Case No. 218400

IN THE SUPREME COURT OF CALIFORNIA

In Re TRANSIENT OCCUPANCY TAX CASES

CITY OF SAN DIEGO, CALIFORNIA

Petitioner,

v.

HOTELS.COM, L.P., et al.

Respondents.

After an Opinion by the Court of Appeal, Second Appellate District, Division Two, Case No. B243800

On Appeal from the Superior Court of the State of California for the County of Los Angeles
The Hon. Elihu M. Berle, Judge of the Superior Court, Department 323
Los Angeles County Superior Court Case No. JCCP 4472

ANSWER TO PETITION FOR REVIEW
[Request To Take Judicial Notice, and Opposition to Petitioner's Request To Take Judicial Notice, Filed Concurrently Herewith]

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUTES AND RULES

OTHER AUTHORITIES

TO THE HONORABLE CHIEF JUSTICE OF CALIFORNIA, AND THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

I. INTRODUCTION

This is the third attempt by cities of California to seek redress from this Court to expand the scope of their transient occupancy tax ("TOT") ordinances, rather than presenting the issue to the voters as required by the California Constitution. By its plain terms, the City of San Diego's (the "City") TOT ordinance limits the imposition of tax to the "Rent charged by the Operator." Under the definitions provided in the ordinance, the "Rent charged by the Operator" is the amount charged by the *proprietor* of the hotel (the "Operator") for "*occupancy*" – *i.e.*, the right to use or possess a hotel room. Respondent online travel companies ("OTCs") are not proprietors of hotels, as the City concedes, and thus the amounts they charge for their reservation services are not amounts charged by the "Operator" for "Occupancy." As the trial court and a unanimous Court of Appeal determined, those amounts are not subject to tax under the plain language of the City's ordinance.

Nevertheless, unhappy with the Court of Appeal's decision, and reluctant to undertake the "difficult and costly" process of amending its tax laws as required by the California Constitution, the City through this Petition is misusing California's writ review procedure in an effort to reargue the merits of its TOT claims against the OTCs. In so doing, the City concocts an "important question of law" and a "change" in doctrine where none exists. The City has not presented an issue appropriate for review by this Court. Its Petition for Review should be denied.

San Diego Must Be Held To The Express Terms Of Its Ordinance

As this Court repeatedly has made clear, a taxing authority can only impose tax in accordance with the express terms of the tax statute it chose to enact. This fundamental rule is in recognition of the reality that a government's exercise of its sovereign taxing power imposes burdens on private citizens, takes their property, and has great potential for governmental abuse. Similar considerations led the voters of California to enact Proposition 218, which amended the California Constitution to further ensure that taxes – specifically including hotel taxes – cannot be expanded at the whim of the municipal government. Instead, under Proposition 218, local governments are prohibited from "impos[ing], extend[ing] or increas[ing] any general tax unless and until that tax is submitted to the electorate and approved by a majority vote." Cal. Const. art. XIII C, § 2.

In accordance with these principles, the City must be held to the express terms of its TOT ordinance ("Ordinance") when seeking to impose TOT obligations and liability on the OTCs.

The City enacted its Ordinance in 1964.[1] The Ordinance imposes tax obligations and liability only on the "transient" and hotel "operator," and imposes tax only on the "Rent charged by the Operator." (Ct. Appeal, 3/27/14 Op., (the "Opinion") at 2-3, quoting Ordinance.) "Rent" is defined as "[t]he total consideration charged to a Transient as shown on the guest receipt for the Occupancy of a room ...." (*Id.* at 2.) In accordance with these express terms, since the Ordinance's enactment, the City asserted

[1] The Ordinance is codified at Chapter 3, Article 5, Division 1 of the San Diego Municipal Code. All emphasis in quotations herein is added, and internal citations omitted, unless otherwise indicated.

TOT liability only against transients and hotel operators in the City, and imposed tax only on the amount charged by, and paid to, the hotel operator for a transient's occupancy of a room. Thus, when a reservation is booked through an OTC, the hotel operator remits TOT to the City on the amount it actually charges and receives as compensation for providing occupancy of a room to the transient. (*Id.* at 4.)

