

What Cities Need to Know to Administer Municipal Hotel Occupancy Taxes

Texas Hotel & Lodging Association

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Introduction

Since the 1960s, hotel occupancy taxes have been an important tool for promoting growth in communities' tourism and hotel industries. Today, over 500 Texas cities levy a local hotel occupancy tax.¹ Hotel guests generate economic activity for local businesses and contribute over \$1 billion in revenues annually for local governments. If a hotel guest is motivated to come to an area or to extend his or her stay due to activities or facilities funded with hotel tax revenues, the local and state economies benefit. In turn, the hotel tax revenues generated from additional room night activity funds future programs and tourism-related facilities, providing an economic engine for prosperity for the area.

Unlike property tax and sales tax revenues, which cities can use for most public purposes, local hotel occupancy tax revenues fall under a more structured statutory mandate. Municipal hotel occupancy taxes are primarily governed by Chapter 351 of the Texas Tax Code. This guide assists local governments, hotel tax revenue grant applicants, and lodging operators in all aspects of the municipal hotel tax process, including the rules on allowable expenditures of these funds by cities that fall within certain population and geographic brackets.

Authorized Entities

All incorporated Texas municipalities, including general law and home rule cities, may enact a hotel occupancy tax within the city limits.² A city with a population of under 35,000 may also adopt the hotel occupancy tax within that city's extraterritorial jurisdiction (ETJ).³ 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.⁴ Additionally, a city or county may not propose a hotel occupancy tax rate that would result in a combined hotel occupancy tax rate imposed from all sources that would exceed 17 percent of the price paid for the room.⁵ 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.⁶ Texas has among the highest combined hotel occupancy tax rates of any major metropolitan areas in the nation, with El Paso at 17 ½ percent, Houston at 17 percent, and San Antonio at 16 ¾ percent.⁷

In addition to local hotel occupancy taxes, all lodging properties operating in Texas are subject to a six percent state hotel occupancy tax.⁸ 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."

¹ Texas Hotel & Lodging Association (THLA) maintains a listing of most city and county hotel tax rates, accessible upon request to THLA members.

² Tex. Tax Code Ann. § 351.002(a) (Vernon 2013).

³ § 351.0025(a).

⁴ § 351.003(a).

⁵ Tex. Loc. Gov't Code § 334.254(d). Note that the 17 percent cap does not apply to a city that approved a higher hotel tax through a venue ballot proposition prior to September 1, 2013, such as El Paso.

⁶ § 351.0025(b).

⁷ Source: National Business Travel Association 2009 Survey.

⁸ Tex. Tax Code § 156.051.

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.⁹ 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.¹⁰ Subject to various exemptions, the hotel tax is imposed on any “person” who 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.¹¹

Meeting rooms versus sleeping rooms:

The rental of sleeping rooms in hotels is subject to both state and local hotel taxes. However, there is a difference in how state and local hotel taxes apply to the rental of hotel meeting rooms. While the rental of sleeping rooms in hotels are subject to both state and local hotel taxes, meeting room rentals are not subject to local hotel occupancy taxes.¹² The rental of a meeting room or meeting space in a hotel is subject to the state 6 percent hotel occupancy tax, provided the room or space is physically located in a structure that also contains sleeping rooms.¹³ Furthermore, sales tax does not apply to the rental of either a meeting room or a sleeping room.

Food and beverage and other hotel charges:

Certain charges assessed by a hotel to a guest are subject to hotel occupancy taxes, while other added charges are subject to state and local sales tax. Common hotel charges usually subject to sales taxes (but generally not subject to hotel occupancy taxes) are banquet service fees, food and beverage fees, movie rentals, dry cleaning/laundry services, internet connection, parking, and portage or bellhop fees.

Hotel charges related to occupancy of a sleeping room or readying a sleeping room for occupancy are usually subject to hotel occupancy taxes only. Common hotel charges subject to hotel occupancy tax are rollaway bed charges, pet charges, smoking fees, room damage fees, room safe charges, and late or early checkout fees.¹⁴ It is important to note that if a hotel offers services as part of a package rate included with lodging, and the price of a specific good or service is not separately stated on a guest’s invoice, bill, or folio, the entire package is subject to hotel occupancy taxes.¹⁵

Additionally, a special rule applies to whether hotel occupancy taxes are imposed on a hotel room rental cancellation fee. A 1989 Texas Comptroller’s hearing concluded that hotel taxes are not due on charges to guests who 1) cancel more than 30 days before the scheduled stay begins, or 2) when the charge to the

⁹ Tex. Tax Code § 156.001; 34 Tex. Admin. Code Ann. § 3.161(a)(3) (Vernon 2009).

¹⁰ Tex. Tax Code § 156.001.

¹¹ Tex. Tax Code § 156.051(a); § 351.002(a).

¹² *Id.*

¹³ Tex. Tax Code § 156.051(a); Tex. Comptroller Opinion Letter No. 200103106L, Mar. 9, 2001.

¹⁴ THLA maintains a list of most hotel charges and which tax, if any is assessed on a particular charge. This list is available upon request to THLA members.

¹⁵ Tex. Comptroller Opinion Letter No. 200102031L, Feb. 7, 2001.

guest is less than the reserved room rate.¹⁶ This rule applies both to individual reservations and also to group contracts.¹⁷

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.¹⁸

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).¹⁹

Hotel guests claiming items one through three of the above exemptions are required to show appropriate identification and to fill out a "Hotel Occupancy Tax Exemption Certificate" promulgated by the Texas Comptroller.²⁰ The tax exemption certificate form is available on the Texas Comptroller's website at <http://www.window.state.tx.us/taxinfo/taxforms/12-forms.html>.

Permanent residents (guests who stay for more than 30 days):

Special attention should be paid to the "permanent resident" hotel tax exemption. This permanent resident exemption applies to both state and local hotel taxes, and ensures that hotel guests staying over 30 days are taxed the same as residents staying at extended-stay properties, apartments, corporate rental facilities, rental houses, etc.²¹ The Texas Tax Code states that any "person" who has the right to use or possess a lodging room for at least 30 consecutive days is exempt from state and local hotel occupancy taxes, provided there is no interruption in payment for the room during this period.²² In Texas, a "person" also includes a corporation or business. Therefore, one should look to whether the same person, corporate entity, business, or other entity paid for the room for that entire period.

If, in advance or upon check-in, the guest provides notice to a hotel of intent to occupy a guest room for

¹⁶ Texas Comptroller's Hearing Decision No. 24,654 (1989).

¹⁷ *Id.*

¹⁸ Tex. Tax Code § 156.102.

¹⁹ § 156.104.

²⁰ *Id.*

²¹ § 156.101.

²² Tex. Tax Code § 156.101; 34 Tex. Admin. Code § 3.161(a)(4).

