HOTEL OCCUPANCY TAX

DISTRIBUTION PROGRAM

After review of the submission of your application for event/budget funding you will be notified as to whether or not you will receive funding for this budget year.

When your application is approved you will not actually receive the funds requested but rather your event will receive a "credit" against which all advertising bills and other related expenses are paid. Therefore you will need to have all invoices sent to or brought to the City offices (City of Alpine, Attention: Megan Antrim, 100 N. 13th St., Alpine, Texas 79830) for payment. It is your responsibility to keep track of all expenses so that you do not exceed the amount awarded and you can include those expenses on next year's request for funding.

I have also attached an article that summarizes the Hotel Occupancy Tax and the tests that distribution of funds must meet. Also there are special rules for the City of alpine that must also be met and I have attached a copy of those rules.

Attached you will find a sample of the narrative that you can use to promote your project and a sample questionnaire that can be used to gather information.

The time line for this year is as follows:

Application due date is August 31, 2015 (no applications will be accepted after this date). Your application will be reviewed after submission.

We realize that you may not have all of the information requested for this fiscal year's funding so we ask that you do the best you can with what you have for information. However, next year we will expect you to have the necessary information available. The City of Alpine has to have accountability of funds awarded to meet the guidelines of the Comptroller's Office, State of Texas.

Your cooperation is appreciated and we look forward to funding your event.

Should you have any questions, please contact:

Erik Zimmer, City Manager 432-837-3301
Molly Taylor, City Secretary 432-837-3301
Megan Antrim, Finance Director 432-837-3301

APPLICATION PROCEDURE
For Requesting Hotel Occupancy Tax Funding of Events

Proposals should include a response to each of the items listed below. The funding cycle is October 1 through September 30.

I. Proposal Table of Contents

II. Proposal Detail

A. Organization Identity
1. Name, address, telephone number of organization
2. Name, address, telephone number of contact person
3. Copy of Articles of Incorporation and or Bylaws (if available)

B. Organization Overview
1. Brief history and description of organization
2. Primary purpose and programs
3. Geographic area and age group served by organization

C. Nature of Request
1. Amount requested
2. Description of project
3. Description of target populations served by project
4. Work plan or time line for project
5. Evaluation plan for project outcome
6. Plan for on going funding of the project

D. Financial Information
1. Total project budget including income and expenses
2. Amount proposed to be funded by Hotel Occupancy Taxes
3. Latest annual financial statement of last years event (income & expenses)
4. Funding received from other sources
5. Projected hotel/motel occupancy from out of town visitors to event
6. Summary of advertising funds spent last year. Radio $_____, TV $_____, Print $_____, Banner/Signs $_____, Brochures $_____, Other $_____.
7. Summary of advertising funds spent this year. Radio $_____, TV $_____, Print $_____, Banner/Signs $_____, Brochures $_____, Other $_____.
8. Summary of funding that was not spent on advertising

E. Supporting Documentation
1. A copy of organization's IRS tax exempt status letter
2. A list of organizations Board of Directors and/or members
3. Copies of completed visitor questionnaires (sample attached)

SPECIAL RULES FOR THE CITY OF ALPINE

Minimum Expenditure for Advertising and Promotion: The minimum amount that must be spent on advertising and promotion to attract tourist and convention delegates or registrants to the city or its vicinity by the City of Alpine is 50 percent.

Maximum Expenditure for Arts: Alpine's maximum percentage for the promotion of art is 15 percent of its hotel occupancy tax revenues.

Maximum Expenditure for Historical Restoration and Promotion: Alpine's maximum percentage for historical restoration and promotion of historical projects is 15 percent of its hotel occupancy tax revenues.

Source: Tax Code Section 351.1035.

CITY OF ALPINE
HOTEL OCCUPANCY TAX APPLICATION
PROJECT NARRATIVE

1. Briefly describe the tourism event you would like to promote. What type of event is it? How long has it been held? How many visitors does it/or will it attract?

2. Date of the event.

3. Location of the event.

4. What do you hope to accomplish by promoting this event?

5. How do you plan to use the funds to promote this event? Please provide a detailed budget.

6. How will the funds improve the promotion of your event?

7. How will you promote the City of Alpine as a part of your promotional campaign? How will you incorporate the City of Alpine logo or tag line in your advertising/promotional campaign?

8. What is the impact you expect from this event? What is your projected increase in terms of hotel/motel sales tax revenue, new visitors, longer visits, etc.?

9. How will you collect the necessary data to measure the impact or your event? Approved projects will need to provide this information before receiving funding.

SAMPLE BUDGET

Amount awarded	$
EXPENSES	
Radio	$
Television	$
Print	$
Banner/Signs	$
Brochures	$
Other (itemize)	$
TOTAL EXPENSES	$

SAMPLE QUESTIONNAIRE

EVENT_____

Your input makes a difference. Thank you for taking the time to complete this quick survey. Your responses help measure the success of this event and shape future activities.

