

## **IC 6-9-25**

### Chapter 25. Henry County Food and Beverage Tax

#### **IC 6-9-25-1**

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

Sec. 1. (a) This chapter applies to a county having a population of more than forty-seven thousand (47,000) but less than fifty thousand (50,000).

(b) The county described in subsection (a) is unique because:

- (1) governmental entities and nonprofit organizations in the county have successfully undertaken cooperative efforts to promote tourism and economic development; and
- (2) several unique tourist attractions are located in the county, including:
  - (A) the Indiana basketball hall of fame;
  - (B) the Wilbur Wright birthplace memorial; and
  - (C) a historic gymnasium.

(c) The presence of these unique attractions in the county has:

- (1) increased the number of visitors to the county;
- (2) generated increased sales at restaurants and other retail establishments selling food in the county; and
- (3) placed increased demands on all local governments for services needed to support tourism and economic development in the county.

(d) The use of food and beverage tax revenues arising in part from the presence of the attractions identified in subsection (b)(2) to support tourism and economic development in the county permits governmental units in the county to diversify the revenue sources for which local government improvements and services are funded.

*As added by P.L.380-1987(ss), SEC.7. Amended by P.L.12-1992, SEC.52; P.L.158-2005, SEC.1.*

#### **IC 6-9-25-2**

##### **Definitions**

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

*As added by P.L.380-1987(ss), SEC.7.*

#### **IC 6-9-25-3**

##### **Ordinance imposing food and beverage tax; adoption; certified copy to commissioner of department of state revenue; effective date; prohibited imposition of tax**

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) Notwithstanding any other law, the imposition of the tax under this chapter is prohibited upon the satisfaction by the county of all of its obligations authorized under section 11.5 of this chapter.

*As added by P.L.380-1987(ss), SEC.7. Amended by P.L.50-1994, SEC.1.*

#### **IC 6-9-25-4**

##### **Taxable transactions**

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 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.380-1987(ss), SEC.7. Amended by P.L.257-2003, SEC.38.*

#### **IC 6-9-25-5**

##### **Tax rate**

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.380-1987(ss), SEC.7.*

**IC 6-9-25-6****Imposition, payment, and collection of tax; return**

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.380-1987(ss), SEC.7.*

**IC 6-9-25-7****Monthly payment of tax receipts to county treasurer**

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

*As added by P.L.380-1987(ss), SEC.7.*

**IC 6-9-25-8****Food and beverage tax receipts fund; establishment; depository; investment income**

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

(b) 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.

*As added by P.L.380-1987(ss), SEC.7.*

**IC 6-9-25-9****Use of food and beverage tax money received before July 1, 1994**

Sec. 9. (a) This section applies to revenues from the county food and beverage tax received by the county before July 1, 1994.

(b) Money in the fund established under section 8 of this chapter shall be used by the county in the following order:

(1) To pay debt service on bonds issued under IC 36-2-6-18 through IC 36-2-6-20, including up to two (2) years interest, to finance:

(A) the acquisition, construction, or equipping of a basketball hall of fame;

(B) all reasonable and necessary architectural, engineering, legal, financing, accounting, advertising, bond discount, and supervisory expenses related to the acquisition, construction, or equipping of a basketball hall of fame or the issuance of bonds; and

(C) the establishment or maintenance of a debt service reserve fund for the bonds or any other reasonable or necessary reserve funds to operate, repair, maintain, or improve a basketball hall of fame.

(2) To redeem or prepay bonds after meeting all requirements of any bond ordinance.

(3) To reimburse the county or any nonprofit corporation for any money advanced for purposes of this chapter.

(c) Money held in the fund established under section 8 of this chapter shall be held until distribution under subsection (b).

(d) The county auditor shall make a semiannual distribution, at the time property tax revenue is distributed, to the paying agent for any bonds described in subsection (b)(1). Each semiannual distribution must be equal to principal and interest obligations on the bonds on the next interest payment date. Money received by a paying agent under this subsection shall be deposited in a special fund to be used to service the bonds.

*As added by P.L.380-1987(ss), SEC.7. Amended by P.L.75-1988, SEC.4; P.L.50-1994, SEC.2.*

### **IC 6-9-25-9.5**

#### **Use of food and beverage tax money; capital expenditures; county capital improvements committee**

Sec. 9.5. (a) This section applies to revenues from the county food and beverage tax received by the county after June 30, 1994.

(b) Money in the fund established under section 8 of this chapter shall be used by the county for the financing, construction, renovation, improvement, equipping, or maintenance of the following capital improvements:

(1) Sanitary sewers or wastewater treatment facilities that serve economic development purposes.

(2) Drainage or flood control facilities that serve economic development purposes.

(3) Road improvements used on an access road for an industrial park that serve economic development purposes.

(4) A covered horse show arena.

(5) A historic birthplace memorial.

(6) A historic gymnasium and community center in a town in the county with a population greater than two thousand (2,000) but less than two thousand four hundred (2,400).

(7) Main street renovation and picnic and park areas in a town in the county with a population greater than two thousand (2,000) but less than two thousand four hundred (2,400).

