

LOCAL HOTEL MOTEL OCCUPANCY TAX

PURPOSE

If a hotel guest is motivated to come to an area or to extend his/her stay to enjoy activities of funded entities, the local and state economies benefit. In turn the room tax on the additional hotel nights operates as a continuing endowment to fund future activities and tourism-related facilities in the area.

AUTHORIZED ENTITIES AND PROCEDURES

Both general law and home rule cities are authorized to adopt a local hotel occupancy tax within the city limits. Most cities are eligible to adopt a hotel occupancy tax of up to 7 percent of the price paid for the use of a hotel room. (The City of Burnet collects 7%).

WHO CHARGES THE TAX

The following businesses are considered “hotels” and are required to charge the tax: a hotel, motel, tourist home, tourist court, lodging house, inn, rooming house, or bed and breakfast. Unlike the state hotel occupancy tax, the local hotel occupancy tax may only be assessed against the use of a room that is ordinarily used for sleeping.

HOW THE CITY RECEIVES THE TAX

The hotel customer pays the hotel occupancy tax. The tax is remitted by the hotel to the city on a regular basis, to be established by the City. (Quarterly for the City of Burnet). The State requires hotels to turn over collected hotel occupancy taxes on a monthly basis.

REIMBURSEMENT OF HOTEL FOR COLLECTION EXPENSES

Hotel operators may be allowed by ordinance to retain up to 1 percent of the amount of hotel occupancy taxes collected as reimbursement for the costs of collecting the tax. (This is option is not included in our ordinance).

PENALTIES FOR FAILURE TO REPORT OR COLLECT THE TAX

A city may include a provision in its hotel occupancy tax that imposes a 15 percent penalty and a provision allowing the collection of attorney’s fees against any hotel operator who is delinquent or fraudulent in remittances.

The hotel occupancy tax ordinance may also include a provision that makes it a criminal misdemeanor offense to fail to collect the tax, fail to file a return, file a false return, or fail to timely make the remittances. Municipal Courts may assess a fine not to exceed \$500/day for any such offense.

A city may request hotel occupancy tax audit information from the State Comptroller. However, the city must keep such information confidential and use the information only for enforcement or administration of the city's hotel tax.

ENFORCEMENT AUTHORITY OF A CITY

Cities are also given the authority to take the following actions against a hotel operator who fails to report or collect the local hotel occupancy tax:

1. Require the forfeiture of any revenue the city allowed the hotel operator to retain for its cost of collecting the tax
2. Bring a civil suit against the hotel operator for noncompliance
3. Ask the district court to enjoin operation of the hotel until the report is filed and/or the tax is paid
4. Any other remedies provided under Texas law.

USE OF LOCAL HOTEL OCCUPANCY TAX REVENUES

There is a two-part test that every expenditure of local hotel occupancy tax must meet to be valid.

Criteria #1: Every expenditure must DIRECTLY enhance and promote tourism and the convention and hotel industry.

A funded event or facility must be likely to do two things:

1. Directly promote tourism (Tourism is defined under Texas State law as bringing visitors from outside of the city into the city or its vicinity)
2. Directly promote the convention and hotel industry (This requirement has consistently been interpreted by the Attorney General's Municipal Affairs Section and by the Texas Municipal League. They have historically indicated that to directly promote hotel or convention activity, the event must be likely to cause increased hotel or convention activity.) If the funded activity or event or facility is not reasonably likely to have such an effect, local hotel occupancy tax revenues cannot be funded.

It is important to note that state law also provides that the hotel occupancy tax may not, in any circumstances, be used for purposes that the city usually expends its general revenues. It also may not be used to pay for governmental expenses that are not directly related to increasing tourism and hotel and convention activity.

Criteria #2: Every expenditure of the hotel occupancy tax must clearly fit into one of six statutorily provided categories for expenditure of local hotel occupancy tax revenues.

The six categories for expenditure of the hotel occupancy tax are as follows:

1. Funding the establishment, improvement, or maintenance of a convention center or visitor center.
2. Paying the administrative costs for facilitating convention registration
3. Paying for advertising, solicitations, and promotions that attract tourists and convention delegates to the city or its vicinity.*See Minimum.
4. Expenditures that Promote the Arts (However, it is not enough that a facility or event promotes the arts; state law requires that the expenditure also must be likely to directly promote tourism and the hotel and convention industry).*See Limits.
5. Funding Historical Restoration or Preservation Programs. *See Limits
6. Fund Costs in Smaller Counties to Hold Sporting Events that Substantially Increase Hotel Activity.

SUMMARY OF THE SIX USES FOR THE LOCAL HOTEL OCCUPANCY TAX

Local hotel occupancy tax revenues only may be spent to establish or enhance a convention center or visitor information center, cover the administrative expenses for registering convention delegates, pay for tourism-related advertising and promotions, fund arts programs that will directly promote tourism and hotel and convention activity, fund historic restoration or preservation projects that will enhance tourism and hotel and convention activity, or in smaller counties to fund certain costs for holding sporting events that substantially increase local hotel activity. **If a city cannot fit expenditure within one of these six categories, hotel occupancy tax revenues cannot be used for that purpose.**

DUTY OF FUNDED ENTITIES TO PROVIDE A LIST OF ACTIVITIES IT WILL OFFER THAT PROMOTE TOURISM AND HOTEL AND CONVENTION ACTIVITY

Effective September 1, 2001, all entities (including the city itself) that are directly or indirectly funded by the local hotel occupancy tax must provide a list of the scheduled activities, programs, or events that they will offer that will directly enhance and promote tourism and the convention and hotel industry. This list is to be provided annually to the city secretary prior to the expenditure of the hotel occupancy tax funding by the funded entity.

USE OF HOTEL OCCUPANCY TAX TO COVER ADMINISTRATIVE EXPENSES

State law allows proceeds of the tax to be used to cover the portion of administrative costs that are directly attributable to work on activities that may be funded by the tax.

ADDITIONAL LIMITS ON EXPENDITURES BASED ON CITY POPULATION

Texas statutes provide certain additional rules regarding the percentage of hotel occupancy tax revenues which may be spent on each of the six categories of expenditures discussed above. The rules differ based on the population of the city.

Cities with populations of less than 125,000

Minimum Expenditure that Must Be Spent on Advertising and Promotion

For cities with a population of less than 125,000, the amount that must be spent on advertising and promotion depends on the hotel occupancy tax rate adopted by the city. The city has a 7 percent hotel occupancy tax rate, therefore at least 1/7 of the hotel occupancy tax proceeds must be spent on advertising and promoting the city and its vicinity to attract tourists and hotel and convention activity.

15 Percent Maximum Expenditure for the Arts and 50 Percent Maximum Expenditure for Historical Restoration and Preservation

Cities with a population of less than 125,000 may not expend more than 15 percent of the hotel occupancy tax, or no more than the amount of tax received by the city and the rate of 1 percent of the cost of a room, whichever is greater, on promotion of the arts.

If a city does not allocate any hotel tax money for a convention center, the Tax Code prohibits the city from allocating more than 50 percent of its hotel occupancy tax for historical restoration or preservation purposes.

DELEGATING THE MANAGEMENT OF FUNDED ACTIVITIES

The governing body of a city may, by written contract, delegate the oversight of programs funded by the hotel occupancy tax. This delegation may be made to a person, another governmental entity, or to a private organization. The municipality shall approve the entity's annual budget prior to the delegation and shall require periodic (at least quarterly) expenditure reports.