1. Gender: Male Female

2. Have you ever been to Alpine prior to this event? Yes No

3. Do you plan on visiting surrounding towns or attractions after attending this event? Yes No

4. Do you plan on attending this event next year? Yes No

5. Are you staying in a local motel/hotel? Yes No
   Are you staying with friends or family? Yes No
   Are you staying in a local RV park? Yes No

6. Please estimate your total expenditures for this visit (including lodging, meals, purchases, travel, etc.)
   $_____.

7. Please rate your experiences at this event. (poor) 1 2 3 4 5 6 7 8 9 10 (excellent)

8. How did you learn about this event? Radio TV Print Ad Banner/sign Brochure/Flier Billboard Website Other _____

9. Comments, Suggestions, Observations _____
   _____
   _____
   _____
   _____
   _____
   _____
   _____

10. Thanks, your participation in this short survey is greatly appreciated.

By Bennett Sandlin
TML Executive Director

The Hotel Tax "Two-Step"

In the grand scheme of things, city hotel occupancy taxes account for just a small amount of city revenue. Property taxes and sales taxes are far more important to most cities. Why does it seem, then, that hotel taxes generate so much confusion and controversy?

The answer is this: hotel taxes, unlike most other taxes, are levied on a specific category of businesses—hotels. As a result, these businesses tend to pay close attention to how cities expend these funds. Spend city sales taxes in a controversial way, and no particular category of business feels singled out enough to raise a fuss. Perceived misuses of hotel taxes, on the other hand, are a different story.

Fortunately, it's very easy for a city official to remember how to legally spend hotel taxes. A city simply needs to remind itself to always follow the "two-part test." The key element of a two-part test is—surprise—that it has two parts! Cities frequently remember to meet one element of the test, but then forget the other part entirely. This article will succinctly describe the two-part test, and then describe some common situations to which we can apply the test.

Part 1: Heads in Beds

The first element of the two-part test is this: Every expenditure of hotel taxes must put "heads in beds." What this means is that every funded project must attract overnight tourists to the city's hotels and motels, thus promoting the city's hotel industry.

For example, how about a weekend-long arts and crafts show? There's a very good chance that out-of-town guests might come to visit such an event, so expenditure of hotel tax money on that event would likely qualify.

On the other hand, how about a quilting bee at a local nursing home? While a worthy cause, the quilting bee is unlikely to attract overnight tourists and, therefore, probably wouldn't qualify to receive hotel tax funds.

Part 2: The Nine Categories

Once a project has cleared the first part of the test, it's time for—you guessed it—the second part of the test. Here it is: every expenditure of hotel taxes must *also* fit into one of nine statutorily authorized categories. These are the nine categories: (1) convention and visitor centers; (2) convention registration; (3) advertising the city; (4) promotion of the arts; (5) historical restoration and preservation; (6) sporting events in a county under one million in population; (7) enhancing or upgrading existing sports facilities or sports fields (only in certain cities); (8) tourist transportation systems; and (9) signage directing the public to sights and attractions that are visited frequently by hotel guests in the city.

Thus, even if an event puts heads in beds, it cannot receive hotel tax money unless it *also* fits into one of the nine categories. For instance, what about a livestock auction that will attract attendees from surrounding counties? While that event is likely to attract overnight tourists, it doesn't fit neatly into one of the nine categories. Therefore, it's likely not a valid recipient of hotel tax money.

It's not enough to meet one of the two prongs of the two-part test. A city must meet both! The following are some real-life examples that have been the focus of inquiries received by the TML Legal Department.

Fireworks, Anyone?

The prototype hotel tax controversy is an event like a fireworks show or a parade. Cities frequently ask if they can fund a fireworks show with hotel tax money.

Let's subject a fireworks show to the two-part test. Does a fireworks show put heads in beds? The answer is "probably

not," unless it is a truly spectacular event. But let's give it the benefit of the doubt. Suppose the town of Pyrotechnic, Texas, truly does put on a fireworks extravaganza that attracts tourists from around the state. So far, so good.

But what about the second part of the test—the nine categories? Do fireworks shows fit neatly into any of the nine? Not really. Some may argue that such shows "advertise" the city, but this is likely not what that category means. Advertising the city literally means some sort of print or other media that explicitly promote the city. Otherwise, a city could simply say that any popular event "advertises" the city that holds it. Direct funding of fireworks displays and the like are, usually, not a very good fit.

Sign of the Times?

Another frequent question concerns highway signs promoting the city. May a city fund a billboard touting the city's attractions, restaurants, and hotels? Let's put it to the two-part test. Heads in beds? Well, why not? If a billboard encourages motorists to stop in town, those motorists might stay the night, whereas without the sign they would have driven on to the next city. This is exactly what the statute intends. The nine categories? How about advertising? Prior to 2009, a convincing argument could be made that because a billboard literally advertises the city it refers to, it would fit within the advertising category. All doubt was erased in 2009, when the Texas Legislature added the ninth category—signage directing the public to sights and attractions. Conclusion—travel signs are a perfect fit for hotel occupancy tax expenditures.

Chambers of Commerce?

Cities frequently wonder if they can fund the local chamber of commerce using hotel tax money. Do chambers put heads in beds? Maybe, maybe not. Chambers of commerce are typically charged with promoting economic development, not tourism. Even assuming a chamber does promote tourism, though, how about the nine categories? Funding a chamber doesn't, in itself, fall into any of the nine categories.

Fortunately, there is an easy solution. The laws governing hotel tax expenditures permit the city to delegate expenditure of hotel tax money to another entity, typically a chamber or convention and visitor bureau. As long as the chamber spends the money on projects that otherwise meet the two-part test mentioned above, it's fine to delegate some funds to them. There must be a written contract laying out the duties of the chamber, though. Also, the chamber must keep the hotel funds in an account separate from its general operating fund.

Arts Organizations

City arts organizations are a common trouble area. It seems that every arts council in the state knows that promotion of the arts is one of the nine categories on which city hotel taxes may be expended. Cities know this because these arts groups frequently come asking for the money.