(8) A community park and cultural center.

(9) Projects for which the county decides after July 1, 1994, to:  
(A) expend money in the fund established under section 8 of this chapter; or

(B) issue bonds or other obligations or enter into leases under section 11.5 of this chapter;

after the projects described in subdivisions (1) through (8) have been funded.

(10) An ambulance.

Money in the fund may not be used for the operating costs of any of the permissible projects listed in this section. In addition, the county

may not issue bonds or enter into leases or other obligations under this chapter after December 31, 2015.

(c) The county capital improvements committee is established to make recommendations to the county fiscal body concerning the use of money in the fund established under section 8 of this chapter. The capital improvements committee consists of the following members:

(1) One (1) resident of the county representing each of the three (3) commissioner districts, appointed by the county executive. Not more than two (2) of the members appointed under this subdivision may be from the same political party.

(2) Two (2) residents of the county, appointed by the county fiscal body. The two (2) appointees may not be from the same political party. One (1) appointee under this subdivision must be a resident of a town in the county with a population greater than two thousand (2,000) but less than two thousand four hundred (2,400). One (1) appointee under this subdivision must be a resident of a town in the county with a population greater than two thousand four hundred (2,400).

(3) Two (2) residents of the largest city in the county, appointed by the municipal executive. The two (2) appointees under this subdivision may not be from the same political party. One (1) appointee must be interested in economic development.

(4) Two (2) residents of the largest city in the county, appointed by the municipal fiscal body. The two (2) appointees under this subdivision may not be from the same political party. One (1) appointee must be interested in tourism.

(d) Except as provided in subsection (e), the term of a member appointed to the capital improvements committee under subsection (c) is four (4) years.

(e) The initial terms of office for the members appointed to the county capital improvements committee under subsection (c) are as follows:

(1) Of the members appointed under subsection (c)(1), one (1) member shall be appointed for a term of two (2) years, one (1) member shall be appointed for three (3) years, and one (1) member shall be appointed for four (4) years.

(2) Of the members appointed under subsection (c)(2), one (1) member shall be appointed for two (2) years and one (1) member shall be appointed for three (3) years.

(3) Of the members appointed under subsection (c)(3), one (1) member shall be appointed for two (2) years and one (1) member shall be appointed for three (3) years.

(4) Of the members appointed under subsection (c)(4), one (1) member shall be appointed for three (3) years and one (1) member shall be appointed for four (4) years.

(f) At the expiration of a term under subsection (e), the member whose term expired may be reappointed to the county capital improvements committee to fill the vacancy caused by the expiration.

(g) The capital improvements committee is abolished on January 1, 2016.

*As added by P.L.50-1994, SEC.3. Amended by P.L.170-2002, SEC.48; P.L.158-2005, SEC.2.*

#### **IC 6-9-25-10**

##### **Repealed**

*(Repealed by P.L.50-1994, SEC.11.)*

#### **IC 6-9-25-10.5**

##### **County food and beverage tax council; establishment; voting; abolition**

Sec. 10.5. (a) The county food and beverage tax council is established in the county. The membership of the county food and beverage tax council consists of the fiscal body of the county and the fiscal body of each municipality that lies either partly or entirely within the county.

(b) The county food and beverage tax council has a total of one hundred (100) votes. Every member of the county food and beverage tax council is allocated a percentage of the total one hundred (100) votes that may be cast. The percentage that a municipality in the county is allocated for a year equals the same percentage that the population of the municipality bears to the population of the county. The percentage that the county is allocated for a year equals the same percentage that the population of all areas of the county not located in a municipality bears to the population of the county. In the case of a municipality that lies partly within the county, the allocation shall be based on the population of that portion of the municipality that lies within the county.

(c) Before January 2 of each year, the county auditor shall certify to each member of the food and beverage tax council the number of votes, rounded to the nearest one-hundredth (0.01), the member has for that year.

(d) The food and beverage tax imposed under this chapter remains in effect until the county food and beverage tax council adopts an ordinance to rescind the tax.

(e) An ordinance to rescind the food and beverage tax takes effect December 31 of the year in which the ordinance is adopted.

(f) The county food and beverage tax council may not rescind the food and beverage tax if there are bonds outstanding or leases or other obligations payable under this chapter.

(g) The county food and beverage tax council is abolished on January 1, 2016.

*As added by P.L.50-1994, SEC.4. Amended by P.L.158-2005, SEC.3.*

#### **IC 6-9-25-10.7**

##### **Ordinance to rescind food and beverage tax; procedures; voting**

Sec. 10.7. (a) Any member of the county food and beverage tax council may present an ordinance to rescind the food and beverage tax. To do so, the member must adopt a resolution to propose the ordinance to the county food and beverage tax council and distribute a copy of the proposed ordinance to the auditor of the county. The

county auditor shall treat an ordinance presented to the county auditor as a casting of all that member's votes in favor of the proposed ordinance. The county auditor shall deliver copies of a proposed ordinance to all other members of the county food and beverage tax council within ten (10) days after receipt by the county auditor. A member shall vote on the proposed ordinance within thirty (30) days after receiving the proposed ordinance from the county auditor. If a member does not vote within thirty (30) days, the county auditor shall treat the member as having voted no on the proposed ordinance.

