

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA

EXPEDIA, INC.,

Plaintiff,

vs.

CASE NO. 2011 CA 000206

OSCEOLA COUNTY, FLORIDA; and
FLORIDA DEPARTMENT OF REVENUE,
a state agency,

Michelle Stephens #740
1/31/11 12.00

Defendants.

SUMMONS

THE STATE OF FLORIDA:
To Each Sheriff of the State:

YOU ARE COMMANDED to serve this Summons and a copy of the Complaint with Exhibits in this action on Defendant:

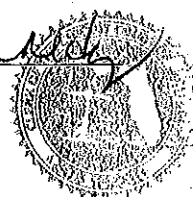
**Osceola County, Florida
c/o Brandon Arrington, Chairman
Osceola County Board of County Commissioners
1 Courthouse Square, Suite 4700
Kissimmee, FL 34741**

Each defendant is required to serve written defenses to the complaint on plaintiff's attorneys, James P. Karen, Deborah S. Sloan, Jones Day, 2727 N. Harwood Street, Dallas, Texas 75201-1515 and Mark E. Holcomb, Madsen Goldman Holcomb, LLP, 1705 Metropolitan Blvd., Suite 101, Tallahassee, FL 32308-3765, within 40 days after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the clerk of this court either before service on plaintiff's attorneys or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint.

DATED this 26th day of Jan 2011.

BOB INZER
As Clerk of the Court

By: Allyson Kerney
As Deputy Clerk



IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

EXPEDIA, INC.,

Plaintiff,

v.

OSCEOLA COUNTY, FLORIDA; and
FLORIDA DEPARTMENT OF REVENUE,
a state agency,

Defendants.

CASE NO. 2011 CA 0206

COMPLAINT

Pursuant to Chapter 72, Florida Statutes, Plaintiff Expedia, Inc. ("Expedia") hereby asserts its Complaint against Defendants Osceola County, Florida ("Osceola County") and the Department of Revenue of the State of Florida (the "Department") (collectively, the "Defendants"), and shows the Court as follows:

IDENTITY OF THE PARTIES

1. Expedia is a corporation organized under Washington law with its principal place of business in Bellevue, Washington.
2. Osceola County is a county existing under the laws of the State of Florida. Osceola County imposes and administers the Osceola County Tourist Development Tax (the "Tourist Development Tax" or "TDT") as authorized by Florida Statutes Section 125.0104.
3. The Department is an agency of the State of Florida lawfully created and organized pursuant to section 20.21 of the Florida Statutes. This action is brought under section 72.011(1) of the Florida Statutes to contest Osceola County's assessment of its TDT, which was

enacted under Florida Statutes section 125.0104. Osceola County has elected under Florida Statutes section 125.0104(10) to administer the TDT locally. Florida Statutes section 72.031(1) therefore requires that this action name the Department as a defendant together with the County.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action, and venue is proper in this Court. FLA. STAT. § 72.011(1)(a), (4)(a).

5. Expedia contests the validity of the Notice of Audit Assessment Tourist Development Tax (the "Assessment") issued on August 27, 2010 by Osceola County for the period of January 1, 2000 through September 30, 2009. A true and correct copy of the Assessment is attached hereto as Exhibit A.

6. This Court has jurisdiction under section 72.011(1)(a) of the Florida Statutes because Expedia is contesting the legality of the assessment of TDT by Osceola County imposed under the authority granted by Florida Statutes section 125.0104.

7. Osceola County Ordinance Section 13-68(g) provides for a formal appeals process to attempt to resolve challenges to assessments of the Tourist Development Tax.

8. On September 23, 2010, Expedia filed a Written Appeal with the Osceola County Office of Commission Auditor, Tourist Development Tax Services, which invoked the formal appeals process.

9. Expedia is informed that Osceola County engaged outside counsel on a contingency fee basis to assist in the audit and assessment of the Tourist Development Tax against Expedia. Expedia is informed that Osceola County disclosed to outside counsel the confidential taxpayer information Expedia provided to Osceola County during the audit process. Outside counsel are not employees of Osceola County or the Florida Department of Revenue.

10. On October 27, 2010, the Osceola County Commission Auditor issued an Appeal Denial overruling Expedia's objections to the Assessments made in the Written Appeal. A true and correct copy of the Appeal Denial for Expedia is attached as Exhibit B.

11. The Assessments became final under Osceola County Ordinance Section 13-68(i) on November 26, 2010, the 21st business day after the Appeal Denial was mailed on October 27, 2010.

12. Under Florida Statutes section 72.011(2)(a), this action is timely filed.

13. As required by Florida Statutes section 72.011(1)(b), prior to filing this Complaint, Expedia complied with the registration requirements contained in Florida Statutes section 125.0104 by submitting registration applications to Osceola County pursuant to Osceola County Ordinance section 13-68(c) and Florida Statutes section 212.18. Because the gravamen of this action is Expedia's contention that it is not subject to the TDT and that the imposition of the TDT on Expedia violates Florida and federal law, the registration applications were submitted to Osceola County under protest. Expedia did not thereby and does not now admit that it is subject to the TDT.

14. Expedia contests the entire amount of the Assessment.

15. As financial security for this action, Expedia attaches hereto a surety bond for the amount of its Assessment endorsed by a surety company authorized to do business in Florida and conditioned upon payment in full of any judgment in favor of the County, including taxes, costs, penalties, and interest. The original surety bond for Expedia is attached as Exhibit C.

16. Expedia has posted or will promptly post a nonresident bond as set forth in Florida Statutes section 57.011.

17. Expedia has exhausted all required administrative remedies and has otherwise satisfied all prerequisites necessary for the filing of this action.

BACKGROUND

18. Expedia is an Internet travel company that provides customers with the ability to search for and reserve air travel, hotel accommodations, car rentals, cruises, tours, and other travel-related services via the Internet.

