

ALERT

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TAX

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EXPEDIA NOT REQUIRED TO COLLECT PHILADELPHIA HOTEL TAX

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The Philadelphia Court of Common Pleas affirmed a decision by the City's Tax Review Board that an Internet hotel reservation company was not liable to collect Philadelphia's Hotel Tax. *City of Philadelphia v. City of Philadelphia Tax Review Board*, Mar. Term 2010 No. 00764 (Phila. C.P. Jan. 14, 2011). The Philadelphia Ordinance requires that an **operator** collect tax from a hotel patron. An operator is a person or entity that maintains, operates, manages, owns, has custody of, or otherwise possesses the right to rent or lease overnight accommodations in any hotel to the public for consideration. Phila. Code § 19-2401. The court agreed with the board below that Expedia did not rent rooms, stating that it was obvious that Expedia did not maintain, operate, manage, own or have custody of rooms. Neither did Expedia have the right to rent or lease overnight accommodations. Expedia entered into agreements with hotels to offer rooms at a discounted rate. A reservation is made online through Expedia, but the hotel is not paid until the transaction is completed when the customer checks in, at which point Expedia forwards payment to the hotel together with tax thereon. It is the hotel that grants possession of the rooms. The hotel retains the right to refuse a room or evict the traveler if the hotel's rules and restrictions are not followed. Expedia had no control over what room is furnished to a traveler and the hotel determines the rate of the room, not Expedia. The court found that the transaction did not occur when the reservation was made, but when the customer actually obtained the right to use and occupy the room, which occurred when the customer arrived at the hotel and checked in. Therefore, Expedia was not renting rooms and had no duty to collect the city tax.

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