

## **IC 6-9-20**

### Chapter 20. Vanderburgh County Food and Beverage Tax

#### **IC 6-9-20-0.3**

##### **Legalization of actions taken by county fiscal body determining to continue excise tax**

Sec. 0.3. Any action taken by a county fiscal body in determining that an excise tax should be continued is legalized and validated, if the action would have been valid under section 3 of this chapter, as amended by P.L.28-1993.

*As added by P.L.220-2011, SEC.167.*

#### **IC 6-9-20-1**

##### **Application of chapter**

Sec. 1. This chapter applies to a county having a population of more than one hundred seventy thousand (170,000) but less than one hundred eighty thousand (180,000).

*As added by P.L.83-1985, SEC.1. Amended by P.L.12-1992, SEC.48; P.L.170-2002, SEC.45.*

#### **IC 6-9-20-2**

##### **Definitions**

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

*As added by P.L.83-1985, SEC.1.*

#### **IC 6-9-20-3**

##### **Imposition of tax by ordinance**

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

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

(d) Except as provided in subsection (e), if the county fiscal body determines that the tax under this chapter should be continued in order to finance improvements to a county auditorium or auditorium renovation resulting in a new convention center and related parking facilities, the tax continues until January 1 of the year following the year in which the last of the bonds issued to finance improvements to a county auditorium or auditorium renovation resulting in a new convention center and related parking facilities, and the last of any bonds issued to refund those bonds, have been completely paid or defeased as to both principal and interest. An action to contest the validity of the determination under this subsection must be instituted not more than thirty (30) days after the determination.

(e) Notwithstanding subsection (d), if the county fiscal body determines that the tax under this chapter should be continued to finance the acquisition, construction, and equipping of an arena and other facilities that serve or support the arena activities, the tax does not terminate as specified in subsection (d) but continues until January 1 of the year following the year in which the last of the bonds issued to finance the acquisition, construction, and equipping of the arena and other facilities that serve or support the arena activities, and the last of any bonds issued to refund those bonds, have been completely paid or defeased as to both principal and interest. An action to contest the validity of the determination under this subsection must be instituted not more than thirty (30) days after the determination.

*As added by P.L.83-1985, SEC.1. Amended by P.L.28-1993, SEC.11; P.L.99-1995, SEC.6; P.L.69-1996, SEC.1; P.L.176-2009, SEC.8.*

#### **IC 6-9-20-4**

##### **Taxable transactions; exemptions**

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

(b) Transactions described in subsection (a)(1) include, but are not limited to, 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 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 packaging used to transport the food).

(c) The county food and beverage tax 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.

*As added by P.L.83-1985, SEC.1. Amended by P.L.257-2003, SEC.34.*

#### **IC 6-9-20-5**

##### **Rate of tax**

Sec. 5. The county food and beverage tax imposed on a food or beverage transaction described in section 4 of this chapter equals one percent (1%) of the gross retail income received by the 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.

*As added by P.L.83-1985, SEC.1.*

#### **IC 6-9-20-6**

##### **Procedures for imposition, payment, and collection; returns**

Sec. 6. The 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 taxes 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.

*As added by P.L.83-1985, SEC.1.*

#### **IC 6-9-20-7**

##### **Repealed**

*(Repealed by P.L.176-2009, SEC.31.)*

#### **IC 6-9-20-7.5**

##### **Payment to county treasurer and Evansville controller**

Sec. 7.5. If the county fiscal body has determined to continue the tax to finance improvements to a county auditorium or auditorium renovation resulting in a new convention center and related parking facilities or to finance the acquisition, construction, and equipping of an arena and other facilities that serve or support the arena activities, the amounts received from the taxes imposed under this chapter shall be paid monthly by the treasurer of state to the county treasurer under section 8.5 of this chapter or the fiscal officer of the largest municipality in the county under section 9.5 of this chapter upon warrants issued by the auditor of state.

