

By: Hodge

H.B. No. 3324

A BILL TO BE ENTITLED

AN ACT

relating to a municipal and county sales and use tax on certain amusements and discretionary food and drink items.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 3, Tax Code, is amended by adding Chapter 328 to read as follows:

CHAPTER 328. MUNICIPAL AND COUNTY SALES AND USE TAX ON CERTAIN AMUSEMENTS AND DISCRETIONARY FOOD AND DRINK ITEMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 328.001. APPLICABILITY OF CHAPTER. The provisions of this chapter apply only to a sale of a taxable item to which the tax imposed by Chapter 321 applies that occurs within the territory of an authorized local governmental entity that elects to impose the tax as provided by Section 328.051.

Sec. 328.002. DEFINITIONS. In this chapter:

(1) "Amusement services" means the provision of amusement, entertainment, or recreation, but does not include the provision of educational or health services if prescribed by a licensed practitioner of the healing arts for the primary purpose of education or health maintenance or improvement. The term includes membership in a private club or organization that provides entertainment, recreational, sports, dining, or social facilities to its members.

(2) "Authorized local governmental entity" means a

1 municipality or county that:

2 (A) has a population of more than one million;
3 and

4 (B) is represented by a local or regional film
5 commission that is a member of the Association of Film Commissions
6 International (AFCI).

7 (3) "Sale or purchase" means any of the following when
8 done or performed for consideration:

9 (A) a transfer of title or possession of tangible
10 personal property;

11 (B) the exchange, barter, lease, or rental of
12 tangible personal property; or

13 (C) the performance of a taxable service, the
14 charge for an extended warranty or service contract for the
15 performance of a taxable service, or, in the case of an amusement
16 service, a transfer of title to or possession of a ticket or other
17 admission document, the collection of an admission fee, whether by
18 individual performance, subscription series, or membership
19 privilege, the collection of dues or a fee, charge, or assessment,
20 including an initiation fee, by a club or organization for
21 membership or a special privilege, status, or membership
22 classification in the club or organization, or the use of a
23 coin-operated machine.

24 (4) "Snack food" means any item that is ordinarily
25 sold for consumption without further preparation and that is not
26 generally considered a major component of a well-balanced meal.

27 The term includes:

1 (A) bakery items, including pastries, donuts,
2 cakes, tortes, pies, tarts, bars, and cookies;

3 (B) candy;

4 (C) chips, including chips made from potatoes,
5 flour, or corn;

6 (D) popcorn;

7 (E) pretzels; and

8 (F) roasted nuts.

9 (5) "Soft drink" means a nonalcoholic beverage that
10 contains natural or artificial sweeteners. The term does not
11 include a beverage that:

12 (A) contains:

13 (i) milk or milk products;

14 (ii) soy, rice, or similar milk
15 substitutes; or

16 (iii) more than 50 percent of vegetable or
17 fruit juice by volume;

18 (B) is intended by the manufacturer for
19 consumption by an infant and that is commonly referred to as "infant
20 formula"; or

21 (C) is intended by the manufacturer for use for
22 weight reduction.

23 (6) "Taxable item" means tangible personal property
24 and amusement services. Except as otherwise provided by this
25 chapter, the sale or use of a taxable item in electronic form
26 instead of on physical media does not alter the item's tax status.

27 (7) "Ticket" means the document sold in an amusement

1 services industry to a person to enable the person to gain admission
2 to an establishment for the purposes normally associated with that
3 industry.

4 [Sections 328.003-328.050 reserved for expansion]

5 SUBCHAPTER B. IMPOSITION AND COLLECTION OF TAX

6 Sec. 328.051. AUTHORIZED LOCAL GOVERNMENTAL AUTHORITY TO
7 IMPOSE TAX. (a) The commissioners court of a county that is an
8 authorized local governmental entity may adopt an order authorizing
9 the tax under this chapter.

10 (b) A municipality that is an authorized local governmental
11 entity may adopt an ordinance authorizing the tax under this
12 chapter.