The thing to remember about arts groups is this: Direct funding of the organization's operations does nothing in and of itself to put "heads in beds." Put another way, funding the operating budget of an arts council meets the second part of the test (promotion of the arts) but not necessarily the first.

The solution? The city should encourage the group to seek funding only for its festivals and shows that do, in fact, attract tourists to the city. By limiting the expenditure to such events, the city meets both parts of the test.

What Else?

There are numerous other technical details about how to legally expend hotel tax funds. In truth, by simply learning and remembering the two-part test, city officials are 99 percent of the way toward full compliance with hotel tax laws. City officials with questions about the hotel occupancy tax should call the TML Legal Department at 512-231-7400. ★

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Texas Taxes

Hotel Occupancy Tax

Hotel Taxes - Frequently Asked Questions

Who has to collect hotel taxes?

A hotel's owner, operator, or manager must collect hotel taxes from their guests. For the purposes of the tax, a hotel is considered to be any building in which members of the public rent sleeping accommodations for $15 or more per day. Local hotel taxes apply to sleeping rooms costing $2 or more per day.

The tax covers hotels, motels, and bed and breakfasts, as well as condominiums, apartments, and houses rented for less than 30 consecutive days. Hotel tax does not apply to hospitals, sanitariums, nursing homes, student dormitories operated by colleges and universities, or condominiums, apartments, and houses leased for more than 30 consecutive days.

What is the hotel tax rate?

The state hotel tax rate is 6 percent.

Cities and some counties can levy local hotel taxes, at rates varying up to 7 percent.

What government agency handles hotel taxes?

The Comptroller's office collects and administers the 6 percent state hotel tax, while cities and counties are responsible for collecting their own local hotel taxes.

Can I use the existing taxpayer number if I buy a hotel?

There are various factors that affect the answer to this question, so please call our Hotel Occupancy tax help line at 1-800-252-1385 to discuss your situation with a tax specialist.

How do I apply for a hotel tax permit?

While the Comptroller's office does not issue printed hotel tax permits, businesses that report the tax should send a completed Hotel Occupancy Tax Questionnaire (form AP-102) to the Comptroller's office in Austin or a local field office.

Owners and operators should contact the county and city where their hotel is located for more information about collecting and reporting local hotel taxes.

When is my hotel tax return (form 12-100) due?

Hotels that owe less than $500 in state tax for each calendar month or $1,500 for a calendar quarter report and remit tax on the 20th day of the month following the end of the quarter. All other hotels file monthly state hotel tax returns by the 20th day of the following month. If the 20th falls on a weekend or bank holiday, the return is due the next business day.

Returns must be postmarked on or before the due date to be considered timely.

To find out due dates for local hotel taxes, hotels should contact the appropriate local jurisdictions.

Is there hotel tax on meeting or banquet rooms?

The 6 percent state hotel tax applies to any room or space in a hotel, including meeting and banquet rooms. Local hotel taxes, however, are due only on those rooms ordinarily used for sleeping.

There are no state or local hotel taxes on meeting and banquet rooms located in a building where no sleeping accommodations are provided.

Who is exempt from paying state and local hotel taxes?

The following organizations and individuals do not have to pay hotel tax:

- the U.S. government and its employees traveling on official business;
- foreign diplomats issued a tax exemption card by the U.S. Department of State, unless the card specifically excludes hotel tax;
- certain Texas state officials with special hotel tax exemption cards (includes heads of state agencies, members of state boards and commissions, judicial officials at the district court level and above, state legislators, and legislative employees);
- permanent residents, that is, guests who occupy a room for at least 30 consecutive days; any interruption in the term of occupancy will void the exemption (guests who stay 30 or more days and notify the hotel in writing of their intention beforehand are exempt from the day of notification, while guests who do not notify the hotel must pay the tax the first 30 days and are exempt thereafter);
- some nonprofit entities and their employees traveling on official business; the entity must have received a hotel tax exemption letter from the Comptroller's office and the reason for the exemption must be written on the exemption certificate, for example, "exempt per Electric Cooperative Act, Utilities Code, Chapter 161" or "exempt per Telephone Cooperative Act, Utilities Code, Chapter 162."

Who is exempt from paying only the state hotel tax?

Religious, charitable, and educational organizations (defined in Comptroller Rule 3.161) that have received a letter of exemption from the Comptroller's office are exempt from the 6 percent state hotel tax. The exemption extends to their employees traveling on official business, but does not apply to any local hotel taxes, which must be paid.

- Exempt religious organizations include nonprofit churches and their guiding or governing bodies, but does not include missionary organizations, Bible study groups, or churches made up only of family members.
- Charitable organizations include nonprofit organizations whose sole purpose is to provide food, clothing, drugs, treatment, or shelter directly to indigent and needy persons. Not included are 501(c)(3) not-for-profit corporations, social groups, professional or business groups, fraternal organizations, or similar organizations.
- Educational organizations include independent school districts, public and private elementary and secondary schools, and Texas institutions of higher education (public and private colleges, universities, junior colleges, and community colleges). Not included are research organizations, home schools, and organizations that mainly provide support services to schools. Effective October 1, 2003, non-Texas institutions of higher education no longer qualify for exemption.

Weren't non-Texas institutions of higher education exempt from state hotel tax?

From September 1, 1999 to August 31, 2001, institutions of higher education from other states and countries were not exempt and their employees traveling on official business had to pay hotel taxes.

These institutions did qualify for a state hotel tax exemption, however, from September 1, 1959 to August 31, 1999 and from September 1, 2001 to September 30, 2003.