*As added by P.L.99-1995, SEC.8. Amended by P.L.69-1996, SEC.2; P.L.176-2009, SEC.9.*

#### **IC 6-9-20-8**

##### **Repealed**

*(Repealed by P.L.176-2009, SEC.31.)*

#### **IC 6-9-20-8.5**

##### **Auditorium fund; deposits; use of fund**

Sec. 8.5. (a) If the tax imposed under section 3 of this chapter is continued to finance improvements to the county auditorium or auditorium renovation resulting in a new convention center and related parking facilities, the county treasurer shall establish an auditorium fund.

(b) Except as provided in sections 8.8 and 9.5 of this chapter, the county treasurer 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.

(d) Money in the fund shall be used by the county for the financing, construction, renovation, improvement, and equipping of a county auditorium or auditorium renovation resulting in a new convention center and related parking facilities.

*As added by P.L.99-1995, SEC.10. Amended by P.L.69-1996, SEC.3; P.L.176-2009, SEC.10.*

### **IC 6-9-20-8.7**

#### **Bonds, leases, or other obligations; validity**

Sec. 8.7. (a) The county may issue bonds, enter into leases, or incur other obligations to:

(1) pay any costs associated with the financing, construction, renovation, improvement, and equipping of a county auditorium or auditorium renovation resulting in a new convention center and related parking facilities; or

(2) refund bonds issued or other obligations incurred under this chapter so long as any bonds issued or other obligations incurred to refund bonds or retire other obligations do not extend the date that the previous bonds or other obligations will be completely paid as to principal and interest.

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

(1) are payable solely from money provided in this chapter;

(2) must be issued in the manner prescribed by IC 36-2-6-18 through IC 36-2-6-20 before January 1, 2002;

(3) may not have a term that is longer than twenty-five (25) years after the date construction, renovation, or improvements on the county auditorium or auditorium renovation resulting in a new convention center and related parking facilities are completed; and

(4) may, in the discretion of the county, be sold at a negotiated sale at a price to be determined by the county or in accordance with IC 5-1-11 and IC 5-3-1.

(c) Leases entered into under this section:

(1) may be for a term not to exceed twenty-five (25) years;

(2) may provide for payments from revenues under this chapter, any other revenues available to the county, or any combination of these sources;

(3) may provide that payments by the county to the lessor are required only to the extent and only for the time that the lessor is able to provide the leased facilities in accordance with the lease;

(4) must be based upon the value of the facilities leased; and

(5) may not create a debt of the county for purposes of the Constitution of the State of Indiana.

(d) A lease may be entered into by the county executive only after

a public hearing at which all interested parties are provided the opportunity to be heard. After the public hearing, the executive may approve the execution of the lease on behalf of the county only if the executive finds that the service to be provided throughout the life of the lease will serve the public purpose of the county and is in the best interests of its residents. A lease approved by the executive must also be approved by an ordinance of the county fiscal body.

(e) An action to contest the validity of bonds issued or leases entered into under this section must be brought not later than thirty (30) days after the adoption of a bond ordinance or commissioners' action approving the execution of the lease.

*As added by P.L.99-1995, SEC.11. Amended by P.L.85-1995, SEC.37; P.L.69-1996, SEC.4.*

### **IC 6-9-20-8.8**

#### **Arena fund; deposits; use of excess revenue for arena fund**

Sec. 8.8. (a) If the tax imposed under section 3 of this chapter is continued to finance the acquisition, construction, and equipping of an arena and other facilities that serve or support the arena activities, the county treasurer shall determine whether there is any food and beverage tax revenue under this chapter that is not required to be deposited and held to:

(1) pay any debt service on bonds issued or rentals on leases entered into by January 1, 2009, for which a pledge of revenues of the food and beverage tax has been made by the county as set forth in section 8.7 of this chapter; or

(2) provide for a debt service reserve related to the bonds or leases described in subdivision (1).

