



COUNTY ADVISORY BULLETIN

CAB

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State Budget Bill Authorizes Counties to Expand Lodging Taxes to Establishments with Less Than Five Guest Rooms and to Impose Penalties and Interest Charges for Late Payment of Lodging Taxes

Effective Date: September 5th, 2001.

Revised Code Sections Affected: Section 5739.024 - Divisions (A) (1), (C), (D), (E), (F) (amended), and (G) (enacted).

Lead Sponsor: Carey (R-Wellston).

Summary

House Bill 94 (Carey R-Wellston) of the 124th General Assembly, the state budget bill for state fiscal years 2002 and 2003, makes changes to the Ohio Revised Code (ORC) affecting county lodging taxes. These changes allow a board of county commissioners to:

1. Expand the lodging tax base to cover transactions that occur in establishments with fewer than five guest rooms; and
2. Impose penalties and interest charges for the late payment of lodging taxes and to prescribe the time for payment of the taxes.

On page 3 of this CAB is a model resolution that can be used, any time on or after September 5th, 2001, by any board of county commissioners that wishes to take the legal steps needed to expand its lodging tax base. If you have questions about the new lodging tax language in House Bill 94, please contact Doug Putnam of CCAO at 614-221-5627 or dputnam@ccao.org

1. Permissive Authority to Expand the Lodging Tax Base

Counties that levy a lodging tax may adopt a resolution, any time on or after September 5th, 2001, that imposes the tax on establishments in which fewer than five rooms are used for the accommodation of guests. These establishments were exempt from charging and

remitting the lodging tax under former law because they were exempt from the definition of “hotel” used to determine which establishments were authorized to collect the tax. The new law allows counties, for purposes of collecting the lodging tax, to expand the definition of the term “hotel” to include establishments with fewer than five guest rooms.

This permissive authority granted to counties also is granted to townships and municipalities that levy lodging taxes. In calendar year 1999, 56 counties, along with 94 townships and 130 municipalities, were reported by the Ohio Department of Taxation as levying lodging taxes.

The resolution expanding the base of the lodging tax may apply to any transactions that will arise from a lodging tax that was in effect **before** the date the resolution was adopted. To be effective, the resolution adopted must state this specifically. However, the tax can apply only to specific transactions that occur **after** the effective date of the tax as stated in the resolution.

The resolution expanding the base of the lodging tax to establishments with fewer than five rooms may apply to any lodging tax enacted by a county under any division of ORC section 5739.024. This includes the 3% lodging taxes enacted by 56 counties as well as special additional lodging taxes enacted in Lucas, Cuyahoga, and Summit counties. The resolution cannot apply to taxes levied by convention facility authorities (CFAs) in Franklin, Guernsey and Muskingum counties. CFAs are considered separate taxing authorities from boards of county commissioners and are not effected by the changes made in House Bill 94.

Please note that House Bill 94 **does not** authorize a board of county commissioners to expand the state sales tax imposed at 5% under ORC 5739.02 (C) to transactions in establishments with fewer than five guest rooms. This 5% state sales tax is separate and distinct from any lodging tax that may be in effect under the authority of ORC 5739.024. Nor does the language of ORC section 5739.024 (G) in House Bill 94 authorize counties to collect any **additional county sales tax** that is in effect above the mandated 5% state rate.

Please also note that House Bill 94 does not change the statutory formulas required to be used when distributing the proceeds of any lodging taxes.

2. Authority to Impose Penalties and Interest Payments for Late Payment of Lodging Taxes

House Bill 94 also authorizes a board of county commissioners to impose, in its regulations related to the lodging tax, either penalties or interest payments, or both, for the late payment of lodging taxes. This authority, which codifies a practice now believed to be in use in many counties, is an extension of the existing authority that a board possesses to establish “all regulations necessary to provide for the administration and allocation of the tax.”

Any penalty imposed by a board for late payments cannot exceed 10% of the tax owed.

Any interest charges imposed cannot exceed the "federal short-term rate" as prescribed in ORC 5703.47 for the payment of delinquent property taxes and other delinquent taxes. That rate is 9% in calendar year 2001. On October 15th of each year, the tax commissioner determines the federal short-term rate for the following calendar year.

House Bill 94 also specifically authorizes these regulations to prescribe the time for payment of the tax, which may be either monthly or quarterly.

Questions on the new lodging tax provisions may be directed to Doug Putnam of CCAO at 614-221-5627 or dputnam@ccao.org

**RESOLUTION TO APPLY THE _____ COUNTY
LODGING TAX TO TRANSACTIONS IN ESTABLISHMENTS THAT
CONTAIN FEWER THAN FIVE ROOMS USED FOR
THE ACCOMMODATION OF GUESTS**

**M. _____ moved the adoption of the following
resolution:**

WHEREAS, Ohio Revised Code (ORC) section 5739.024 (G), as enacted by House Bill 94 of the 124th General Assembly, authorizes a board of county commissioners to adopt a resolution specifying that, for purposes of any lodging tax that may be imposed by the board under ORC section 5739.024 or division (C) of ORC section 5739.02, "hotel," as otherwise defined in ORC section 5739.01, includes establishments in which fewer than five rooms are used for the accommodation of guests; and

WHEREAS, the _____ County Board of Commissioners currently imposes a lodging tax of _____% on transactions that occur at hotels within the jurisdiction of the county; and

WHEREAS, this lodging tax was originally imposed by resolution of the board of commissioners on _____; and

WHEREAS, it is the intent of the _____ County Board of Commissioners at this time to impose this lodging tax on transactions in establishments in which fewer than five rooms are used for the accommodation of guests; and

WHEREAS, the lodging tax to which these transactions would be subject was imposed by the board before the date on which this resolution is adopted; **THEREFORE BE IT**

RESOLVED, that the _____ County Board of Commissioners hereby authorizes, for purposes of the _____ County lodging tax, that the definition of "hotel" will include establishments in which fewer than five rooms are used for the accommodation of guests; and be it further

RESOLVED, that the lodging tax shall be collected and remitted by those establishments in accordance with the applicable provisions of the ORC and with the rules and regulations adopted by this board; and be it further

RESOLVED, that this resolution shall become effective on the 30th day after the day of its adoption and that on that date, the _____ County lodging tax shall be extended to transactions in establishments in which fewer than five rooms are used for the accommodation of guests; and be it further

RESOLVED, that all formal actions of the board relating to the adoption of this resolution were taken in an open meeting of the board in compliance with all legal requirements of ORC section 121.22, the Sunshine Law and be it finally

RESOLVED, that certified copies of this resolution shall be forwarded by the clerk of this board to the County Auditor, the _____ County Visitors and Convention Bureau and the County Commissioners Association of Ohio (CCAO).

Upon roll call on the adoption of the resolution, the vote was as follows:

Adopted