30 days or longer, no tax is due for any part of a guest's stay. A signed registration card or confirmed reservation indicating a guest's intent to occupy a room for 30 days or longer is sufficient written evidence.²³ Furthermore, the guest is not actually required to physically occupy the room, but the guest must maintain the right to occupy the room for the length of the exemption period.²⁴

If no notice is provided upon check-in that can be documented by a written agreement (guest reservation, confirmation, registration, or folio or separate agreement), the first 30 days of the guest's stay are **not** tax-exempt.²⁵ However, the guest's stay becomes automatically tax exempt on the 31st day—regardless of whether there was prior notice of the guest's intent to stay for 30 days or more, as long as there has been no interruption in payment for the room.²⁶

THLA generally recommends hoteliers collect hotel occupancy taxes from the guest for the first 30 days of the guest's stay. On the 31st day of the guest's stay, provided there is no interruption of payment for the room and there was prior written notice or a reservation indicating the guest's intent to stay 30 days or longer, the hotel should refund the collected hotel occupancy taxes for the first thirty days. This protects the hotel from incurring tax liability should the guest check out before staying at least 30 days. The hotel could choose to not collect the hotel tax during the stay if the guest paid in advance for the entire 30 days and there was no allowance for a refund if the guests checks out early.

State Employees:

Virtually all rank and file state employees do not have a special hotel occupancy tax exemption card that prevents them from having to pay the state and local hotel tax even when they are on official business. Such state employees must pay the state and local hotel occupancy tax when paying their bill and, their employing agency may later apply for a refund from the state and local government tax offices.²⁷ The state agency the employee works for is responsible for requesting this refund from the state and local government.

City and County Employees/Officials:

City and county officers and employees are not exempt from the state or the local hotel occupancy tax, even if the officers or employees are traveling on official business.²⁸ Additionally, cities have no legal authority to authorize additional exemptions from the hotel occupancy tax not recognized in the Tax Code.²⁹ The Attorney General ruled in JM-865 (1988) that cities cannot grant an exception to the hotel occupancy tax for religious, charitable, or educational organizations without new constitutional or statutory authority to do so.

Letters of tax exemption:

The Texas Comptroller maintains an online database of entities that have been granted a "Letter of Tax Exemption" from the state hotel occupancy tax. Most commonly, these organizations fall into the religious or charitable categories of exemption from the state hotel occupancy tax, and the Comptroller generally requires a letter of tax exemption to accompany a completed exemption certificate before an exemption may be granted on this basis. This database is accessible online at

²³ Tex. Comptroller Opinion Letter No. 200601452L, Jan. 27, 2006.

²⁴ 34 Tex. Admin. Code § 3.161(b)(2)(C).

²⁵ § 3.161(b)(2)(A).

²⁶ *Id.*

²⁷ §3.163(b).

²⁸ See generally Tex. Tax Code § 351.005; Tex. Comptroller Opinion Letter No. 200202815L, Feb. 22, 2002.

²⁹ Tex. Att'y Gen. JM-865 (1988).

<http://www.window.state.tx.us/taxinfo/hotel/index.html>. It is important to note that many entities are exempt from the state sales tax, but are not exempt from the state or local hotel occupancy tax.

For religious entities with a national affiliation, oftentimes the national organization's letter of tax exemption will cover individual congregations.³⁰ For example, a search of "Baptist Convention" on the online database reveals that the "NATIONAL BAPTIST CONVENTION OF AMERICA INCORPORATED" holds a letter of tax exemption that will also be valid for subordinate entities. An individual Baptist congregation affiliated with the National Baptist Convention can use the national organization's letter of tax exemption to accompany the signed exemption certificate.

Finally, the Comptroller's staff has indicated they are willing to exercise some flexibility for lodging properties that accept a tax exemption certificate in good faith from a qualifying religious entity when the entity may not yet have formally filed for a letter of tax exemption. This, however, should only be relied upon as a last resort, as there is no official report of this position, and auditors are trained to look for definitive documentation. In such a case, check the identification papers (ID, business card, etc.) for the traveler. If the entity fits into one of the exempt categories under the THLA exemption chart, honor the exemption if that entity is paying for the room. Make a copy of the identification item you are relying on, and be sure that all such travelers fill out the exemption certificate.

To simplify the hotel tax exemption issue, THLA publishes a chart a hotel or city official can utilize to determine when an exemption is proper starting on the next page:

³⁰ Tex. Comptroller Opinion Letter No. 200109470L, Sep. 13, 2001.

THLA’s Simplified Hotel Occupancy Tax Exemption Rules

TYPE OF BUSINESS REQUESTING EXEMPTION	EXEMPT FROM STATE H.O.T.	EXEMPT FROM LOCAL H.O.T.	COMMENTS
Agricultural Development Corporations	Yes	Yes	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate.
City & County Employees	Not exempt	Not exempt	Local government employees are not exempt from hotel taxes, even when traveling on official business.
Charitable Organizations	Depends (see comments to the right)	Not exempt	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate. Charitable entities must be able to show that they devote all or substantially all of their activities to the alleviation of poverty, disease, pain, and suffering by providing food, clothing, drugs, treatment shelter, or psychological counseling directly to indigent or similarly deserving members of society, with entity funds derived from sources other than fees or charges for its services. Other 501 (c) (3) and 501 (c) (6) entities are not exempt.
Texas Educational Organizations (see comments on the right regarding differences between Texas and out-of-state educational organizations)	Yes	Not exempt	Guest must fill out tax exemption certificate. State law limits the state hotel occupancy tax exemption for higher education entities to only Texas institutions of higher education. Out-of-state higher education entities are not exempt from the state or local hotel tax. However, out-of-state educational entities that are not institutions of higher education (high schools, middle schools, elementary schools, etc.) are exempt from state hotel taxes just like their Texas counterparts.
Electric & Telephone Cooperatives	Yes	Yes	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate.
Federal Credit Unions	Yes	Yes	Guest must fill out tax exemption certificate, and Present a valid ID. Texas Comptroller opinion letters indicate that employees traveling on official business as employees of a federal credit union are treated as federal government employees.
Federal Employees (includes FEMA and Red Cross reimbursed rooms)	Yes	Yes	Guest must fill out tax exemption certificate, and Present a valid ID.
Foreign Diplomats	Yes	Yes	Guest must fill out tax exemption certificate, and Guest must present tax exempt card issued by U.S. Department of State.

