been controversial to say the least, and not just in Maryland. Across the country, it's estimated that state and local governments are losing $300 million to $400 million each year in uncollected tax revenues. The companies have been sued (Maryland's comptroller is currently seeking eight years of back taxes from them), and many states have been clarifying tax law to help settle the matter once and for all.

State Sen. Richard Madaleno Jr. of Montgomery County has offered just such a bill, and it could help the state collect an extra $3 million to $4 million annually in tax revenues, money that could help close a $750 million budget gap and restore funding to public education, albeit somewhat modestly. The legislation would seem a no-brainer under the circumstances given that applying the sales tax in any other manner makes no sense.

But here's the problem. In the last election, the words, "tax increase," have come to be regarded as something only slightly more shocking than "Fifty Shades of Grey" and a whole lot less popular with the general public, and particularly with Gov. Larry Hogan. (OK, so we don't actually know what he thinks of the movie, but you get the point.) And online travel companies have been portraying Senator Madaleno's measure as a tax increase since it would, after all, raise what they pay in taxes and potentially cause their customers to pay more to book hotel rooms if they pass those charges along.

The danger then is that lawmakers will be afraid to approve a bill that imposes what most would regard as common sense. It's only because Maryland tax law was written long before an Internet was ever contemplated that the Expedias of the world can hide behind the fact that they are not hotels charging for their own rooms.

That kind of short-sighted view is actually anti-business, as it puts actual hotels and motels at a disadvantage since they have no tax loophole — or at least perceived tax loophole — to inflate their profits. Those are companies that are invested in Maryland, pay their taxes, support their employees and contribute to communities.

Small wonder that local governments have been going after online travel companies for hotel occupancy taxes, too. Baltimore City and Baltimore and Montgomery counties as well as Worcester County, home of hotel-rich Ocean City, were among the jurisdictions that sued those companies for a similar tax dodge and subsequently received millions of dollars in confidential settlements over back taxes.

This is not to suggest that Orbitz and other online companies don't provide a useful service that benefits Maryland's economy. They facilitate the booking of hotel rooms, which helps boost the hotel trade and the local tourism industry. Maryland, as Mr. Hogan likes to say, is open for business, and that includes the booking of discount hotel rooms.

But fair is fair. If Joe Blow books a hotel room through such a service for $200, taxes are due based on that amount, not on $150 or whatever the wholesale price might have been. There ought to be no exemption because Travelocity is acting as an intermediary. Otherwise, the whole nature of retail trade is undermined and Costco will rightly wonder why it has to apply the sales tax to the price it charges for tube socks at the cash register and not the price it paid the sportswear manufacturer for them in the first place.

OHIO

LODGING ECONOMIC OVERVIEW 2014

OH&LA OHIO HOTEL & LODGING ASSOCIATION

AMERICA'S HOTELS: STRENGTHENING THE ECONOMY IN EVERY STATE.

Ohio's hotels are an important segment of the state's economy. **4%** of all jobs in the state are directly or indirectly related to the lodging industry, as part of the greater travel sector, with hotels, motels, resorts, or lodges helping to generate **$1 billion** in tax revenue for state and local governments.

Many of our properties are small businesses, a segment of the economy responsible for **47%** of jobs in the state.

Our industry reaches far beyond just providing our guests with comfortable rooms or convenient meeting spaces—we are interlinked with many other industries, such as transportation, restaurants, agriculture, manufacturing, and recreation supporting **$4.7 billion** in total sales throughout the state.

STATE ECONOMIC FACTS

JOBS

33,545
LODGING JOBS IN 2012

$747 MILLION
IN EMPLOYEE WAGES

LOCATIONS

1,385
LODGING PROPERTIES

125,625
HOTEL ROOMS

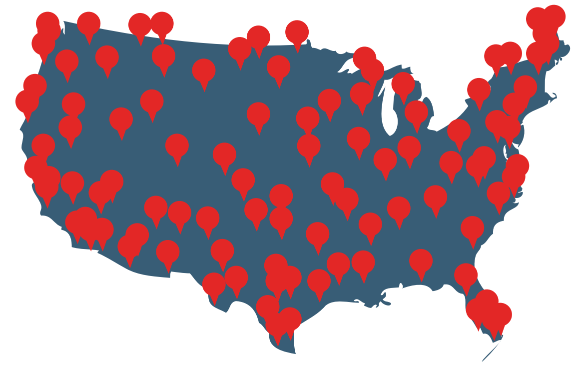
Figures are derived from industry statistical research, Small Business Administration, STR, U.S. Bureau of Labor Statistics, U.S. Census Bureau data, U.S. Travel Association, and World Travel and Tourism Council (WTTC).
Figures are based on properties with 15 rooms or more, as of July 2014.

AHLA AMERICAN HOTEL & LODGING ASSOCIATION

AMERICA'S LODGING INDUSTRY

BY THE NUMBERS

52,887 LODGING PROPERTIES IN THE U.S.



4,926,543
GUESTROOMS IN U.S. LODGING PROPERTIES

1.8 MILLION+
EMPLOYED BY HOTEL PROPERTIES WITHIN THE TRAVEL & TOURISM INDUSTRY

4.7 MILLION
AVERAGE NUMBER OF GUESTS EACH NIGHT IN ALL COMBINED U.S. HOTELS

$1.41 TRILLION
TRAVEL REVENUE GENERATED THROUGHOUT THE ECONOMIC CHAIN OR 8.4% OF GDP

$274.7 BILLION
SPENDING BY BUSINESS TRAVELERS IN 2013

$163 BILLION
TOTAL LODGING SALES REVENUE IN 2013

$133.9 BILLION
COMBINED TAX REVENUE GENERATED EACH YEAR BY BUSINESS TRAVEL