

# HOUSE BILL No. 1071

---

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-8.1-1-1; IC 6-9-43.

**Synopsis:** Municipal food and beverage tax. Authorizes a municipal legislative body to impose by ordinance a municipal food and beverage tax. Provides that the tax may not exceed 1% of the gross retail income received from retail food and beverage transactions. Provides that the tax does not apply to a transaction that is exempt from the sales tax. Provides that the tax does not apply to a consolidated city, a municipality that has imposed a food and beverage tax under current law, or a municipality entitled to receive county food and beverage tax revenue.

**Effective:** July 1, 2012.

---

---

**Baird**

---

---

January 7, 2013, read first time and referred to Committee on Ways and Means.

---

---

C  
O  
P  
Y



First Regular Session 118th General Assembly (2013)

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.

C  
o  
p  
y

# HOUSE BILL No. 1071



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.182-2009(ss),  
2 SECTION 247, IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2012]: 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 slot machine wagering tax (IC 4-35-8); the type II  
7 gambling game excise tax (IC 4-36-9); the gross income tax (IC 6-2.1)  
8 (repealed); the utility receipts and utility services use taxes (IC 6-2.3);  
9 the state gross retail and use taxes (IC 6-2.5); the adjusted gross income  
10 tax (IC 6-3); the supplemental net income tax (IC 6-3-8) (repealed); the  
11 county adjusted gross income tax (IC 6-3.5-1.1); the county option  
12 income tax (IC 6-3.5-6); the county economic development income tax  
13 (IC 6-3.5-7); the auto rental excise tax (IC 6-6-9); the financial  
14 institutions tax (IC 6-5.5); the gasoline tax (IC 6-6-1.1); the alternative  
15 fuel permit fee (IC 6-6-2.1); the special fuel tax (IC 6-6-2.5); the motor  
16 carrier fuel tax (IC 6-6-4.1); a motor fuel tax collected under a  
17 reciprocal agreement under IC 6-8.1-3; the motor vehicle excise tax



1 (IC 6-6-5); the commercial vehicle excise tax (IC 6-6-5.5); the excise  
 2 tax imposed on recreational vehicles and truck campers (IC 6-6-5.1);  
 3 the hazardous waste disposal tax (IC 6-6-6.6); the cigarette tax  
 4 (IC 6-7-1); the beer excise tax (IC 7.1-4-2); the liquor excise tax  
 5 (IC 7.1-4-3); the wine excise tax (IC 7.1-4-4); the hard cider excise tax  
 6 (IC 7.1-4-4.5); the malt excise tax (IC 7.1-4-5); the petroleum  
 7 severance tax (IC 6-8-1); the various innkeeper's taxes (IC 6-9); the  
 8 various food and beverage taxes (IC 6-9); the county admissions tax  
 9 (IC 6-9-13 and IC 6-9-28); **a municipal food and beverage tax**  
 10 **(IC 6-9-43)**; the regional transportation improvement income tax  
 11 (IC 8-24-17); the oil inspection fee (IC 16-44-2); the emergency and  
 12 hazardous chemical inventory form fee (IC 6-6-10); the penalties  
 13 assessed for oversize vehicles (IC 9-20-3 and IC 9-30); the fees and  
 14 penalties assessed for overweight vehicles (IC 9-20-4 and IC 9-30); the  
 15 underground storage tank fee (IC 13-23); the solid waste management  
 16 fee (IC 13-20-22); and any other tax or fee that the department is  
 17 required to collect or administer.

18 SECTION 2. IC 6-9-43 IS ADDED TO THE INDIANA CODE AS  
 19 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
 20 1, 2012]:

21 **Chapter 43. Uniform Municipal Food and Beverage Tax**

22 **Sec. 1. This chapter does not apply to any of the following:**

- 23 (1) A consolidated city.  
 24 (2) A municipality imposing a food and beverage tax under  
 25 any other provision of this article.  
 26 (3) A municipality entitled to receive county food and  
 27 beverage tax revenue under this article.

28 **Sec. 2. The definitions in IC 6-2.5, IC 6-9-12-1, and IC 36-1-2**  
 29 **apply throughout this chapter.**

30 **Sec. 3. As used in this chapter, "municipal food and beverage**  
 31 **tax" refers to a tax imposed under section 4 of this chapter.**

32 **Sec. 4. (a) The legislative body of a municipality may adopt an**  
 33 **ordinance to impose an excise tax, known as the \_\_\_\_\_**  
 34 **(insert name of municipality) food and beverage tax, on those**  
 35 **transactions described in section 5 of this chapter.**

36 **(b) If the legislative body adopts an ordinance under subsection**  
 37 **(a), the legislative body shall immediately send a certified copy of**  
 38 **the ordinance to the commissioner of the department of state**  
 39 **revenue.**

40 **(c) If the legislative body adopts an ordinance under subsection**  
 41 **(a), the municipal food and beverage tax applies to transactions**  
 42 **that occur after the later of the following:**