19. Expedia contracts with hotels for the ability to make room reservations available to customers through its website. Using Expedia's online services, customers are able to search for availability at numerous hotels, compare the rates and amenities of those hotels, and ultimately make a reservation at the customer's chosen hotel. Before Internet travel companies made their services available on the Internet, a customer wishing to make a hotel room reservation in a particular area either had to enlist the help of a travel agent or had to use a map and/or telephone book to determine which hotels were located in the area, contact the hotels to compare rates, amenities, and availability, and make a room reservation. Expedia's services provide an alternative and more convenient way to research and reserve hotel accommodations.

Merchant Model

20. Expedia facilitates hotel room reservations under what is commonly referred to as the "merchant model," a model that has been used by travel agents, tour operators and other travel facilitators for decades. Under the merchant model, a customer uses Expedia's website to search for hotel rooms based on criteria such as date, location, and amenities. On its website, Expedia provides the customer with a list of available rooms by specific hotels that meet the customer's stated criteria, and the customer selects his or her desired hotel accommodations and provides Expedia with identification and payment information. Expedia then charges the

customer's credit card the amount that will be paid to the hotel after the stay is concluded, plus compensation for Expedia's costs, fees, and services.

21. The amount that is charged to the customer's credit card consists of: (a) a reservation rate that includes (i) the "Net Rate" that the hotel charges for the room rental, which is passed along to the hotel (i.e., the "rent") and (ii) an amount retained by Expedia for the travel-related services it provides to the customer (the "Facilitation Fee"); and (b) an amount for "tax recovery charges and service fees" that includes (i) a tax recovery charge equal to the amount the hotel will owe in taxes on the rental rate (calculated by multiplying the Net Rate by the tax rate that the hotel provides to Expedia) and (ii) an additional fee for services provided by Expedia ("Service Fees").

22. When the customer's credit card is charged, Expedia transmits the customer's request for hotel accommodations to the operator of the hotel, and the hotel reserves a room in the name of the guest. The operator of the hotel does not book rooms in Expedia's name.

23. Expedia does not have any possessory or ownership interest in any hotel rooms and does not bear any inventory risk for rooms that are not reserved by customers.

24. Expedia does not buy or rent rooms for resale or re-rental.

25. Upon arrival at the hotel for check-in, the customer provides the hotel with identification. The hotel conducts its security and check-in procedures and then assigns the customer a specific room and access to that room.

26. The hotel provides the guest with accommodations, and the guest pays the hotel directly for any incidental services consumed (e.g., telephone charges, movie rentals, mini-bar usage, etc.) when the guest checks out.

27. The hotel receives the traveler's payment for the room rental rate and applicable taxes through Expedia, typically upon invoicing Expedia after checkout. The hotel invoices Expedia for the Net Rate and the taxes applicable to the Net Rate, as calculated by the hotel. The hotel's invoice or charge to Expedia typically includes separately itemized state and local sales or occupancy tax based upon the Net Rate. Expedia then pays the hotel's invoice, including the amount invoiced for state and local taxes. Expedia retains the remainder as compensation for its services in facilitating the room reservation. The hotel collects and remits the hotel occupancy taxes to the appropriate taxing jurisdiction.

**THE TOURIST DEVELOPMENT TAX AND RELATED FLORIDA STATUTES
AND ADMINISTRATIVE REGULATIONS**

28. Osceola County imposes a Tourist Development Tax under Section 13-61 of the Osceola County Code.

29. The TDT is authorized by the "Local Option Tourist Development Act" (the "Enabling Act") provided in Florida Statutes section 125.0104.

30. The Enabling Act permits a county to impose the TDT on the privilege of renting, leasing or letting for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, roominghouse, mobile home park, recreational vehicle park, or condominium for a term of six months or less. FLA. STAT. § 125.0104(3)(a).

31. The Enabling Act permits counties levying the TDT to adopt an ordinance providing for collection and administration of the TDT by the county. FLA. STAT. § 125.0104(10).

32. Osceola County has adopted an ordinance providing for local collection and administration of the TDT by Osceola County. OSCEOLA COUNTY CODE § 13-68(a)-(i).

33. Osceola County has elected to assume for itself all responsibility for auditing the records and accounts of dealers under the TDT. OSCEOLA COUNTY CODE § 13-68(d).

34. Because Osceola County has provided for local collection and administration of the TDT and because it has elected to audit and enforce the TDT, Osceola County is bound by the administrative rules promulgated by the Department under Florida Statutes sections 125.0104(3)(k) and 212.03. FLA. STAT. § 125.0104(10)(c).

35. The Tourist Development Tax is a privilege tax imposed on persons renting, leasing, or letting for consideration any living quarters in a hotel, apartment hotel, motel, resort motel, apartment, apartment motel, roominghouse, mobile home park, recreational vehicle park, tourist or trailer camp, or condominium for a term of six months or less. OSCEOLA COUNTY CODE § 13-61(a).

36. The TDT is to be paid by the lessee, tenant or customer and is to be charged by “the person receiving the consideration for the lease or rental.” OSCEOLA COUNTY CODE § 13-61(c). The tax is on the “total rental charged every person who rents, leases or lets for consideration.” OSCEOLA COUNTY CODE § 13-61(a).

COUNT I
EXPEDIA IS NOT SUBJECT TO THE TOURIST DEVELOPMENT TAX

37. The allegations contained in paragraphs 1-36 are hereby incorporated by reference.

38. Expedia does not rent, lease or let accommodations in Osceola County. Expedia does not own, operate, manage, or control any hotels or hotel rooms and never has. Expedia does not bear any inventory risk for hotel rooms that are not reserved by customers.

39. Expedia does not buy or rent rooms for resale or re-rental.

40. Upon arrival at the hotel for check-in, the customer provides the hotel with identification. The hotel conducts its security and check-in procedures and then assigns the customer a specific room and access to that room.

41. The hotel provides the guest with accommodations, and the guest pays the hotel directly for any incidental services consumed (*e.g.*, telephone charges, movie rentals, mini-bar usage, etc.) when the guest checks out.

42. Because Expedia does not rent, lease or let accommodations in Osceola County, it is not subject to the Tourist Development Tax.