The OTCs provide comparative information about airlines, hotels and rental car companies on their websites, and allow customers to book reservations with such travel providers. (Op. at 3.) OTCs are not hotel operators, as the City concedes. (*Id.* at 3 & 18 n.14.) Accordingly, the OTCs do not have tax obligations and liability, and the amount they charge customers and retain for their online services is not "Rent charged by the Operator."

Nevertheless, through this lawsuit, and the underlying assessments, the City sought to go beyond the Ordinance's express terms to (i) impose tax obligations and liability on OTCs retroactively (*id.* at 5), even though they are not "Transients" or hotel "Operators;" and (ii) impose tax on the amount an OTC charges a customer and retains for using its online services to book a reservation for a hotel room, even though those amounts are not "Rent charged by the Operator" "for the Occupancy of a room." (*Id.*)

In response to the City's attempt to evade the plain meaning of its Ordinance, the OTCs first pursued an administrative appeal, and then petitioned the Superior Court for a writ of mandamus. (*Id.*) The Superior Court, the Hon. Elihu M. Berle presiding, issued a writ of mandate ordering that the administrative ruling upholding the assessments be vacated, and the assessments set aside. (*Id.*) The City appealed. (*Id.*)

The Court of Appeal affirmed. Adhering to the express terms of the City's Ordinance, the Court of Appeal unanimously upheld the trial court's conclusion that "under the plain language of the appellant City of San Diego's (City) TOT ordinance, the OTCs have no TOT obligations or liability." (*Id.* at 2.)

The Court Of Appeal Properly Held San Diego's Ordinance Does Not Apply To The OTCs

In its Opinion, the Court of Appeal recognized that the City "must be held to the express terms of [its] tax statute." (*Id.* at 7.) After performing its "first task" of "examin[ing] the words of the ordinance," the Court concluded "the words of ordinance do not reveal an intent to tax the service fees and markups charged by the OTCs." (*Id.* at 7.) Under the "plain meaning" of the Ordinance's express terms, the amount subject to tax is limited to "rent charged by the hotel operator." (*Id.* at 8.) The Court held "the OTCs cannot be considered to be operators of [] hotels," and "therefore the OTCs' service charges and markups are not within the scope of the City's ordinance." (*Id.* at 9.) In so ruling, the Court explained the contrary constructions proffered by the City are "defeated by the plain language of the ordinance," which mandates that "TOT may only be collected on the rent charged by the operator." (*Id.* at 15.)

The City's Petition reveals nothing more than dissatisfaction with the Court's "plain meaning" construction of its Ordinance, which it claims defeats the supposed intent of the Ordinance to tax all amounts paid by transients in a room reservation transaction. But the Court correctly rejected this assertion, noting that while the Ordinance's "intent to impose a tax on transients," "from the statute's plain language that the tax is limited [to] the amount of rent charged by the hotel operator to the transient." (Op. at 18.)

Thus, the City is left to protest the Court's refusal to go *outside* the Ordinance's express terms to impose tax liability on the OTCs based on a theory that the OTCs are somehow "agents" of the hotels. This supposed ground for review is contrary to and untethered from the Ordinance's express terms, and is based on the City's rejected construction that tax is due on the "retail rate" the transient paid for the reservation booking. (*Id.* at 1.) As the Court of Appeal held, the City's construction ignores, and is premised upon a fundamental misstatement of, the Ordinance's express terms setting forth the tax base as solely "Rent charged by the Operator." (Op. at 2.)[2]

In its effort to obtain review by this Court, the City is left where its Petition begins – appealing to the purse by asserting the transient occupancy tax is an important source of revenue. (Pet. at 3-4.) The City goes one step further, and asserts that because other California cities have enacted similar tax ordinances, the decision "impacts the budgets of public entities across the State." (*Id.* at 3.) This Court properly rejected the same arguments when it denied the petitions for review filed by the cities of Anaheim and Santa Monica (*see* OTCs' Request To Take Judicial Notice ("OTCs' RJN") Ex. 11); of course, the amount at issue alone does not create an "important question of law." Nor does the City's desire for additional tax revenue justify expanding the plain language of a tax statute, contrary to

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[2] Further, the City's wholesale/retail construct is disingenuous. The City does not seek to impose tax on the "retail rate" the OTC allegedly charges for the room as "agent" of the hotel. Instead, the City seeks to impose tax on both the "retail rate" – *i.e.*, the room rate charged by the hotel plus the margin charged by the OTC for its services – *plus* the OTCs' separately stated service fees. Nowhere does the City explain how imposing tax on those service fees is consistent with its argument that it seeks to impose tax on the "retail rate" charged for the room.

the California Constitution and all canons of statutory construction.

