
HOUSE BILL No. 1794

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-8.1-1-1; IC 6-9-18-4; IC 6-10.

Synopsis: Uniform food and beverage and innkeepers taxes. Provides that taxes imposed under the uniform county innkeeper's tax law may be used to enhance and conserve natural resources, promote and encourage economic and industrial development, and promote and encourage the development of the arts. Authorizes a county, city, or town to adopt a 1% local food and beverage tax under a uniform procedure. Provides that the tax may be used for reduction of the unit's property tax levy, targeted property tax relief, debt service or lease rentals, capital projects, operating revenue, pension liabilities, or any other purpose that the fiscal body determines is in the best interests of the unit.

Effective: July 1, 2003.

Scholer, Klinker

January 21, 2003, read first time and referred to Committee on Ways and Means.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

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HOUSE BILL No. 1794



A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-8.1-1-1, AS AMENDED BY P.L.192-2002(ss),
2 SECTION 140, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2003]: Sec. 1. "Listed taxes" or "taxes" includes
4 only the pari-mutuel taxes (IC 4-31-9-3 through IC 4-31-9-5); the
5 riverboat admissions tax (IC 4-33-12); the riverboat wagering tax
6 (IC 4-33-13); the gross income tax (IC 6-2.1) (repealed); the utility
7 receipts tax (IC 6-2.3); the state gross retail and use taxes (IC 6-2.5);
8 the adjusted gross income tax (IC 6-3); the supplemental net income
9 tax (IC 6-3-8) (repealed); the county adjusted gross income tax
10 (IC 6-3.5-1.1); the county option income tax (IC 6-3.5-6); the county
11 economic development income tax (IC 6-3.5-7); the municipal option
12 income tax (IC 6-3.5-8); the auto rental excise tax (IC 6-6-9); the
13 financial institutions tax (IC 6-5.5); the gasoline tax (IC 6-6-1.1); the
14 alternative fuel permit fee (IC 6-6-2.1); the special fuel tax
15 (IC 6-6-2.5); the motor carrier fuel tax (IC 6-6-4.1); a motor fuel tax
16 collected under a reciprocal agreement under IC 6-8.1-3; the motor
17 vehicle excise tax (IC 6-6-5); the commercial vehicle excise tax



1 (IC 6-6-5.5); the hazardous waste disposal tax (IC 6-6-6.6); the
 2 cigarette tax (IC 6-7-1); the beer excise tax (IC 7.1-4-2); the liquor
 3 excise tax (IC 7.1-4-3); the wine excise tax (IC 7.1-4-4); the hard cider
 4 excise tax (IC 7.1-4-4.5); the malt excise tax (IC 7.1-4-5); the
 5 petroleum severance tax (IC 6-8-1); the various innkeeper's taxes
 6 (IC 6-9); the various ~~county~~ food and beverage taxes (IC 6-9 **and**
 7 **IC 6-10**); the county admissions tax (IC 6-9-13 and IC 6-9-28); the oil
 8 inspection fee (IC 16-44-2); the emergency and hazardous chemical
 9 inventory form fee (IC 6-6-10); the penalties assessed for oversize
 10 vehicles (IC 9-20-3 and IC 9-30); the fees and penalties assessed for
 11 overweight vehicles (IC 9-20-4 and IC 9-30); the underground storage
 12 tank fee (IC 13-23); the solid waste management fee (IC 13-20-22);
 13 and any other tax or fee that the department is required to collect or
 14 administer.

15 SECTION 2. IC 6-9-18-4 IS AMENDED TO READ AS FOLLOWS
 16 [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) If a tax is levied under section
 17 3 of this chapter, the county treasurer shall establish a convention,
 18 visitor, and tourism promotion fund. He shall deposit in this fund all
 19 amounts he receives under that section.

20 (b) In a county in which a commission has been established under
 21 section 5 of this chapter, the county auditor shall issue a warrant
 22 directing the county treasurer to transfer money from the convention,
 23 visitor, and tourism promotion fund to the commission's treasurer if the
 24 commission submits a written request for the transfer.

25 (c) Money in a convention, visitor, and tourism promotion fund, or
 26 money transferred from such a fund under subsection (b), may be
 27 expended ~~only~~ to:

- 28 (1) promote and encourage conventions, visitors, and tourism
 29 within the county;
- 30 (2) **enhance and conserve natural resources within the county;**
- 31 (3) **promote and encourage economic and industrial**
 32 **development within the county; and**
- 33 (4) **promote and encourage the development of the arts within**
 34 **the county.**

35 Expenditures under ~~this subsection~~ **subdivision (1)** may include, but
 36 are not limited to, expenditures for advertising, promotional activities,
 37 trade shows, special events, and recreation. **At least fifty percent**
 38 **(50%) of money in the fund or transferred from the fund under**
 39 **subsection (b) must be used for expenditures described in**
 40 **subdivision (1).**

41 (d) If before July 1, 1997, a county issues a bond with a pledge of
 42 revenues from the tax imposed under section 3 of this chapter, the

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1 county shall continue to expend money from the fund for that purpose
2 until the bond is paid.

