

IC 6-9-27

Chapter 27. Miscellaneous Local Food and Beverage Taxes

IC 6-9-27-1

Application

Sec. 1. This chapter applies to the following:

- (1) A town:
 - (A) located in a county having a population of more than sixty-five thousand (65,000) but less than seventy thousand (70,000); and
 - (B) having a population of more than nine thousand (9,000).
- (2) A town:
 - (A) located in a county having a population of more than thirty-four thousand nine hundred (34,900) but less than thirty-four thousand nine hundred fifty (34,950); and
 - (B) having a population of less than one thousand (1,000).
- (3) A town:
 - (A) located in a county having a population of more than one hundred thousand (100,000) but less than one hundred five thousand (105,000); and
 - (B) having a population of more than fifteen thousand (15,000).
- (4) A town:
 - (A) located in a county having a population of more than one hundred thousand (100,000) but less than one hundred five thousand (105,000); and
 - (B) having a population of more than ten thousand (10,000) but less than fifteen thousand (15,000).
- (5) A town:
 - (A) located in a county having a population of more than one hundred thousand (100,000) but less than one hundred five thousand (105,000); and
 - (B) having a population of more than five thousand (5,000) but less than six thousand three hundred (6,300).
- (6) A city having a population of more than eleven thousand five hundred (11,500) but less than eleven thousand seven hundred forty (11,740).

As added by P.L.35-1990, SEC.24. Amended by P.L.12-1992, SEC.54; P.L.103-1995, SEC.1; P.L.170-2002, SEC.51; P.L.214-2005, SEC.34.

IC 6-9-27-2

Definitions

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

As added by P.L.35-1990, SEC.24.

IC 6-9-27-3

Adoption of ordinance

Sec. 3. (a) The fiscal body of the municipality may adopt an

ordinance to impose an excise tax, known as the municipal food and beverage tax, on transactions described in section 4 of this chapter.

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

(c) If a fiscal body adopts an ordinance under subsection (a), the municipal 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.

As added by P.L.35-1990, SEC.24. Amended by P.L.214-2005, SEC.35.

IC 6-9-27-4

Transactions; application of tax

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 city or 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 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 municipal 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.

As added by P.L.35-1990, SEC.24. Amended by P.L.257-2003, SEC.40; P.L.214-2005, SEC.36.

IC 6-9-27-5

Amount

Sec. 5. The municipal 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 a transaction does not include the amount of tax imposed on the transaction under IC 6-2.5. *As added by P.L.35-1990, SEC.24. Amended by P.L.214-2005, SEC.37.*

IC 6-9-27-6

Imposition, payment, and collection; returns

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 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.

As added by P.L.35-1990, SEC.24.

IC 6-9-27-7

Payments to municipal fiscal officer

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

As added by P.L.35-1990, SEC.24. Amended by P.L.214-2005, SEC.38.

IC 6-9-27-8

Town food and beverage tax receipts fund

Sec. 8. (a) If a tax is imposed under section 3 of this chapter by a town described in section 1 of this chapter, 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.

As added by P.L.35-1990, SEC.24. Amended by P.L.214-2005, SEC.39.

IC 6-9-27-8.5

City food and beverage tax receipts fund

Sec. 8.5. (a) If a tax is imposed under section 3 of this chapter by a city described in section 1(6) of this chapter, the city fiscal officer shall establish a food and beverage tax receipts fund.

(b) The city 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.

As added by P.L.214-2005, SEC.40.

IC 6-9-27-9

Town use of revenue; pledges to pay obligations

Sec. 9. (a) Except as provided in subsection (b), money in the

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) Park or recreational facilities.
- (3) Drainage or flood control facilities.
- (4) Water treatment, storage, or distribution facilities.

(b) The fiscal body of the town may pledge money in the 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 obligations that are issued, obtained, or incurred after the date on which the tax is imposed under section 3 of this chapter.

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

As added by P.L.35-1990, SEC.24. Amended by P.L.214-2005, SEC.41.

IC 6-9-27-9.5

City use of revenue; pledges to pay obligations

Sec. 9.5. (a) A city shall use money in the fund established under section 8.5 of this chapter for only the following:

- (1) Renovating the city hall.
- (2) Constructing new police or fire stations, or both.
- (3) Improving the city's sanitary sewers or wastewater treatment facilities, or both.
- (4) Improving the city's storm water drainage systems.
- (5) Other projects involving the city's water system or sanitary sewer system or protecting the city's well fields, as determined by the city fiscal body.

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

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

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

As added by P.L.214-2005, SEC.42. Amended by P.L.184-2006, SEC.10; P.L.176-2009, SEC.16.

IC 6-9-27-10

Payment of outstanding obligations; covenant with holders

Sec. 10. With respect to obligations for which a pledge has been made under section 9(b) or 9.5(b) 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.
As added by P.L.35-1990, SEC.24. Amended by P.L.214-2005, SEC.43.