

IC 6-9-33

Chapter 33. Allen County Supplemental Food and Beverage Tax

IC 6-9-33-1

Application of chapter

Sec. 1. This chapter applies to a county having a population of more than three hundred thousand (300,000) but less than four hundred thousand (400,000).

As added by P.L.8-2000, SEC.3.

IC 6-9-33-2

Definitions

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

As added by P.L.8-2000, SEC.3.

IC 6-9-33-3

Ordinance imposing tax

Sec. 3. (a) After January 1 but before June 1, the fiscal body of a county may adopt an ordinance to impose an excise tax, known as the county supplemental 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 supplemental food and beverage tax applies to transactions that occur after June 30 of the year in which the ordinance is adopted. Any legal challenges to the imposition of the tax, including any effort to force the revocation or repeal of the tax, must be filed within ninety (90) days after the adoption of the tax by the fiscal body of a county. Pending the time for a legal challenge to the tax, and during the course of any legal challenge to the tax, the tax shall not apply to any covered transaction.

(d) The tax terminates two (2) years after the later of the following:

- (1) The retirement of debt that was incurred under this chapter.
- (2) The retirement of debt that was incurred by the capital improvement board of managers under IC 36-10-8-6 and IC 36-10-8-7.

As added by P.L.8-2000, SEC.3. Amended by P.L.229-2011, SEC.97.

IC 6-9-33-4

Taxable transactions; exemption

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 supplemental 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.8-2000, SEC.3. Amended by P.L.257-2003, SEC.41.

IC 6-9-33-5

Rate of tax

Sec. 5. The county supplemental food and beverage tax imposed on a food or beverage transaction described in section 4 of this chapter may not exceed 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.8-2000, SEC.3. Amended by P.L.176-2009, SEC.17.

IC 6-9-33-6

Collection of tax; 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 tax under this chapter may be made separately 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.8-2000, SEC.3.

IC 6-9-33-7

Payment of receipts to county treasurer

Sec. 7. The amounts received from the county supplemental food and beverage tax 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.8-2000, SEC.3.

IC 6-9-33-8

Supplemental coliseum improvement fund; excess revenue

Sec. 8. (a) If a tax is imposed under section 3 of this chapter, the county treasurer shall establish a supplemental coliseum improvement fund. The county treasurer shall deposit in this fund all amounts received from the tax imposed under this chapter. Money in this fund:

(1) may be appropriated only to retire or advance refund bonds issued, loans obtained, or lease payments incurred under IC 36-1-10 (referred to in this chapter as "obligations") to remodel, expand, improve, or acquire an athletic and exhibition coliseum in existence before the effective date of an ordinance adopted under section 3 of this chapter; and

(2) shall be used to make transfers required by subsection (b).

(b) There is established a food and beverage tax reserve account to be administered by the capital improvement board of managers (IC 36-10-8). The money that is deposited in the supplemental coliseum improvement fund after December 31, 2009, and is not needed in a year to make payments on obligations for which a pledge of revenue under this chapter was made before January 1, 2009, shall be transferred to the capital improvement board. The county treasurer shall make the transfer before February 1 of the following year. The capital improvement board shall deposit the money it receives in the board's food and beverage tax reserve account. Money in the reserve account may not be withdrawn or transferred during the year it is received except to make transfers back to the county to make payments on obligations for which a pledge of revenue under this chapter was made before January 1, 2009. However, the capital improvement board may transfer:

(1) interest earned on money in the reserve account; and

(2) an amount equal to the balance that has been held in the reserve account for at least twelve (12) months;

to the board's capital improvement fund established by IC 36-10-8-12.

(c) Excess revenue transferred under subsection (b) to the capital improvement board of managers may be used to provide funding for:

(1) the construction of a capital improvement (as defined in IC 36-10-1-4);

(2) an economic development project as described in:

(A) IC 6-3.5-7-13.1(c)(1) or IC 6-3.5-7-13.1(c)(2)(A) through IC 6-3.5-7-13.1(c)(2)(I); and

(B) IC 6-3.5-7-13.1(c)(2)(K); or

(3) financing a capital improvement or an economic development project described in subdivision (1) or (2).

In carrying out this subsection, the capital improvement board may borrow against future tax revenue that will be collected under this chapter. In addition, the capital improvement board may use an

amount not to exceed one hundred thousand dollars (\$100,000) annually from the tax revenue collected under this chapter to pay expenses related to investigating a potential capital improvement or economic development project, including feasibility and preliminary engineering studies related to such a capital improvement or economic development project.

(d) Excess revenue transferred under subsection (b) to the capital improvement board of managers may not be used to:

- (1) provide funding for improvements initiated before January 1, 2009, that are located in the area bounded on the north by Jefferson Boulevard, on the east by Harrison Street, on the south by Breckenridge Street, and on the west by Ewing Street as those public ways were located on January 1 2009, as part of the Harrison Square project;
- (2) provide for debt service or lease payments for a project for which the obligations for the project were incurred before January 1, 2009; or
- (3) pay operational expenses for any facilities of the municipality.

As added by P.L.8-2000, SEC.3. Amended by P.L.176-2009, SEC.18; P.L.229-2011, SEC.98.

IC 6-9-33-9

Payment of obligations

Sec. 9. (a) Obligations entered into before January 1, 2009, for the acquisition, expansion, remodeling, and improvement of an athletic and exhibition coliseum shall be retired by using money collected from a tax imposed under this chapter.

(b) With respect to obligations for which a pledge has been made under this section before January 1, 2009, the general assembly covenants with the holders of these obligations that:

- (1) this chapter will not be repealed or amended in any manner that will adversely affect the imposition or collection of the tax imposed under this chapter; and
- (2) this chapter will not be amended in any manner that will change the purpose for which revenues from the tax imposed under this chapter may be used;

as long as the payment of any of those obligations is outstanding.

As added by P.L.8-2000, SEC.3. Amended by P.L.176-2009, SEC.19.

IC 6-9-33-10

Repealed

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

IC 6-9-33-11

Coliseum operations; annual report

Sec. 11. On or before March 31 each year, the executive director of the World War Memorial Coliseum shall submit to the capital improvement board of managers an annual report of the operations of the coliseum.

As added by P.L.176-2009, SEC.20.