TYPE OF BUSINESS REQUESTING EXEMPTION	EXEMPT FROM STATE H.O.T.	EXEMPT FROM LOCAL H.O.T.	COMMENTS
Health Facilities Development Corporations	Yes	Yes	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate.
Housing Authorities & Finance Corporations	Yes	Yes	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate.
Pan American Games Olympic Games Local Organizing Committees	Yes	Yes	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate.
Permanent Residents (30 days or more)	Yes	Yes	Guest must notify of their intent to stay 30 or more days from the beginning. If stay is interrupted, hotel occupancy taxes must be paid. Guests who do not notify the hotel of the anticipated over 30 day duration of their stay are exempt for hotel occupancy taxes beginning on the 31 st consecutive day of their stay.
Public Facility Corporation	Yes	Yes	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate.
Regional Education Service Centers	Yes	Not exempt	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate.
Religious Organizations	Yes	Not exempt	Guest must present Texas Comptroller letter of tax exemption, and Guest must fill out tax exemption certificate.
High Ranking State Officials with Hotel Tax Exemption Photo ID Card	Yes	Yes	Guest must present Texas Comptroller letter of tax exemption, and Guest must present state photo ID card that specifically notes that employee is exempt from hotel occupancy tax. These are heads of state agencies; members of state boards and commissions; state legislators and their staff; and state judges.
General State Employees <u>without</u> Special Hotel Tax Exemption Photo ID Card	Not exempt	Not exempt	Guest must pay the state and local hotel tax, and then their state agency may apply for reimbursement from the local and state governments through a separate process.

How the City Receives the Tax

The hotel occupancy tax is collected from the hotel guest by the hotel when the guest makes payment to the hotel. The tax is then remitted by the hotel to the city on a regular basis, to be established by the city. Although the Texas Comptroller's Office is not directly involved in the collection of the local hotel occupancy tax, cities sometimes use the same reporting timeframes and forms used by the Texas Comptroller for collection of the local hotel occupancy tax. This allows hotels to follow a consistent payment pattern. The Texas Comptroller's timeframes are as follows: Hotels owing less than \$500 in state hotel 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 day falls on a weekend or bank holiday, the return is due on the next business day.³¹

Regardless of the reporting period used, cities often require hotels to include a copy of the hotel's state hotel tax report for the Texas Comptroller as part of their report. The state report data may be used to check the local report provided by the hotel to the city. It is important to remember, however, that the amount of taxable revenue will vary to a certain degree between the state and local hotel tax based on the amount of state hotel tax exempt business a property handles that is not exempt from the local hotel tax, and the amount of meeting room rentals subject solely to the state hotel tax.

Reimbursement of Hotel for Collection Expenses

By ordinance, a municipality may allow hotel operators to retain up to 1 percent of the amount of hotel occupancy taxes collected as reimbursement for the costs of collecting the tax.³² The municipality may require hotels to forfeit the reimbursement because of a failure to pay the tax or failure to file a report as required by the municipality.³³ One should take note that the state statutes do not contain provisions allowing city governments to retain any of the collected tax to cover costs of imposing or collecting the tax. However, cities that undertake responsibility for administering a facility or event funded by the local hotel occupancy tax may be reimbursed from the tax revenues for actual expenses incurred in operating the facility or event, if the expenditure directly promotes tourism and local hotel and convention activity.³⁴

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.³⁵

Interest, delinquency penalties, and attorney's fees:

A city may include a provision in its hotel occupancy tax ordinance that imposes a 15 percent penalty of

³¹ Tex. Comptroller, <http://www.window.state.tx.us/taxinfo/hotel/faqhotel.html>.

³² Tex. Tax Code § 351.005(a).

³³ § 351.005(b).

³⁴ § 351.101(e).

³⁵ § 351.004.

the total amount of the tax owed, but only if the tax has been delinquent for at least one complete municipal fiscal quarter.³⁶ Additionally, a delinquent hotel operator may be liable to the municipality for the municipality's reasonable attorney's fees.³⁷ The hotel occupancy tax ordinance may also include a provision that makes it a criminal misdemeanor offense for failure to collect the tax, failure to file a return, filing a false return, or failure to timely make the remittances.³⁸

A city may assess interest on unpaid hotel occupancy taxes, with interest accruing from the first day after the date the tax is due to the city.³⁹ The maximum interest rate a city may assess is the greater of either, 1) the prime rate published in the Wall Street Journal plus one percent, or 2) the rate the city imposed on January 1, 2013.⁴⁰

Audits, audit costs, and concurrent state tax delinquencies:

Generally, a city may not use hotel occupancy tax revenues to pay for audit costs associated with administrating the collection of hotel occupancy taxes.⁴¹ A city can require a hotel to pay the costs of a city audit of the hotel's revenues if the hotel did not file a tax report as required by the municipality, but only if 1) the hotel is delinquent for at least two complete municipal calendar quarters, and 2) the municipality has not received a disbursement from the Texas Comptroller for the hotel's concurrent state hotel tax delinquency.⁴²

The concurrent state hotel tax delinquency provision in the Tax Code allows cities to receive a commission from the Texas Comptroller if the Comptroller successfully utilizes city audit information to collect delinquent state hotel taxes from the hotel.⁴³ First, a city submits any documentation or other information to the Comptroller that shows a hotel's failure to collect or pay state hotel occupancy tax. The Comptroller then reviews the submitted information and determines whether to proceed with collection and enforcement.⁴⁴ If the information submitted by the city results in the collection of delinquency state hotel occupancy taxes, the Comptroller will remit 20 percent of the revenues collected by the Comptroller to the city, to defray the city's audit costs.⁴⁵

Alternatively, a city may request hotel occupancy tax audit information from the Texas Comptroller. However, the city must keep such information confidential, and use the information only for enforcement or administration of the city's hotel tax. To obtain such information, a city must make a written request to the Comptroller's Office, Open Records Section, at P.O. Box 13528, Austin, Texas 78711. The request must be on city letterhead and signed by a high-level city official, preferably the mayor. A city may also fax such a written request to the Comptroller's Office, Open Records Section, at (512) 475-1610.

³⁶ *Id.*

³⁷ § 351.004.

³⁸ *Id.*

³⁹ § 351.0042.

⁴⁰ *Id.*

⁴¹ See generally § 351.101(e). The Tax Code contains an exception to the prohibition on using hotel occupancy tax revenues to pay for audit costs specific to the City of Amarillo: Under Tex. Tax Code § 351.1067, the City of Amarillo may use hotel occupancy tax revenues to pay for the costs of auditing a hotel, provided the City audits no more than one-third of the total number of hotels in the city in any fiscal year.

⁴² § 351.004.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

Enforcement Authority of a City

Cities are also given the authority to take the following actions against a hotel operator who fails to report or collect the local hotel occupancy tax:

- require the forfeiture of any revenue the city allowed the hotel operator to retain for its cost of collecting the tax;⁴⁶
- bring a civil suit against the hotel operator for noncompliance;⁴⁷
- ask the district court to enjoin operation of the hotel until the report is filed and/or the tax is paid;⁴⁸ and
- any other remedies provided under Texas law.

The most noteworthy of these remedies is the ability of the city to request that the district court close down the hotel if the hotel occupancy taxes are not turned over. Informing the hotel operator of the possibility of such a closure generally results in compliance by the hotel.