43. The Enabling Act and regulations are clear that only the hotels or motels providing accommodations must collect and remit the TDT because they are the ones who receive the consideration for leases or rentals.

44. Because each hotel has charged the amount each hotel has demanded as consideration for the hotel's rental of the room to the guest who books through Expedia's websites, plus the amount of the TDT due on the amount charged by the hotel, the full amount of TDT owed with respect to accommodations reserved through Expedia's website has already been remitted to Osceola County by the hotels. The amount retained by Expedia is for the provision of travel-related services, including the making of reservations on behalf of hotel customers, and is not "consideration for the lease or rental" subject to TDT.

45. Even if Expedia's transactions were subject to TDT (which they are not), if the County's position is that Expedia is subject to TDT because it purchases and resells hotel rooms, then the County is prohibited from taxing Expedia's "vacation package" transactions, as defined by Florida Administrative Code. Because TDT was remitted by the hotels on the components of

the vacation package transactions, the County is not permitted to impose any additional TDT upon vacation packages.

46. The Assessment is unlawful and contrary to the Osceola County Code and to the Enabling Act and to the regulations promulgated thereunder. The Assessment is therefore invalid.

COUNT II COMMERCE CLAUSE VIOLATION

47. The allegations of paragraphs 1-45 are hereby incorporated by reference.

48. Expedia's provision of online hotel reservation services involves an interstate transaction. Expedia has no facilities of any kind in Osceola County or the State of Florida. The people who book and reserve hotel rooms using Expedia's website are located all over the world.

49. The United States Constitution provides Congress with the power to "regulate Commerce with Foreign Nations, and among the several States." U.S. CONST. art. I, § 8, cl. 3. In addition to being an affirmative grant of power, the Commerce Clause also has a "negative sweep" (the "Dormant Commerce Clause").

50. The Commerce Clause prevents interstate commerce from being subjected to more burdensome state regulation or taxation than commerce that does not cross state boundaries. The Commerce Clause prohibits certain state actions that interfere with interstate commerce.

51. A tax violates the Commerce Clause unless it "is applied to an activity with a substantial nexus" with the taxing jurisdiction. For local taxes, the relevant inquiry is whether the taxpayer has a substantial physical presence within the locality, not the state. *Quill Corp. v. North Dakota*, 504 U.S. 298, 309 (1992).

52. Expedia lacks substantial nexus with Osceola County sufficient to impose the TDT or to impose an obligation to collect the TDT.

53. Expedia's provision of hotel reservation services are completed outside of Osceola County. Osceola County lacks substantial nexus with Expedia's services and does not have the power to tax the transaction.

54. A state or local tax complies with the Dormant Commerce Clause only if the "tax (1) is applied to an activity with substantial nexus with the taxing State, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to the services provided by the State." *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 285 (1977); *Quill*, 504 U.S. at 309. For any tax to withstand constitutional scrutiny, it must satisfy all four prongs of the *Complete Auto* test. Osceola County cannot satisfy any of the four prongs of this test.

55. A jurisdiction may tax only that portion of the revenues from the interstate activity which reasonably reflects the in-state component of the activity being taxed.

56. Because Expedia's services are performed, and the transactions with its customers are consummated, outside of Osceola County, the County's attempt to impose the TDT upon the amounts Expedia retains is unconstitutional. The Assessment attempts to tax the value of activity occurring outside the County and thus violates the Commerce Clause.

57. The Assessment is unlawful and contrary to the Commerce Clause of the United States Constitution and is therefore invalid.

COUNT III **DUE PROCESS VIOLATION**

58. The allegations of paragraphs 1-56 are hereby incorporated by reference.

59. The Due Process Clause of the United States Constitution requires that a legislative body provide meaningful standards to guide the application of its laws.

60. The Assessment is an unprecedented application of the TDT to an online travel intermediary. The TDT, by its terms, fails to give Expedia notice of its applicability.

61. The TDT is void for vagueness because it fails to give adequate notice of the asserted TDT. Therefore, the Assessment is invalid.

COUNT IV
BREACH OF CONFIDENTIALITY

62. The allegations of paragraphs 1-60 are hereby incorporated by reference.

63. Florida Statutes section 213.053(2) provides that “[a]ll information contained in returns, reports, accounts, or declarations received by the department, including investigative reports” is confidential taxpayer information. Section 213.053 expressly applies to county governments. FLA. STAT. § 213.053(1)(a).

64. Osceola County disclosed Expedia’s confidential taxpayer information obtained during the course of the audit to outside counsel, who were not officers or employees of Osceola County.

65. Osceola County thus violated the confidentiality provisions of Florida Statutes section 213.053, and the resulting Assessment is therefore invalid.

COUNT V
FUNDAMENTAL BIAS OF THE ASSESSMENT

66. The allegations of paragraphs 1-64 are hereby incorporated by reference.

67. There is a standard of neutrality that must be met by attorneys representing the government in matters that affect public interest.

68. The collection of taxes implicates a public interest against the abuse of such power if carried out under terms that would create a financial interest in any amount assessed or collected for those involved in the enforcement and collection.

69. Expedia is informed and believes that Osceola County engaged outside counsel on a contingency fee basis to assist in the audit and assessment of the TDT.

70. The Assessment is fundamentally biased by the financial interest the County's outside counsel had in the assessment and collection of the TDT. The Assessment is consequently invalid.

COUNT VI
INTERNET TAX FREEDOM ACT
AND SUPREMACY CLAUSE VIOLATION

71. The allegations of paragraphs 1-69 are hereby incorporated by reference.

72. The Supremacy Clause of the United States Constitution provides, in pertinent part, that “[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. CONST. art VI, cl. 2.

73. In 1998, Congress enacted the Internet Tax Freedom Act (the “ITFA”), Pub. L. No. 105-277, 112 Stat. 2681-716 (1998), which was subsequently amended by Pub. L. No. 107-75, 115 Stat. 703 (2001); Pub. L. No. 108-435, 118 Stat. 2615 (2004); and by Pub. L. No. 110-108, 121 Stat. 1024 (2007).