Currently, out-of-state institutions of higher education are not exempt from hotel tax.

How can my organization apply for a hotel tax exemption?

Complete the appropriate application and provide documentation, as required, to the Exempt Organizations Section of the Tax Policy Division. For additional information on exemptions, please refer to publication 96-122 "Exempt Organizations - Sales and Purchases."

Why do some hotels collect tax after a permanent resident gives written notice?

A hotel is liable for tax if a guest fails to stay for 30 consecutive days and thus may prefer to collect tax and then later give the guest a refund or credit.

Does an exempt organization have to pay the hotel directly or can the guest pay?
The employee's method of payment does not affect the exemption. Non-employees, however, must pay the hotel with the organization's funds (organization check, credit card, or direct billing).

Are third-party contractors working for the federal government exempt?
No, third-party contractors completing contracts for the government or using federal grant money are not exempt and must pay state and local hotel taxes.

Are Texas state agencies and their employees exempt from hotel taxes?
No, state agencies (except Texas institutions of higher education) and their employees (except certain state officials described above) must pay state and local hotel taxes. State agencies can request a refund of state and local hotel taxes paid or reimbursed to employees (Rule 3.163).

Are local government agencies and their employees exempt from hotel taxes?
No, county and city agencies and their employees must pay state and local hotel taxes, and cannot request refunds of taxes paid.

How does a hotel guest claim an exemption?
The exempt organization or employee must give the hotel a completed Hotel Occupancy Tax Exemption Certificate (form 12-302) and proof that the organization has received a letter of hotel tax exemption from the Comptroller's office at the time of registration. The on-line list of organizations that have received hotel tax exemption is located at the Comptroller's website at http://cpastar2.cpa.state.tx.us/exempt/allexempt_srch.php

What do hotels need to verify an exemption?
Hotels can accept exemption certificates in good faith when the guest provides the following supporting documentation:

- federal employees traveling on government business - a valid government identification card;
- designated Texas state employees - a special hotel tax exemption photo ID or card that states holder is exempt from hotel taxes;
- foreign diplomats - a tax exemption card issued by the U.S. Department of State that exempts the diplomat or mission, unless the card specifically excludes hotel tax;
- employees and representatives of a specific nonprofit entity or a nonprofit charitable, educational, or religious organization traveling on organization business - a Comptroller's letter of hotel tax exemption or verification that the organization is on the Comptroller's list of exempted entities, such as a printed copy of the Comptroller's website listing the organization as exempt for hotel tax. See reference below.

For the online list of organizations that have received a letter of hotel tax exemption, visit the Comptroller's website at http://cpastar2.cpa.state.tx.us/exempt/allexempt_srch.php

More information on exemptions is in Hotel Occupancy Tax Exemptions (publication 96-224).

For further assistance, call a hotel tax specialist toll free at 1-800-252-1385. Texas hotel tax forms are online at www.window.state.tx.us/taxinfo/taxforms/12-forms.html. Hotel tax rules are online at http://window.state.tx.us/taxinfo/rulendx/ruleindex.html.

Carole Keeton Strayhorn
Texas Comptroller of Public Accounts

What Cities Need to Know to Administer Municipal Hotel Occupancy Taxes

Abridged Version

Texas Hotel & Lodging Association

REVISED FALL 2011

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Editor's Note

This is the abridged version of THLA's *What Cities Need to Know to Administer Municipal Hotel Occupancy Taxes*. A full version of this article, with information including expanded information on hotel tax collection, tax exemptions, and city-specific rules, is available by contacting THLA at 512-474-2996.

Authorized Entities

All incorporated Texas municipalities, including general law and home rule cities, may enact a hotel occupancy tax within the city limits.[1] A city with a population of under 35,000 may also adopt the hotel occupancy tax within that city's extraterritorial jurisdiction (ETJ).[2] Most cities are eligible to adopt a hotel occupancy tax at a rate of up to 7 percent of the price paid for the use of a hotel room.[3] If a city adopts the hotel occupancy tax within its ETJ, the combined state, county, and municipal hotel occupancy tax rate may not exceed 15 percent.[4] Texas has among the highest combined hotel occupancy tax rates of any major metropolitan areas in the nation, with Houston at 17 percent and San Antonio at 16 ¾ percent.[5]

In addition to local hotel occupancy taxes, all lodging properties operating in Texas are subject to a six percent state hotel occupancy tax.[6] Governed under Chapter 156 of the Texas Tax Code, the state hotel occupancy tax is administered by the Texas Comptroller. Funds from the state six percent hotel occupancy tax flow directly to the Texas Comptroller's office and are largely used for the general governmental operations of the State. A portion of the state hotel occupancy tax revenue also goes toward funding tourism promotion through Texas's ad campaign. Most Texans know this successful ad campaign by its famous tagline, "Texas, it's like a whole other country."

