THE BUCKEYE INSTITUTE

Written Interested Party Testimony Before the Ohio House Ways and Means Committee on House Bill 571

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Chairman Schaffer, Vice Chair Scherer, Ranking Member Rogers, and members of the Committee, thank you for the opportunity to offer written comments today regarding House Bill 571.

My name is Greg R. Lawson. I am the research fellow at **The Buckeye Institute**, an independent research and educational institution—a think tank—whose mission is to advance free-market public policy in the states.

Online Travel Companies—or OTCs—such as Hotel.com and Expedia facilitate transactions for consumers looking to book hotel rooms online. These companies make it easier to find and secure lodging options by making those options available at a one-stop website location where consumers can search for the best deal and book a room, rather than scouring the internet for individual hotel rates and availability on individual hotel websites.

OTCs provide an online service that customers and hotel operators may use as they see fit to meet their own shopping and business needs. Nothing compels hotels to use OTCs, they choose to do so voluntarily because they believe that it will increase their exposure, reach more customers, and lead to more bookings. In short, they believe that it helps their business prosper and many smaller, non-chain hotels use OTCs precisely for this reason, because OTCs provide a critical service that boosts their room sales.

Unfortunately, House Bill 571 threatens to interfere with this free-market process by extending the reach of local lodging taxes to include the OTCs' service fees.

Typically, customers who book rooms through an OTC will pay the same amount for their room as customers who book directly through a hotel website. The actual room rates that hotels receive for bookings made through an OTC, however, are generally lower than what the hotel would receive on rooms booked directly. The OTC keeps the difference—effectively charging the hotel a service fee for facilitating the booking.

Local governments assess sales and lodging taxes based upon the actual room rates that hotels receive, not the prices paid by customers. Consequently, local governments collect less total tax on rooms booked through an OTC than they would on the same rooms booked directly through the hotel. House Bill 571 would expand the local sales and lodging taxes to include an OTC's service fee.

It is not hard to understand that House Bill 571 could be attractive to local governments eager to collect more taxes, but the bill has at least one fatal flaw.

As proposed, House Bill 571 would assess a lodging tax on a service fee. Such taxes have already been held illegal in multiple cases across multiple jurisdictions. As the Legislative Service Commission has explained, the United States Court of Appeals for the Sixth Circuit—with federal jurisdiction over Ohio—has twice ruled that localities cannot impose lodging taxes on OTCs.[1] Other courts have made similar rulings recently in Texas and Illinois,[2] and as of early

[1] Mackenzie Damon, **House Bill 571 Bill Analysis**, Legislative Service Commission, 2018.
[2] Paul Stinson, **Online Travel Companies Prevail in $84 Million Texas Tax Dispute**, Bloomberg Bureau of National Affairs, November 30, 2017.

2016, courts in 39 cases in 23 states had concluded that OTC services could not be taxed as hotel occupancy taxes.[3]

Furthermore, House Bill 571 would also apply a sales tax to OTC service fees. The Buckeye Institute remains open to discussing sales taxes on services as part of a comprehensive tax reform that would include eliminating the state personal income tax,[4] as well as other appropriate offsets that will make Ohio's tax system fairer, simpler, and more transparent.[5] Merely taxing OTC service fees without other comprehensive tax reforms would be nothing more than a selective tax increase imposed on only one service industry, and it would threaten to hurt profits, sales, and jobs.

Ohio's taxes are already too high, with an average combined state and local tax rate standing at more than seven percent.[6] Some Ohioans pay even higher combined rates in some communities where tax rates approach 10 percent[7]—a level one might expect in high-tax states like New York.[8] High tax rates have real world consequences for workers, businesses, and states. As the Tax Foundation has demonstrated, people and jobs do in fact migrate from high-tax states to low-tax states—and that migration will inevitably cost Ohio workers, businesses, and future economic opportunities.[9] Simply adding new taxes on services will not lighten Ohio's already burdensome tax load.

As tempting as House Bill 571 may be for some revenue collectors, Ohio must be careful not to allow or encourage local governments to impose harmful new—and in this case, illegal—taxes apart from a more balanced and comprehensive tax reform effort.

Thank you for the opportunity to submit this testimony.

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[3] Joseph Bishop-Henchman, **Litigation Ongoing Against Online Travel Companies for Hotel Occupancy Taxes**, The Tax Foundation, February 17, 2016.

[4] Greg R. Lawson, research fellow, The Buckeye Institute, **Testimony** Before the Ohio House Ways and Means Committee, March 15, 2015.

[5] Rea Hederman Jr., Tom Lampman, Greg R. Lawson, and Joe Nichols, ***Tax Reform Principles for Ohio***, The Buckeye Institute, February 2, 2015.

[6] Jared Walczak and Scott Drenkard, **State and Local Tax Rates 2018**, The Tax Foundation, February 13, 2018.

[7] Morgan Scarboro, Scott Drenkard, and Rea S. Hederman Jr., ***Ohio Illustrated: A Visual Guide to Taxes and the Economy***, The Tax Foundation and The Buckeye Institute, June 2017.

[8] *Ibid.*

[9] **State to State Migration Data**, The Tax Foundation (Last visited June 14, 2018).

About The Buckeye Institute

Founded in 1989, The Buckeye Institute is an independent research and educational institution – a think tank – whose mission is to advance free-market public policy in the states.

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