

NOTE: THIS INFORMATION WAS OBTAINED FROM A PUBLICATION ENTITLED “WHAT COUNTIES NEED TO KNOW TO ADMINISTER THE LOCAL HOTEL OCCUPANCY TAX” by Scott Joslove, President and CEO, Texas Hotel & Lodging Association. (Revised Spring – 2008)

Criteria #1: First, every expenditure must DIRECTLY enhance and promote tourism AND the convention and hotel industry.

In other words, a funded event or facility must be likely to do two things: 1) directly promote tourism; and 2) directly promote the convention and hotel industry. With regard to the first prong of Criteria #1, tourism is defined under Texas State law as bringing visitors from outside of the area (from a different city or county) into the county or its vicinity. With regard to the second prong of Criteria #1, state law does not specifically define what constitutes a “direct” promotion of the convention and hotel industry. However, this requirement has been consistently interpreted by the Texas Municipal League. They have historically indicated that to directly promote the convention and hotel industry, the event or facility must be likely to cause increased hotel or convention activity. This activity may result from hotel or convention guests that are already in town and choose to attend the hotel tax funded event or facility. Alternatively, it may result from individuals that come from another city or county, at least in part, to attend the funded event or facility. Their interpretation would arguably be analogous to the use of the county hotel occupancy tax.

If the funded event or facility is not reasonably likely to have such an effect, local hotel occupancy tax revenues can not fund it. It is important to note, however, that events and facilities that do not qualify for hotel occupancy tax funding are generally still legally eligible for county funding from most of the other funding sources available to the county (general property tax revenues, general sales tax revenues, user fee revenues, etc.). State law is simply stricter in terms of how the local hotel occupancy tax monies can be spent.

There is no set formula for determining whether an event will directly promote tourism and hotel and convention activity. Of course, the first time an event is held it can only be hypothesized as to whether it is likely to be frequented by tourists and hotel guests. It may be beneficial for an applying entity to indicate in its county funding application how it would market the event to attract tourists and hotel guests. If an entity does not market its events outside of the county or in some other way provide notice of the events to guests of hotels, it is difficult to argue that the events or facility will promote tourism and hotel activity. It is also worth considering whether a funded event will be held in a venue that will likely attract tourists and hotel guests. For example, if an event is held in a local school or community center, it may be less likely to attract tourists than if it is held at a local performing arts venue, museum or civic center. Each community will need to assess whether the facility that is hosting the function is likely to attract tourists. Similarly, if an event is labeled and implemented to be a community picnic, local parade, educational class, or other similar type of event, it may not be likely to attract tourists and hotel guests.

After an event has been offered for several years, funded entities will likely have a reasonable idea as to whether the facility or event's attendance includes a number of tourists and hotel guests. Some entities keep a guest register at funded events to quantify the number of out-of-towners in attendance. Some entities have added a box on such registers to check if the attendee is staying at a local hotel. Some entities measure out-of-town attendance from their ticket sales records or other gathered information. Funded entities can also visit with area hoteliers who in many cases can provide feedback on whether any of their hotel guests had expressed an interest in attending such events. Front desk and management generally are aware of the events of interest to their guests due to guest requests for directions, information, and transportation to such events.

It is important to note that state law also provides that the hotel occupancy tax may not in any circumstance be used for purposes that the county 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. For example, consider a request to use the hotel occupancy tax to pay for construction of additional lighting, bathrooms, roads, or landscaping in a downtown area. These are expenditures for which the county would traditionally use its general revenues. It is difficult to argue that such improvements would "directly" promote tourism and hotel activity. At best, one could argue the improvements would "indirectly" enhance tourism and hotel activity -- which is not sufficient to qualify for funding from the hotel occupancy tax.

Criteria #2: Unless otherwise provided by a special statutory provision, every expenditure of the hotel occupancy tax must clearly fit into one of five statutorily provided categories.

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

1) Funding the establishment, improvement, or maintenance of a convention center or visitor information center

This category allows expenditures for the creation, improvement, or upkeep of a convention center or visitor information center. State law specifies that the new facility must be one that is primarily used to host conventions and meetings. "Primarily used" in this context would arguably mean that at least 51 percent of the bookings for the facility are to host conventions or meetings that directly promote tourism and the hotel and convention industry. In other words, holding local resident meetings in a facility would not count toward qualifying the facility as a convention center, but meetings of individuals from out-of-town that may stay at hotels would potentially qualify.