Collecting the Tax

Under the Texas Tax Code, the following businesses are considered "hotels" and are required to collect hotel occupancy taxes from their guests: "Any building or buildings in which members of the public obtain sleeping accommodations for consideration" for less than 30 days, including a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or bed and breakfast facilities. The Texas Administrative Code also includes "manufactured homes, skid mounted bunk houses, residency inns, condominiums, cabins, and cottages within the definition of a "hotel" if the facility is rented for periods of under 30 days.[7] Hospitals, sanitariums, nursing homes, dormitories or other non-hotel housing facilities owned by institutions of higher education, and oilfield portable units do not collect the tax.[8] Subject to various exemptions, the hotel tax is imposed on any "person" who

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[1] Tex. Tax Code Ann. § 351.002(a) (Vernon 2011).
[2] § 351.0025(a).
[3] § 351.003(a).
[4] § 351.0025(b).
[5] Source: National Business Travel Association 2009 Survey.
[6] Tex. Tax Code § 156.051.
[7] Tex. Tax Code § 156.001; 34 Tex. Admin. Code Ann. § 3.161(a)(3) (Vernon 2009).
[8] Tex. Tax Code § 156.001.

pays for the use of a room in a hotel, including corporations, organizations, and other legal entities. The hotel room must cost $2 or more per day for the local hotel tax to apply, and $15 or more per day for the state hotel tax to apply.[9]

A full version of this article, with information including expanded information on hotel tax collection is available by contacting THLA at 512-474-2996.

Exemptions from the Local Tax

Texas law provides certain hotel tax exemptions based on the length of a guest's stay or the guest's affiliation with an exempt organization. Texas law is more permissive for exemptions from the state 6% hotel occupancy tax than it is for local hotel tax exemptions. The state hotel occupancy tax allows for an exemption for the following entities: educational, charitable, and religious entities are often exempt from the state hotel occupancy tax. These entities are *not exempt* from local hotel occupancy taxes.[10]

Focusing specifically on the local hotel occupancy taxes, there are primarily four categories of exemptions permitted from municipal and county hotel occupancy taxes:

1) **Federal Employees:** Federal employees traveling on official business;
2) **Diplomats:** Foreign diplomats with a tax exempt card issued by the U.S. Department of State;
3) **High Ranking State Officials**: A very limited number of state officials with a hotel tax exemption card (e.g. heads of state agencies, state legislators and legislative staff, members of state boards and commissions, and state judges); and
4) **Permanent Resident/Over 30 Day Stay:** Persons or businesses who have agreed in advance to use a hotel room for more than 30 consecutive days (i.e. the "permanent resident" hotel tax exemption).[11]

A full version of this article with information including expanded information on tax exemptions is available by contacting THLA.

Penalties for Failure to Report or Collect the Tax

The local hotel occupancy tax statutes provide for specific penalties a city may assess against hotel operators who fail to file the hotel tax collections report, file late or without full payment, or produce false tax returns.[12]

A full version of this article with information including expanded information on hotel tax penalties is available by contacting THLA.

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[9] Tex. Tax Code § 156.051(a); § 351.002(a).
[10] Tex. Tax Code § 156.102.
[11] § 156.104.
[12] § 351.004.

Use of Local Hotel Occupancy Tax Revenues

There is a two-part test for every expenditure of local hotel occupancy tax.[13]

Criteria #1: First, every expenditure must DIRECTLY enhance and promote tourism AND the convention and hotel industry.[14]

Under the Tax Code, every event, program, or facility funded with hotel occupancy tax revenues must be likely to do two things: 1) directly promote tourism; and 2) directly promote the convention and hotel industry.[15] "Tourism" is defined under Texas law as guiding or managing individuals who are traveling to a different, city, county, state, or country.[16] A "direct" promotion of the convention and hotel industry has been consistently interpreted by the Texas Attorney General as a program, event, or facility likely to cause increased hotel or convention activity.[17] This activity may result from hotel or convention guests that are already in town and choose to attend the hotel tax funded facility or arts or historical event, or it may result from individuals who come from another city or county to stay in an area lodging property at least in part to attend the hotel tax funded event or facility.

If the funded event or facility is not reasonably likely to directly enhance tourism and the hotel and convention industry, local hotel occupancy tax revenues cannot legally fund it.[18] However, it is important to note that events and facilities that do not qualify for hotel occupancy tax funding are often still legally eligible for city funding from most of the other funding sources available to the city (general property tax revenues, general sales tax revenues, franchise fee revenues, etc.). State law is stricter in terms of how the local hotel occupancy tax revenues can be spent.

There is no statutory formula for determining the level of impact an event must have to satisfy the requirement to directly promote tourism and hotel and convention activity.[19] However, communities with successful tourism promotion programs generally award the amount of the hotel occupancy tax by the proportionate impact on tourism and hotel activity incident to the funding request. Entities applying for hotel occupancy tax revenue funding should indicate how they will market the event to attract tourists and hotel guests. If an entity does not adequately market its events to tourists and hotel guests, it is difficult to produce an event or facility that will effectively promote tourism and hotel activity.

A city or delegated entity should also consider whether a funded event will be held in a venue that will likely attract tourists and hotel guests. For example, if an event is held in a local school or community center, it may be less likely to attract tourists than if it is held at a local performing arts venue, museum or civic center. Each community will need to assess whether the facility hosting the function is likely to attract tourists and hotel guests. Similarly, if an event is a community picnic, local parade, educational class, or other similar type of event, it is often not likely to attract tourists and hotel guests, and would likely not be eligible for hotel occupancy tax funding.

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[13] §§ 351.101(a), (b).
[14] §§ 351.101(b).
[15] *Id.*
[16] § 351.001(6).
[17] *See* Op. Tex. Att'y Gen. Nos. GA-0124 (2003), JM-690 (1987).
[18] *Id.*
[19] *See generally* Tex. Tax Code §§ 351.101(a), (b).