C  
o  
p  
y



- 1           (1) The day specified in the ordinance.
- 2           (2) The last day of the month that succeeds the month in
- 3                which the ordinance is adopted.
- 4           **Sec. 5. (a) Except as provided in subsection (c), a municipal food**
- 5 **and beverage tax applies to any transaction in which food or**
- 6 **beverage is furnished, prepared, or served:**
- 7                (1) for consumption at a location or on equipment provided by
- 8                a retail merchant;
- 9                (2) in the municipality in which the tax is imposed; and
- 10              (3) by a retail merchant for consideration.
- 11           **(b) Transactions described in subsection (a)(1) include**
- 12 **transactions in which food or beverage is:**
- 13                (1) served by a retail merchant off the merchant's premises;
- 14                (2) food sold in a heated state or heated by a retail merchant;
- 15                (3) two (2) or more food ingredients mixed or combined by a
- 16                retail merchant for sale as a single item (other than food that
- 17                is only cut, repackaged, or pasteurized by the seller, and eggs,
- 18                fish, meat, poultry, and foods containing these raw animal
- 19                foods requiring cooking by the consumer as recommended by
- 20                the federal Food and Drug Administration in chapter 3,
- 21                subpart 3-401.11 of its Food Code so as to prevent food borne
- 22                illnesses); or
- 23                (4) food sold with eating utensils provided by a retail
- 24                merchant, including plates, knives, forks, spoons, glasses,
- 25                cups, napkins, or straws (for purposes of this subdivision, a
- 26                plate does not include a container or packaging used to
- 27                transport the food).
- 28           **(c) The municipal food and beverage tax does not apply to the**
- 29 **furnishing, preparing, or serving of any food or beverage in a**
- 30 **transaction that is exempt, or to the extent exempt, from the state**
- 31 **gross retail tax imposed by IC 6-2.5.**
- 32           **Sec. 6. A municipal food and beverage tax is in addition to any**
- 33 **county food and beverage tax imposed under this article in the**
- 34 **municipality.**
- 35           **Sec. 7. A municipal food and beverage tax is imposed on the**
- 36 **gross retail income received by a retail merchant from a**
- 37 **transaction described in section 5 of this chapter at a rate specified**
- 38 **in the ordinance adopted under section 4 of this chapter. The tax**
- 39 **rate:**
- 40                (1) must be imposed in an increment of twenty-five
- 41                hundredths percent (0.25%); and
- 42                (2) may not exceed one percent (1%).

COPY



1           **Sec. 8.** For purposes of this chapter, the gross retail income  
 2 received by the retail merchant from a transaction that is subject  
 3 to the municipal food and beverage tax does not include the  
 4 following:

5           (1) The amount of tax imposed on the transaction under  
 6 IC 6-2.5.

7           (2) The amount of tax imposed on the transaction by a county  
 8 under this article, if any.

9           **Sec. 9.** A municipal food and beverage tax shall be imposed,  
 10 paid, and collected in the same manner that the state gross retail  
 11 tax is imposed, paid, and collected under IC 6-2.5. However, the  
 12 return to be filed for the payment of the tax under this chapter  
 13 may be made separately or may be combined with the return filed  
 14 for the payment of the state gross retail tax, as prescribed by the  
 15 department of state revenue.

16           **Sec. 10. (a)** The department shall notify the fiscal officer of the  
 17 municipality of the amount of tax paid in the municipality during  
 18 the immediately preceding three (3) month period.

19           (b) Amounts received from a municipal food and beverage tax  
 20 each month must be paid before the twentieth day of the following  
 21 month by the treasurer of state to the fiscal officer of the imposing  
 22 municipality upon warrants issued by the auditor of state.

23           **Sec. 11. (a)** If a municipality has outstanding obligations that are  
 24 payable from a municipal food and beverage tax, the legislative  
 25 body of the municipality may not reduce the municipal food and  
 26 beverage tax rate below a rate that would produce one and  
 27 twenty-five hundredths (1.25) times the total of the highest annual  
 28 payment requirements from the municipal food and beverage tax  
 29 to their final maturity.

30           (b) For purposes of subsection (a), the determination of a tax  
 31 rate sufficient to produce one and twenty-five hundredths (1.25)  
 32 times the total of the highest annual payment requirements is based  
 33 on an average of the immediately preceding three (3) years  
 34 collections for the municipal food and beverage tax, if the tax has  
 35 been imposed for the last preceding three (3) years. If the tax has  
 36 not been imposed for the last preceding three (3) years, the  
 37 legislative body of the municipality may not reduce the rate below  
 38 a rate that would produce one and twenty-five hundredths (1.25)  
 39 times the total of the highest annual payment requirements, based  
 40 upon a study by a qualified accountant or financial advisor.

41           (c) If a municipality has no outstanding obligations that are  
 42 payable from a municipal food and beverage tax imposed, the

C  
O  
P  
Y



1 legislative body of the municipality may adopt an ordinance to  
 2 reduce the tax rate imposed under section 4 of this chapter or to  
 3 repeal the tax.