The term "convention center" is defined to include civic centers, auditoriums, exhibition halls, and coliseums that are owned by the county or another governmental entity or that are managed in whole or in part by the county. It also includes parking areas in the immediate vicinity of other convention center facilities. It does not include facilities that are not of the same general characteristics as the structures listed above. Simply naming a facility a convention center or visitor information center does not bring it under this section. The ability to improve general public facilities is limited. The Attorney General

has specifically ruled against the expenditure of local hotel occupancy taxes for a recreational facility such as a golf course or a tennis court (JM-184 (1984) and JM-965 (1988)).

2) Paying the administrative costs for facilitating convention registration

This provision allows expenditures for administrative costs that are actually incurred for assisting in the registration of convention delegates or attendees. It may include covering the personnel costs and costs of materials for the registration of convention delegates or attendees.

3) Paying for advertising, solicitations, and promotions that attract tourists and convention delegates to the county or its vicinity

This provision allows expenditures for solicitations or promotional programs/advertising that is directly related to attracting tourists and convention delegates to the county or its vicinity. Such expenditures are traditionally in the form of newspaper, mail, television, or radio ads or solicitations to promote an event or facility. In certain cases, a county may be able to use this category to justify covering the costs of advertising an event that will attract tourists and hotel guests, even though the administrative costs for the underlying event would not qualify for hotel tax funding. For example, it may be argued that a county could use hotel occupancy tax to pay for advertisements for a hunting tournament that would generate tourists and hotel activity. However, it could not use hotel occupancy tax to fund the other costs of holding the hunting tournament since it does not fit into one of the five types of authorized expenditures.

However, the Attorney General has ruled that the local hotel occupancy tax may not be used for facility improvements or advertising to attract new businesses or permanent residents to an area (JM-690 (1987)).

4) Expenditures that Promote the Arts

This section authorizes the expenditure of local hotel occupancy tax for a variety of art-related programs that also would promote tourism and local hotel and convention activity. Specifically, it allows funding the encouragement, promotion, improvement, and application of the arts including 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. **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.** Section 351.101 (a) of the Tax Code specifically states that the “hotel occupancy tax may be used only to promote tourism and the convention and hotel industry.”

5) Funding Historical Restoration or Preservation Programs

This section anticipates that a county may spend a portion of its hotel occupancy tax revenues to enhance historical restoration and preservation projects within the county or its vicinity that are likely to attract tourists and hotel guests. This funding can include the costs for rehabilitation or preservation of existing historic structures. State law does not limit such funding to structures that are owned by a public or nonprofit entity, but the county may choose to impose such a limitation. This category could also include the costs of advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit such preserved historic structures or museums.

Summary of the Five Uses for the Local Hotel Occupancy Tax

In summary, unless the county fits into one of the seven noted special geographic categories, local hotel occupancy tax revenues only may be spent for one of five statutory purposes. These purposes include: 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 or facilities that will directly promote tourism and hotel and convention activity, or fund historic restoration or preservation projects that will enhance tourism and hotel and convention activity. If the county cannot fit an expenditure within one of these five categories or under another applicable statute, hotel occupancy tax revenues cannot be used for that purpose.

With regard to the use of local hotel occupancy taxes, there is no time limit for a county to expend all of its hotel occupancy tax funds. However, the county must expend the minimum amount required for advertising and promoting the area. Unless otherwise provided by statute, most counties must expend about 15 percent (seven percent rate requires 1/7th of all funds be spent on advertising; six percent rate requires 1/6 be spent on advertising, and so on).

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, counties are required to maintain a record of county hotel occupancy receipts and expenditures. Additionally, all entities (including the county 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 prior to the expenditure of the hotel occupancy tax funding by the funded entity. An entity may add items to this list at any time. Each county decides the format that it would like to have this information provided. However, state law would arguably be satisfied if the funded entity took its calendar of events for the year and circled the items

that are reasonably expected to directly promote tourism and the hotel and convention industry. The entity would circle events that the entity has marketed to and anticipates attendance by tourists and hotel guests. If an entity does not have any such events or programs, it is not eligible for local hotel occupancy tax funding. If only a portion of an entity's programs fit this criterion, then only a portion of that entity's costs should be covered by the local hotel occupancy tax.