Finally, it is a good practice to utilize a hotel tax application form. THLA has a sample hotel occupancy tax application form and a "post event" form that are already in use by many city governments throughout Texas. For a copy of these two forms, simply call THLA at (512) 474-2996, or email THLA at news@texaslodging.com. These forms pose questions of funding applicants such as "Do you have a hotel room block for your events?," and "What do you expect to be the number of room nights sold for this event?" Additionally, the application asks if the entity has negotiated a special hotel price for attendees of their funded event. If the entity does not find the need to reserve a hotel block or negotiate a special hotel rate, it is not likely that they anticipate their event/s will have a meaningful impact on hotel activity.

Funded entities can also visit with area hoteliers who, in many cases, can provide feedback on whether any of their hotel guests expressed an interest in attending such events or facilities in the past. Hotel front desk and management staff usually know what local events and facilities were of interest to their guests by notes in their reservation systems, requests for directions, information and transportation to such venues by hotel patrons.

After an applicant's event or program is offered for several years, the applicant should have a reasonable idea as to whether their event or program's attendance includes a number of tourists and hotel guests. For example, some entities track whether guests are staying at local hotels via their guest registry. Other entities measure potential out-of-town attendance from their ticket sales records or other survey information.

It is important to note that Texas law also provides that the hotel occupancy tax may not be used for general revenue purposes or general governmental operations of a municipality.[20] It also may not be used to pay for governmental expenses that are not directly related to increasing tourism and hotel and convention activity.[21] For example, consider a request to use the hotel occupancy tax to pay for construction of additional lighting, restrooms, roads, sidewalks, or landscaping in a downtown area. These are expenditures for which the city would traditionally use its general revenues. Therefore, such an expenditure would violate the prohibition against using the hotel tax for "general governmental operations of a municipality."[22] It is difficult to argue that such improvements to a non-tourism facility would "directly" promote tourism and hotel activity. At best, one could argue the improvements would "indirectly" enhance tourism and hotel activity—which is not sufficient under the clear language of the Tax Code to qualify for funding from the hotel occupancy tax.

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[20] Tex. Tax Code § 351.101(b); *see also* Op. Tex. Att'y Gen. Nos. JM-184 (1984), JM-965(1988).
[21] *Id.*
[22] *Id.*

Criteria #2: Every expenditure of the hotel occupancy tax must clearly fit into one of nine statutorily provided categories for expenditure of local hotel occupancy tax revenues.[23]

The nine categories for expenditure of the hotel occupancy tax are as follows:

1) Funding the establishment, improvement, or maintenance of a convention center or visitor information center.

This category allows expenditures of the hotel tax for the creation, improvement, or upkeep of a convention center or a visitor information center.[24] The term "convention center" is defined to include civic centers, auditoriums, exhibition halls, and coliseums that are owned by the city or another governmental entity or that are managed in whole or in part by the city.[25] It also includes parking areas in the immediate vicinity of a convention center facility, and certain hotels that are owned by the city or another governmental entity, or that are managed in whole or in part by the city.[26] It does not include facilities that are not of the same general characteristics as the structures listed above.

Texas law specifies that for a facility to be funded as a convention center, it must be a facility primarily used to host conventions and meetings.[27] "Primarily used" in this context would arguably mean that more than 50 percent of the bookings for the facility are to host conventions or meetings that directly promote tourism and the hotel and convention industry.[28] In other words, holding local resident meetings in a facility would not count toward qualifying the facility as a convention center, but meetings of individuals from out-of-town who in part stay at hotels would qualify.

Simply naming a facility a convention center or visitor information center does not automatically qualify the facility as a "convention center." The authority to use the hotel occupancy tax for facilities is limited and any such facility must meet the above noted "primary usage" test. For example, general civic buildings such as the city hall, local senior citizen centers or activity centers would not qualify as convention centers that could be funded by hotel tax.

2) Paying the administrative costs for facilitating convention registration.

This provision allows expenditures for administrative costs that are actually incurred for assisting in the registration of convention delegates or attendees.[29] This is generally an expenditure for larger cities that hold large conventions, and includes covering the personnel costs and costs of materials for the registration of convention delegates or attendees.

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[23] Tex. Tax Code § 351.101(a).
[24] § 351.101(a)(1).
[25] § 351.001(2).
[26] *Id.*
[27] *Id.*
[28] *Id.; see generally* Tex. Tax Code §§ 351.101(a), (b).
[29] Tex. Tax Code § 351.101(a)(2).

3) Paying for advertising, solicitations, and promotions that attract tourists and convention delegates to the city or its vicinity.

This provision allows expenditures for solicitations or promotional programs/advertising directly related to attracting tourists and convention delegates to the city or its vicinity.[30] Such expenditures are traditionally in the form of internet, newspaper, mail, television, or radio ads; or solicitations to promote an event or facility. The advertising or promotion must directly promote the hotel and convention industry.[31] For example, the Texas Attorney General ruled that the local hotel occupancy tax may not be used for advertising or other economic development initiatives or improvements to attract new businesses or permanent residents to a city.[32]

In certain cases, a city may be able to use the advertising and promotion category to justify covering the costs of advertising an event that will attract tourists and hotel guests, even though the administrative or facility costs for the underlying event would not qualify for hotel tax funding.[33]

4) Expenditures that promote the arts.

