

# **Local Hotel Occupancy Tax**

**Newly Elected City Officials' Orientations  
Austin, Texas  
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## **General:**

### **1. What is the municipal hotel occupancy tax?**

The municipal hotel occupancy tax is a tax which may be imposed on the price paid for a hotel room.<sup>1</sup> The revenue generated by hotels within the city generally may be expended on endeavors which promote tourism and the convention and hotel industry and is associated with certain enumerated expenditures discussed below.<sup>2</sup>

### **2. How is the hotel occupancy tax imposed?**

Unlike certain sales taxes which are imposed by a sales tax election, a city may impose the hotel occupancy tax by simply passing an ordinance at an open meeting. The ordinance would authorize the imposition of the hotel occupancy tax on a person who, under a lease, contract, or agreement pays for the use of a room that is in a hotel which costs \$2 or more each day.<sup>3</sup>

## **Tax Rate:**

### **3. What is the municipal hotel occupancy tax rate?**

Generally, the hotel occupancy tax rate cities may charge is seven percent (7%).<sup>4</sup> Nonetheless, certain cities are authorized to charge different rates ranging as high as nine percent (9%). For example, the cities of Fort Worth and San Antonio meet the definition of "eligible central municipality." Consequently, both of these cities may assess a municipal hotel occupancy tax at the rate of nine percent (9%).<sup>5</sup> The City of Corpus Christi may impose a municipal hotel occupancy tax at the rate of nine percent (9%).<sup>6</sup> The rate for the city of South Padre Island, "eligible barrier island coastal municipality," may not exceed 8.5 percent of the price paid for a room.<sup>7</sup> And, the rate for the City of College Station may not

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<sup>1</sup> TEX. TAX CODE ANN. § 351.003(a) (Vernon 2008).

<sup>2</sup> TEX. TAX CODE ANN. § 351.101(a)(1)-(8) (as amended by Tex. H.B. 1789, 81<sup>st</sup> Leg., R.S. (2009), Tex. H.B. 3098, 81<sup>st</sup> Leg., R.S. (2009), and Tex. S.B. 1247, 81<sup>st</sup> Leg., R.S. (2009)).

<sup>3</sup> TEX. TAX CODE ANN. § 351.002(a).

<sup>4</sup> TEX. TAX CODE ANN. § 351.003(a).

<sup>5</sup> TEX. TAX CODE ANN. §§ 351.001(7) (as amended by Tex. S.B. 1247, 81<sup>st</sup> Leg., R.S. (2009); and Tex. H.B. 2032, 81<sup>st</sup> Leg., R.S. (2009)) and 351.003(b) (as amended by Tex. S.B. 1247, 81<sup>st</sup> Leg., R.S. (2009)).

<sup>6</sup> TEX. TAX CODE ANN. § 351.003(c).

<sup>7</sup> TEX. TAX CODE ANN. § 351.003(d) (as added by Tex. H.B. 1324, 81<sup>st</sup> Leg., R.S. (2009)).

exceed 7.75 percent.<sup>8</sup>

#### **4. Can the State of Texas assess a state hotel occupancy tax?**

The state does assess a hotel occupancy tax. The state rate imposed is six percent (6%) on the price paid for a hotel room.<sup>9</sup>

#### **5. Can a county assess a county hotel occupancy tax?**

Certain counties are authorized to assess a county hotel occupancy tax. The county hotel occupancy tax is contained in Chapter 352 of the Tax Code. The counties authorized to assess the tax are found in section 352.002 of the Tax Code. Some of the Texas counties authorized to impose a county hotel occupancy tax include: Harris, El Paso, Webb, Sabine, Somervell, Camp, Rains, Young, Stephens, Palo Pinto, Hidalgo, Cameron, Wood, Val Verde, Brewster, Uvalde, Chambers, Jefferson, Galveston, Brazoria, Matagorda, Calhoun, Aransas, San Patricio, Nueces, Kleberg, Kenedy, Young, and Blanco.<sup>10</sup>

#### **6. If a county is authorized to assess a county hotel occupancy tax, do hotels have to pay both a county and municipal hotel occupancy tax?**

Not necessarily. In certain counties the county hotel occupancy tax does not apply to hotels located within a city which imposes a municipal hotel occupancy tax. Consequently, for certain counties the county hotel occupancy tax may not be imposed within the city limits.<sup>11</sup>

#### **7. How much can a county charge as the county hotel occupancy tax rate?**

Eligible Texas counties may assess a county hotel occupancy tax rate as allowed by section 352.003 of the Texas Tax Code. The Texas Tax Code authorizes a county hotel occupancy tax rate ranging from one percent (1%) to seven percent (7%).<sup>12</sup>

#### **8. Can a city or county impose a sports venue tax?**

Chapters 334 and 335 of the Local Government Code authorize the imposition of venue taxes for authorized venue projects. The permissible venue taxes include; a sales and use tax,

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<sup>8</sup> TEX. TAX CODE ANN. § 351.0035 (as added by Tex. H.B. 4661, 81<sup>st</sup> Leg., R.S. (2009)).

