



COUNTY ADVISORY BULLETIN

CAB

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37 West Broad Street, Suite 650 • Columbus, Ohio 43215-4195

Phone: 614-221-5627 • Fax: 614-221-6986 • www.ccao.org

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NEW LAW GIVES SELECTED COUNTIES A SECOND CHANCE TO ENACT PERMISSIVE LODGING TAX

INTRODUCTION

In 1979 the General Assembly enacted H.B. 355. This act gave counties until July 1, 1980 to exclusively enact a permissive lodging tax at a rate of not more than three percent. Most of the funds derived from this tax must be used to fund convention and visitors bureaus operating within the county. Under this law, after July 1, 1980, if the county had not enacted this tax, any municipality or township in the county could enact an additional three percent lodging tax. This tax was in addition to the three percent that both municipalities and townships were authorized to enact in 1967. This original county lodging tax law also provided that if any municipality or township in the county enacted all or any part of this second three percent lodging tax, that the county was then forever precluded from enacting a lodging tax.

This restriction on county enactment will no longer apply effective May 10, 1994. The change is the result of the enactment of H.B. 163 that was sponsored by Representative Joan Lawrence (R-Galena). The purpose of this CAB is to inform counties of this recent change in the law, and to provide other information to all counties on the lodging tax law in general. Attached to this CAB is a table that describes the various lodging tax legal authorities for all local governments.

Additional information on the county lodging tax may be found in Chapter 16 of the COUNTY COMMISSIONERS' HANDBOOK, which is available from CCAO. For those who have copies of the HANDBOOK, it is recommended that this CAB be inserted after the CCAO INFORMATION tab at the end of the new HANDBOOK which will be sent to all counties in the near future.

STATUS OF LODGING TAX IN 1992

During 1992, forty three counties had enacted the permissive lodging tax. Total collections by counties during this year were \$26.7 million. Our analysis shows that at least 10 counties have been precluded from enacting the lodging tax because of the former restriction in law, that will no longer apply. These counties include Butler, Clark, Defiance, Delaware, Jefferson, Pickaway, Portage, Van Wert, Washington, and Wood counties. We feel that these counties are affected because, according to 1992 data from the Ohio Department of Taxation, at least one municipality or township in these counties has enacted more than three percent, meaning that the county is "cut off" from enacting the tax.

In addition, more counties may be affected by the change because a municipality primarily located in one county has annexed land in an adjacent county.

Other counties may be affected even though no municipality or township in their county has enacted a lodging tax greater than three percent. CCAO has learned from past experience that some municipalities that have a 3 percent lodging tax rate have enacted the "1980 tax", not the "1967 tax". Since the former pre-emption provision of law applies only to the "1980 tax", some counties other than those listed may have been precluded from enacting the lodging tax even though no municipality or township in the county is collecting more than three percent. To be sure it is vital to know the exact statutory provision that a municipality or township used to enact the tax.

If a municipality or township has enacted the tax under the "1980 law", they might want to repeal it, and at the same time, re-enact the same rate pursuant to the "1967 law". The incentive to such a municipality or township is that they must pay 50 percent of the revenue from the "1980 tax" to convention and visitors bureaus operating in the county, while they may keep all the proceeds from the "1967 tax" for the general fund of the municipality or township.

Ohio laws on local permissive lodging taxes are very complex and confusing. Rather than to try to explain the details in a narrative, the table attached to this CAB summarizes the major local government permissive lodging tax authorities as they now are codified in the Ohio Revised Code.

SUMMARY OF THE NEW LAW

Those counties that have been precluded from enacting the lodging tax because of prior municipal or township enactment may now enact the tax because of the passage of H.B. 163. The tax, however, may not be enacted so that it is on top of the previously enacted municipal or township tax. In other words, the combined rate for all lodging taxes may not exceed 6 percent.

For example, in County A, if one township and one city has a lodging tax rate of 6 percent, the county may now also enact a lodging tax. The 3 percent county rate, however, would not apply within the township and city. It would apply within all other jurisdictions. In County B, if one village has a lodging tax at the rate of 4 percent, the county could also enact a lodging tax. The 3 percent rate would apply to all areas of the county outside of the village. Within the village, however, the rate would remain at 4 percent because if the village has levied all or any portion of the tax the county tax can not apply. In other words, even though the county enacted 3 percent, the 2 percent on top of the village's 4 percent can not be collected.

ENACTMENT PROCEDURE

Unlike other county permissive taxes, the enactment of the permissive lodging tax does not require public notice or public hearings. While such hearings may be desired, there is no requirement in law to hold hearings. Likewise, there is no procedure in law for a referendum or an initiative election. It is, however, recommended that local hotels and motels be notified prior to the enactment of the permissive lodging tax.