(b) A member of the county food and beverage tax council may exercise the member's votes by passing a resolution and transmitting the resolution to the county auditor. A resolution passed by a member of the county food and beverage tax council exercises all votes of the member on the proposed ordinance. Those votes may not be changed during the year.

(c) Before a member of the county food and beverage tax council may propose an ordinance or vote on a proposed ordinance to rescind the food and beverage tax, the member must hold a public hearing on the proposed ordinance and provide the public with notice of the time and place where the hearing will be held in accordance with IC 5-3-1.

(d) The county auditor shall record all votes taken on a proposed ordinance presented for a vote under this section and immediately send a certified copy of the results to the department of state revenue by certified mail.

*As added by P.L.50-1994, SEC.5.*

#### **IC 6-9-25-11**

##### **Bonds; issuance; payment; lease of facilities**

Sec. 11. (a) The county may issue its bonds to:

- (1) pay any costs associated with a basketball hall of fame, as set forth in section 9(b)(1) of this chapter;
- (2) reimburse the county or any nonprofit corporation for any money advanced to pay those costs; or
- (3) refund bonds issued under this section.

(b) Bonds issued under this section:

- (1) are payable solely from money provided under this chapter;
- (2) must be issued in the manner prescribed by IC 36-2-6-18 through IC 36-2-6-20; and
- (3) may, in the discretion of the county, be sold at 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) Proceeds of the tax established under this chapter may be pledged:

- (1) to pay debt service on bonds issued under this chapter;
- (2) for the payment of lease rentals or other obligations entered into under this chapter; or
- (3) for any purposes set forth in section 9(b)(1) or 9.5 of this chapter.

A pledge is enforceable as set forth in IC 5-1-14-4.

(d) The county may lease the basketball hall of fame facility to a nonprofit corporation for a term not to exceed twenty-five (25) years. The lease may contain any terms acceptable to the county council and must be approved by ordinance of the county council.

*As added by P.L.75-1988, SEC.5. Amended by P.L.50-1994, SEC.6.*

### **IC 6-9-25-11.5**

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

Sec. 11.5. (a) Until January 1, 2016, the county may:

- (1) use money in the fund established under section 8 of this chapter to pay all or part of the costs associated with the facilities described in section 9.5 of this chapter;
- (2) issue bonds, enter into leases, or incur other obligations to pay any costs associated with the facilities described in section 9.5 of this chapter;
- (3) reimburse the county or any nonprofit corporation for any money advanced to pay those costs; or
- (4) refund bonds issued or other obligations incurred under this chapter.

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

- (1) are payable from money provided in this chapter, any other revenues available to the county, or any combination of these sources, in accordance with a pledge made under IC 5-1-14-4;
- (2) must be issued in the manner prescribed by IC 36-2-6-18 through IC 36-2-6-20;
- (3) 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; and
- (4) may be issued for a term not to exceed twenty (20) years, such term to include any refunding bonds issued to refund bonds originally issued under this section.

(c) Leases entered into under this section:

- (1) may be for a term not to exceed fifty (50) 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) Upon execution of a lease under this section, and after approval of the lease by the county fiscal body, the county executive shall publish notice of the execution of the lease and the approval of the lease in accordance with IC 5-3-1.

(f) An action to contest the validity of bonds issued or leases entered into under this section must be brought within thirty (30) days after the adoption of a bond ordinance or notice of the execution and approval of the lease, as the case may be.

*As added by P.L.50-1994, SEC.7. Amended by P.L.158-2005, SEC.4.*

### **IC 6-9-25-12**

#### **Bonds, leases, or other obligations; adverse legislation covenant**

Sec. 12. With respect to:

(1) 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 11 or 11.5 of this chapter; and

(2) bonds issued by a lessor that are payable from lease rentals; the general assembly covenants with the county, the purchasers or owners of the bonds or other obligations described in subdivision (1), and the owners of bonds described in subdivision (2) 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.75-1988, SEC.6. Amended by P.L.50-1994, SEC.8.*

### **IC 6-9-25-13**

#### **Tourism and economic development projects; financing; purpose**

Sec. 13. The financing of tourism and economic development projects in the county serves a public purpose and is of benefit to the general welfare of the county by encouraging investment, job creation and retention, and economic growth and diversity.

*As added by P.L.50-1994, SEC.9.*

### **IC 6-9-25-14**

#### **Basketball hall of fame; operation and maintenance fund; use of food and beverage tax to finance**

Sec. 14. Notwithstanding any other law, funds accumulated from the collection of the food and beverage tax imposed under section 3 of this chapter after redemption of the bonds issued under this chapter and accrued before July 1, 1994, may be set aside in an operation and maintenance fund for a basketball hall of fame financed under section 9 of this chapter. Money in the fund may be used by a nonprofit corporation that has leased the basketball hall of fame facility for the operation, repair, maintenance, or improvement of the basketball hall of fame.

*As added by P.L.50-1994, SEC.10.*