<sup>9</sup> TEX. TAX CODE ANN. § 156.052.

<sup>10</sup> TEX. TAX CODE ANN. § 352.002(a)(1)-(25).

<sup>11</sup> TEX. TAX CODE ANN. § 352.002(d).

<sup>12</sup> TEX. TAX CODE ANN. § 352.003(a) – (h).

short-term motor vehicle rental tax, admissions tax, parking tax, facility use tax, and hotel occupancy tax. The sports venue taxes would have to be approved by the voters at an election called and held for that purpose. A city or county, with voter approval, could authorize a hotel occupancy tax rate not to exceed two percent (2%).<sup>13</sup> Dallas County was recently authorized to impose a hotel occupancy tax rate authorized by the sports venue provisions at a rate not to exceed three percent (3%) with the requisite voter approval.<sup>14</sup> The ballot proposition must specify the maximum rate of the hotel occupancy tax rate to be adopted.<sup>15</sup>

## **9. What are permissible expenditures of the hotel occupancy tax generated by the sports venue provisions?**

Revenue generated by the sports venue provisions including the hotel occupancy tax may be expended for authorized venue projects. Permissible venue projects include an arena, coliseum, stadium, or other similar facility; a convention center facility or related improvements; and a tourist development area along an island waterway.<sup>16</sup> Hotel occupancy tax revenue generated for sports venue projects may not be expended for an area or facility that is part of a municipal parks and recreation system.<sup>17</sup> Neither, may the revenue be expended for permissible Type A or Type B project [formerly referred to as section 4A or 4B projects] other than an arena, coliseum, stadium, or other sports facility.<sup>18</sup> Additionally, the revenue may not be expended for a watershed protection and preservation program.<sup>19</sup>

### **Permissible Expenditures**

## **10. What are permissible expenditures of the municipal hotel occupancy tax?**

The Texas Tax Code provides a two-part test for all expenditures of the tax. The revenue must promote tourism and the convention and hotel industry, and be tied to one of the following possible expenditures.<sup>20</sup> The municipal hotel occupancy tax may be expended on

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<sup>13</sup> TEX. LOC. GOV'T CODE ANN. § 334.254(a).

<sup>14</sup> TEX. LOC. GOV'T CODE ANN. § 334.254(c).

<sup>15</sup> TEX. LOC. GOV'T CODE ANN. § 334.254(b).

<sup>16</sup> TEX. LOC. GOV'T CODE ANN. § 334.001(4)(A), (B), and (C).

<sup>17</sup> TEX. LOC. GOV'T CODE ANN. § 334.2515(1).

<sup>18</sup> TEX. LOC. GOV'T CODE ANN. § 334.2515(2).

<sup>19</sup> TEX. LOC. GOV'T CODE ANN. § 334.2517.

<sup>20</sup> TEX. TAX CODE ANN. § 351.101(a)(1)-(8) (as amended or added by Tex. H.B. 1789, 81<sup>st</sup> Leg., R.S.).

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items which promote tourism and the convention and hotel industry and are tied to the following: convention center facilities and visitor information centers; furnishing of facilities, personnel and materials for the registration of convention delegates; advertising and promotional activities which attract tourists and convention delegates; promotion of the arts; historical restoration and preservation projects; and expenses directly related to a sporting event in which a majority of the participants are tourists, for cities located in a county with a population of 1,000,000 or less; and expenditures by certain cities to upgrade certain existing sports facilities.

