
TAX - ILLINOIS

Village of Bedford Park v. Expedia, Inc. (WA)

United States District Court, N.D. Illinois, Eastern Division - September 28, 2015 - F.R.D. - 2015 WL 5693596

Fourteen Illinois municipalities – on behalf of a putative class of 154 municipalities – filed putative class action in state court against online travel companies seeking unpaid taxes owed under their municipal hotel tax ordinances. Following removal, pursuant to Class Action Fairness Act (CAFA), municipalities moved to certify class.

The District Court held that:

- Common questions did not predominate;
- Class action was not superior to other methods of resolving claims; and
- Class was ascertainable.

Questions affecting only individual members predominated over questions of law or fact common to class members, precluding certification of Illinois municipalities' class action claims against online travel companies for unpaid taxes owed under multiple municipal hotel tax ordinances. Although claims had been organized into subgroups that included like-worded ordinances, any statutory analysis to determine whether the ordinances set materially identical legal standards would require an individual inquiry into whether any relevant amendments had been enacted over time, as well as the nature and effect of these amendments, and individual analysis would be required to determine whether the same terms in different ordinances had the same legal meaning.

Class action was not superior to other available methods for fairly and efficiently adjudicating claims of 154 Illinois municipalities against online travel companies for unpaid taxes owed under multiple municipal hotel tax ordinances, precluding certification of the claims. Although, absent certification, a multitude of individual lawsuits would be filed against the online travel companies, the 154 ordinances at issue could not be easily arranged into a modest number of subclasses, given possibility that materially different legal standards applied between the individual ordinances.

Proposed definition of class was clear, and it defined membership by objective criteria, so as to ensure ascertainability of members, as required for certification of class action against online travel companies for unpaid taxes owed under multiple municipal hotel tax ordinances, where definition described putative class members as Illinois municipalities that had enacted and collected tax on a percentage of a retail rate that consumer occupants paid owners or operators of hotels for lodging within their cities. Although travel companies asserted that definition promoted only a proscribed fail-safe class, in that membership was defined in terms of success on the merits, definition did not include only those who were entitled to relief, given possibility of varying definitions of "owner" or "operator" in the ordinances, which might or might not include travel companies.

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