

SENATE AMENDMENTS

2nd Printing

By: Lyne

H.B. No. 2048

A BILL TO BE ENTITLED

AN ACT

relating to the collection and enforcement of state and local hotel occupancy taxes.

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

SECTION 1. Subchapter F, Chapter 156, Tax Code, is amended by adding Section 156.2513 to read as follows:

Sec. 156.2513. ALLOCATION OF REVENUE TO CERTAIN MUNICIPALITIES AND COUNTIES. Not later than the last day of the month following a calendar quarter, the comptroller shall:

(1) compute the amount of revenue, excluding penalties and interest, derived from the collection of taxes imposed by this chapter that resulted from documentation or other information described by Section 351.008 or 352.008; and

(2) issue a warrant drawn on the general revenue fund in the amount of 20 percent of the revenue computed under Subdivision (1) to the municipality or county that provided the documentation or other information.

SECTION 2. Sections 351.004(a), (a-1), (a-2), and (a-3), Tax Code, are amended to read as follows:

(a) The [~~municipal attorney or other attorney acting for the~~] municipality may bring suit against a person who is required to collect the tax imposed by this chapter and pay the collections over to the municipality, and who has failed to file a tax report or pay the tax when due, to collect the tax not paid or to enjoin the person

1 from operating a hotel in the municipality until the tax is paid or
2 the report filed, as applicable, as provided by the court's
3 order. In addition to the amount of any tax owed under this
4 chapter, the person is liable to the municipality for:

- 5 (1) the municipality's reasonable attorney's fees;
6 (2) the costs of an audit conducted under Subsection
7 (a-1)(1), as determined by the municipality using a reasonable
8 rate, but only if:

9 (A) the tax has been delinquent for at least two
10 complete municipal fiscal quarters at the time the audit is
11 conducted; and

12 (B) the municipality has not received a
13 disbursement from the comptroller as provided by Section 156.2513
14 related to the person's concurrent state tax delinquency described
15 by Section 351.008; and

- 16 (3) a penalty equal to 15 percent of the total amount
17 of the tax owed if the tax has been delinquent for at least one
18 complete municipal fiscal quarter.

19 (a-1) If a person required to file a tax report under this
20 chapter does not file the report as required by the municipality,
21 the [~~municipal attorney or other attorney acting for the~~]
22 municipality may determine the amount of tax due under this chapter
23 by:

- 24 (1) conducting an audit of each hotel in relation to
25 which the person did not file the report as required by the
26 municipality; or

- 27 (2) using the tax report filed for the appropriate

1 reporting period under Section 156.151 in relation to that hotel.

2 (a-2) If the person did not file a tax report under Section
3 156.151 for that reporting period in relation to that hotel, the
4 ~~[municipal attorney or other attorney acting for the]~~ municipality
5 may estimate the amount of tax due by using the tax reports in
6 relation to that hotel filed during the previous calendar year
7 under this chapter or Section 156.151. An estimate made under this
8 subsection is prima facie evidence of the amount of tax due for that
9 period in relation to that hotel.

10 (a-3) The authority to conduct an audit under this section
11 is in addition to any other audit authority provided by statute,
12 charter, or ordinance. A municipality may directly perform an
13 audit authorized by this section or contract with another person to
14 perform the audit on an hourly rate or fixed-fee basis. A
15 municipality shall provide at least 30 days' written notice to a
16 person who is required to collect the tax imposed by this chapter
17 with respect to a hotel before conducting an audit of the hotel
18 under this section.

19 SECTION 3. Subchapter A, Chapter 351, Tax Code, is amended
20 by adding Section 351.008 to read as follows:

21 Sec. 351.008. CONCURRENT STATE TAX DELINQUENCY. (a) If, as
22 a result of an audit conducted under Section 351.004, a
23 municipality obtains documentation or other information showing a
24 failure to collect or pay when due both the tax imposed by this
25 chapter and the tax imposed by Chapter 156 on a person who pays for
26 the right to occupy a room or space in a hotel, the municipality
27 shall notify and submit the relevant information to the

1 comptroller.