The cities which are authorized to use hotel occupancy tax revenue for this sports facilities expenditure are: (1) cities which have a population of 80,000 or more and are located within a county which has a county population of 350,000 or less; (2) cities which have a population between 65,000 to 70,000 and are located within a county which has a county population of 155,000 or less; (3) cities which have a population between 34,000 and 36,000, and are located in a county with a population of 90,000 or less; (4) cities that have a population of at least 13,000 but less than 39,000 and are located in a county that has a population of at least 200,000; (5) cities that have a population of at least 65,000 but less than 80,000, and no part of which is located in a county with a population greater than 150,000; or (6) cities located in a county that is adjacent to the Texas-Mexico border, has a county population of at least 500,000, and does not have a city with a population greater than 500,000.<sup>21</sup>

In 2007, the Texas Legislature also authorized the use of hotel occupancy tax revenue for a transportation system to transport tourists from hotels in and near the municipality to: (1) the commercial center of the municipality; (2) a convention center in the municipality; (3) other hotels in or near the municipality; and (4) tourist attractions in or near the municipality. The transportation system that transports tourists may be: (1) owned and operated by the municipality; or (2) privately owned and operated but partially financed by the municipality.<sup>22</sup>

In 2009, the Texas Legislature authorized the use of hotel occupancy tax revenue for the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of a coliseum or multiuse facility in a city with a population of at least 65,000, but less than 80,000, and no part of which is located in a county with a population greater than 150,000.<sup>23</sup>

In addition, the 2009 Texas Legislature authorized the use of hotel occupancy tax revenue for

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(2009); Tex. H.B. 3098, 81<sup>st</sup> Leg., R.S. (2009); and Tex. S.B. 1247, 81<sup>st</sup> Leg., R.S. (2009)).

<sup>21</sup> TEX. TAX CODE ANN. § 351.101(a)(7) (as amended by Tex. H.B. 1789, 81<sup>st</sup> Leg., R.S. (2009); and Tex. H.B. 3098, 81<sup>st</sup> Leg., R.S. (2009)).

<sup>22</sup> TEX. TAX CODE ANN. § 351.110.

<sup>23</sup> TEX. TAX CODE ANN. § 351.101(a)(8) (as added by Tex. H.B. 1789, 81<sup>st</sup> Leg., R.S. (2009)).

signage directing the public to sights and attractions that are visited frequently by hotel guests in the municipality.<sup>24</sup>

Also, the Texas Legislature, in 2009, authorized the use of hotel occupancy tax revenue for the construction of a recreational venue in the immediate vicinity of area hotels. Cities authorized to utilize this provisions must be a general-law municipality with a population of not more than 900, and does not impose ad valorem taxes.<sup>25</sup> Not more than \$100,000 of municipal hotel occupancy tax revenue may be used for the construction of the recreational venue; a majority of the hotels in the city must request the municipality to construct the recreational venue; the recreational venue must be used primarily by hotel guests; and the city must pay for maintenance of the recreational venue from the city's general revenue fund.

### **11. Can the municipal hotel occupancy tax be expended for general revenue purposes?**

The municipal hotel occupancy tax can only be used to promote tourism and the convention and hotel industry and are tied to one of the above permissible expenditures. The revenue may not be used for general revenue purposes or general governmental operations of a municipality.<sup>26</sup>

### **12. Can the municipal hotel occupancy tax finance the construction or improvement of a visitor information center?**

The municipal hotel occupancy tax can fund the construction of or improvements to a visitor information center.<sup>27</sup>

### **13. Can the municipal hotel occupancy tax finance general landscaping and sidewalk improvements?**

The hotel occupancy tax may only be used to promote tourism and the convention and hotel industry. Expenditures for general landscaping and sidewalk improvements generally do not promote tourism and the convention and hotel industry.<sup>28</sup>

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<sup>24</sup> TEX. TAX CODE ANN. § 351.101(a)(8) (as added by Tex. S.B. 1247, 81<sup>st</sup> Leg., R.S. (2009)).

<sup>25</sup> TEX. TAX CODE ANN. § 351.101(a)(8) (as added by Tex. H.B. 3098, 81<sup>st</sup> Leg., R.S. (2009)).

<sup>26</sup> TEX. TAX CODE ANN. § 351.101(b).

<sup>27</sup> TEX. TAX CODE ANN. § 351.101(a)(1), and Tex. Att'y Gen. LO 92-51 (1992).

<sup>28</sup> See, Tex. Att'y Gen. LO 92-16 (1992).