USE OF THE REVENUE

As a general rule no revenue derived from a permissive lodging tax may be used for the county general fund. The only monies that the county can retain is for the actual costs of administering the tax. Unlike the permissive sales and use tax, which is collected by the state and remitted to the county, a county enacting the lodging tax must establish and manage the collection of the tax.

The law provides that after funds are deducted for the administration of the tax that:

1. The county must return to any municipality or township that does not have a lodging tax in effect a uniform percent, not to exceed 33.3 percent. The Attorney General has ruled (OAG 88-082) that this distribution is mandatory, however, it could be as little as .5 percent. In addition, if there are no hotels and motels in a township or municipality, then no funds are returned.
2. After deducting administrative expenses and making any required distributions to townships and municipalities, the county must deposit remaining revenue in a special fund to be used solely to make contributions to convention and visitors bureaus operating in the county.

CONCLUSION

As of 1992, forty three counties have enacted the permissive lodging tax. Most have found that the funds are used effectively by convention and visitors bureaus in promoting meetings and conventions and in promoting tourism. The tax is generally not controversial

because local residents rarely pay the tax. H.B. 163 will now make it possible for some counties to have a second chance to enact the tax where they were previously prohibited by prior municipal or township tax enactment. For further information refer to the attached table and to Section 5739.024 of the Revised Code or call CCAO. Counties should also consult their prosecuting attorney prior to enacting the tax.

TABLE 1

LOCAL GOVERNMENT PERMISSIVE LODGING TAX AUTHORITIES

POLITICAL SUBDIVISION	RATE	ORC	DISPOSITION OF REVENUE	NARRATIVE DESCRIPTION/COMMENTS
COUNTY	Not More Than 3%	5739.02(C)(3) 5739.024(A)	The county must provide that a uniform percent (not to exceed 33.3%) shall be distributed to townships and municipalities that have not enacted a lodging tax pursuant to ORC 5739.02(C)(1). The uniform percent, however, is only distributed to municipalities and townships that have hotels or motels. The basis of the distribution is the uniform percentage rate times the revenue derived from hotels and motels located in the township or municipality. If no hotels or motels are located in the township or municipality, no revenues are distributed. In addition, if a	This authority was granted in 1980. Counties were given a "window" until July 1, 1980 to exclusively enact this tax. After that date if the county had not enacted the tax, any municipality or township could enact this tax pursuant to ORC 5739.024(B). Such enactment by any municipality or township in the county had the effect of precluding subsequent enactment by the county, however, this prohibition was eliminated effective May 10, 1994 (HB 163). Under this new law, however, a county may not overlap the tax in any municipality or township that has enacted an ORC

			<p>municipality or township has enacted a lodging tax pursuant to ORC 5739.02(C)(1), no revenues may be distributed. The remainder must be used to make contributions to convention and visitor bureaus operating in the county.</p>	<p>5739.024(B) tax. Thus, as a general rule the combined rate may not exceed 6%.</p>
MUNICIPALITY	Not More Than 3%	5739.02(C)(1)	<p>All revenues may be used for any lawful municipal purpose.</p>	<p>This authority was granted in 1967. This tax can be used for any municipal purpose and none of these revenues are required by statute to be used for convention and visitor bureau purposes.</p>
MUNICIPALITY	Not More Than 3%	5739.024(B)	<p>At least 50% of the revenues derived from this tax must be spent to make contributions to convention and visitor bureaus operating in the county. The other 50% may be used for municipal general fund purposes.</p>	<p>This authority was granted in 1980. However, it is only available to municipalities located in counties that have not imposed the tax pursuant to ORC 5739.024(A). A municipality need not have in effect the tax pursuant to ORC 5739.021(C)(1) in order to enact this tax.</p>
TOWNSHIP	Not More Than 3%	505.56	<p>All revenues may be used for any lawful township purpose.</p>	<p>This authority was granted in 1967. This tax can be used for any township purpose and none of these revenues are required by statute</p>

				to be used for convention and visitor bureau purposes.
				This authority was granted in 1980. However, it is only available to townships located in counties that have not imposed the tax pursuant to ORC 5739.024(A). A township need not have in effect the tax pursuant to ORC 5739.02(C)(1) and ORC 505.56 in order to enact this tax.
		5739.02(C)(2)		
TOWNSHIP	Not More Than 3%	5739.024(B)	At least 50% of the revenue derived from this tax must be spent to make contributions to convention and visitor bureaus operating in the county. The other 50% may be used for township general fund purposes.	