2 (b) The comptroller shall review the information submitted
3 by a municipality under Subsection (a) and determine whether to
4 proceed with collection and enforcement efforts. If the
5 information results in the collection of a delinquent tax under
6 Chapter 156, the comptroller shall distribute a percentage of the
7 amount collected to the municipality as provided by Section
8 156.2513 to defray the cost of the municipal audit.

9 SECTION 4. Section 352.004, Tax Code, is amended by adding
10 Subsection (e) to read as follows:

11 (e) If a person required to file a tax report under this
12 chapter does not file the report as required by the county, the
13 county may determine the amount of tax due under this chapter by
14 conducting an audit of each hotel in relation to which the person
15 did not file the report as required by the county. A county may
16 directly perform an audit authorized under this subsection or
17 contract with another person to perform the audit on an hourly rate
18 or fixed-fee basis. A county shall provide at least 30 days'
19 written notice to a person who is required to collect the tax
20 imposed by this chapter with respect to a hotel before conducting an
21 audit of the hotel under this subsection.

22 SECTION 5. Subchapter A, Chapter 352, Tax Code, is amended
23 by adding Section 352.008 to read as follows:

24 Sec. 352.008. CONCURRENT STATE TAX DELINQUENCY. (a) If, as
25 a result of an audit conducted under Section 352.004, a county
26 obtains documentation or other information showing a failure to
27 collect or pay when due both the tax imposed by this chapter and the

1 tax imposed by Chapter 156 on a person who pays for the right to
2 occupy a room or space in a hotel, the county shall notify and
3 submit the relevant information to the comptroller.

4 (b) The comptroller shall review the information submitted
5 by a county under Subsection (a) and determine whether to proceed
6 with collection and enforcement efforts. If the information
7 results in the collection of a delinquent tax under Chapter 156, the
8 comptroller shall distribute a percentage of the amount collected
9 to the county as provided by Section 156.2513 to defray the cost of
10 the county audit.

11 SECTION 6. The change in law made by this Act applies only
12 to an audit performed by a municipality or county on or after the
13 effective date of this Act. An audit performed by a municipality or
14 county before the effective date of this Act is governed by the law
15 in effect immediately before that date, and that law is continued in
16 effect for that purpose.

17 SECTION 7. This Act takes effect September 1, 2011.

ADOPTED

AMENDMENT NO. 1

MAY 20 2011

BY: *D. J. Powell*

Atty. Gen.

1 Amend House Bill 2048 (House ~~enrolled~~ version) as follows:

2 (1) In SECTION 1, page 1, line 11, between "interest" and
3 ",," insert "and amounts paid under protest"

4 (2) In SECTION 3, page 4, line 6, between "Chapter 156"
5 and ",," insert "and the assessment has become
6 administratively final"

7 (3) In SECTION 5, page 5, line 7, between "Chapter 159"
8 and ",," insert "and the assessment has become
9 administratively final"

ADOPTED

F 47 2 0 2011

FLOOR AMENDMENT NO. _____

Deputy Spew
Secretary of the Senate

BY: _____

Dewell

1 Amend H.B. No. 2048 (Senate committee printing) by adding the
2 following appropriately numbered SECTION to the bill and
3 renumbering the subsequent SECTIONS of the bill accordingly:

4 SECTION _____. (a) Section 351.101(a), Tax Code, as amended
5 by Chapters 402 (H.B. 1789), 1220 (S.B. 1247), and 1322 (H.B. 3098),
6 Acts of the 81st Legislature, Regular Session, 2009, is reenacted
7 and amended to read as follows:

8 (a) Revenue from the municipal hotel occupancy tax may be
9 used only to promote tourism and the convention and hotel industry,
10 and that use is limited to the following:

11 (1) the acquisition of sites for and the construction,
12 improvement, enlarging, equipping, repairing, operation, and
13 maintenance of convention center facilities or visitor information
14 centers, or both;

15 (2) the furnishing of facilities, personnel, and
16 materials for the registration of convention delegates or
17 registrants;