A city may also require in its hotel occupancy tax ordinance that persons buying a hotel retain out of the purchase price an amount sufficient to cover any delinquent hotel occupancy taxes that are due to the city.⁴⁹ If the buyer does not remit this amount or show proof that the hotel is current in remitting its hotel occupancy taxes, the buyer becomes liable for any past delinquent hotel occupancy taxes due on the purchased hotel.⁵⁰

The purchaser of a hotel may request that the city provide a receipt showing that no hotel occupancy tax is due (“Letter of No Tax Due”) on the property to be purchased.⁵¹ The city is required to issue the statement not later than the 60th day after the request.⁵² If the city fails to issue the statement by the deadline, the purchaser is released from the obligation to withhold the amount due from the purchase price.⁵³

The general statute of limitations for a lawsuit related to the collection and delinquency of hotel occupancy taxes is four years from the date the tax is due.⁵⁴ This statute of limitations period does not apply if a hotel fails to file a report for the tax, or if the hotel files a false or fraudulent report.⁵⁵

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ § 351.0041.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

Use of Local Hotel Occupancy Tax Revenues

There is a two-part test for every expenditure of local hotel occupancy tax.⁵⁶

Criteria #1: First, every expenditure must DIRECTLY enhance and promote tourism AND the convention and hotel industry.⁵⁷

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.⁵⁸ “Tourism” is defined under Texas law as guiding or managing individuals who are traveling to a different, city, county, state, or country.⁵⁹ 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.⁶⁰ 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.⁶¹ 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.⁶² 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.

⁵⁶ §§ 351.101(a), (b).

⁵⁷ §§ 351.101(b).

⁵⁸ *Id.*

⁵⁹ § 351.001(6).

⁶⁰ See Op. Tex. Att’y Gen. Nos. GA-0124 (2003), JM-690 (1987).

⁶¹ *Id.*

⁶² 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.⁶³ It also may not be used to pay for governmental expenses that are not directly related to increasing tourism and hotel and convention activity.⁶⁴ 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.”⁶⁵ 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.

⁶³ Tex. Tax Code § 351.101(b); see also Op. Tex. Att’y Gen. Nos. JM-184 (1984), JM-965(1988).

⁶⁴ *Id.*

⁶⁵ *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.⁶⁶

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.⁶⁷ 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.⁶⁸ 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.⁶⁹ 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.⁷⁰ “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.⁷¹ 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.⁷² 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.

⁶⁶ Tex. Tax Code § 351.101(a).

⁶⁷ § 351.101(a)(1).

⁶⁸ § 351.001(2).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*; see generally Tex. Tax Code §§ 351.101(a), (b).

⁷² 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.⁷³ 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.⁷⁴ 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.⁷⁵

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.⁷⁶

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.⁷⁷ 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.⁷⁸ 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.⁷⁹

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.”

Additionally, THLA and Texans for the Arts (TFA) have formed a partnership to assist local governments in implementing hotel tax laws. In order to comply with the hotel occupancy tax statute, THLA and TFA agree that to be eligible for municipal arts funding with HOT revenues, recipients must satisfy the following requirements:

1. The recipient presents, performs, promotes, encourages or otherwise makes possible, artistic events, cultural performances, programs, exhibitions or lectures involving the major art forms listed in the statute, or “other arts related to the presentation, performance, execution and

⁷³ § 351.101(a)(3).

⁷⁴ § 351.101(b).

⁷⁵ Op. Tex. Att’y Gen. No. JM-690 (1987).

⁷⁶ See generally Tex. Tax Code § 351.101(a)(3).

⁷⁷ Tex. Tax Code § 351.101(a)(4).

⁷⁸ *Id.*

⁷⁹ § 351.101(b).

- exhibition of these major art forms.”
2. The hotel occupancy tax funded programs and events are advertised and open to the general public.
 3. The recipient directly enhances and promotes tourism and the convention and hotel industry.

With regard to requirement No. 3 above, THLA and TFA agree that the statute does not require a recipient to demonstrate a set level of direct impact on tourism and the convention and hotel industry to be eligible for hotel occupancy tax revenue funding. **However, the demonstration of some level of direct impact on tourism and the convention and hotel industry should be required.** Because the statute provides no specific methodology for determining a recipient’s impact on tourism or the convention/hotel industry, each funding entity has the flexibility to consider a number of factors.

The following factors may be beneficial to consider, but this list is neither exhaustive nor mandatory. Cities and counties using hotel occupancy tax may consider any or all the below listed factors or other factors that are appropriate for determining a recipient’s impact on tourism and the convention and/or hotel industry in a particular community:

- a. The recipient works with its area lodging operators and/or the convention and visitor’s bureau (CVB), either independently or in conjunction with other local arts organizations, to promote local arts events through hotel concierge services, training of hotel staff, hotel or CVB lobby area exhibitions, flyers or similar measures to better serve visitors to the area and encourage their extended stay in area hotels or a return to stay in area lodging facilities.
- b. The recipient provides entertainment to conventions, conferences and meetings offered in their cities and towns at which attendees are drawn from both in and out of the region.
- c. The recipient uses local hotel and lodging facilities for galas, meetings or other events sponsored by the recipient, including the use of hotel dining facilities by their patrons both pre and post events.
- d. The recipient books hotel rooms for visiting artists and offers hotel related information to attendees of the organization’s hotel occupancy tax funded events.
- e. The recipient promotes or markets its events outside of the local area through standard media promotion or advertising, websites, mailing lists, local, regional and national listings in publications and calendars and use of social media and where appropriate includes a link to information about area hotels.
- f. The recipient produces its events in conjunction with or within the boundaries of a Cultural and Fine Arts District established pursuant to Texas Government Code § 444.031.
- g. The recipient, either through audience or attendee questionnaires, polling, or hotel block booking codes, demonstrates that hotel guests, tourists, convention attendees or other out-of-town visitors have attended its hotel tax funded events.
- h. A performance, exhibition or other event sponsored by the hotel occupancy tax recipient has been reviewed or otherwise noted in a publication that circulates outside of the recipient’s local community, which helps promote tourism and hotel activity in the area.

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 24.

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.⁸⁰ 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.⁸¹ 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 24.

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.⁸² 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.”⁸³ The statutory authorization also requires that a majority of the participants in the sporting event also be tourists to the area.⁸⁴

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, it 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 statutory authority to prohibit the use of local hotel tax for sporting related facilities or

⁸⁰ § 351.101(a)(5).

⁸¹ § 351.101(b).

⁸² § 351.101(a)(6).

⁸³ *Id.*

⁸⁴ *Id.*

events that are purely local (e.g.; local recreation centers, local little league and parks events, intramural sports, etc.).