74. The ITFA prohibits state and local governments from imposing discriminatory taxes on electronic commerce. ITFA § 1101(a)(2). The ITFA’s prohibition of discriminatory taxes is intended to prevent transactions carried out on the Internet from being singled out for higher taxes than similar transactions that are carried out with traditional, non-electronic methods.

75. The transactions by which Expedia allows visitors to reserve and pay for hotel accommodations through its website constitute “electronic commerce” under ITFA § 1105(3).

76. Expedia is informed and believes that for many years travel agents, tour operators and other travel intermediaries have engaged in Osceola County in the provision of services similar to those provided by Expedia with respect to hotel accommodations but have not used electronic commerce in the provision of that service. Such persons have made agreements with Osceola County hotels to facilitate the making of hotel room reservations by guests, with such guests paying a negotiated rate agreed upon with the hotels. Such persons have collected amounts from the guests in excess of such negotiated rate. They have remitted the negotiated rate to the hotel, together with the amount of the TDT due on such rate. They have retained as compensation for their services the amount collected from the guest in excess of the negotiated rate.

77. For example, Expedia is informed and believes that many travel agents have collected payment in advance from hotel guests of amounts in excess of the rate agreed upon between the travel agent and the hotel and have remitted payment of the negotiated rate to the hotel together with the amount of the TDT due on such rate. Such travel agents have retained as compensation for their services the amounts collected in excess of the negotiated rate.

78. Furthermore, Expedia is informed and believes that persons known as "aggregators" have provided packages of travel services including hotel accommodations. Unlike Expedia, an aggregator actually takes the risk that a hotel room will not be sold. The aggregator receives payment from the guest and remits the negotiated rate to the hotel, together with the TDT due on such rate. Such aggregators have retained as compensation for their services the amounts collected in excess of the negotiated rate.

79. Expedia is informed and believes that Osceola County has never attempted to require the travel providers referred to in paragraphs 77 through 79 to remit the TDT on the amounts they receive and retain in excess of the negotiated rate remitted to the hotel.

80. Under the merchant model, Expedia receives and retains amounts from guests that exceed the Net Rate. Expedia remits the Net Rate to the hotels, together with the applicable taxes due on the Net Rate. The Assessment imposes the TDT on the amounts that Expedia retained in excess of the sum of the Net Rate plus taxes on the Net Rate. Expedia's business is dependent on electronic commerce. Because Osceola County has not attempted to impose the TDT on amounts that exceed the sum of the rate negotiated by other travel providers plus taxes on such rate retained by similar travel providers who do not use electronic commerce, the Assessment represents the imposition of a tax that is not generally imposed and legally collectible by Osceola County on transactions involving similar property, goods, services, or information accomplished through other means, in violation of ITFA § 1105(2)(A)(i).

81. The Assessment also has the effect of imposing the TDT on Expedia at a rate higher than the rate generally imposed and legally collectible by Osceola County on transactions involving similar services accomplished through other means, in violation of ITFA § 1105(2)(A)(ii).

82. The Assessment further represents the imposition of an obligation to collect or pay the TDT on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means in violation of ITFA § 1105(2)(A)(iii).

83. The Assessment is unlawful and contrary to the ITFA and to the Supremacy Clause of the United States Constitution and is therefore invalid.

COUNT VII
PENALTIES SHOULD BE ABATED

84. The allegations of paragraphs 1-82 are incorporated by reference.

85. Under Florida law, noncompliance penalties may be abated when noncompliance is due to reasonable cause and not to willful negligence, willful neglect, or fraud. FLA. STAT. § 213.21(3).

86. Expedia did not collect and remit the TDT based on the reasonable belief that the company is not subject to the TDT. To the extent Expedia's activities constitute noncompliance with the TDT, any such noncompliance was due to reasonable cause.

87. The imposition of penalties in the Assessment is improper, and the penalties should be abated.

PRAYER FOR RELIEF

WHEREFORE, EXPEDIA respectfully requests that this Court enter an Order:

1. Abating the Assessment in full;
2. Awarding Expedia its costs herein; and
3. Providing such other relief as the Court deems just and proper.

Dated: January 24, 2011

Respectfully submitted,

James P. Karen, Esq. (*motion to be admitted
pro hac vice to be filed*)

Texas Bar No. 11098700

Deborah S. Sloan, Esq. (*motion to be admitted
pro hac vice to be filed*)

Texas Bar No. 00786230

Jones Day

2727 N. Harwood Street

Dallas, Texas 75201-1515

Telephone: (214) 220-3939

Facsimile: (214) 969-5100



Mark Holcomb, Esq.

Florida Bar No. 0500811

Madsen Goldman & Holcomb, LLP

1705 Metropolitan Boulevard, Ste. 101

Tallahassee, Florida 32308

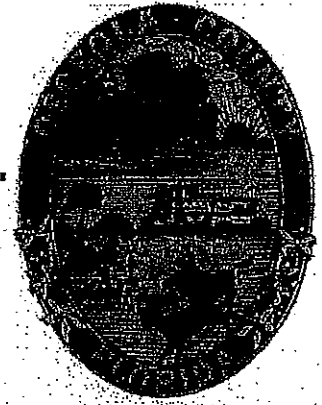
Telephone: (850) 523-0400

Facsimile: (850) 523-0401

EXHIBIT A

Osceola County

Office of Commission Auditor



Tourist Development Tax Services
P.O. Box 423066, Kissimmee, FL 34742-3066
Telephone 407-742-6400 Fax 407-742-6401

August 27, 2010

VIA CERTIFIED MAIL: 7003 1010 0003 1641 5086
RETURN RECEIPT REQUESTED

Expedia, Inc.
c/o NRAI Services, Inc.
2731 Executive Park Drive
Suite 4
Weston, FL 33331

Re: **Notice of Audit Assessment**
Taxpayer: Expedia, Inc.

