

FORSYTH COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: AUGUST 31, 2015 AGENDA ITEM NUMBER: 11

SUBJECT: RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT BETWEEN FORSYTH COUNTY AND SEVERAL ONLINE TRAVEL COMPANIES RESOLVING DISAGREEMENTS REGARDING PAST OCCUPANCY TAX LIABILITY OF THE COMPAN ES

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:

SUMMARY OF INFORMATION:

See attached

ATTACHMENTS: YES NO

SIGNATURE: _____ DATE: August 25, 2015
COUNTY MANAGER

**RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT
BETWEEN FORSYTH COUNTY AND SEVERAL ONLINE TRAVEL COMPANIES
RESOLVING DISAGREEMENTS REGARDING PAST
OCCUPANCY TAX LIABILITY OF THE COMPANIES**

WHEREAS, a dispute arose in 2011 about the constitutionality of statutory changes enacted by Session Law 2010-31, Section 31.6 regarding Forsyth County's right to collect occupancy taxes from online travel companies ("OTCs") for accommodations facilitated in Forsyth County by the companies; and

WHEREAS, the OTCs which are parties to the Agreement, have proposed a settlement of all past occupancy tax liability with Forsyth County for accommodations facilitated by the said OTCs from January 1, 2011, to the present to the extent provided in the attached Resolution Agreement; and

WHEREAS, under the proposed settlement, which is similar to settlements entered into by the OTCs with the State of North Carolina and various other counties, in exchange for the payment to Forsyth County by such OTCs as set forth therein, Forsyth County is releasing all of its claims for Forsyth County Occupancy Tax against the OTCs which are parties to the settlement for accommodations facilitated in Forsyth County commencing prior to July 1, 2015, and the OTCs shall pay all future occupancy taxes to Forsyth County based upon accommodations facilitated as of July 1, 2015, or later;

NOW, THEREFORE, BE IT RESOLVED that the Forsyth County Board of Commissioners hereby approves the attached settlement proposed by the OTCs, which are parties to the agreement, regarding disputed occupancy taxes.

BE IT FURTHER RESOLVED that the Forsyth County Board of Commissioners hereby authorizes the Chairman or the County Manager and the Clerk to the Board, to execute, on behalf of Forsyth County, the attached Resolution Agreement relating to accommodations facilitated by OTCs named therein, arising out of reservations made on or after January 1, 2011, subject to a pre-audit certificate thereon by the County Chief Financial Officer, if applicable, and approval as to form and legality by the County Attorney.

Adopted this 31st day of August 2015.

RESOLUTION AGREEMENT

This Resolution Agreement (“Agreement”) is entered into by and between Orbitz, LLC, Trip Network, Inc., TVL LP (f/k/a Travelocity.com LP), Expedia, Inc. (including its subsidiary, Travelscape LLC), Hotels.com L.P., Hotwire, Inc., and Egencia LLC (individually “OTC” and collectively “OTCs”), and the County of Forsyth (“Forsyth”).

WHEREAS, the OTCs contend that amendments to N.C. Gen. Stat. §§ 105-164.4(a)(3), 153A-155(c), and 160A-215(c) enacted by Session Law 2010-31, § 31.6 and the amendments to N.C. Gen. Stat. §§ 105-164.4(a)(3) and 105-164.4F enacted by Session Law 2014-3, § 8.1(a) and (b) (collectively “the Amendments”) are unconstitutional under the United States Constitution and the North Carolina Constitution and in violation of the federal Internet Tax Freedom Act, as amended;

WHEREAS, Forsyth contends that the Amendments are lawful and that Forsyth has the right to collect occupancy taxes under the terms of the Amendments;

WHEREAS, the parties desire to resolve their dispute without litigation;

WHEREAS, the parties further desire to resolve all past potential occupancy tax liability of the OTCs since 1 January 2011 to Forsyth and to adopt a mutually agreeable reporting and remittance methodology on a prospective basis; and

WHEREAS, the parties desire to enter into this Agreement to accomplish the above.

NOW IT IS HEREBY DETERMINED AND AGREED:

1. Each of the OTCs agrees to make the following payments to Forsyth:
 - a. For occupancy of accommodations commencing prior to July 1, 2015 which were facilitated by any OTC pursuant to reservations made on or after January 1, 2014 and which are subject to Forsyth’s occupancy tax (“Forsyth Occupancy Tax”), each OTC will pay to Forsyth, on or before October 1, 2015, the amount specified on Exhibit A, attached hereto.
 - b. For occupancy of accommodations commencing July 1, 2015 through September 30, 2015 which were or are facilitated by any OTC pursuant to reservations made on or after January 1, 2014 and which are subject to Forsyth Occupancy Tax, each OTC will pay to Forsyth, on or before November 1, 2015, Forsyth Occupancy Tax on the gross receipts derived from such rentals, as defined in N.C. Gen. Stat. § 105-164.4F(b), less any amounts of occupancy tax sent by the OTC to retailers for such rentals.
2. For occupancy of accommodations commencing on or after October 1, 2015 which are

subject to Forsyth Occupancy Tax, each OTC will remit Forsyth Occupancy Tax on the gross receipts derived from such rentals, as defined in N.C. Gen. Stat. § 105-164.4F(b) when returns for such taxes are due. Each OTC will report and remit all such Forsyth Occupancy Tax through one of the following methods, at the option of each OTC:

(i) Accommodation Retailer Remit: All Forsyth Occupancy Tax will be reported and remitted to the retailers of the accommodations in accordance with N.C. Gen. Stat. §§ 105-164.4(a)(3), 105-164.4F(c), 153A-155(c), and applicable county ordinances.