13 (c) If a municipality that authorizes the tax under this
14 chapter as provided by Subsection (b) is located in a county that
15 also authorizes the tax under this chapter as provided by
16 Subsection (a), only the tax authorized by the municipality may be
17 imposed and collected on the sale of a taxable item that occurs in
18 the municipality.

19 Sec. 328.052. TAX IMPOSED. (a) A tax is imposed on each
20 sale at retail of a soft drink, snack food, or ticket.

21 (b) The tax rate is the rate adopted by the authorized
22 authorized local governmental entity that authorizes the tax and
23 applied to the sales price of the soft drink, snack food, or ticket,
24 not to exceed three percent of that sales price.

25 (c) The tax imposed under this chapter is in addition to any
26 other tax imposed by state law.

27 (d) The authorized local governmental entity that

1 authorizes the tax may increase or decrease the rate of the tax,
2 subject to Subsection (b). The entity by order or ordinance, as
3 applicable, may repeal the entity's authorization of the tax under
4 this chapter.

5 Sec. 328.053. COLLECTION. (a) The authorized local
6 governmental entity that authorizes the tax may, by order or
7 ordinance, as applicable, require the owner or lessee of an
8 approved venue project in the territory of the authorized local
9 governmental entity to collect the tax for the benefit of the
10 authorized local governmental entity.

11 (b) An owner or lessee required to collect the tax under
12 this section shall add the tax to the sale price of the soft drink,
13 snack food, or ticket. The tax is a part of the sale price, a debt
14 owed to the owner or lessee of the approved venue project by the
15 purchaser, and recoverable at law in the same manner as the sale
16 price.

17 (c) The tax imposed by this chapter is not an occupation tax
18 imposed on the owner or lessee of the approved venue project.

19 Sec. 328.054. REMITTANCE OF TAX. (a) A person required to
20 collect a tax imposed under this chapter shall report and send the
21 taxes to the authorized local governmental entity that authorizes
22 the tax in the manner provided by that entity.

23 (b) The authorized local governmental entity may prescribe
24 penalties, including interest charges, for failure to keep records
25 required by the entity, to report when required, or to pay the tax
26 when due. The attorney acting for the entity may bring suit against
27 a person who fails to collect a tax under this chapter and to remit

1 the tax as required.

2 (c) The authorized local governmental entity may permit a
3 person who is required to collect a tax under this chapter to retain
4 a percentage of the amount collected and required to be reported as
5 reimbursement to the person for the costs of collecting the tax.
6 The authorized local governmental entity may provide that the
7 person may retain the amount only if the person pays the tax and
8 files reports as required by the entity.

9 [Sections 328.055-328.100 reserved for expansion]

10 SUBCHAPTER C. ALLOCATION OF TAX

11 Sec. 328.101. DEPOSIT OF TAX REVENUE. Revenue from the tax
12 imposed under this chapter shall be deposited in the media
13 incentive fund of the authorized local governmental entity that
14 authorizes the tax.

15 Sec. 328.102. MEDIA INCENTIVE FUND. (a) An authorized
16 local governmental entity in which an approved venue project is
17 located shall establish by resolution a fund known as the media
18 incentive fund. The authorized local governmental entity shall
19 establish separate accounts within the fund for the various revenue
20 sources.

21 (b) The authorized local governmental entity shall deposit
22 into the media incentive fund:

23 (1) the proceeds of any tax collected and remitted to
24 the entity under this chapter;

25 (2) all revenue from the state or other sources
26 provided for this purpose; and

27 (3) any other money required by law to be deposited in

1 the fund.

2 (c) The authorized local governmental entity creating the
3 fund shall develop a program to use money in the fund for the
4 purpose of retaining existing and attracting new business related
5 to the film, television, and related industries. This program
6 should be established in coordination with the area's film
7 commission.

8 SECTION 2. This Act takes effect September 1, 2005.