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.⁸⁵ Acceptable sports facilities include those for baseball, softball, soccer, and flag football.⁸⁶ The municipality must own the sporting facility, and the municipality must meet one of the following population requirements:

- i. The municipality has a population of 80,000 or more, and is located in a county that has a population of 350,000 or less: **Abilene, Amarillo, Beaumont, College Station, Corpus Christi, Killeen, Laredo, League City, Longview, Lubbock, Midland, Odessa, Pearland, San Angelo, Tyler, Waco, and Wichita Falls.**⁸⁷
- ii. The municipality has a population of at least 75,000, but not more than 95,000, and is located in a county that has a population of less than 200,000 but more than 160,000: **Bryan and College Station.**⁸⁸
- iii. The municipality has population of at least 36,000, but not more than 39,000, and is located in a county that has a population of 100,000 or less that is not adjacent to a county with a population of more than two million: **Huntsville and Texarkana.**⁸⁹
- iv. The municipality has a population of at least 13,000 but not more than 39,000, and is located in a county that has a population of at least 200,000: **Addison, Alamo, Alvin, Angleton, Balch Springs, Bellaire, Benbrook, Burleson, Colleyville, Converse, Coppell, Copperas Cove, Corinth, Deer Park, Dickinson, Donna, Duncanville, Farmers Branch, Friendswood, Groves, Hewitt, Highland Village, Horizon City, Harker Heights, Humble, Hurst, Hutto, Katy, La Marque, La Porte, Lake Jackson, Lancaster, Leander, Little Elm, Live Oak, Mercedes, Murphy, Nederland, Port Neches, Portland, Rio Grande City, Rosenberg, Sachse, Saginaw, San Benito, San Juan, Schertz, Seagoville, Socorro, South Houston, Southlake, Stafford, Taylor, The Colony, Universal City, University Park, Watauga, Weslaco, West University Place, and White Settlement.**⁹⁰
- v. The municipality has a population of at least 70,000, but not more than 90,000, and no part of the city is located in a county with a population greater than 150,000: **Longview.**⁹¹
- vi. The municipality is located in a county that is adjacent to the Texas-Mexico border, the county has a population of at least 500,000, and the county does not have a municipality with a population greater than 500,000: Cities in Hidalgo County including, but not limited to **McAllen, Edinburg, Mission, and Pharr.**⁹²
- vii. The municipality has a population of at least 25,000 but not more than 26,000, and is located in a county that has a population of 90,000 or less: **Greenville and Paris.**⁹³

⁸⁵ § 351.101(a)(7).

⁸⁶ *Id.*

⁸⁷ § 351.101(a)(7)(B)(i).

⁸⁸ § 351.101(a)(7)(B)(ii).

⁸⁹ § 351.101(a)(7)(B)(iii).

⁹⁰ § 351.101(a)(7)(B)(iv).

⁹¹ § 351.101(a)(7)(B)(v).

⁹² § 351.101(a)(7)(B)(vi).

⁹³ § 351.101(a)(7)(B)(vii).

- viii. The municipality has a population of at least 7,500 and is located in a county that borders the Pecos River and that has a population of not more than 15,000: **Pecos**.⁹⁴
- ix. The municipality is located in a county that has a population of not more than 300,000 and in which a component university of the University of Houston System is located: **Victoria**.⁹⁵

[Note that statutory population brackets are based on the decennial U.S. Census, most recently conducted in 2010.⁹⁶]

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.⁹⁷

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.⁹⁸ 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.⁹⁹ 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.¹⁰⁰

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.¹⁰¹

The reimbursed transportation system must be owned and operated by the city, or privately owned and

⁹⁴ § 351.101(a)(7)(B)(viii).

⁹⁵ § 351.101(a)(7)(B)(viii).

⁹⁶ Tex. Gov’t Code Ann. § 311.005(3) (Vernon 2011).

⁹⁷ Tex. Tax Code §§ 351.101(a)(7), 351.1076.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ § 351.110(a).

operated but financed in part by the city.¹⁰² 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.¹⁰³

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.¹⁰⁴ 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.¹⁰⁵

Summary of the Nine Uses for the Local Hotel Occupancy Tax

In summary, local hotel occupancy tax revenues only may be spent to establish or enhance a convention center or visitor information center, cover the administrative expenses for registering convention delegates, pay for tourism-related advertising and promotions, fund arts programs or facilities that will directly promote tourism and hotel and convention activity, fund historic restoration or preservation projects that will enhance tourism and hotel and convention activity, in certain counties and cities noted above fund certain costs for holding sporting events and making upgrades to sporting facilities that substantially increase local hotel activity, certain transportation costs for taking tourists from hotels to various locations, and pay for signage directing tourists to sights and attractions frequently visited by hotel guests. If the city cannot fit an expenditure within one of these nine categories, hotel occupancy tax revenues cannot be used for that purpose, unless a special state statute was passed to allow such additional uses. This article includes a summary of special provisions and limitations placed on cities that fall into certain population brackets or special geographic areas of the state.

With regard to the use of local hotel occupancy taxes, there is no time limit for a city to expend all of its hotel occupancy tax funds. At a minimum, however, state law does require that for cities with a seven percent local hotel tax rate, at least one-seventh of the hotel tax proceeds must be spent advertising and promoting the city to directly impact tourism and the hotel and convention industry.¹⁰⁶ It should also be noted that state law requires that interest earned on hotel tax must be spent in the same way as other hotel tax revenues.¹⁰⁷ State law does not address revenues that are earned from events funded by the local hotel occupancy tax.

¹⁰² § 351.110(b).

¹⁰³ § 351.110(c).

¹⁰⁴ § 351.101(a)(9).

¹⁰⁵ *Id.*

¹⁰⁶ §§ 351.103, 351.1035, 351.104(d), 351.105(b), and 351.106(a).

¹⁰⁷ §§ 351.001(9), (10).

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.¹⁰⁸ 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.¹⁰⁹ 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.¹¹⁰

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.¹¹¹ 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.¹¹²

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.¹¹³ This delegation may be made to a person, another governmental entity, or to a private organization.¹¹⁴ 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.¹¹⁵ 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.¹¹⁶ 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.¹¹⁷

An entity with delegated authority to manage hotel tax funded programs undertakes a fiduciary duty with respect to the use of the tax revenue.¹¹⁸ 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

¹⁰⁸ § 351.108(b).

¹⁰⁹ *Id.*; § 351.108(d).

¹¹⁰ § 351.108(g).

¹¹¹ § 351.101(b).

¹¹² § 351.101(e).

¹¹³ § 351.101(c).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ § 351.101(d).

¹¹⁸ § 351.101(c).

or funds.¹¹⁹ 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.¹²⁰ 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.¹²¹ These expenses may include supplies, salaries, office rental, travel expenses, and other administrative costs.¹²² 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.¹²³ 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.¹²⁴ 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.¹²⁵ This travel should facilitate the acquisition of skills and knowledge that will promote tourism and the convention and hotel industry.¹²⁶

¹¹⁹ *Id.*

¹²⁰ § 351.101(e).

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ § 351.101(f).

¹²⁶ *Id.*

Special Rules for Selected Municipalities

The Texas Tax Code provides additional rules for certain Texas cities based on the city's population bracket. Where noted, these special rules supplement or further restrict the general two-part test for hotel occupancy tax revenue expenditures, discussed earlier in this guide. For statutory construction purposes, population brackets are based on the decennial federal census, most recently conducted in 2010.¹²⁷

Cities with a population of 200,000 or greater (except Houston): Arlington, Austin, Corpus Christi, Dallas, El Paso, Fort Worth, Garland, Irving, Laredo, Lubbock, Plano, and San Antonio.