3 SECTION 3. IC 6-10 IS ADDED TO THE INDIANA CODE AS A
4 NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
5 2003]:

6 **Article 10. UNIFORM FOOD AND BEVERAGE TAX**

7 **Chapter 1. Applicability**

8 **Sec. 1. This article applies to any unit that does not impose a**
9 **food and beverage tax under IC 6-9.**

10 **Chapter 2. Definitions**

11 **Sec. 1. The definitions set forth in this chapter apply throughout**
12 **this article.**

13 **Sec. 2. Except as otherwise provided in this chapter, the**
14 **definitions in IC 36-1-2 apply throughout this article.**

15 **Sec. 3. "Beverage" includes an alcoholic beverage.**

16 **Sec. 4. "Bonds" has the meaning set forth in IC 5-1-11-1.**

17 **Sec. 5. (a) "Capital", in reference to a project or program,**
18 **refers to any project or program that is capital in nature, involves**
19 **the formation of capital for funding, or may be capitalized under**
20 **generally accepted accounting principles.**

21 **(b) The term applies to a project or program for the acquisition**
22 **of real or personal property, creation or improvement of**
23 **infrastructure, and acquisition, improvement, construction, or**
24 **installation of buildings, structures, and equipment.**

25 **Sec. 6. "Department" means the department of state revenue.**

26 **Sec. 7. "Food" includes any food product.**

27 **Sec. 8. "Gross retail income" has the meaning set forth in**
28 **IC 6-2.5-1-5.**

29 **Sec. 9. "Obligations" has the meaning set forth in IC 5-1-3-1(b).**

30 **Sec. 10. "Operating" refers to an expense that is not capital in**
31 **nature.**

32 **Sec. 11. "Person" has the meaning set forth in IC 6-2.5-1-3.**

33 **Sec. 12. "Retail merchant" has the meaning set forth in**
34 **IC 6-2.5-1-8.**

35 **Sec. 13. "Unit" means a county, city, or town. The term does not**
36 **include a township.**

37 **Chapter 3. Food and Beverage Tax**

38 **Sec. 1. (a) After January 1 but before August 1, the fiscal body**
39 **of a unit may adopt an ordinance to impose an excise tax known as**
40 **the unit's food and beverage tax on transactions described in**
41 **section 2 of this chapter.**

42 **(b) Before a fiscal body may adopt an ordinance imposing a food**

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1 and beverage tax, the fiscal body must hold a public hearing on the
2 proposed ordinance, with notice of the time, date, and place of the
3 public hearing given in accordance with IC 5-3-1.

4 (c) If a fiscal body adopts an ordinance under this chapter, the
5 ordinance takes effect January 1 of the year following the year in
6 which the ordinance is adopted.

7 (d) This subsection does not apply to a county governed under
8 IC 36-2-3.5. If the fiscal body of a county adopts an ordinance to
9 impose a food and beverage tax under this chapter, the county
10 executive must also adopt a substantially similar ordinance to
11 impose the tax.

12 (e) This subsection applies to a county governed under
13 IC 36-2-3.5. If the fiscal body of a county adopts an ordinance to
14 impose a food and beverage tax under this chapter, the county
15 executive must approve the ordinance in the manner prescribed by
16 IC 36-2-4-8 to impose the tax.

17 (f) If an ordinance is adopted under subsection (d) or approved
18 under subsection (e), the county executive shall immediately send
19 a certified copy of the ordinance to the department.

20 Sec. 2. (a) Except as provided in subsection (c), a food and
21 beverage tax imposed under section 1 of this chapter applies to any
22 transaction in which food or a beverage is furnished, prepared, or
23 served:

- 24 (1) for consumption at a location, or on equipment, provided
- 25 by a retail merchant;
- 26 (2) in the unit in which the tax is imposed; and
- 27 (3) by the retail merchant for consideration.

28 (b) Transactions described in subsection (a)(1) include
29 transactions in which food or a beverage is:

- 30 (1) served by a retail merchant off the merchant's premises;
- 31 (2) sold by a retail merchant who ordinarily bags, wraps, or
- 32 packages the food or beverage for immediate consumption on
- 33 or near the retail merchant's premises, including food or
- 34 beverages sold on a "take out" or "to go" basis; or
- 35 (3) sold by a street vendor.