In Citing Its Prior Unpublished Decisions In These Coordinated Actions, The Court of Appeal Properly Relied Upon The "Law of the Case" Exception To Rule 8.1115(a)

The City's attempt to manufacture legal issues of statewide significance relating to the "law of the case" doctrine is a contrivance that also does not merit review. This argument takes two forms (*see* Pet. at 5-6), and both fail.

First, the City argues that the Court of Appeal erred in referencing its own prior decisions in the *Santa Monica* and *Anaheim* actions[3] as "law of the case," and that hundreds of other California municipalities will be bound by the Court's purported "law of the case" holding as to TOT ordinances. Instead, in response to the City's petition for rehearing, the Court of Appeal added a footnote to its decision explaining that under the circumstances of these coordinated actions, citing those decisions was permissible under Rule of Court 8.1115(b)(1), the "law of the case" exemption to Rule of Court 8.1115(a), which is the general rule prohibiting citation of unpublished decisions. (Op. n.4.)[4]

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[3] *In re Transient Occupancy Tax Cases*, Case No. B236166 (Cal. App. 2 Dist. 2012) (Santa Monica) (OTCs' RJN Ex. 10); *In re Transient Occupancy Tax Cases*, Case No. B230457 (Cal. App. 2 Dist. 2012) (Anaheim) (OTCs' RJN Ex. 9). This Court rejected both cities' Petitions for Review. *In re Transient Occupancy Tax Cases*, No. S207192, *review denied* (CA. Sup. Ct., January 23, 2013) (OTCs' RJN Ex. 11).

[4] The Court's added footnote reads, in its entirety:

> Pursuant to California Rules of Court, rule 8.1115, subdivision (b), this court may cite and rely upon an unpublished case when it is relevant as law of the case. The unpublished opinions that we cite in this opinion are part of the same single coordinated proceedings as this case, captioned "In re Transient Occupancy Tax Cases (No. JCCP 4472)". The coordinated transient occupancy tax cases necessarily share common questions of fact and law. (Code Civ. Proc., § 404.) Under the circumstances, we cite these unpublished opinions as law of the case. (See *Kowis v. Howard* (1992) 3 Cal. 4th

(cont'd)

Although the City argued in its petitions for rehearing that citation to the *Anaheim* and *Santa Monica* opinions violated Rule 8.1115(a), it does not make that argument to this Court. As the City now appears to concede, the Court's reference to the *Anaheim* and *Santa Monica* opinions was consistent with the rules it cited governing coordinated proceedings, which aim to prevent inconsistent orders and judgments in cases involving common questions of law and fact. (*See* Op. at 4 n.4 (citing Cal. Civ. Proc. Code §404)). *See also* Cal. Civ. Proc. Code §§ 404, 404.1.

Further, the Court of Appeal's analysis demonstrates that it did *not* rely on the *Anaheim* and *Santa Monica* decisions as binding "law of the case." Instead, the Court thoroughly examined the language of San Diego's own Ordinance and held that it does not impose TOT obligations or liability on the OTCs. In so doing, it discussed the "logic" and reasoning of the *Anaheim* and *Santa Monica* decisions where the statutory provisions were "similar." (*See* Op. at 9.) But it did not bind San Diego to those holdings as "law of the case." The City's speculation that the Court of Appeal will blindly apply its past decisions to these coordinated proceedings as "law of the case" in any future appeals is belied by its track record of individually analyzing each of the three ordinances presented to it to date.

Second, the City exaggerates the nature of the Court's reference to the "law of the case doctrine," describing it as a "holding" in a published case that decisions in coordinated actions are binding law of the case in

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(cont'd from previous page)

888, 892-893 ["The law of the case doctrine states that when, in deciding an appeal, an appellate court 'states in its opinion a principle or rule of law necessary to the decision, that principle or rule becomes the law of the case and must be adhered to throughout its subsequent progress, both in the lower court and upon subsequent appeal.'"])

other coordinated actions. From that fictitious holding, the City then posits dire consequences beyond the context of these TOT cases. The City's straw man argument does not justify review.