In addition to the general two part test for all expenditures of the hotel occupancy tax revenue, the above cities have certain specific expenditure limitations that apply to their handling of the local hotel occupancy tax.

Minimum expenditure that must be spent on advertising and promotion:

A city with a population of 200,000 or greater is required to spend at least 50 percent of the hotel occupancy tax collected by the city on advertising and conducting solicitations and promotional programs to attract tourists to the city or its vicinity.¹²⁸ However, if the city collects more than \$2 million in hotel tax revenues annually, this 50 percent minimum expenditure requirement does not apply.¹²⁹

15 Percent maximum expenditure for the arts and 15 percent maximum expenditure for historical restoration and preservation:

Under § 351.103(c), a city with a population of at least 200,000 may not expend more than the greater of either 15 percent of the hotel occupancy tax revenue collected or the amount of tax received by the city at the rate of 1 percent of the cost of a room on promotion of the arts.¹³⁰ Also, a city with a population of more than 125,000 may not spend more than 15 percent of its hotel occupancy tax revenue on historical restoration and preservation programs.¹³¹

Special rules for the City of Houston.

Maximum hotel occupancy tax rate for Houston:

Houston is capped by statute at a total combined hotel occupancy tax rate of 17 percent.¹³² This includes the state, city, county, and sports authority hotel occupancy taxes.¹³³

¹²⁷ Tex. Gov't Code § 311.005(3).

¹²⁸ Tex. Tax Code § 351.103(a).

¹²⁹ § 351.103(b).

¹³⁰ § 351.103(c).

¹³¹ § 351.103(c).

¹³² Tex. Tax Code §§ 352.003, 351.003(a); Tex. Local Gov't Code Ann. § 382.155 (Vernon 2011).

¹³³ *Id.*

Minimum 23 percent expenditure for advertising and promotion:

The City of Houston must spend at least 23 percent of the tax revenue it collects on advertising and promotion, unless the allocation impairs the City's ability to operate and maintain its convention center facilities or to pledge revenue for the payment of convention center bonds.¹³⁴

Maximum 19.3 percent expenditure for arts:

The City of Houston may not expend more than the greater of 19.3 percent of the hotel occupancy tax revenue collected or the amount of tax received by the city at the rate of 1 percent of the cost of a room on promotion of the arts.¹³⁵

Additional rules for “eligible central municipalities:” Austin, Arlington, Corpus Christi, Dallas, Fort Worth, Garland, Grand Prairie, Irving, and San Antonio.

Austin, Arlington, Corpus Christi, Dallas, Fort Worth, Garland, Grand Prairie, Irving, and San Antonio fall under the statutory definition of an “eligible central municipality.”¹³⁶ An “eligible central municipality” is defined as a municipality with a population of more than 140,000 but less than 1.5 million that is located in a county with a population of one million or more, and that has adopted a capital improvement plan for the expansion of an existing convention center facility; or a municipality with a population of 250,000 or more that is located wholly or partly on a barrier island in the Gulf of Mexico, is located in a county with a population of 300,000 or more; and has adopted a capital improvement plan to expand an existing convention center facility.¹³⁷

Ability to pledge revenue for a convention center hotel or a historic hotel:

Eligible central municipalities may pledge hotel occupancy tax revenue for a convention center hotel, a historic hotel, convention center entertainment related facilities, restaurants, or certain civic projects.¹³⁸ However, only the revenue collected from that particular project for a period of up to ten years may be pledged.¹³⁹ Eligible central municipalities are also permitted to pledge the sales tax from such a project to repay the costs for up to ten years.¹⁴⁰

Dallas only: 55% maximum on convention center and 45% minimum on advertising.

Dallas falls into an additional category, “Populous Municipalities with Council-Manager Government,” which requires it to use the revenue derived from the portion of the municipal hotel occupancy tax rate that exceeds 4 percent for the following purposes: 1) no more than 55 percent for the municipality's convention center complex; and 2) at least 45 percent for advertising and promotion.¹⁴¹ The other noted rules for expenditure of the hotel occupancy tax for cities with a population in excess of 200,000 applies to the first four percent portion of the rate.¹⁴²

Additional 2 percent rate for a convention center facility (Austin, Fort Worth, and San Antonio):

Austin, Fort Worth, and San Antonio are authorized to implement up to a 9 percent maximum municipal

¹³⁴ Tex. Tax Code § 351.103(b).

¹³⁵ § 351.103(c).

¹³⁶ § 351.001(7).

¹³⁷ *Id.*

¹³⁸ §§ 351.102, 151.429(h).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ § 351.106.

¹⁴² §§ 351.106, 351.103.

hotel occupancy tax rate.¹⁴³ The revenue derived from application of the tax at a rate more than 7 percent, and its interest income, may only be used for the construction in an expansion of an existing convention center facility.¹⁴⁴ This nine percent maximum rate does not apply to Dallas, or to eligible central municipalities with a population of less than 440,000: Arlington, Corpus Christi, Garland, Grand Prairie, and Irving.¹⁴⁵

Project financing zones (Dallas and Fort Worth):

Additionally, the City of Fort Worth and the City of Dallas have recent statutory authority to receive new “incremental” state hotel occupancy tax revenues, state sales tax revenues, and mixed beverage tax revenues from hotels within a three mile radius of their convention center and/or other statutory designated city facilities.¹⁴⁶ This incremental tax revenue is the additional state hotel occupancy tax revenues, state sales tax revenues, and mixed beverage tax revenues at certain hotels that exceed a base amount collected from hotels within a three-mile radius of the project. The state funding can be used to enhance and upgrade the convention center in either city, as well as the Will Rogers Memorial Center complex in Fort Worth. The process is performed as follows:

1. The city designates the project financing zone (i.e. the convention center and/or the Will Rogers Memorial complex), with a project expiration date of less than 30 years. Within 30 days of the designation of the project financing zone, the city notifies the Comptroller about the designation.
2. Base year amounts are determined for state hotel occupancy tax revenues, state sales tax revenues, and mixed beverage tax revenues collected from hotels located within the three mile zone in the year in which financing zone is designated.
3. Then the “incremental hotel-associated revenue” is calculated by determining the amount of annual state hotel occupancy tax revenues, state sales tax revenues, and mixed beverage tax revenues collected from hotels within the three mile zone that are in excess of the “base year amount.” The city is entitled to receive this incremental revenue from the Texas Comptroller, beginning on January 1st after the project’s designation, and ending when the project financing zone expires.

Cities with populations between 125,000 and 200,000: Amarillo, Brownsville, Grand Prairie, Killeen, McAllen, McKinney, Mesquite, and Pasadena.