**14. Can the municipal hotel occupancy tax finance advertisement and promotional programs that promote tourism?**

The municipal hotel occupancy tax may be expended for advertisement and promotional programs that attract tourists and convention delegates or registrants to the city and its vicinity.<sup>29</sup>

**15. Can the municipal hotel occupancy tax finance and promote the arts?**

The municipal hotel occupancy tax may be expended for the promotion of the arts, provided the revenue is used in the promotion of tourism and the convention and hotel industry.<sup>30</sup> The term arts includes, “instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms.”<sup>31</sup>

**16. Can the municipal hotel occupancy tax finance historical restoration and preservation projects?**

The municipal hotel occupancy tax may be expended for historical restoration and preservation projects.<sup>32</sup> Further, the revenue may be expended for activities or advertising, solicitations and promotional programs that encourage tourists and convention delegates to visit certain preserved historic sites or museums.

**17. Can the municipal hotel occupancy tax finance certain sporting events?**

Cities located in counties with a county population of less than 1,000,000 may make expenditures towards certain sporting events. The expenditures, including promotion expenses, may be expended for sporting events in which the “majority of participants are tourists who substantially increase economic activity at hotels and motels within the municipality or its vicinity.”<sup>33</sup> According to 2000 census figures the following four (4) counties have a population exceeding 1,000,000: Harris, Dallas, Tarrant, and Bexar County. Accordingly, cities located within these four (4) counties are excluded from funding certain sporting events.

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<sup>29</sup> TEX. TAX CODE ANN. § 351.101(a)(3).

<sup>30</sup> TEX. TAX CODE ANN. § 351.101(a).

<sup>31</sup> TEX. TAX CODE ANN. § 351.101(a)(4).

<sup>32</sup> TEX. TAX CODE ANN. § 351.101(a)(5).

<sup>33</sup> TEX. TAX CODE ANN. § 351.101(a)(6).

**Miscellaneous:**

**18. Can cities charge the hotel occupancy tax within the city's extraterritorial jurisdiction (or ETJ)?**

Cities with a population of less than 35,000 may, by ordinance, impose the city hotel occupancy tax within the city's ETJ. However, some cities may not impose the tax if the combined rate for state, county, and city hotel occupancy taxes in the ETJ exceeds fifteen percent (15%) for the price paid for a hotel room.<sup>34</sup> Further, the city may continue to impose the tax for hotels located within the ETJ should the county subsequently adopt a county hotel occupancy tax.<sup>35</sup>

**19. What remedies may a city seek to collect delinquent hotel occupancy taxes?**

The city attorney may bring suit against a person who is required to collect the tax and has failed to pay the tax due. Additionally, suit may be brought for failure to file the required tax report.<sup>36</sup> The city may enjoin a person from operating a hotel in the city until the tax is paid or the report is filed, as provided by court order.<sup>37</sup> The hotel can be liable for reasonable attorney's fees, and the cost of an audit. Further, a fifteen percent (15%) penalty may be assessed on the total amount of tax owed. The city, by ordinance, may also authorize misdemeanor punishment for a hotel occupancy tax violation.<sup>38</sup>

**20. Can the city allow the hotels to retain a portion of the hotel occupancy tax as reimbursement?**

Cities, by ordinance, may allow hotel operators to retain up to one percent (1%) of the amount of hotel occupancy taxes collected as reimbursement to hotels for the costs of collecting the tax.<sup>39</sup>

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<sup>34</sup> TEX. TAX CODE ANN. § 351.0025(b).

<sup>35</sup> Op. Tex. Att'y Gen. No. GA-0408 (2006) (Section 351.0025(b) of the Tax Code prohibits a municipality with a population of fewer than 35,000 from adopting and imposing a hotel occupancy tax in its extraterritorial jurisdiction when the combined rate of state, county, and municipal taxes would exceed 15 percent. The section does not, however, prohibit a municipality from imposing its tax if the combined rate did not exceed 15 percent when the municipality adopted its tax but exceeds that rate after the county adopts a county tax).

<sup>36</sup> TEX. TAX CODE ANN. § 351.004(a).

<sup>37</sup> *Id.*

<sup>38</sup> TEX. TAX CODE ANN. § 351.004(c).

<sup>39</sup> TEX. TAX CODE ANN. § 351.005.

**21. Can hotel occupancy tax revenue be used for day-to-day administrative costs?**

The Texas Tax Code authorizes the expenditure of hotel occupancy tax proceeds for the following administrative costs: day-to-day operations, supplies, salaries, office rental, travel expenses, and “other administrative costs only if” costs are incurred directly in the promotion and servicing of expenditures authorized under section 351.101(a) of the Texas Tax Code.<sup>40</sup>

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<sup>40</sup> TEX. TAX CODE ANN. § 351.101(f) & (g).