As a threshold matter, the City cannot be heard to complain about the Court of Appeal publishing the Opinion and creating binding precedent, since the City itself – represented by outside counsel who purport to represent "numerous" California municipalities[5] – *requested* publication for this precise purpose. (OTCs' RJN Ex. 14 (Appellants' Pet. for Rehearing & Request for Publication (March 20, 2014)), at 4.)

More importantly, the City misstates the context and manner in which the Court of Appeal mentioned the "law of the case" exemption to Rule 8.1115(a). The Court did not hold that the *Santa Monica* and *Anaheim* decisions were law of the case as to San Diego. Instead, it invoked the "law of the case" exception to the general rule prohibiting citation to unpublished decisions. It did not set forth a new or expanded application of the "law of the case" doctrine; it merely provided a rationale for citation to unpublished decisions under the unique circumstances of this case. And even if this Court were to disagree with this limited holding, the remedy would be to depublish the Opinion (or depublish footnote 4). The remedy is not review of the merits of the Opinion by this Court.

The City's Petition should be denied.

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[5] *See* Larson Albert LLP, http://www.lalitigationlawyers.com/lawyer-attorney-1364032.html (lasted visited May 21, 2014) ("Represented as co-counsel numerous California municipalities ....").

II. BACKGROUND

A. The Unopposed Coordination of Los Angeles and San Diego Actions, and The Addition Of Three Later Add-On Actions

On December 30, 2004, the City of Los Angeles filed the first action in California seeking to hold the OTCs liable for hotel occupancy tax. (*See* OTCs' RJN Ex. 1 (Los Angeles Class Action Complaint).) On February 9, 2006, the City of San Diego – represented by the same outside counsel as the City of Los Angeles – filed its action against the OTCs. (*See* OTCs' RJN Ex. 2 (San Diego Complaint).)

On April 19, 2006, the Chief Justice of California and Chair of the Judicial Council signed an Order Assigning Motion Judge and Setting Date for Hearing. (*See* Petitioner's Request to Take Judicial Notice ("Petitioner's RJN") Ex. A.) On July 3, 2006, the coordination motion judge signed its Recommendations Regarding Coordination and Order on Stay Request, in which it determined the Los Angeles and San Diego actions were complex and recommended the cases be coordinated before the Los Angeles Superior Court. (*Id.* Ex. C.) Coordination was not opposed by any party. (*Id.* Ex. C ¶ 2.) The judge further designated the Court of Appeal, Second Appellate District, as the reviewing court. (*Id.* Ex. C ¶ 3.) Thereafter, by order dated July 21, 2006, the Presiding Judge assigned a Los Angeles Superior Court judge as coordination trial judge for JCCP 4472. (Petitioner's RJN Ex. D.)

The OTCs successfully demurred to the complaints on the grounds that Los Angeles and San Diego failed to exhaust their administrative remedies. (*See* OTCs' RJN Exs. 4 & 5.) The cases were stayed pending exhaustion. (*Id.*)

In the meantime, actions involving the cities of Anaheim and Santa Monica were coordinated as add-on cases to JCCP 4472 on May 4, 2009, and August 31, 2010 respectively. (*See* Petitioner's RJN Exs. E & G.) Neither of those cities opposed coordination. (*Id.*) Over the objection of the City and County of San Francisco, the court ordered actions involving San Francisco coordinated into JCCP 4472. (Petitioner's RJN Ex. F; OTCs' RJN Ex. 6.)

Both Anaheim and Santa Monica were represented by the same outside counsel as San Diego here. In each of those actions, the coordination trial judge (Hon. Carolyn B. Kuhl) analyzed the city's respective TOT ordinance, and held that neither ordinance imposed tax obligations or liability on the OTCs, and that the amounts the OTCs charge and retain for their services is not taxable. (OTCs' RJN Exs. 7 & 8.) In separate unpublished decisions, the Court of Appeal analyzed each city's ordinance and upheld the coordination trial judge's rulings. (OTCs' RJN Exs. 9 (Anaheim decision) & 10 (Santa Monica decision).)

B. San Diego Assessed TOT Against The OTCs And The OTCs Administratively Appealed

In October 2007, San Diego began TOT audits of the OTCs and later issued TOT assessments against the OTCs, which each OTC timely appealed. (JA2:412.)[6] The hearing was held in early 2010, and the hearing officer issued his decision in May 2010. (*Id.*) The hearing officer affirmed $21.264 million in assessments against the OTCs. (*Id.* at 222-223.)