Minimum expenditure on advertising and promotion:

Cities with populations between 125,000 and 200,000 must spend a minimum amount of hotel occupancy tax revenue on advertising and promotion, and that minimum depends on the hotel occupancy tax rate adopted by the city.¹⁴⁷ If the city adopts a tax rate of not more than 3 percent, at least one-half of 1 percent of the rate must be spent on advertising and promotion of the city and its vicinity.¹⁴⁸ If the city adopted a rate that exceeds 3 percent, at least 1 percent of the rate must be spent on advertising and promotion of the city and its vicinity.¹⁴⁹ For example, if a city has a 7 percent hotel

¹⁴³ § 351.003(b).

¹⁴⁴ §§ 351.1065, 351.003(b).

¹⁴⁵ § 351.003(b).

¹⁴⁶ § 351.1015

¹⁴⁷ § 351.103.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

occupancy tax rate, at least 1/7 of the hotel occupancy tax proceeds must be spent on advertising and promoting the city and its vicinity to attract tourists and hotel and convention activity. An exception to the minimum threshold for advertising and promotion expenditures is provided if the city receives in excess of \$2 million in hotel tax revenues annually, in which case, the city should allocate its revenue by ordinance.¹⁵⁰

15 Percent maximum expenditure for the arts and 15 percent maximum expenditure for historical restoration and preservation:

Under § 351.103(c), a city with a population between 125,000 and 200,000 may not expend more than the greater of either 15 percent of the hotel occupancy tax revenue collected, or the amount of tax received by the city at the rate of 1 percent of the cost of a room, on promotion of the arts.¹⁵¹ Additionally, a city with a population of more than 125,000 may not spend more than 15 percent of its hotel occupancy tax revenue on historical restoration and preservation programs.¹⁵²

Cities with populations of less than 125,000.

Minimum expenditure on advertising and promotion:

Cities with populations of less than 125,000 must spend a minimum amount of hotel occupancy tax revenue on advertising and promotion, and that minimum depends on the hotel occupancy tax rate adopted by the city.¹⁵³ If the city adopts a tax rate of not more than 3 percent, at least one-half of 1 percent of the rate must be spent on advertising and promotion of the city and its vicinity.¹⁵⁴ If the city adopted a rate that exceeds 3 percent, at least 1 percent of the rate must be spent on advertising and promotion of the city and its vicinity.¹⁵⁵ For example, if a city has a 7 percent hotel occupancy tax rate, at least 1/7 of the hotel occupancy tax proceeds must be spent on advertising and promoting the city and its vicinity to attract tourists and hotel and convention activity. An exception to the minimum threshold for advertising and promotion expenditures is provided if the city receives in excess of \$2 million in hotel tax revenues annually, in which case, the city should allocate its revenue by ordinance.¹⁵⁶

15 percent maximum expenditure for the arts and 50 percent maximum expenditure for historical restoration and preservation:

Under § 351.103(c), a city with a population of under 125,000 may not expend more than the greater of either 15 percent of the hotel occupancy tax revenue collected or the amount of tax received by the city at the rate of 1 percent of the cost of a room on promotion of the arts.¹⁵⁷ Additionally if a city with a population of under 125,000 does not allocate any hotel tax money for a convention center, the Tax Code prohibits the city from allocating more than 50 percent of its hotel occupancy tax for historical restoration or preservation projects.¹⁵⁸

¹⁵⁰ *Id.*

¹⁵¹ § 351.103(c).

¹⁵² *Id.*

¹⁵³ § 351.103.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

Additional rules for certain large coastal municipalities: Corpus Christi.

Public beach expenditures:

The City of Corpus Christi is authorized to use all or any portion of the city hotel occupancy tax collected from hotels that are within areas that were annexed by the City of Corpus Christi and were previously subject to the county hotel occupancy tax toward cleaning and maintaining public beaches.¹⁵⁹

Expenditures from the portion of municipal hotel tax rate exceeding 7 percent:

The City of Corpus Christi must separately account for all hotel occupancy tax revenue it derives from a city hotel occupancy tax rate that exceeds 7 percent (up to a maximum of 9 percent).¹⁶⁰ The city may use revenue from the portion of the city hotel occupancy tax rate that exceeds 7 percent for acquiring land for a municipally owned convention center; constructing, improving, operating and maintaining the convention center; and paying bonds to finance these activities.¹⁶¹

Special rules for medium sized “eligible coastal municipalities:” Galveston.

A different set of revenue expenditure rules apply for eligible coastal municipalities, defined as a “home-rule municipality that borders the Gulf of Mexico and has a population of less than 80,000.”¹⁶² The City of Galveston fits this bracket’s description. The Tax Code limits the allocation of local hotel occupancy tax revenue for eligible coastal municipalities in the following ways:

- **Minimum expenditure for improvements to civic centers, hotels, marinas, golf courses, trolleys, and other improvements that attract tourists:**
If the city levies a rate of 7 percent, at least 1 percent of the cost of a room shall be used for the payment of bonds issued to establish, acquire, purchase, construct, or improve public improvements that serve the purpose of attracting visitors and tourists, such as parks, civic centers, auditoriums, coliseums, marinas, cruise ship terminals, hotels, motels, parking facilities, golf courses, trolleys or trolley transportation systems.¹⁶³ This 1 percent may also be used for maintenance, improvement, or operation of any of the above facilities.¹⁶⁴ For eligible coastal cities with a 7 percent rate, this requirement mandates dedicating 1/7 of the hotel occupancy tax revenue for items within the above noted purposes.¹⁶⁵
- **Minimum expenditure for matching funds for beach clean-up:**
If the city levies a rate of 6 percent or more, at least 1 percent of the cost of a room shall be used as matching funds for state funds and other funds available to clean and maintain public beaches.¹⁶⁶ For example, if the city levied a 7 percent local hotel occupancy tax, at least 1/7 of the hotel occupancy tax must be spent on beach clean-up. However, a city may credit any funds

¹⁵⁹ § 351.1055.

¹⁶⁰ §§ 351.1055, 351.003(c), 351.107(e).

¹⁶¹ *Id.*

¹⁶² § 351.001(3).

¹⁶³ § 351.105.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

it receives from the state hotel occupancy tax for beach clean-up toward meeting this obligation.

- **Minimum 1 percent expenditure for other beach related expenditures:**

If the city levies a rate of 5 percent or more, at least 1 percent of the cost of a room shall be used for beach patrol, lifeguard services, marine water safety, and park law enforcement.¹⁶⁷ For example, if the city levied a 7 percent local hotel occupancy tax, at least 1/7 of the hotel occupancy tax must be spent on the above noted beach related expenditures. However, a city may credit any funds it receives from the state hotel occupancy tax for beach related expenditures toward meeting this obligation.¹⁶⁸

- **Minimum 3 percent expenditure for advertising and promotion:**

If the city levies a rate of 4 percent or more, at least 3 percent of the cost of a room shall be used for advertising and promotion.¹⁶⁹ For example, if the city levied a 7 percent local hotel occupancy tax, at least 3/7 of the hotel occupancy tax must be spent on advertising and promotion.

Special state funding for beach clean-up: Galveston.

