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TAX - CALIFORNIA

In re Transient Occupancy Tax Cases

Supreme Court of California, California - December 12, 2016 - P.3d - 2016 WL 7187624

Online travel companies petitioned for writ of mandate challenging city's determination that companies were responsible for paying transient occupancy tax on their service fees.

The Superior Court granted writ of mandate. City appealed, and the Court of Appeal affirmed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that tax was not payable on amounts retained by travel companies above the amounts remitted to hotels as the agreed wholesale costs of room rentals plus the hotel-determined markup.

City transient occupancy tax, which was charged as percentage "of the Rent charged by the Operator," was not payable on amounts retained by online travel companies above the amounts remitted to hotels as the agreed wholesale costs of room rentals plus the hotel-determined markup. Travel companies were not "operators" under the ordinance and did not act as agents for purposes of setting and collecting additional markups from room occupants, and contractual provisions between hotels and travel companies apportioning tax responsibility did not create tax liability.

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