Dear Sir/Madam:

Osceola County, a political subdivision of the State of Florida collects a Tourist Development Tax on all short-term accommodations in the County. Section 125.0104, Florida Statutes and Sections 13-61 through 13-68, Osceola County Code of Ordinances, authorize this tax and establishes the tax rate.

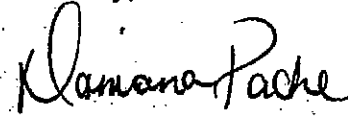
On October 21, 2009, Expedia, Inc. was served with a notice of intent to audit in compliance with Section 212.13, Florida Statutes. The scope of the audit was limited to the Osceola County Tourist Development Tax for the audit period of January 2000 through September 2009.

Based upon the authority of Osceola County under Section 125.0104, Florida Statutes and Sections 13-61 through 13-68, Osceola County Code of Ordinances, the Commission Auditor's Office issues an assessment on the results of the audit. This audit found that the taxpayers gross rental receipts were under reported by \$54,456,133.57 resulting in an assessment of \$5,784,443.74 inclusive of tax, interest, and penalties, as shown in the attached schedules.

The assessment is subject to appeal in compliance with Section 13-68(g), Osceola County Code of Ordinances. There are several deadlines to be observed and once the deadlines have expired, the County is unable to grant any relief. See attached Protest and Appeal Rights.

Penalty and interest has been calculated in this Notice of Audit Assessment based on the provisions in Section 212.12, Florida Statutes. However, Osceola County reserves the right to assess penalties on any unpaid Tourist Development Taxes to the fullest extent allowed by Florida Statutes.

Sincerely,



Damiana Pache
Auditor

Enclosures: Assessment Schedules
Protest and Appeal Rights

cc: Mr. Burke F. Norton
Executive Vice President,
General Counsel and Secretary
Expedia, Inc.
333 108th Avenue NE
Bellevue, WA 98004

Ms. Deborah S. Sloan
James P. Karen
Jones Day
2727 N. Harwood Street
Dallas, TX 75201

Mr. John Allan
Jones Day
1420 Peachtree Street, N.E.,
Suite 800
Atlanta, Georgia 30309-3053

Ms. Mace Gunter
Jones Day
1420 Peachtree Street, N.E.,
Suite 800
Atlanta, Georgia 30309-3053

Tourist Development Tax Audit Assessment

BPN _____
 Lien # _____
 CO# _____
 CA# _____

DBA Expedia, Inc.
 Tax Type TDT #
 Status Unregistered

Owner Expedia, Inc.
 Book # _____
 Page # _____

Date Assessment Issued: 8/27/2010

Actual Figure	Delinquent Period (mm/01/yy)	NTA Interest / Int Adjustment	Penalty Waiver (% Waived)	Gross Rental Receipts	E-File Penalty	Tax Due	Penalty	Interest	TOTAL
✓	1	Jun-2001		\$5,537.28	\$	276.86	\$ 138.43	\$ 140.98	\$ 556.27
✓	2	Jul-2001		\$218,478.48	\$	10,923.97	\$ 5,481.99	\$ 6,451.21	\$ 21,837.17
✓	3	Aug-2001		\$146,804.88	\$	7,330.23	\$ 3,665.12	\$ 3,683.18	\$ 14,578.53
✓	4	Sep-2001		\$80,281.34	\$	4,014.07	\$ 2,007.03	\$ 1,919.93	\$ 7,941.03
✓	5	Oct-2001		\$98,008.16	\$	4,900.31	\$ 2,450.16	\$ 2,297.10	\$ 9,647.56
✓	6	Nov-2001		\$163,894.77	\$	7,879.74	\$ 3,839.87	\$ 3,524.26	\$ 15,043.87
✓	7	Dec-2001		\$288,351.56	\$	11,817.58	\$ 5,908.79	\$ 6,008.51	\$ 23,734.87
✓	8	Jan-2002		\$401,225.94	\$	20,081.30	\$ 10,030.65	\$ 10,018.55	\$ 40,110.50
✓	9	Feb-2002		\$488,325.23	\$	24,416.26	\$ 12,208.13	\$ 11,987.38	\$ 48,611.77
✓	10	Mar-2002		\$508,187.48	\$	25,309.37	\$ 12,654.69	\$ 12,174.15	\$ 50,138.21
✓	11	Apr-2002		\$350,428.86	\$	17,521.34	\$ 8,780.67	\$ 8,280.15	\$ 34,682.17
✓	12	May-2002		\$301,288.75	\$	16,083.44	\$ 7,531.72	\$ 6,977.88	\$ 29,573.03
✓	13	Jun-2002		\$333,380.54	\$	16,668.03	\$ 8,334.01	\$ 8,587.91	\$ 33,589.95
✓	14	Jul-2002		\$388,132.81	\$	18,408.84	\$ 9,203.32	\$ 9,352.08	\$ 36,962.04
✓	15	Aug-2002		\$283,791.88	\$	14,189.59	\$ 7,094.80	\$ 7,101.01	\$ 28,385.41
✓	16	Sep-2002		\$267,518.93	\$	13,375.95	\$ 6,687.97	\$ 6,591.59	\$ 26,555.61
✓	17	Oct-2002		\$330,738.22	\$	16,538.91	\$ 8,268.46	\$ 8,026.97	\$ 32,832.33
✓	18	Nov-2002		\$346,862.70	\$	17,343.13	\$ 8,671.57	\$ 8,290.02	\$ 34,304.72
✓	19	Dec-2002		\$383,712.21	\$	19,185.61	\$ 9,592.81	\$ 9,024.07	\$ 37,802.48
✓	20	Jan-2003		\$444,409.22	\$	22,220.48	\$ 11,110.23	\$ 10,281.68	\$ 43,612.37
✓	21	Feb-2003		\$497,586.12	\$	24,879.31	\$ 12,438.65	\$ 11,340.19	\$ 48,659.15
✓	22	Mar-2003		\$593,334.78	\$	29,666.74	\$ 14,833.37	\$ 13,288.28	\$ 57,788.36
✓	23	Apr-2003		\$480,359.38	\$	24,017.97	\$ 12,008.98	\$ 10,580.41	\$ 46,807.36
✓	24	May-2003		\$492,514.03	\$	24,625.70	\$ 12,312.85	\$ 10,665.98	\$ 47,604.51
✓	25	Jun-2003		\$607,281.31	\$	30,363.07	\$ 15,181.53	\$ 14,747.32	\$ 60,291.92
✓	26	Jul-2003		\$556,778.91	\$	27,838.95	\$ 13,919.47	\$ 13,338.31	\$ 55,098.73
✓	27	Aug-2003		\$425,429.19	\$	21,321.46	\$ 10,660.73	\$ 10,081.41	\$ 42,043.60
✓	28	Sep-2003		\$351,659.78	\$	17,582.99	\$ 8,791.49	\$ 8,189.36	\$ 34,563.83
✓	29	Oct-2003		\$518,883.47	\$	25,844.17	\$ 12,922.09	\$ 11,881.43	\$ 50,627.69
✓	30	Nov-2003		\$529,618.41	\$	26,480.92	\$ 13,240.48	\$ 11,967.95	\$ 51,689.33
✓	31	Dec-2003		\$555,220.35	\$	27,761.02	\$ 13,880.51	\$ 13,905.54	\$ 55,547.07
✓	32	Jan-2004		\$1,000,967.52	\$	50,048.38	\$ 25,024.19	\$ 24,730.19	\$ 99,802.76
✓	33	Feb-2004		\$1,087,117.48	\$	54,355.87	\$ 27,177.94	\$ 28,490.32	\$ 108,024.14
✓	34	Mar-2004		\$1,009,597.29	\$	50,478.86	\$ 25,239.93	\$ 24,281.37	\$ 100,001.17
✓	35	Apr-2004		\$655,720.49	\$	32,788.02	\$ 16,393.01	\$ 15,555.45	\$ 84,734.49
✓	36	May-2004		\$681,206.28	\$	34,080.31	\$ 17,030.16	\$ 15,921.80	\$ 67,012.27