18 (3) advertising and conducting solicitations and
19 promotional programs to attract tourists and convention delegates
20 or registrants to the municipality or its vicinity;

21 (4) the encouragement, promotion, improvement, and
22 application of the arts, including instrumental and vocal music,
23 dance, drama, folk art, creative writing, architecture, design and
24 allied fields, painting, sculpture, photography, graphic and craft
25 arts, motion pictures, radio, television, tape and sound recording,
26 and other arts related to the presentation, performance, execution,
27 and exhibition of these major art forms;

28 (5) historical restoration and preservation projects
29 or activities or advertising and conducting solicitations and

1 promotional programs to encourage tourists and convention
2 delegates to visit preserved historic sites or museums:

3 (A) at or in the immediate vicinity of convention
4 center facilities or visitor information centers; or

5 (B) located elsewhere in the municipality or its
6 vicinity that would be frequented by tourists and convention
7 delegates;

8 (6) for a municipality located in a county with a
9 population of one million or less, expenses, including promotion
10 expenses, directly related to a sporting event in which the
11 majority of participants are tourists who substantially increase
12 economic activity at hotels and motels within the municipality or
13 its vicinity;

14 (7) subject to Section 351.1076, the promotion of
15 tourism by the enhancement and upgrading of existing sports
16 facilities or fields, including facilities or fields for baseball,
17 softball, soccer, and flag football, if:

18 (A) the municipality owns the facilities or
19 fields;

20 (B) the municipality:

21 (i) has a population of 80,000 or more and
22 is located in a county that has a population of 350,000 or less;

23 (ii) has a population of at least 65,000 but
24 not more than 70,000 and is located in a county that has a
25 population of 155,000 or less;

26 (iii) has a population of at least 34,000
27 but not more than 36,000 and is located in a county that has a
28 population of 90,000 or less;

29 (iv) has a population of at least 13,000 but
30 less than 39,000 and is located in a county that has a population of
31 at least 200,000;

1 (v) has a population of at least 65,000 but
2 less than 80,000 and no part of which is located in a county with a
3 population greater than 150,000; ~~or~~

4 (vi) is located in a county that:

5 (a) is adjacent to the Texas-Mexico
6 border;

7 (b) has a population of at least
8 500,000; and

9 (c) does not have a municipality with
10 a population greater than 500,000; or

11 (vii) has a population of at least 25,000
12 but not more than 26,000 and is located in a county that has a
13 population of 90,000 or less; and

14 (C) the sports facilities and fields have been
15 used, in the preceding calendar year, a combined total of more than
16 10 times for district, state, regional, or national sports
17 tournaments; ~~and~~

18 (8) for a municipality with a population of at least
19 65,000 but less than 80,000, no part of which is located in a county
20 with a population greater than 150,000, the construction,
21 improvement, enlarging, equipping, repairing, operation, and
22 maintenance of a coliseum or multiuse facility;

23 (9) ~~(8)~~ signage directing the public to sights and
24 attractions that are visited frequently by hotel guests in the
25 municipality; and

26 (10) ~~(8)~~ the construction of a recreational venue in
27 the immediate vicinity of area hotels, if:

28 (A) the municipality:

29 (i) is a general-law municipality;

30 (ii) has a population of not more than 900;

31 and

1 (iii) does not impose an ad valorem tax;
2 (B) not more than \$100,000 of municipal hotel
3 occupancy tax revenue is used for the construction of the
4 recreational venue;
5 (C) a majority of the hotels in the municipality
6 request the municipality to construct the recreational venue;
7 (D) the recreational venue will be used primarily
8 by hotel guests; and
9 (E) the municipality will pay for maintenance of
10 the recreational venue from the municipality's general fund.
11 (b) To the extent of any conflict, this section prevails
12 over another Act of the 82nd Legislature, Regular Session, 2011,
13 relating to nonsubstantive additions to and corrections in enacted
14 codes.
15 (c) Notwithstanding any other provision of this Act, this
16 section takes effect immediately if this Act receives a vote of
17 two-thirds of all the members elected to each house, as provided by
18 Section 39, Article III, Texas Constitution. If this Act does not
19 receive the vote necessary for this section to have immediate
20 effect, this section takes effect September 1, 2011.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 23, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2048 by Lyne (Relating to the collection and enforcement of state and local hotel occupancy taxes.), **As Passed 2nd House**

There could be an indeterminate revenue gain to the state from the provisions of the bill.