(b) Before the twentieth day of each month, the county treasurer shall determine whether there is excess food and beverage tax revenue under subsection (a) and by the last day of that month transfer the excess food and beverage tax revenue to the fiscal officer of the most populated municipality in the county. The municipal fiscal officer shall deposit the excess food and beverage tax revenue in a municipal arena fund. Any money earned from the investment of money in the municipal arena fund becomes a part of the municipal arena fund. Money in the municipal arena fund shall be used by the most populated municipality in the county for financing the acquisition, construction, and equipping of an arena and other facilities that serve or support the arena activities. This money shall be retained in the municipal arena fund until applied or transferred to another fund pledged to the payment of debt service on bonds, rent on leases, or other obligations incurred to finance the facilities.

*As added by P.L.176-2009, SEC.11.*

### **IC 6-9-20-8.9**

#### **Arena fund; deposits; use of fund for arena financing**

Sec. 8.9. (a) If the tax imposed under section 3 of this chapter is continued to finance the acquisition, construction, and equipping of an arena and other facilities that serve or support the arena activities,

the most populated municipality in the county may issue bonds, enter into leases, or incur other obligations to:

- (1) pay any costs associated with the financing, acquisition, construction, and equipping of the arena and other facilities that serve or support the arena activities; or
- (2) refund bonds issued or other obligations incurred under this chapter so long as any bonds issued or other obligations incurred to refund bonds or retire other obligations do not extend the date when the previous bonds or other obligations will be completely paid as to principal and interest.

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

- (1) are payable from money provided in this chapter, any other revenues available to the municipality, or any combination of these sources;
- (2) must be issued in the manner prescribed by IC 36-4-6-19 through IC 36-4-6-20;
- (3) may not have a term ending more than thirty (30) years after the first February 1 following the date on which construction of the arena and other facilities that serve or support the arena activities is estimated to be completed;
- (4) may be payable at any regular designated intervals and may be paid in unequal amounts if the municipality reasonably expects to pay the debt service from funds other than property taxes that are exempt from the levy limitations of IC 6-1.1-18.5 (even if the municipality has pledged to levy property taxes to pay the debt service if those other funds are insufficient); and
- (5) may, in the discretion of the municipality, be sold at a negotiated sale at a price to be determined by the municipality or in accordance with IC 5-1-11 and IC 5-3-1.

(c) Leases entered into under this section:

- (1) may be for a term ending not later than thirty (30) years after the first February 1 following the date on which construction of the arena and other facilities that serve or support the arena activities is estimated to be completed;
- (2) may be payable at any regular designated intervals and may be paid in unequal amounts if the municipality reasonably expects to pay the lease rentals from funds other than property taxes that are exempt from the levy limitations of IC 6-1.1-18.5 (even if the municipality has pledged to levy property taxes to pay the lease rentals if those other funds are insufficient);
- (3) may provide for payments from revenues under this chapter, any other revenues available to the municipality, or any combination of these sources;
- (4) may provide that payments by the municipality to the lessor are required only to the extent and only for the time that the lessor is able to provide the leased facilities in accordance with the lease;
- (5) must be based upon the value of the facilities leased; and
- (6) may not create a debt of the municipality for purposes of the Constitution of the State of Indiana.

(d) A lease may be entered into by the municipal executive after a public hearing of the municipal fiscal body at which all interested parties are provided the opportunity to be heard. After the public hearing, the municipal executive may approve the execution of the lease on behalf of the municipality only if:

- (1) the municipal executive finds that the service to be provided throughout the life of the lease will serve the public purpose of the municipality and is in the best interests of its residents; and
- (2) the lease is approved by an ordinance of the municipal fiscal body.

(e) An action to contest the validity of bonds issued or leases entered into under this section must be brought not later than thirty (30) days after the adoption of a bond ordinance or the municipal executive's action approving the execution of the lease.