Prepared by: <u>Damiana Pache</u>	Filing Fee	Tax	Penalty	Interest	TOTAL FOR PAGE 1
Title: <u>Auditor</u>		\$ 789,353.54	\$ 394,676.77	\$ 376,543.87	\$ 1,560,574.18
Service Center: <u>Osceola Tourist Development Tax Services</u>	Daily Factor: <u>0.000191781</u>		Daily Interest: \$	<u>151.38</u>	(Tax * Daily Factor)

Tourist Development Tax Audit Assessment

BPN _____
 Lien # _____
 CO# _____
 CA# _____

DBA Expedia, Inc.
 Tax Type TDT #
 Status Unregistered

Owner Expedia, Inc.
 Book # _____
 Page # _____
 Date Assessment Issued: 8/27/2010

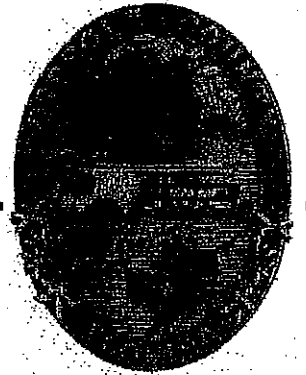
Actual Figure	Delinquent Period (mm/D1/yy)	NTA Interest / Int. Adjustment	Penalty Waiver (% Waived)	Gross Rental Receipts	E-File Penalty	Tax Due	Penalty	Interest	TOTAL
✓ 37	Jun-2004			\$773,381.68	\$	38,689.08	\$ 19,334.54	\$ 17,831.10	\$ 75,854.73
✓ 38	Jul-2004			\$839,205.24	\$	38,352.31	\$ 19,176.16	\$ 17,425.16	\$ 74,953.63
✓ 39	Aug-2004			\$492,969.98	\$	29,578.20	\$ 14,789.10	\$ 13,238.27	\$ 57,605.57
✓ 40	Sep-2004			\$489,413.83	\$	28,164.83	\$ 14,082.42	\$ 12,421.00	\$ 54,668.25
✓ 41	Oct-2004			\$537,393.65	\$	32,243.62	\$ 16,121.81	\$ 13,987.22	\$ 62,352.64
✓ 42	Nov-2004			\$523,083.73	\$	31,385.02	\$ 15,692.51	\$ 13,422.68	\$ 60,500.21
✓ 43	Dec-2004			\$582,379.98	\$	31,942.80	\$ 15,971.40	\$ 14,870.03	\$ 62,784.22
✓ 44	Jan-2005			\$984,748.73	\$	59,084.92	\$ 29,542.48	\$ 27,090.84	\$ 115,718.22
✓ 45	Feb-2005			\$877,721.61	\$	52,683.30	\$ 26,331.65	\$ 23,823.28	\$ 102,818.23
✓ 46	Mar-2005			\$872,488.61	\$	52,348.12	\$ 26,174.06	\$ 23,336.50	\$ 101,858.68
✓ 47	Apr-2005			\$535,694.66	\$	32,141.58	\$ 16,070.84	\$ 14,117.24	\$ 62,329.76
✓ 48	May-2005			\$628,116.31	\$	37,888.98	\$ 18,843.49	\$ 16,298.78	\$ 72,827.24
✓ 49	Jun-2005			\$618,857.75	\$	37,011.47	\$ 18,505.73	\$ 17,234.87	\$ 72,751.86
✓ 50	Jul-2005			\$593,882.92	\$	35,632.98	\$ 17,816.49	\$ 16,302.82	\$ 69,752.28
✓ 51	Aug-2005			\$503,353.98	\$	30,201.24	\$ 15,100.82	\$ 13,601.73	\$ 58,903.68
✓ 52	Sep-2005			\$385,404.87	\$	23,124.29	\$ 11,682.15	\$ 10,243.43	\$ 44,929.87
✓ 53	Oct-2005			\$598,459.77	\$	35,787.59	\$ 17,893.78	\$ 15,670.54	\$ 69,251.92
✓ 54	Nov-2005			\$638,308.27	\$	38,298.38	\$ 19,149.19	\$ 16,389.08	\$ 73,836.65
✓ 55	Dec-2005			\$670,924.84	\$	40,255.48	\$ 20,127.74	\$ 18,295.29	\$ 78,678.51
✓ 56	Jan-2006			\$1,000,827.71	\$	80,048.68	\$ 30,024.83	\$ 28,781.33	\$ 116,855.82
✓ 57	Feb-2006			\$1,020,099.84	\$	81,205.99	\$ 30,603.00	\$ 28,827.51	\$ 118,636.49
✓ 58	Mar-2006			\$1,030,612.97	\$	81,836.78	\$ 30,918.39	\$ 28,578.80	\$ 119,333.97
✓ 59	Apr-2006			\$642,835.09	\$	38,570.11	\$ 19,286.05	\$ 18,250.69	\$ 74,105.85
✓ 60	May-2006			\$626,371.16	\$	37,582.27	\$ 18,791.13	\$ 15,525.59	\$ 71,899.00
✓ 61	Jun-2006			\$618,867.03	\$	37,132.02	\$ 18,566.01	\$ 15,420.98	\$ 71,119.01
✓ 62	Jul-2006			\$572,188.54	\$	34,331.31	\$ 17,165.66	\$ 13,928.75	\$ 65,423.72
✓ 63	Aug-2006			\$398,861.00	\$	23,931.06	\$ 11,965.53	\$ 9,491.45	\$ 45,388.04
✓ 64	Sep-2006			\$345,971.83	\$	20,758.31	\$ 10,379.15	\$ 8,045.41	\$ 39,182.87
✓ 65	Oct-2006			\$435,295.64	\$	26,117.74	\$ 13,058.87	\$ 9,878.59	\$ 49,055.19
✓ 66	Nov-2006			\$474,237.37	\$	28,454.24	\$ 14,227.12	\$ 10,505.07	\$ 53,186.43
✓ 67	Dec-2006			\$582,467.70	\$	34,948.06	\$ 17,474.03	\$ 12,534.86	\$ 64,958.95
✓ 68	Jan-2007			\$787,720.19	\$	47,283.21	\$ 23,631.61	\$ 16,501.33	\$ 87,398.15
✓ 69	Feb-2007			\$857,765.77	\$	51,485.95	\$ 25,732.97	\$ 17,494.89	\$ 94,693.81
✓ 70	Mar-2007			\$973,729.55	\$	58,423.77	\$ 29,211.89	\$ 19,264.64	\$ 108,900.30
✓ 71	Apr-2007			\$691,520.53	\$	41,491.23	\$ 20,745.62	\$ 13,258.44	\$ 75,495.28
✓ 72	May-2007			\$668,271.94	\$	40,095.32	\$ 20,048.16	\$ 12,417.22	\$ 72,561.70