In 1995, the Texas Legislature passed a special statute that dedicates the revenue generated from the state hotel tax at a rate of two percent (one third of the state hotel occupancy tax) from Galveston lodging operators to beach clean-up.¹⁷⁰ For example, if the 6 percent state hotel tax generates \$300 in state hotel tax proceeds, \$100 is given back to the City of Galveston to use for clean-up of beaches within the City of Galveston.

The implementing legislation that authorizes this funding only applies to an “eligible coastal municipality” that has created a park board of trustees to clean and maintain public beaches.¹⁷¹ An eligible coastal municipality is defined under state law to be a city that,

1. Borders on the Gulf of Mexico; and
2. Has a population of less than 80,000.¹⁷²

A city is eligible to adopt a park board of trustees for beach clean-up only if it,

1. Is a home rule city;
2. Has over 40,000 in population;
3. Is under 80,000 in population; and
4. Borders the Gulf of Mexico.¹⁷³

According to the Texas Comptroller's Office, the only Texas city that fits both the definition of an "eligible coastal municipality" and the definition of a city that may adopt a park board of trustees for beach clean-up is Galveston.¹⁷⁴ Accordingly, Galveston receives one-third of the state hotel occupancy

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ § 156.2511.

¹⁷¹ *Id.*

¹⁷² § 351.001(3).

¹⁷³ Tex. Loc. Gov't Code Ch. 306.

¹⁷⁴ Tex. Comptroller Opinion Letter No. 200007471L, July 6, 2000.

taxes collected from Galveston area hoteliers for beach clean-up purposes through a rebate from the Texas Comptroller.

Special state funding for beach clean-up: Port Aransas and South Padre Island.

Originally enacted in 1999, and amended in 2009 and 2013, the Texas Legislature passed a special statute, similar to the authority relating to Galveston, dedicating a portion of the state hotel occupancy tax generated from certain eligible barrier island coastal municipalities to beach clean-up.¹⁷⁵

The implementing legislation for this funding applies only to an eligible barrier island coastal municipality.¹⁷⁶ According to the Texas Comptroller's Office, the two Texas cities that fit this definition are South Padre Island and Port Aransas.¹⁷⁷ The State of Texas provides a rebate to the City of South Padre Island of 2/6 of the state hotel occupancy collected by the State from lodging operators in South Padre Island, and a rebate to the City of Port Aransas of 1/6 of the state hotel occupancy collected by the State from lodging operators in Port Aransas.¹⁷⁸ This rebated amount can be used by each city only for beach clean-up and beach erosion response projects.¹⁷⁹

¹⁷⁵ Tax Code § 156.2512.

¹⁷⁶ *Id.*

¹⁷⁷ Tex. Comptroller Opinion Letter No. 200007471L, July 6, 2000.

¹⁷⁸ Tax Code § 156.2512

¹⁷⁹ *Id.*

Municipal hotel occupancy tax funding for coastal erosion: South Padre Island.

In 2009, the Texas Legislature amended Chapter 351 of the Tax Code to allow the City of South Padre Island to increase its hotel occupancy tax rate to 8 ½ percent.¹⁸⁰ The law dedicates 7 percent of the 8 ½ percent rate to advertising and promotion or convention center related purposes.¹⁸¹ One percent can be used for any purpose authorized under Tax Code § 351.101. This legislation dedicates the remaining ½ percent of municipal hotel occupancy tax to coastal erosion projects.¹⁸²

Special rules for medium sized home rule coastal cities with a population of less than 80,000 and that border bays: Ingleside, Portland, Aransas Pass, La Porte, Seabrook, Port Aransas, Port Lavaca, Rockport, Baytown, Texas City, and Palacios.

Home-rule cities that have a population of less than 80,000 and border bays may use up to 10 percent of the revenue derived from the local hotel occupancy tax for certain special beach related purposes and for tourism related public improvements.¹⁸³ Specifically, such cities can use up to 10 percent of the local hotel occupancy tax to clean and maintain publicly owned land that is adjacent to a bay, to mitigate coastal erosion, or to pay for the operation or debt for certain tourism related public improvements, as defined under Tax Code §§ 351.105(a)(1) or 351.105(a)(2). This authority does not apply to eligible coastal municipalities such as Galveston.¹⁸⁴

If the city uses any of the local hotel occupancy tax for beach maintenance under this authority, it may not reduce the amount of revenue that the city uses for tourism advertising and promotion.¹⁸⁵ In particular, the city's advertising and promotion budget may not be set at an amount that is less than the average amount of revenue used by the city for advertising and promoting during the 36-month period that preceded the city's use of city hotel tax for beach maintenance or tourism related public improvements.¹⁸⁶

Additionally, the amount that is spent from the hotel occupancy tax for beach maintenance or tourism related public improvements (e.g.; a convention center facility) must be matched by the city with the same amount of revenue from a non-hotel occupancy tax source (e.g.; property tax or sales tax or other general fund dollars).¹⁸⁷

Special rules for small coastal municipalities with a population of less than 5,000, adjacent to a home-rule city with a population of less than 80,000: Jamaica Beach.

Coastal cities with a population of less than 5,000 adjacent to a home-rule city with a population of less than 80,000 may use all or any portion of the municipal hotel tax revenue it collects to clean or maintain beaches within the city, to provide beach security (defined as beach patrol, lifeguard services, marine water safety and park law enforcement) within the municipality, and to pay for any purpose allowed by Tex. Tax Code § 351.105 or Tex. Gov't Code § 1504.001.¹⁸⁸ The maximum municipal hotel occupancy

¹⁸⁰ Tax Code §§ 351.001(11), 351.003(d).

¹⁸¹ § 351.1055(d).

¹⁸² § 351.1055(e).

¹⁸³ § 351.104.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ § 351.1055(c).

rate for cities in this bracket is 9 percent.¹⁸⁹

Special rules for the City of Alpine.

Minimum expenditure on advertising and promotion:

The City of Alpine must spend at least 50 percent of its hotel occupancy tax revenue on advertising and promotion to attract tourists and convention delegates or registrants to the city or its vicinity.¹⁹⁰

Maximum expenditure for arts:

Alpine's maximum percentage for the promotion of the arts is 15 percent of its hotel occupancy tax revenues.¹⁹¹

Maximum expenditure for historical restoration and promotion projects:

Alpine's maximum percentage for historical restoration and promotion of historical projects is 15 percent of its hotel occupancy tax revenues.¹⁹²

Special rules for the City of El Paso.

The City of El Paso may use hotel occupancy tax revenues for the construction, remodeling, or rehabilitation of a "qualified hotel project" that is within 3,000 feet of the city-owned convention center. In addition to hotel occupancy tax revenues, El Paso may also use enterprise zone financing to rebate sales tax collected by the qualified hotel project back to the hotel.

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.

¹⁸⁹ § 351.003(c).

¹⁹⁰ § 351.1035.

¹⁹¹ *Id.*

¹⁹² *Id.*

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