(f) Notwithstanding the provisions of this chapter or any other law, instead of issuing bonds, entering into leases, or incurring obligations in whole or in part under this chapter, the most populated municipality in the county may cause bonds to be issued, leases to be entered into, or obligations to be incurred under this subsection to finance the acquisition, construction, and equipping of an arena and other facilities that serve or support the arena. The bonds, leases, or obligations:

- (1) must be issued, entered into, or incurred by any special taxing district, agency, department, or instrumentality of or in the municipality, under any other law by which bonds may be issued, leases may be entered into, or obligations incurred;
- (2) must be payable from money provided under this chapter, from any other revenues available to the municipality or any special taxing district, agency, department, or instrumentality of or in the municipality, or any combination of these sources;
- (3) must have a term ending not later than thirty (30) years after the first February 1 following the date on which construction of the arena and other facilities that serve or support the arena activities is estimated to be completed; and
- (4) may be payable at any regular designated intervals and may be paid in unequal amounts if the municipality, special taxing district, agency, department, or instrumentality of or in the municipality reasonably expects to pay the debt service or lease rentals from funds other than property taxes that are exempt from the levy limitations of IC 6-1.1-18.5 (even if the municipality or any special taxing district, agency, department, or instrumentality of or in the municipality has pledged to levy property taxes to pay the debt service or lease rentals if those other funds are insufficient).

*As added by P.L.176-2009, SEC.12.*

#### **IC 6-9-20-9**

##### **Bonds, leases, or other obligations; covenants of general assembly**

Sec. 9. With respect to bonds, leases, or other obligations for which a pledge of revenues of the food and beverage tax imposed

under this chapter has been made by the county as set forth in section 8.7 or 8.9 of this chapter, and bonds issued by a lessor that are payable from lease rentals, the general assembly covenants with the county, the most populated municipality in the county, and the purchasers or owners of the bonds or other obligations described in this subdivision that this chapter will not be repealed or amended in any manner that will adversely affect the imposition or collection of the food and beverage tax imposed by this chapter as long as the principal of any bonds, the interest on any bonds, or the lease rentals due under any lease are unpaid.

*As added by P.L.83-1985, SEC.1. Amended by P.L.99-1995, SEC.12; P.L.176-2009, SEC.13.*

#### **IC 6-9-20-9.5**

##### **Arena fund; deposits; use of fund for arena financing**

Sec. 9.5. If:

(1) the county treasurer has certified to the treasurer of state that:

(A) the last of the bonds issued to finance the improvements to a county auditorium or auditorium renovation resulting in a new convention center and related parking facilities; and

(B) the last of any bonds issued to refund the bonds referred to in clause (A);

have been completely paid or defeased as to both principal and interest; and

(2) the county fiscal body has made a determination to continue the tax to finance the acquisition, construction, and equipping of an arena and other facilities that serve or support the arena activities;

the amounts received from the taxes imposed under this chapter shall be paid monthly by the treasurer of state to the fiscal officer of the most populated municipality in the county upon warrants issued by the auditor of state. The fiscal officer shall deposit any amounts received under this section in the municipal arena fund.

*As added by P.L.176-2009, SEC.14.*

#### **IC 6-9-20-10**

##### **Repealed**

*(Repealed by P.L.99-1995, SEC.14.)*

#### **IC 6-9-20-11**

##### **County auditorium or auditorium renovation; financing and purpose**

Sec. 11. The financing of:

(1) improvements to a county auditorium or auditorium renovation resulting in a new convention center and related parking facilities; and

(2) the acquisition, construction, and equipping of an arena and other facilities that serve or support the arena activities;

serves a public purpose and is of benefit to the general welfare of the

county by enhancing cultural activities and improving the quality of life in the county and encouraging investment, economic growth, and diversity.

*As added by P.L. 99-1995, SEC. 13. Amended by P.L. 69-1996, SEC. 5; P.L. 176-2009, SEC. 15.*