

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 2012 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1070

AN ACT to amend the Indiana Code concerning taxation.

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

SECTION 1. IC 6-9-43 IS ADDED TO THE INDIANA CODE AS A **NEW CHAPTER TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2013]:

Chapter 43. Cloverdale Food and Beverage Tax

Sec. 1. This chapter applies to the town of Cloverdale.

Sec. 2. The definitions in IC 6-9-12-1 apply throughout this chapter.

Sec. 3. (a) The fiscal body of the town may adopt an ordinance to impose an excise tax, known as the town food and beverage tax, on transactions described in section 4 of this chapter.

(b) If the fiscal body of the town adopts an ordinance under subsection (a), it shall immediately send a certified copy of the ordinance to the commissioner of the department of state revenue.

(c) If the fiscal body of the town adopts an ordinance under subsection (a), the town food and beverage tax applies to transactions that occur after the last day of the month that succeeds the month in which the ordinance is adopted.

Sec. 4. (a) Except as provided in subsection (c), a tax imposed under section 3 of this chapter applies to any transaction in which food or beverage is furnished, prepared, or served:

(1) for consumption at a location, or on equipment, provided by a retail merchant;

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- (2) in the town in which the tax is imposed; and
- (3) by a retail merchant for consideration.

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

- (1) served by a retail merchant off the merchant's premises;
- (2) food sold in a heated state or heated by a retail merchant;
- (3) two (2) or more food ingredients mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods that require cooking by the consumer (as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code to prevent food borne illnesses)); or
- (4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).

(c) A town food and beverage tax imposed under section 3 of this chapter does not apply to the furnishing, preparing, or serving of any food or beverage in a transaction that is exempt, or to the extent exempt, from the state gross retail tax imposed by IC 6-2.5.

Sec. 5. A town food and beverage tax imposed under section 3 of this chapter equals one percent (1%) of the gross retail income received by the retail merchant from the transaction. For purposes of this chapter, the gross retail income received by the retail merchant from such a transaction does not include the amount of tax imposed on the transaction under IC 6-2.5.

Sec. 6. The town food and beverage tax that may be imposed under this chapter shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5. However, the return to be filed for the payment of the tax may be made on separate returns or may be combined with the return filed for the payment of the state gross retail tax, as prescribed by the department of state revenue.

Sec. 7. If a tax is imposed under section 3 of this chapter, the amounts received from the tax shall be paid monthly by the treasurer of state to the town fiscal officer upon warrants issued by the auditor of state.

Sec. 8. (a) If a tax is imposed under section 3 of this chapter, the town fiscal officer shall establish a food and beverage tax receipts

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fund.

(b) The town fiscal officer shall deposit in this fund all amounts received under this chapter.

(c) Any money earned from the investment of money in the fund becomes a part of the fund.

Sec. 9. (a) Except as provided in subsection (b), money in the food and beverage tax receipts fund established under section 8 of this chapter shall be used by the town for the financing, construction, operation, or maintenance of the following:

- (1) Sanitary sewers or wastewater treatment facilities.
- (2) Drainage or flood control facilities.
- (3) Water treatment, storage, or distribution facilities.

(b) The fiscal body of the town may pledge money in the food and beverage tax receipts fund to pay bonds issued, loans obtained, and lease payments or other obligations incurred by or on behalf of the town or a special taxing district in the town to provide the facilities described in subsection (a).

(c) Subsection (b) applies only to bonds, loans, lease payments, or other obligations that are issued, obtained, or incurred after the date on which the town food and beverage tax is imposed under section 3 of this chapter.

(d) A pledge under subsection (b) is enforceable under IC 5-1-14-4.

SECTION 2. IC 6-9-44 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 44. Town of Fishers Food and Beverage Tax

Sec. 1. This chapter applies to the town of Fishers.

Sec. 2. The definitions in IC 6-9-12-1 apply throughout this chapter.

Sec. 3. (a) The fiscal body of the town may adopt an ordinance on or before December 31, 2013, to impose an excise tax, known as the town food and beverage tax, on transactions described in section 4 of this chapter. The fiscal body of the town may adopt an ordinance under this subsection only after the fiscal body has previously held at least one (1) separate public hearing in which a discussion of the proposed ordinance to impose the town food and beverage tax is the only substantive issue on the agenda for that public hearing.

(b) If the town fiscal body adopts an ordinance under subsection (a), the town fiscal body shall immediately send a certified copy of the ordinance to the department of state revenue.

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(c) If the town fiscal body adopts an ordinance under subsection (a), the town food and beverage tax applies to transactions that occur after the last day of the month that succeeds the month in which the ordinance is adopted.

Sec. 4. (a) Except as provided in subsection (c), a tax imposed under section 3 of this chapter applies to a transaction in which food or beverage is furnished, prepared, or served:

- (1) for consumption at a location or on equipment provided by a retail merchant;
- (2) in the town; and
- (3) by a retail merchant for consideration.

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

- (1) served by a retail merchant off the merchant's premises;
- (2) food sold in a heated state or heated by a retail merchant;
- (3) made of two (2) or more food ingredients, mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or
- (4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or package used to transport the food).

(c) The town food and beverage tax does not apply to the furnishing, preparing, or serving of a food or beverage in a transaction that is exempt, or to the extent the transaction is exempt, from the state gross retail tax imposed by IC 6-2.5.

Sec. 5. The town food and beverage tax rate may not exceed one percent (1%) of the gross retail income received by the merchant from the food or beverage transaction described in section 4 of this chapter. For purposes of this chapter, the gross retail income received by the retail merchant from a transaction does not include the amount of tax imposed on the transaction under IC 6-2.5.

Sec. 6. A tax imposed under this chapter shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5. However, the return to be filed with the payment of the tax imposed under this chapter

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may be made on a separate return or may be combined with the return filed for the payment of the state gross retail tax, as prescribed by the department of state revenue.

Sec. 7. The amounts received from the tax imposed under this chapter shall be paid monthly by the treasurer of state to the town fiscal officer upon warrants issued by the auditor of state.

Sec. 8. (a) If a tax is imposed under section 3 of this chapter by a town, the town fiscal officer shall establish a food and beverage tax receipts fund.

(b) The town fiscal officer shall deposit in this fund all amounts received under this chapter.

(c) Money earned from the investment of money in the fund becomes a part of the fund.

Sec. 9. Money in the food and beverage tax receipts fund shall be used by the town:

(1) to reduce the town's property tax levy for a particular year at the discretion of the town, but this use does not reduce the maximum permissible ad valorem property tax levy under IC 6-1.1-18.5 for the town; or

(2) for economic development purposes, including the pledge of money under IC 5-1-14-4 for bonds, leases, or other obligations for economic development purposes.

Revenue derived from the imposition of a tax under this chapter may be treated by the town as additional revenue for the purpose of fixing its budget for the budget year during which the revenues are to be distributed to the town.

Sec. 10. With respect to obligations for which a pledge has been made under section 9 of this chapter, the general assembly covenants with the holders of the obligations that this chapter will not be repealed or amended in a manner that will adversely affect the imposition or collection of the tax imposed under this chapter if the payment of any of the obligations is outstanding.

SECTION 3. An emergency is declared for this act.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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