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Hotels.com, L.P. v. Pine Bluff Advertising and Promotion Commission

Supreme Court of Arkansas - May 16, 2024 - S.W.3d - 2024 Ark. 8620 - 24 WL 2195663

County and city advertising and promotion commission brought putative class action against online travel companies that facilitated reservations between travelers and lodging establishments that supplied rooms, seeking declaratory judgment that companies were liable for state and local gross receipts tax and state and local tourism tax.

After class certification was granted, numerous advertising and promotion commissions, cities, and counties filed motion to intervene, and companies filed motion to decertify damages class.

The Circuit Court denied both motions. Companies filed interlocutory appeal. The Supreme Court dismissed appeal for lack of a final order. Thereafter, the Circuit Court granted plaintiffs' summary judgment motion, denied companies' cross-motion for summary judgment, and ordered companies to pay previously unpaid taxes, plus penalties, interest, and attorney fees and costs. Companies appealed.

The Supreme Court held that:

- Statutes governing state and local gross receipts tax and state tourism tax were ambiguous;
- Ejusdem generis doctrine supported finding that statutes governing state and local gross receipts tax and state tourism tax did not apply to companies;
- Legislative amendment demonstrated that accommodations intermediaries were newly subject to the taxes;
- Department of Finance and Administration's (DF&A) established position was that prior to amendments accommodations intermediaries were not entities subject to state and local gross receipts tax; and
- Companies were not subject to local tourism tax.

Reasonable minds might have disagreed or been uncertain as to whether online travel companies that facilitated reservations between travelers and lodging establishments that supplied rooms constituted "any other provider of accommodations," within meaning of statutes governing state and local gross receipts tax and state tourism tax, so that statutes were ambiguous requiring interpretation of phrase according to legislative intent; entities subject to taxation plainly included owners and managers of lodging establishments, but it was not clear that accommodations intermediaries such as companies were included, given that those entities were not specifically listed in statutes, and that phrase "any other provider of accommodations" was not statutorily defined.

"Ejusdem generis doctrine," which provides that when general words follow specific words in a statutory enunciation, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words, supported finding that phrase "any other

provider of accommodations” in statutes governing state and local gross receipts tax and state tourism tax did not apply to online travel companies that facilitated reservations between travelers and lodging establishments that supplied rooms; preceding specific words in these statutes listed only lodging establishments or entities that managed lodging establishments, did not expressly list such companies as entities subject to those taxes, and companies did not own, operate, or manage lodging establishments, but rather were accommodations intermediaries.

Legislature’s addition of “accommodations intermediaries” to list of entities subject to state and local gross receipts tax, its specific definition of that group as a “person other than the owner, operator, or manager,” and its decision to title act as one to require accommodations intermediaries to collect and remit sales and tourism taxes, demonstrated that accommodations intermediaries were newly subject to the taxes, such that prior to addition such intermediaries were not subject to taxation; if accommodations intermediaries had previously been subject to taxation, then amendments would have been unnecessary.

Department of Finance and Administration’s (DF&A) established position, that prior to legislative amendments accommodations intermediaries such as online travel companies that facilitated reservations between travelers and lodging establishments that supplied rooms were not entities subject to state and local gross receipts tax, supported interpretation of statute to not apply to such companies prior to amendments; internal DF&A memo had concluded law prior to amendments did not require intermediaries to collect and remit hotel taxes, DF&A Revenue Legal Counsel had issued a legal opinion concluding that intermediaries would not be subject to gross receipts and tourism tax levied on service of furnishing rooms to transient guests, and DF&A had issued legislative-impact statement observing that amendments modified existing law to include “accommodations intermediary” as an entity furnishing, making available for, or otherwise arranging for the sale or use of a room.

Online technology companies that facilitated reservations between travelers and lodging establishments that supplied rooms were not subject to local tourism tax, which, prior to amendments, imposed tax on gross receipts from renting, leasing, or otherwise furnishing hotel rooms, motel rooms, or similar accommodations; companies’ services did not fit within the plain language of “renting, leasing, or otherwise furnishing” rooms given that contracts between companies and hotels included language that companies did not acquire inventories of rooms and that nothing in contracts constituted a sale or rental of rooms from hotel to companies, and dictionary definition of “furnish” meant “to provide with what is needed,” or to “supply” or “give,” but companies’ services were intermediary, not as actually “providing,” “supplying,” or “giving” rooms to guests.