[6] Citations to the Joint Appendix are designated "JA" followed by tab and page numbers.

C. The Superior Court Vacated The San Diego Assessments

On September 6, 2011, after extensive briefing and oral argument, the Superior Court granted the OTCs' Motion for Judgment Granting Writ of Mandate, and denied San Diego's cross motion.

After noting the facts were essentially undisputed, the court described the OTCs' business operations: (i) "the OTC contracts with hotels for the right to sell occupancy privileges to the transients; (ii) the OTC books room reservations "through [its] Internet site" and "charges ... a marked-up retail price for the room plus certain taxes and fees;" (iii) the OTC then "remits to the hotel the wholesale price of the room and the [TOT], based on the wholesale price paid to the hotel." (*Id.* at 1200.)

The court, citing the City's Ordinance, explained that tax is imposed "on transients for the privilege of occupancy in hotels," and is a "percent of the 'rent charged by the operator' to the transient for the privilege of occupancy in hotel." (*Id.* at 1199.)

The court ruled OTCs do not have "control over the hotel or ... the right to run the business of the hotel," and thus, are not hotel "operators." (*Id.* at 1214.) Having ruled the OTCs are not "operators," of hotels, the court concluded:

> The phrase 'charged by the operator' ... limits the tax base to those amounts that are charged by the operator for the privilege of occupancy. Since this court concludes that the OTCs are not operators of the hotels, the amount that the OTCs charge for their reservation services [is] not part of the rent.

(*Id.* at 1222.)

The court issued a writ of mandate ordering the hearing officer to vacate his ruling in favor of San Diego, issue a new ruling that the OTCs are not liable for TOT, and set aside San Diego's assessments.

D. The Court of Appeal Affirmed The Order Vacating The San Diego Assessments

The Court of Appeal also accepted that the facts of the case were "essentially undisputed" and focused on the interpretation of the TOT ordinance. (Op. at 6.) The interpretation of a tax statute is governed by well-settled rules of statutory construction that mandate (i) where "the language of the statute is clear and unambiguous, there is no need for statutory construction;" and (ii) that a "taxing authority must be held to the express terms of a tax statute." (*Id.* at 6-7, quoting *Lungren v. Deukmejian*, 45 Cal. 3d 727, 735 (1988) and *Agnew v. State Bd. of Equalization*, 21 Cal. 4th 310, 327 (1999).) In accordance with those governing rules, the Court focused on the express terms of the City's Ordinance, and held that "the words of the ordinance do not reveal an intent to impose a tax on the service fees and markups charged by the OTCs." (Op. at 7.)

First, the Court looked to the Ordinance's tax imposition provision, which states "For the privilege of Occupancy in any Hotel located in the City of San Diego, each Transient is subject to and shall pay a tax in the amount of six percent (6%) of the Rent charged by the Operator." (Op. at 7, quoting Ord. § 35.0103.) The Court explained that "[t]here is no provision imposing any tax liability on any entity other than the hotel operator or the transient." (Op. at 8.) Thus, the Court held that "from the statute's plain language[,] the tax is limited. It may only be imposed on the amount of rent charged by the hotel operator to the transient." (Op. at 18.)

As the Court explained, "[t]he City concedes that OTCs are not transients, and that OTCs are not hotel operators." (Op. at 18.) The Court held that "[b]ecause the City's ordinance imposes tax only on rent charged

by the operator, it does not reach amounts charged by the OTC for its services." (Op. at 9.)

The Court then performed a detailed analysis of the statutory definition of "rent," concluding "items are not taxable unless they are charged by the hotel operator. The OTC service fees are not charged by the hotel operator, therefore they are not taxable." (Op. at 10.) Simply, as expressly defined in the Ordinance, "rent" "cannot be interpreted to include as part of the tax base any and all service charges imposed upon the transient." (Op. at 14.)

The Court explained, its "plain language interpretation ... fully comports with the stated intent of the ordinance" to impose a tax on transients: "We understand the statute's intent to impose a tax on transients; however, we also understand from the statute's plain language that the tax is limited. It may only be imposed on the amount of the rent charged by the hotel operator to the transient. [Accordingly,] there is simply no basis for the imposition of TOT liability on the OTC." (Op. at 18.)