The bill would amend Chapters 156, 351, and 352 of the Tax Code, regarding the collection and enforcement of state and local hotel occupancy taxes.

The bill would require that a municipality or a county notify the Comptroller's Office if they find that state hotel tax was underpaid or underreported as a result of a local audit. The Comptroller would review the data provided by the municipality or county and decide whether or not to pursue collection. If the state does collect tax based on data from a local audit, the Comptroller must pay the municipality or county an amount equal to 20 percent of the amount of state hotel tax collected (not including penalty and interest). A municipality or county would not be eligible for the 20 percent payment from the Comptroller if the information obtained resulted from an audit performed on a contingent fee basis.

The bill would authorize municipalities and counties to conduct, or contract with third parties to conduct, audits of hotels that do not file a tax report as required by Chapter 351 or Chapter 352 of the Tax Code. The bill would require cities and counties to provide at least a 30-day written notice prior to conducting an audit of the hotel's records.

By requiring municipalities and counties to notify the Comptroller's Office when their audits reveal state hotel tax deficiencies, it is possible the state may receive additional hotel occupancy tax revenue.

The bill would allow a municipality with a population of at least 25,000 but not more than 26,000, and located in a county that has a population of 90,000 or less, to use revenue from its municipal hotel occupancy tax for the promotion of tourism by the enhancement and upgrading of existing sports facilities or fields.

The bill would take effect September 1, 2011.

Local Government Impact

There could be an indeterminate fiscal impact to units of local government from the provisions of the bill. The bill would allow the cities of Greenville and Paris to use revenue from municipal hotel occupancy tax for the promotion of tourism by the enhancement and upgrading of existing sports facilities or fields.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JOB, AG, KK, SD

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 10, 2011

TO: Honorable Steve Ogden, Chair, Senate Committee on Finance

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2048 by Lyne (Relating to the collection and enforcement of state and local hotel occupancy taxes.), **As Engrossed**

<p>There could be an indeterminate revenue gain to the state from the provisions of the bill.</p>
--

The bill would amend Chapters 156, 351, and 352 of the Tax Code, regarding the collection and enforcement of state and local hotel occupancy taxes.

The bill would require that a municipality or a county notify the Comptroller's Office if they find that state hotel tax was underpaid or underreported as a result of a local audit. The Comptroller would review the data provided by the municipality or county and decide whether or not to pursue collection. If the state does collect tax based on data from a local audit, the Comptroller must pay the municipality or county an amount equal to 20 percent of the amount of state hotel tax collected (not including penalty and interest). A municipality or county would not be eligible for the 20 percent payment from the Comptroller if the information obtained resulted from an audit performed on a contingent fee basis.

The bill would authorize municipalities and counties to conduct, or contract with third parties to conduct, audits of hotels that do not file a tax report as required by Chapter 351 or Chapter 352 of the Tax Code. The bill would require cities and counties to provide at least a 30-day written notice prior to conducting an audit of the hotel's records.

By requiring municipalities and counties to notify the Comptroller's Office when their audits reveal state hotel tax deficiencies, it is possible the state may receive additional hotel occupancy tax revenue.

The bill would take effect September 1, 2011.

Local Government Impact

There could be an indeterminate fiscal impact to units of local government from the provisions of the bill.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JOB, AG, KK, SD

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 17, 2011

TO: Honorable Harvey Hilderbran, Chair, House Committee on Ways & Means

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2048 by Lyne (relating to the collection and enforcement of state and local hotel occupancy taxes.), **Committee Report 1st House, Substituted**

There could be an indeterminate revenue gain to the state from the provisions of the bill.

