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TAX - ILLINOIS

Village of Bedford Park v. Expedia, Inc.

United States Court of Appeals, Seventh Circuit - November 22, 2017 - 876 F.3d 296

Illinois municipalities, that had enacted one or more ordinances imposing taxes on rental of hotel rooms within their borders, brought putative class action in state court against online travel agencies, through which travelers could purchase hotel room reservations, alleging that travel agencies failed to remit taxes owed under ordinances.

Following removal, the United States District Court granted summary judgment in favor of travel agencies with respect to all but one municipal ordinance, and granted summary judgment in favor of remaining municipality. Municipalities and travel agencies appealed.

The Court of Appeals sitting by designation, held that:

- Certification to Illinois Supreme Court of questions concerning interpretation of Illinois municipal ordinances was not warranted;
- Travel agencies were not subject to municipal ordinances that required owners, operators, and managers of hotels or hotel rooms to collect tax and remit to respective municipality; and
- Travel agencies were not subject to municipal ordinances that imposed tax on those engaged in renting hotel rooms or engaged in business of renting hotel rooms.

Certification to Illinois Supreme Court of questions concerning interpretation of Illinois municipal ordinances that imposed taxes on rental of hotel rooms was not warranted, in action by Illinois municipalities alleging that online travel agencies failed to remit taxes owed under ordinances, even though Illinois Supreme Court had not yet ruled on such issues, since issues involved routine questions of statutory interpretation, and once ordinances were interpreted, question of whether ordinances applied to travel agencies merely required Court of Appeals to exercise judgment.

Under Illinois law, as predicted by Court of Appeals, online travel agencies, through which travelers could purchase hotel room reservations, were not “owners” of hotels or hotel rooms within meaning of municipal ordinances that required owners, operators, and managers of hotels or hotel rooms to collect hotel room occupancy tax from traveler and remit to respective municipality, since travel agencies, despite contracting with hotels for ability to make room reservations for travelers, did not have right to possess, use, or convey to others hotels or hotel rooms.

Under Illinois law, as predicted by Court of Appeals, online travel agencies, through which travelers could purchase hotel room reservations, were not “managers” of hotels or hotel rooms within meaning of municipal ordinance that required owners, operators, and managers of hotels or hotel rooms to collect hotel room occupancy tax from traveler and remit to municipality, since travel agencies did not supervise affairs of hotels or hotel rooms.

Under Illinois law, as predicted by Court of Appeals, online travel agencies, through which travelers could purchase hotel room reservations, were not “operators” of hotels or hotel rooms within meaning of municipal ordinance that required owners, operators, and managers of hotels or hotel

rooms to collect hotel room occupancy tax from traveler and remit to municipality, since travel agencies did not perform function of running hotel, rather they performed one set of functions of hotel by making room reservations.

Under Illinois law, as predicted by Court of Appeals, online travel agencies, through which travelers could purchase hotel room reservations, were not “engaged in renting” hotel rooms within meaning of municipal ordinances that imposed hotel room occupancy tax on those engaged in renting hotel rooms or engaged in business of renting hotel rooms, since renting implied ownership and granting possession of property, and travel agencies did not own hotels or hotel rooms, nor could they independently grant travelers access to hotel rooms.

Under Illinois law, as predicted by Court of Appeals, online travel agencies, through which travelers could purchase hotel room reservations, were not “engaged in the business of renting” hotel rooms within meaning of municipal ordinance that imposed hotel room occupancy tax on those engaged in renting hotel rooms or engaged in business of renting hotel rooms, since travel agencies were not engaged in business of renting hotel rooms routinely or commercially, given that travel agencies did not rent hotel rooms.

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