Prepared by: <u>Damiana Pache</u>	Filing Fee	Tax	Penalty	Interest	TOTAL FOR PAGE 2
Title: <u>Auditor</u>		\$ 1,408,230.31	\$ 704,115.15	\$ 586,201.19	\$ 2,698,546.65
Service Center: <u>Osceola Tourist Development Tax Services</u>	Daily Factor: 0.000191781	Daily Interest: \$	270.07	(Tax * Daily Factor)	

Osceola County

Office of Commission Auditor

Tourist Development Tax Services
P.O. Box 423066, Kissimmee, FL 34742-3066
Telephone 407-742-6400 Fax 407-742-6401



PROTEST AND APPEAL RIGHTS

According to Section 13-68(g), Osceola County Code of Ordinances provides each taxpayer a means of resolving disputes arising out of a tax assessment by providing the taxpayer an opportunity to appear or submit a written statement of why he or she believes the Assessment to be in error. A written protest must be filed within twenty (20) business days from the date of assessment with Tourist Development Tax Services. The protest shall include the following information:

1. Legal Name.
2. Doing business as (d/b/a) name, if applicable.
3. Address.
4. Tourist tax account number.
5. Federal taxpayer identification number:
 - a) Social security number.
 - b) Federal employee identification number.
 - c) Foreign taxpayer identification number.
6. A statement of the factual or legal grounds in support of the taxpayer's position that the county's funds are not in jeopardy and/or the assessment or audit was incorrect.
7. A statement of whether an oral presentation is requested.
8. A copy of the assessment or audit statement.
9. The time period covered under the assessment and the amount of tax protested.

If satisfactory resolution is not obtained from this protest, the taxpayer may protest or appeal this decision to the Tourist Development Tax Appeal Committee within twenty (20) business days of the issuance of a written decision by the Tourist Development Tax Services. This protest or appeal should include the above information as well as any additional factual or legal grounds.

At any time, if you choose to take formal action against this assessment, you must file a written complaint with the Clerk of the Circuit Court, pursuant to Chapter 72, Florida Statutes. Your complaint must be received by the Clerk of the Circuit Court within 60 days from the date of this assessment unless an extension has been granted.

EXHIBIT B

Osceola County

Office of Commission Auditor



Tourist Development Tax Services
P. O. Box 423066
Kissimmee, FL 34742
Telephone 407-742-6400 Fax 407-742-6401

October 27, 2010

VIA CERTIFIED MAIL: 7005 1820 0007 9832 7102
RETURN RECEIPT REQUESTED

Expedia, Inc.
c/o NRAI Services, Inc.
2731 Executive Park Drive, Suite 4
Weston, Florida 33331

Re: Tourist Development Tax Audit Level I Appeal
Expedia, Inc.

Dear Sir/Madam:

On August 27, 2010 the Commission Auditor's Office issued an audit assessment based on an audit of Expedia, Inc. that resulted in an assessment of \$5,784,443.74 inclusive of tax, penalties and interest. On September 23, 2010, our Office received a Level I Appeal of the audit assessment in compliance with Section 13-68(g), Osceola County Code of Ordinances along with a request for an oral presentation.