This section authorizes the expenditure of local hotel occupancy tax for a variety of art-related programs that also promote tourism and local hotel and convention activity.[34] Specifically, it allows funding the encouragement, promotion, improvement, and application of the arts including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution and exhibition of these major art forms.[35] However, it is not enough that a facility or event promotes the arts; Texas law requires that the arts related expenditure also directly promote tourism and the hotel and convention industry.[36]

Section 351.101(a) of the Tax Code specifically states that "the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry." The Texas Attorney General reaffirmed this standard when it held in Opinion GA-0124: "Under section 351.101 of the Tax Code, a municipality may expend its municipal hotel occupancy tax revenue only to promote tourism and the convention and hotel industry,' and only for the specific uses listed in the statute." There are many success stories of cities that have partnered with the arts entities to turn one day arts events into multi-day events that can substantially increase tourism and hotel activity. Such partnerships and long term planning can help both foster the arts and grow hotel tax proceeds that can be made available to the arts.

Additionally, the amount of funding a city allocates to the arts category may be limited by statute. See the "Special Rules" section of this guide, starting on page 23.

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[30] § 351.101(a)(3).
[31] § 351.101(b).
[32] Op. Tex. Att'y Gen. No. JM-690 (1987).
[33] *See generally* Tex. Tax Code § 351.101(a)(3).
[34] Tex. Tax Code § 351.101(a)(4).
[35] *Id.*
[36] § 351.101(b).

5) Funding historical restoration or preservation programs.

A city may spend a portion of its hotel occupancy tax revenues to enhance historical restoration and preservation projects or activities, or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums that are likely to attract tourists and hotel guests.[37] Texas law does not limit such funding to structures that are owned by a public or nonprofit entity, or to whether the project is listed on a historic registry, but the city may choose to impose such limitations.

It is not enough that a project or activity event merely be historical in nature; Texas law requires that the historical related expenditure also directly promote tourism and the hotel and convention industry.[38] Section 351.101(a) of the Tax Code specifically states that "the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry." The Attorney General in Opinion GA-0124 (2003) reaffirmed this standard when it held: "Under section 351.101 of the Tax Code, a municipality may expend its municipal hotel occupancy tax revenue "only to promote tourism and the convention and hotel industry" and only for the specific uses listed in the statute."

Additionally, the amount of funding a city allocates to the historical programs category may be limited by statute. See the "Special Rules" section of this guide, starting on page 23.

6) Funding certain expenses, including promotional expenses, directly related to a sporting event within counties with a population of under 1 million.

This section authorizes a municipality located in a county with a population of under 1 million to use local hotel occupancy tax revenue to fund certain expenses, including promotional expenses, directly related to a sporting event.[39] To qualify under this authorization, the sporting event must be one that would "substantially increase economic activity at hotels and motels within the city or its vicinity."[40] The statutory authorization also requires that a majority of the participants in the sporting event also be tourists to the area.[41]

This category is intended to allow communities to fund the event costs for sporting tournaments that result in substantial hotel activity. For example, if a city had to pay an application fee to seek a particular sporting event or tournament, if could use hotel tax for such an expenditure if the sporting event would substantially increase economic activity at hotels and the city was within a county of under one million population. The requirement that a majority of the participants must be "tourists" is included in the statuary authority to prohibit the use of local hotel tax for sporting related facilities or events are purely local (e.g.; local recreation centers, local little league and parks events, intramural sports, etc.).

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[37] § 351.101(a)(5).
[38] § 351.101(b).
[39] § 351.101(a)(6).
[40] *Id.*
[41] *Id.*

7) Funding the enhancement or upgrading of existing sports facilities or sports fields for certain municipalities.

Certain statutorily bracketed cities may use local hotel occupancy tax to enhance and upgrade existing sports facilities owned by the municipality.[42] Acceptable sports facilities include those for baseball, softball, soccer, and flag football.[43] The municipality must own the sporting facility, and the municipality must meet one of the following population requirements in the Code. A full version of this article, with information including which cities are eligible for this category, is available by contacting THLA at 512-474-2996.

Texas law further requires that before local hotel tax to be used for this purpose, the sports facilities and fields must have been used a combined total of more than 10 times for district, state, regional, or national sports tournaments in the preceding calendar year.[44]

If hotel tax revenues are spent on enhancing or upgrading a sports facility, the municipality must also determine the amount of "area hotel revenue" generated by hotel activity from sports events held at the hotel tax funded facility for five years after the upgrades to the sport facility are completed.[45] The area hotel revenues that were generated from sports events at the hotel tax funded facility over that five year period must at least equal the amount of hotel tax that was spent to upgrade the sports facility.[46] If the amount of hotel tax that was spent on the facility upgrades exceeds hotel revenue attributable to events held at that facility over that five year period, the municipality must reimburse the hotel occupancy tax revenue fund any such difference from the municipality's general fund.[47]

For example, if a city spent $400,000 on improvements to its soccer fields, it would have to show at least $400,000 in area hotel revenue directly attributable to events held at that soccer field over the five year period after the soccer field improvements were completed. If the city could only show $300,000 in hotel industry revenue due to events held at that soccer field, the city would have to reimburse the city hotel tax with the $100,000 difference from the city's general fund.

8) Funding transportation systems for tourists

Often with conventions and large meetings, there is a need to transport the attendees to different tourism venues. In 2007, the Texas Legislature authorized the use of city hotel tax for any sized city to cover the costs for transporting tourists from hotels to and near the city to any of the following destinations:

- the commercial center of the city;
- a convention center in the city;
- other hotels in or near the city; and
- tourist attractions in or near the city.[48]

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[42] § 351.101(a)(7).
[43] *Id.*
[44] Tex. Tax Code §§ 351.101(a)(7), 351.1076.
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] § 351.110(a).