The bill would amend Chapters 156, 351, and 352 of the Tax Code, regarding the collection and enforcement of state and local hotel occupancy taxes.

The bill would require that a municipality or a county notify the Comptroller's Office if they find that state hotel tax was underpaid or underreported as a result of a local audit. The Comptroller would review the data provided by the municipality or county and decide whether or not to pursue collection. If the state does collect tax based on data from a local audit, the Comptroller must pay the municipality or county an amount equal to 20 percent of the amount of state hotel tax collected (not including penalty and interest). A municipality or county would not be eligible for the 20 percent payment from the Comptroller if the information obtained resulted from an audit performed on a contingent fee basis.

The bill would authorize municipalities and counties to conduct, or contract with third parties to conduct, audits of hotels that do not file a tax report as required by Chapter 351 or Chapter 352 of the Tax Code. The bill would require cities and counties to provide at least a 30-day written notice prior to conducting an audit of the hotel's records.

By requiring municipalities and counties to notify the Comptroller's Office when their audits reveal state hotel tax deficiencies, it is possible the state may receive additional hotel occupancy tax revenue.

The bill would take effect September 1, 2011.

Local Government Impact

There could be an indeterminate fiscal impact to units of local government from the provisions of the bill.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JOB, AG, KK, SD

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 28, 2011

TO: Honorable Harvey Hilderbran, Chair, House Committee on Ways & Means

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2048 by Lyne (Relating to the collection and enforcement of state and local hotel occupancy taxes.), **As Introduced**

There could be an indeterminate revenue gain to the state from the provisions of the bill.
--

The bill would amend Chapters 156, 351, and 352 of the Tax Code, regarding the collection and enforcement of state and local hotel occupancy taxes.

The bill would require that a municipality or a county notify the Comptroller's Office if they find that state hotel tax was underpaid or underreported as a result of a local audit. The Comptroller would review the data provided by the municipality or county and decide whether or not to pursue collection. If the state does collect tax based on data from a local audit, the Comptroller must pay the municipality or county an amount equal to 20 percent of the amount of state hotel tax collected (not including penalty and interest). A municipality or county would not be eligible for the 20 percent payment from the Comptroller if the information obtained resulted from an audit performed on a contingent fee basis.

The bill would authorize municipalities and counties to conduct, or contract with third parties to conduct, audits of hotels that do not file a tax report as required by Chapter 351 or Chapter 352 of the Tax Code.

By requiring municipalities and counties to notify the Comptroller's Office when their audits reveal state hotel tax deficiencies, it is possible the state may receive additional hotel occupancy tax revenue.

The bill would take effect September 1, 2011.

Local Government Impact

There could be an indeterminate fiscal impact to units of local government from the provisions of the bill.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JOB, KK, SD, AG

LEGISLATIVE BUDGET BOARD
Austin, Texas

TAX/FEE EQUITY NOTE

82ND LEGISLATIVE REGULAR SESSION

April 17, 2011

TO: Honorable Harvey Hilderbran, Chair, House Committee on Ways & Means

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2048 by Lyne (relating to the collection and enforcement of state and local hotel occupancy taxes.), **Committee Report 1st House, Substituted**

Because the bill would not create or impact a state tax or fee, no comment from this office is required by the rules of the House as to the general effects of the proposal on the distribution of tax and fee burdens among individuals and businesses.

Source Agencies:

LBB Staff: JOB, KK

LEGISLATIVE BUDGET BOARD
Austin, Texas

TAX/FEE EQUITY NOTE

82ND LEGISLATIVE REGULAR SESSION

March 25, 2011

TO: Honorable Harvey Hilderbran, Chair, House Committee on Ways & Means

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2048 by Lyne (Relating to the collection and enforcement of state and local hotel occupancy taxes.), **As Introduced**

No statistically significant impact on the overall distribution of a state tax or fee burden among individuals and businesses is anticipated from the provisions of this bill.

Source Agencies:

LBB Staff: JOB, KK