III. THE CITY'S PETITION SHOULD BE DENIED BECAUSE NO GROUNDS FOR REVIEW EXIST IN THIS CASE.

California Rule of Court 8.500(b) sets forth the limited grounds under which this Court may review a decision of a Court of Appeal:

> The Supreme Court may order review of a Court of Appeal decision: (1) When necessary to secure uniformity of decision or to settle an important question of law; (2) When the Court of Appeal lacked jurisdiction; (3) When the Court of Appeal decision lacked the concurrence of sufficient qualified justices; or, (4) For the purpose of transferring the matter to the Court of Appeal for such proceedings as the Supreme Court may order.

Cal. R. Ct. 8.500(b). "The petition must explain how the case presents a ground for review under rule 8.500(b)." Cal. R. Ct. 8.504(b)(2).

The City argues review should be granted as to "important questions of law," because (i) "the TOT question presents a uniform issue of statewide importance," and (ii) the Court of Appeal's decision will "automatically constitute 'law of the case' as to the other coordinated actions." (Pet. at 4, 5-6.) In so doing, the City seeks to manufacture grounds for review where none exist. Instead, each of the City's purported issues presented underscores that its Petition is merely a continuation of its effort to impose tax in a manner contrary to its Ordinance's express terms.

A. The Court Of Appeal's Plain Meaning Construction Of The City's Transient Occupancy Tax Ordinance Does Not Provide A Ground For Review.

As shown above, the Opinion adheres to the plain meaning of the terms of San Diego's Ordinance. This plain meaning construction of the City's Ordinance adheres to the rules governing statutory construction set forth by this Court in *Lungren, Agnew*, and *Pioneer Express*. (*Supra* at 12.) As the Court of Appeal held, this plain meaning construction is fatal to the City's tax claims.[7]

San Diego's arguments otherwise simply rehash the merits arguments the Court considered and correctly rejected. And none justifies review by this Court. *People v. Davis*, 147 Cal. 346, 348 (1905)(holding that mere error is insufficient to warrant review by this Court).

1. The Court Correctly Construed the Phrase "Rent Charged By The Operator" To Include Only Amounts Charged By The Hotel Operator For The Room Rental.

[7] The rules governing statutory construction further mandate that any doubts as to the meaning of tax statute "are *construed most strongly against the government*, and in favor of the citizen." (Op. at 7, quoting *Pioneer Express*, 208 Cal. at 687.) Thus, even if the City had proffered a contrary construction of its Ordinance that is reasonable (it did not), then, at best, this contrary construction would result in an ambiguity that must be resolved in the OTCs' favor, thereby still defeating the City's tax claims.

The City argues the Court erred by reasoning that "'rent' charged' means 'rent received' by hotels." (Pet. at 23.) Of course, this argument ignores the key limiting language of the Ordinance, which only taxes the "Rent charged *by the Operator*." Ord. at § 35.0103. In any event, the City misstates the Court of Appeal's (and the trial court's) construction.

As the Court explained, "The hotels are not giving away the rooms for free. They are *charging* transients to occupy their hotel rooms." (Op. at 10 n.10 (emphasis in original).) And further, "As the City admits, the hotel operators contractually allow the OTCs to collect the rent that the hotels charge for occupancy." (*Id.* at 15 n.12.) "Whether that rent is charged directly by the hotel or indirectly through a third party – the OTC – its numeric value does not change." (*Id.* at 17.) Thus, the Court applied the plain meaning of the term "Rent charged by the Operator," and concluded that in a merchant model transaction, the hotel charges the rent, which is collected by the OTC. (*Id.* at 16-17.)

Relatedly, the City argues the Court's construction is erroneous because the customer cannot obtain the right to occupancy unless he pays the OTCs' margin and service fees, and therefore the amounts charged by OTCs for the services must be *deemed* "'rent charged' by the hotel" and included in the tax base. (Pet. at 24-25.) The Court of Appeal also correctly rejected this argument.

To start, it is not true that customers must pay an OTCs' margin and service fees in order to book a hotel room reservation. (*See* Pet. at 7.) Customers can always avoid an OTC's fee by booking directly with the hotel, instead of using the OTC's online services.

In any event, it does not change the result here. For a reservation booked through an OTC, "the Rent charged by the Operator" is the rate