The reimbursed transportation system must be owned and operated by the city, or privately owned and operated but financed in part by the city.[49] For example, this authority could be used to cover the costs of a city to finance certain private shuttles to operate between the convention center and area hotels and attractions for a large city-wide convention. The law specifically prohibits the use of the local hotel tax to cover the costs for a transportation system that serves the general public.[50]

9) Signage directing tourists to sights and attractions that are visited frequently by hotel guests in the municipality.

In 2009, the Texas Legislature added a statutory category that allows cities to use municipal hotel occupancy tax revenue to pay for signage directing tourists to sights and attractions frequently visited by hotel guests in the municipality.[51] Arguably, this type of expenditure was permissible as "advertising and promotion" prior to this 2009 legislation. However, the Legislature codified this understanding to officially include signage directing tourists to sights and attractions that are frequently visited by hotel guests.[52]

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[49] § 351.110(b).
[50] § 351.110(c).
[51] § 351.101(a)(9).
[52] *Id.*

Administering Hotel Occupancy Tax Revenue Expenditures

Duty of funded entities to provide a list of activities.

All entities (including the city itself) that are directly or indirectly funded by the local hotel occupancy tax are annually required to provide a list of the scheduled activities, programs, or events that will directly enhance and promote tourism and the convention and hotel industry.[53] This list is to be provided annually to the city secretary or his/her designee prior to the expenditure of the hotel occupancy tax funding by the funded entity.[54] An entity may add items to this list at any time, and each city decides the format for providing this information. This documentation requirement does not apply if the entity already provides written information to the city indicating which scheduled activities or events that it offers that directly enhance and promote tourism and the convention and hotel industry. For example, cities that require quarterly or annual reports on the use of hotel tax by hotel tax funded entities would satisfy this requirement if their report addresses the extent to which their events directly promote tourism and hotel activity.[55]

It is important to remember that if an entity does not have any such events or programs reasonably expected to directly promote tourism and the hotel and convention industry, it is not eligible for local hotel occupancy tax funding.[56] If only a portion of an entity's programs fit this criteria, then only a proportionate amount of that entity's costs should be covered by the local hotel occupancy tax.[57]

Delegating management of funded activities.

The governing body of a city may delegate the management or supervision of programs funded by the hotel occupancy tax by written contract.[58] This delegation may be made to a person, another governmental entity, or to a private organization.[59] This delegation is often made to a local arts council, a chamber of commerce, or to the convention and visitors bureau. The municipality shall approve the entity's annual budget prior to delegating the management or supervision of hotel tax funded programs.[60] Furthermore, the municipality shall require the delegated entity to make periodic reports, at least quarterly, listing the hotel occupancy tax expenditures made by the delegated entity.[61] Additionally, the Code requires that the contracted entity maintain complete and accurate financial records for every expenditure of hotel occupancy tax revenue, and upon the request of the municipality or another person, make the records available for inspection and review.[62]

An entity with delegated authority to manage hotel tax funded programs undertakes a fiduciary duty with respect to the use of the tax revenue.[63] Such entities are also required to maintain the city hotel occupancy tax revenue in a separate bank account that may not be commingled with any other account

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[53] § 351.108(b).
[54] *Id.;* § 351.108(d).
[55] § 351.108(g).
[56] § 351.101(b).
[57] § 351.101(e).
[58] § 351.101(c).
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] § 351.101(d).
[63] § 351.101(c).

or funds.[64] The Tax Code does not contain similar prohibitions against commingling the funds for individual organizations, such as an arts or historical group that receives hotel tax funding for their individual program, but do not themselves oversee hotel tax funding to other entities.

Use of hotel occupancy tax revenues to cover administrative expenses.

Texas law allows proceeds of the municipal hotel occupancy tax to be used to cover the portion of administrative costs that are directly attributable to work on activities that may be funded by the tax.[65] For example, entities that manage activities funded by the hotel occupancy tax may spend some of the tax for certain day-to-day operational expenses.[66] These expenses may include supplies, salaries, office rental, travel expenses, and other administrative costs.[67] However, these costs may be reimbursed only if the expenses are incurred in the promotion and servicing of expenditures authorized under the hotel occupancy tax laws.[68] The portion of the administrative costs that are covered should not exceed the percentage of the cost that is attributable to the activity funded by the hotel occupancy tax.[69] For example, administrators who spend 33 percent of their time overseeing hotel occupancy tax funded programs should seek funding for no more than 33 percent of their salary or 33 percent of other related overhead costs. Additionally, hotel occupancy tax revenues may be spent on travel that is directly related to the performance of the person's job in an efficient and professional manner.[70] This travel should facilitate the acquisition of skills and knowledge that will promote tourism and the convention and hotel industry.[71]

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[64] *Id.*
[65] § 351.101(e).
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Id.*
[70] § 351.101(f).
[71] *Id.*

Special Rules for Selected Municipalities

The Texas Tax Code provides additional rules for certain Texas cities based on the city's population brackets. A full version of this article with information on city-specific rules is available by contacting THLA at 512-474-2996.

Additional Information

If a city or funded entity has additional questions about the administration or use of the hotel occupancy tax, it is welcome to contact the Texas Hotel & Lodging Association for assistance by phone at (512) 474-2996. THLA has sample documents available to assist in administering hotel taxes, such as funding grant application forms, post event forms, and tax collection guidelines.

Texas city officials can also make inquiries to the legal staff of the Texas Municipal League at (512) 231-7400. Finally, all entities may make inquiries to the Municipal Affairs Section of the Office of the Attorney General of Texas (OAG). The OAG's Municipal Affairs Division can be reached by phone at (512) 475-4683.