4 **Sec. 12. A municipal food and beverage tax is a listed tax.**

5 **Sec. 13. The department of local government finance may not**  
 6 **reduce a municipality's property tax levy by the amount of revenue**  
 7 **received by the municipality from a municipal food and beverage**  
 8 **tax.**

9 **Sec. 14. (a) The fiscal officer of a municipality shall establish a**  
 10 **food and beverage tax revenue fund for the deposit of all amounts**  
 11 **received under this chapter.**

12 **(b) Money in a municipality's food and beverage tax revenue**  
 13 **fund may be treated by the municipality as additional revenue for**  
 14 **the purpose of fixing its budget for the budget year during which**  
 15 **the revenues are to be distributed to the municipality.**

16 **Sec. 15. A municipality may pledge any revenues received from**  
 17 **a municipal food and beverage tax in accordance with IC 5-1-14-4.**

18 **Sec. 16. (a) A municipality may use municipal food and**  
 19 **beverage tax revenue for one (1) or more of the following purposes:**

20 **(1) Reducing the municipality's property tax levy for the**  
 21 **ensuing budget year.**

22 **(2) Providing property tax relief to taxpayers or classes of**  
 23 **taxpayers, to the extent permitted by the Constitution of the**  
 24 **State of Indiana.**

25 **(3) Replacing revenues of the municipality lost as a result of**  
 26 **the credit provided by IC 6-1.1-20.6.**

27 **(4) Paying debt service or lease rentals on:**

28 **(A) bonds;**

29 **(B) leases;**

30 **(C) obligations; or**

31 **(D) any other evidence of indebtedness of the municipality.**

32 **(5) Paying the costs of any capital project.**

33 **(6) As operating revenue.**

34 **(b) Bonds or other obligations issued under this section:**

35 **(1) are payable from money provided in this chapter, any**  
 36 **other revenues available to the municipality, or any**  
 37 **combination of these sources, in accordance with a pledge**  
 38 **made under IC 5-1-14-4;**

39 **(2) must be issued in the manner prescribed by:**

40 **(A) IC 36-4-6-19 through IC 36-4-6-20; or**

41 **(B) IC 36-5-2-11 through IC 36-5-2-12;**

C  
O  
P  
Y



- 1           (3) may, in the discretion of the municipality, be sold at a
- 2           negotiated sale at a price to be determined by the county or in
- 3           accordance with IC 5-1-11 and IC 5-3-1; and
- 4           (4) may be issued for a term not to exceed twenty-five (25)
- 5           years, and the term must include any refunding bonds issued
- 6           to refund bonds originally issued under this section.
- 7           (c) Leases entered into under this section:
- 8           (1) may be for a term not to exceed twenty-five (25) years;
- 9           (2) may provide for payments from revenues under this
- 10          chapter, any other revenues available to the municipality, or
- 11          any combination of these sources;
- 12          (3) may provide that payments by the municipality to the
- 13          lessor are required only to the extent and only for the time
- 14          that the lessor is able to provide the leased facilities in
- 15          accordance with the lease;
- 16          (4) must be based upon the value of the facilities leased; and
- 17          (5) may not create a debt of the municipality for purposes of
- 18          the Constitution of the State of Indiana.
- 19          (d) A lease may be entered into by the executive of the
- 20          municipality only after a public hearing with notice given in
- 21          accordance with IC 5-3-1 at which all interested parties are
- 22          provided the opportunity to be heard. After the public hearing, the
- 23          executive may approve the execution of the lease on behalf of the
- 24          municipality only if the executive finds that the service to be
- 25          provided throughout the life of the lease will serve the public
- 26          purpose of the municipality and is in the best interests of its
- 27          residents. A lease approved by the executive must also be approved
- 28          by an ordinance of the municipal legislative body.
- 29          (e) Upon execution of a lease under this section, and after
- 30          approval of the lease by the municipal legislative body, the
- 31          executive of the municipality shall publish notice of the execution
- 32          of the lease and the approval of the lease in accordance with
- 33          IC 5-3-1.
- 34          (f) An action to contest the validity of bonds issued or leases
- 35          entered into under this section must be brought within thirty (30)
- 36          days after the adoption of a bond ordinance or notice of the
- 37          execution and approval of the lease, as applicable.
- 38          Sec. 17. The general assembly covenants with:
- 39               (1) each municipality imposing a municipal food and beverage
- 40               tax; and
- 41               (2) the purchasers and owners of obligations of a municipality
- 42               payable from a municipal food and beverage tax;

COPY



1     **that this chapter will not be repealed or amended in any manner**  
2     **that will adversely affect the imposition or collection of a municipal**  
3     **food and beverage tax so long as the principal, interest, or lease**  
4     **rentals due under those obligations of a municipality that are**  
5     **payable from a municipal food and beverage tax remain unpaid.**

C  
o  
p  
y

