

Travel Sites Owe Lower Tax On Car Rentals: Hawaii Justices

By **Philip Rosenstein**

Law360 (March 5, 2019, 9:20 PM EST) -- The Hawaii Supreme Court has ruled that five online travel platforms must pay the state's general excise tax on car rental transactions completed through their sites, but the companies only owe tax apportioned to the amounts they keep.

The unanimous decision Monday from the state's high court ruled that car rentals made by five online travel companies, including Expedia Inc. and Priceline.com, could be apportioned under [Section 237-18\(f\)](#) of Hawaii statutes, since they constitute a "tourism-related service." The Hawaii Tax Court had ruled that only car rentals that were part of vacation packages were eligible for the statutory apportionment for tourism related services.

The state supreme court's decision disagreed, to an extent, with both parties. The online travel companies had argued that taxes on car rentals could not be assessed at all because of a previous ruling regarding the general excise tax, or GET, on hotel rooms, making the rental assessments barred under the res judicata doctrine, which prevents relitigating matters that have already been settled. The Hawaii state tax director, on the other hand, had argued that the statute allowing apportionment for tourism-related services "simply does not encompass" car rentals.

"We ... hold that car rentals are tourism related services that qualify for GET apportionment under these circumstances," the high court concluded.

On the online travel companies' argument that the director was precluded through res judicata to assess GET on car rentals, the court ruled that it is "not an available defense against the government's sovereign power of taxation."

The online travel companies had not been filing taxes in Hawaii until 2011, when the director assessed GET on transactions for hotel rooms between 1999 and 2011, as well as interest and penalties. The **Supreme Court eventually ruled** that those transactions were eligible for apportioned GET only on the amounts that were retained by the online travel companies.

The director then assessed the companies for GET on car rentals while the hotel room case was pending.

The online travel companies appealed the director's assessments for general excise tax on car rentals between Jan. 1, 2000, and Dec. 31, 2013, arguing the claims should be barred since the previous hotel room case had already settled the matter of tax liability.

The Supreme Court disagreed in part with the Tax Court decision, finding that even standalone car rentals made through the sites were eligible for apportionment. The Hawaii Tax Court had found that the "standalone merchant rental car transactions did not qualify as tourism-related services," given they were not part of an overall vacation package.

"The provision of rental vehicles is a 'tourism-related service' within the meaning of the statute, and the Tax Court erred by failing to apply GET apportionment to the assessed standalone rental car transactions," the Supreme Court said.

"We believe the court reached a fair decision on the manner in which these transactions are subject

to tax and the ruling will provide clarity to taxpayers on their obligations under the tax laws," a spokesman for the Hawaii attorney general told Law360.

Counsel for the online travel companies did not respond to requests for comment.

Expedia Inc., Hotwire Inc., Orbitz LLC, Trip Network Inc. (dba Cheaptickets.com) and Priceline.com Inc. are represented by Paul Alston and Pamela Bunn of Dentons and by Ronald I. Heller of Torkildson Katz Hetherington Harris Knorek.

The Hawaii Director of Taxation is represented by Gary Cruciani and Steven D. Wolens of McKool Smith, by Cynthia M. Johiro, Warren Price III and Hugh Jones of the Hawaii Attorney General's Office, and by Kenneth Okamoto and Robert A. Marks.

The case is In the Matter of the Tax Appeal of Priceline.com Inc. et al. v. Hawaii Director of Taxation, case number SCAP-17-0000367, in the Hawaii Supreme Court.

--Editing by John Oudens.

Update: This story has been updated with comment from the Hawaii Attorney General's Office.