SUPREME COURT OF MONTANA

Montana Department of Revenue v. Priceline.Com, Inc.

380 Mont. 352 (2015) · Decided August 12, 2015

SUMMARY

The Montana Supreme Court considered whether online travel companies must collect and remit Montana lodging facility use taxes and sales taxes on fees charged to customers. The court held that the lodging facility use tax did not apply because the companies were not facility owners or operators, but the sales tax did apply because the companies sold taxable services. The court held that the companies were liable for sales taxes on those fees beginning November 8, 2010, when the Department filed suit.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Shea; Chief Justice McGrath; Justice Wheat; Justice Cotter; Justice Baker
JURISDICTION	Montana
DECIDED	August 12, 2015
DISPOSITION	other
PROCEDURAL POSTURE	The Montana Department of Revenue appealed from the First Judicial District Court's summary judgment ruling in favor of online travel companies.
STANDARD OF REVIEW	Summary judgment orders are reviewed de novo. Summary judgment is proper when there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. Statutory interpretation is reviewed for correctness.
PRECEDENTIAL VALUE	published Montana Supreme Court opinion
PARTIES	Montana Department of Revenue v. Priceline.com, Inc., Travelweb, LLC, Trip Network, Inc., Orbitz, LLC, Expedia, Inc., Hotels.com, LP, Hotwire, Inc., Travelocity.com, LP, Site59.com, LLC, Does 1 through 1000

TOPICS

sales and use tax · tax collection · statutory interpretation · administrative law · tax court procedure

PRACTICE AREAS

state and local taxation · administrative law · statutory interpretation · civil procedure

QUESTIONS PRESENTED

1. Whether online travel companies were required to collect and remit Montana's Lodging Facility Use Tax on fees charged to customers.
2. Whether online travel companies were required to collect and remit Montana sales tax on fees charged for hotel accommodations and campgrounds.
3. Whether online travel companies were required to collect and remit Montana sales tax on fees charged for rental vehicles.
4. Whether the Court's ruling should apply retroactively, including whether liability extended to sales taxes accruing after the Department filed suit.

HOLDINGS

1. Online travel companies are not required to collect or remit Montana's Lodging Facility Use Tax on their customer fees because they are not owners or operators of lodging facilities.
2. The Montana Sales Tax applies to fees retained by online travel companies for booking accommodations, and the companies are sellers required to collect and remit tax on those fees.
3. The Sales Tax applies to online travel company fees associated with rental vehicles because the statutory term base rental charge must be read consistently with sales price, which includes the value of services.
4. The online travel companies are liable for unpaid sales taxes on their fees accruing from November 8, 2010, the date the Department filed suit.

KEY QUOTATIONS

> *"The OTCs do not participate in the day-to-day bookkeeping of a facility, make management decisions, or decide how a facility will spend its revenue. In short, they are not responsible for the financial affairs of a facility."* (356)

> *"The Sales Tax contains no language indicating that the sales price of an accommodation or rental vehicle is the fee charged by the owner or operator."* (358)

> *"The fact that the OTCs elected not to collect the Sales Tax in the ensuing years after being placed on notice by the Department's lawsuit does not relieve them of this debt."* (361)

FACTUAL BACKGROUND

The online travel companies used a merchant model under which they negotiated wholesale rates with hotels and rental-car suppliers and charged customers a higher amount. The difference included taxes on the wholesale rate and fees retained by the online travel companies for their services. The companies collected and passed through tax on the wholesale rate but did not collect or remit tax on their retained fees.

PROCEDURAL HISTORY

The Department sued the online travel companies in November 2010, seeking to require them to collect and remit Montana lodging facility use and sales taxes on fees charged to customers. The parties filed cross-motions for summary judgment, and the District Court granted judgment for the online travel companies. The Montana Supreme Court affirmed in part and reversed in part.

DISPOSITION

other

CASES CITED

- Bailey v. State Farm Mutual Automobile Insurance Co., 2013 MT 119, ¶ 18, 370 Mont. 73, 300 P.3d 1149
- Smith v. Burlington Northern & Santa Fe Railway Co., 2008 MT 225, ¶ 10, 344 Mont. 278, 187 P.3d 639
- City of Missoula v. Iosefo, 2014 MT 209, ¶ 8, 376 Mont. 161, 330 P.3d 1180
- Infinity Insurance Co. v. Dodson, 2000 MT 287, ¶ 46, 302 Mont. 209, 14 P.3d 487
- Travelocity.com, LP v. Wyoming Department of Revenue, 329 P.3d 131 (Wyo. 2014)
- Pitt County v. Hotels.com, LP, 553 F.3d 308, 313 (4th Cir. 2009)
- City of Branson v. Hotels.com, LP, 396 S.W.3d 378, 383 (Mo. Ct. App. 2013)
- Denke v. Shoemaker, 2008 MT 418, ¶ 39, 347 Mont. 322, 198 P.3d 284
- MC, Inc. v. Cascade City-County Board of Health, 2015 MT 52, ¶¶ 14, 17, 378 Mont. 267, 343 P.3d 1208
- State v. Triplett, 2008 MT 360, ¶ 25, 346 Mont. 383, 195 P.3d 819
- Montana Sports Shooting Association v. State, 2008 MT 190, ¶ 11, 344 Mont. 1, 185 P.3d 1003
- Chevron Oil Co. v. Huson, 404 U.S. 97 (1971)
- City of Gallup v. Hotels.com, LP, No. 06-0549-JC, 2007 U.S. Dist. LEXIS 86720, at *5, *13-*14 (D.N.M. Jan. 30, 2007)
- City of Fairview Heights v. Orbitz, Inc., No. 05-CV-840-DRH, 2006 U.S. Dist. LEXIS 47085, at *19-*20 (S.D. Ill. July 12, 2006)
- Expedia, Inc. v. District of Columbia, Nos. 14-CV-308 & 14-CV-309, 2015 D.C. App. LEXIS 288, at *2-*3 (D.C. July 23, 2015)
- City of Atlanta v. Hotels.com, 710 S.E.2d 766, 769 (Ga. 2011)
- Expedia, Inc. v. City of Columbus, 681 S.E.2d 122, 128 (Ga. 2009)

Canonical source: https://lawtools.ai/cases/state/montana-supreme-court-of-montana/2015/montana-department-of-revenue-v-priceline-com-inc-k6kqa8o0