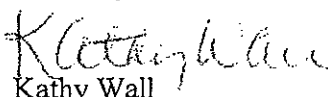
On October 21, 2010, at your request, a hearing was held with your representative to allow an appeal of the audit assessment issued. Your appeal was carefully reviewed and based on your written appeal and oral presentation, it was found that the evidence was not provided to support your position.

In accordance with Osceola Code of Ordinances, Section 13-68(h), your level I appeal has been denied. The audit assessment due is \$5,820,730.16 inclusive of tax, interest, and penalties. Please be aware that interest on the tax due continues to accrue until the assessment is paid in full.

You may protest or appeal this decision to the Tourist Development Tax Appeal Committee within twenty (20) business days of the issuance of this letter.

If you have any questions, contact me at the number listed above or email at kwall@osceola.org.

Sincerely,


Kathy Wall
Commission Auditor

Expedia, Inc.
October 27, 2010
Page 2

cc: Mr. Burke F. Norton
Executive Vice President,
General Counsel and Secretary
Expedia, Inc.
333 108th Avenue NE
Bellevue, WA 98004

Ms. Deborah S. Sloan
James P. Karen
Jones Day
2727 N. Harwood Street
Dallas, TX 75201

Mr. John Allan
Jones Day
1420 Peachtree Street, N.E.,
Suite 800
Atlanta, Georgia 30309-3053

Ms. Mace Gunter
Jones Day
1420 Peachtree Street, N.E.,
Suite 800
Atlanta, Georgia 30309-3053

EXHIBIT C

Appeal Bond

Bond No. 023014852

IN THE LEON COUNTY CIRCUIT COURT
STATE OF FLORIDA

EXPEDIA, INC.,

Plaintiff

vs.

CASE NO. _____

OSCEOLA COUNTY, FLORIDA and
FLORIDA DEPARTMENT OF REVENUE, a state
agency

Defendants

KNOW ALL MEN BY THESE PRESENTS, That we, EXPEDIA, INC. as Principal, and LIBERTY MUTUAL INSURANCE COMPANY a Massachusetts stock insurance company, as Surety are held and firmly bound unto the OSCEOLA COUNTY REVENUE COLLECTOR, as its respective interest may appear, in the amount of SIX MILLION THREE HUNDRED THIRTY-NINE THOUSAND THREE HUNDRED FIFTY-EIGHT AND 68/100 Dollars (\$6,339,358.68---) for the payment of which, well and truly be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that whereas the above named EXPEDIA, INC. herein Principal, has filed or will file suit under Chapter 72 and 86, FLORIDA STATUTES, inter alta, to review action of the OSCEOLA COUNTY REVENUE COLLECTOR dated _____ in the amount of SIX MILLION THREE HUNDRED THIRTY-NINE THOUSAND THREE HUNDRED FIFTY-EIGHT AND 68/100 Dollars.

NOW THEREFORE, if it, the said EXPEDIA, INC., Principal herein, shall satisfy any money judgment or other legal assessment in the event it does not prevail, then this obligation shall be null and void, otherwise to remain in full force and effect; provided however, the maximum liability of the surety shall not exceed the penal sum of SIX MILLION THREE HUNDRED THIRTY-NINE THOUSAND THREE HUNDRED FIFTY-EIGHT AND 68/100 Dollars (6,339,358.68).

SIGNED AND SEALED this 11th day of January, 2011.

EXPEDIA, INC.

Principal

By: _____

LIBERTY MUTUAL INSURANCE COMPANY

By: _____

Kathleen M. Mitchell

Attorney-in-Fact

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

LIBERTY MUTUAL INSURANCE COMPANY
BOSTON, MASSACHUSETTS
POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS: That Liberty Mutual Insurance Company (the "Company"), a Massachusetts stock insurance company, pursuant to and by authority of the By-law and Authorization hereinafter set forth, does hereby name, constitute and appoint DAVID J. BUELOW, LINDA PAWLAK, ROBERT J. WELLER, KIRSTEN RASMUSSEN, JOHN DRUMMEY, JR., GAIL E. TSUBOI, DEANNA K. NAKASHIMA, DEBBIE LINDSTROM, RACHEL A. MULLEN, KATHLEEN M. MITCHELL, ALL OF THE CITY OF SEATTLE, STATE OF WASHINGTON

, each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations in the penal sum not exceeding ONE HUNDRED FIFTY MILLION AND 00/100***** DOLLARS (\$ 150,000,000.00*****) each, and the execution of such undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company in their own proper persons.

That this power is made and executed pursuant to and by authority of the following By-law and Authorization:

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

By the following instrument the chairman or the president has authorized the officer or other official named therein to appoint attorneys-in-fact:

Pursuant to Article XIII, Section 5 of the By-Laws, Garnet W. Elliott, Assistant Secretary of Liberty Mutual Insurance Company, is hereby authorized to appoint such attorneys-in-fact as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

That the By-law and the Authorization set forth above are true copies thereof and are now in full force and effect.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of Liberty Mutual Insurance Company has been affixed thereto in Plymouth Meeting, Pennsylvania this 7th day of December, 2010

LIBERTY MUTUAL INSURANCE COMPANY



By Garnet W. Elliott, Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 7th day of December, 2010, before me, a Notary Public, personally came Garnet W. Elliott, to me known, and acknowledged that he is an Assistant Secretary of Liberty Mutual Insurance Company; that he knows the seal of said corporation; and that he executed the above Power of Attorney and affixed the corporate seal of Liberty Mutual Insurance Company thereto with the authority and at the direction of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires March 28, 2013
Member, Pennsylvania Association of Notaries

By Teresa Pastella, Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the officer or official who executed the said power of attorney is an Assistant Secretary specially authorized by the chairman or the president to appoint attorneys-in-fact as provided in Article XIII, Section 5 of the By-laws of Liberty Mutual Insurance Company.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of Liberty Mutual Insurance Company at a meeting duly called and held on the 12th day of March, 1980.

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said company, this 11 day of January, 2011



By David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.