36 (c) A food and beverage tax imposed under this chapter does not
37 apply to furnishing, preparing, or serving of any food or beverage
38 in a transaction that is exempt, or to the extent the transaction is
39 exempt, from the state gross retail tax imposed under IC 6-2.5.

40 Sec. 3. The food and beverage tax imposed on a food or
41 beverage transaction described in section 2 of this chapter equals
42 one percent (1%) of the gross retail income received by the retail

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1 merchant from the transaction. For purposes of this chapter, the
 2 gross retail income received by the retail merchant from such a
 3 transaction does not include the amount of tax imposed on the
 4 transaction under IC 6-2.5.

5 **Sec. 4. If no bonds, leases, obligations, or other evidences of**
 6 **indebtedness of a unit that are payable from a food and beverage**
 7 **tax imposed under this chapter are outstanding, the fiscal body**
 8 **that imposed the local food and beverage tax may adopt an**
 9 **ordinance to repeal the food and beverage tax under this chapter.**
 10 **The ordinance must be adopted after January 1 but before**
 11 **September 1 of a year. The fiscal body shall send a certified copy**
 12 **of the ordinance repealing the food and beverage tax to the**
 13 **department.**

14 **Chapter 4. Collection Procedures for Food and Beverage Taxes**

15 **Sec. 1. A food and beverage tax imposed under IC 6-10-3 shall**
 16 **be imposed, paid, and collected in the same manner that the state**
 17 **gross retail tax is imposed, paid, and collected under IC 6-2.5.**
 18 **However, the return that is filed for the payment of the tax may be**
 19 **made on a separate return or may be combined with the return**
 20 **filed for the payment of the state gross retail tax as prescribed by**
 21 **the department.**

22 **Sec. 2. A food and beverage tax imposed under IC 6-10-3 is a**
 23 **listed tax for the purposes of IC 6-8.1.**

24 **Sec. 3. (a) The department shall notify the fiscal officer of a unit**
 25 **that imposes a food and beverage tax under IC 6-10-3 of the**
 26 **amount of tax paid in the unit.**

27 **(b) The amounts received from a food and beverage tax imposed**
 28 **under IC 6-10-3 shall be paid monthly by the treasurer of state on**
 29 **warrants issued by the auditor of state to the fiscal officer of the**
 30 **unit that imposed the tax.**

31 **Sec. 4. A unit's fiscal officer shall establish a local food and**
 32 **beverage tax revenue fund into which all amounts received**
 33 **monthly from the treasurer of state under this chapter shall be**
 34 **deposited.**

35 **Chapter 5. Use of Revenue**

36 **Sec. 1. Revenue derived from the imposition of a tax under this**
 37 **article may be treated by each unit as additional revenue for the**
 38 **purpose of fixing its budget for the budget year during which the**
 39 **revenues are to be distributed to the unit.**

40 **Sec. 2. A unit may use revenues from the imposition of a tax**
 41 **under this article for one (1) or more of the following purposes:**

42 **(1) Reducing the unit's property tax levy for the ensuing**

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1 budget year.
 2 (2) Providing property tax relief to taxpayers or classes of
 3 taxpayers, to the extent permitted by the Constitution of the
 4 State of Indiana.
 5 (3) Paying debt service or lease rentals on:
 6 (A) bonds;
 7 (B) leases;
 8 (C) obligations; or
 9 (D) any other evidence of indebtedness of the unit.
 10 (4) Paying the costs of any capital project.
 11 (5) Use as operating revenue.
 12 (6) Paying pension liabilities of the unit.
 13 (7) For any other purpose that the fiscal body determines is
 14 necessary, wise, and in the best interests of the residents of the
 15 unit.
 16 Sec. 3. The department of local government finance may not
 17 reduce a unit's property tax levy by the amount of revenue
 18 received from a tax imposed under this article.
 19 Chapter 6. Covenants
 20 Sec. 1. The general assembly covenants with the respective units
 21 and the purchasers and owners of bonds, leases, obligations, or any
 22 other evidences of indebtedness of a unit payable from a tax
 23 imposed under this article that this article will not be repealed or
 24 amended in any manner that will adversely affect the imposition or
 25 collection of a tax imposed under this article so long as the
 26 principal, interest, or lease rentals due under those bonds, leases,
 27 obligations, or other evidences of indebtedness of a unit that are
 28 payable from a tax imposed under this article remain unpaid.
 29 SECTION 4. [EFFECTIVE JULY 1, 2003] IC 6-9-18-4, as
 30 amended by this act, applies to innkeepers' taxes collected after
 31 June 30, 2003.

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