(ii) Partial Direct Remit: All Forsyth Occupancy Tax will be partially reported and remitted to the retailers of the accommodations for further remittance to Forsyth and partially reported and remitted directly to Forsyth. Specifically, the portion of the Forsyth Occupancy Tax not reported and remitted to the retailers of the accommodations in accordance with N.C. Gen. Stat. §§ 105-164.4(a)(3), 105-164.4F(c), 153A-155(c), and applicable county ordinances must be reported and remitted directly by the OTC to Forsyth.

(iii) Full Direct Remit: All Forsyth Occupancy Tax not reported and remitted to the providers of the accommodations in accordance with N.C. Gen. Stat. §§ 105-164.4(a)(3), 105-164.4F(c), 153A-155(c), and applicable county ordinances must be reported and remitted directly by the OTC to Forsyth.

(iv) Each OTC will give advance notice to Forsyth of its selected option.

(v) If registering for occupancy tax purposes or paying occupancy tax, each OTC will do so by November 20, 2015.

3. This Agreement will resolve the OTCs' dispute with Forsyth regarding the Amendments and all potential occupancy tax liability to Forsyth for occupancy of accommodations facilitated by any OTC commencing prior to July 1, 2015.
4. Forsyth acknowledges that this Agreement contains Tax Information, as defined in N.C. Gen. Stat. § 105-259, and its provisions are therefore subject to the disclosure prohibitions of N.C. Gen. Stat. § 105-259, N.C. Gen. Stat. § 153A-148.1, and N.C. Gen. Stat. § 132-1.1.
5. Registering for occupancy tax purposes or payment of occupancy tax does not constitute a concession that the OTCs are engaging in business within any locality in North Carolina or a concession that the OTCs are subject to any other tax or license in North Carolina.

6. Forsyth will not issue any assessments to any OTC for Forsyth Occupancy Tax for occupancy of accommodations facilitated by any OTC commencing prior to July 1, 2015.
7. The OTCs agree that Forsyth has the authority and jurisdiction to audit for purposes of Forsyth Occupancy Tax due under paragraphs 1(b) and 2 of this Agreement. Upon request, each OTC will provide to Forsyth data and documents, or reasonable access to records, for audit purposes.
8. The parties acknowledge that each side takes a different view of the facts and law related to the matters encompassed by this Agreement. The parties agree that this Agreement is based on the parties' desire to compromise their disputes and is not an indication that either side has expressed agreement with the other side's view of the facts or law. This Agreement does not constitute a concession, agreement or admission by any of the parties as to the correctness or applicability of any legal or factual contention by any other party.
9. The parties agree that the Agreement is for the benefit of, and an agreement expressly between, the parties hereto. This Agreement may only be amended by written agreement by all parties hereto. Any such amendment shall be attached hereto. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
10. This Agreement shall be governed by the laws of North Carolina. Each party has cooperated in the drafting and preparation of this Agreement, and it shall be construed according to the plain meaning of its language and not for or against any party.
11. By signing this Agreement, all parties certify that they have read and agreed to all the terms hereof and that they have authority to enter into this Agreement.
12. This Agreement (including each of the rights and obligations set forth herein) shall be binding upon, and inure to the benefit of, the respective present or former, successor, direct or indirect family members, parents, subsidiaries, affiliates, agents, representatives, officials, insurers, employees, officers, directors and shareholders of the undersigned parties. Additionally, any reference in this Agreement to any of the parties shall be a reference to the present or former, successor, direct or indirect, family members, parents, subsidiaries, affiliates, agents, legal representatives, insurers, employees, officers, directors, and shareholders of those entities.
13. Forsyth and each OTC acknowledge that they: (a) have consulted with legal counsel about the Agreement; (b) they are entering into the Agreement voluntarily and with an understanding that, except as provided in paragraph 1(a) of this Agreement, Forsyth is releasing all of its claims for Forsyth Occupancy Tax against the OTCs for occupancy of accommodations commencing prior to July 1, 2015; (c) they have the authority to enter into this Agreement; (d) no other persons or entities have or have had any interest in any claims that are now being released; and (e) they have not sold, transferred, or assigned their

claims to any other person or entity prior to entering into this Agreement.

ORBITZ, LLC

By: _____

Print name: _____

Title: _____

Date: _____

TRIP NETWORK, INC.

By: _____

Print name: _____

Title: _____

Date: _____

TVL LP (f/k/a TRAVELOCITY.COM, LP)

By: General Partner, Travelocity.com LLC

By: _____

Print name: _____

Title: _____

Date: _____

EXPEDIA, INC.

By: _____

Print name: _____

Title: _____

Date: _____

TRAVELSCAPE LLC

By: _____

Print name: _____

Title: _____

Date: _____

HOTELS.COM L.P.

By: _____

Print name: _____

Title: _____

Date: _____

HOTWIRE, INC.

By: _____

Print name: _____

Title: _____

Date: _____

EGENCIA LLC

By: _____

Print name: _____

Title: _____

Date: _____

FORSYTH COUNTY

By: _____

Print name: _____

Title: _____

Date: _____