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

THE HOTEL TAX “TWO-STEP”



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

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

PART 1: Heads in Beds

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

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

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

PART 2: The Six Categories

Once a project has cleared the first part of the test, it's time for—you guessed it—the second part of the test. Here it is: every expenditure of hotel taxes must also fit into one of six statutorily authorized categories. These are the six categories: 1) convention and visitor centers; 2) convention registration; 3) advertising the city; 4) promotion of the arts; 5) historical restoration and preservation; and 6) sporting events in a county under one million in population.

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

It's not enough to meet one of the two prongs of the two-part test. A city must meet both! The following are some real-life examples that the TML legal department has received inquiries about.

Fireworks, anyone?

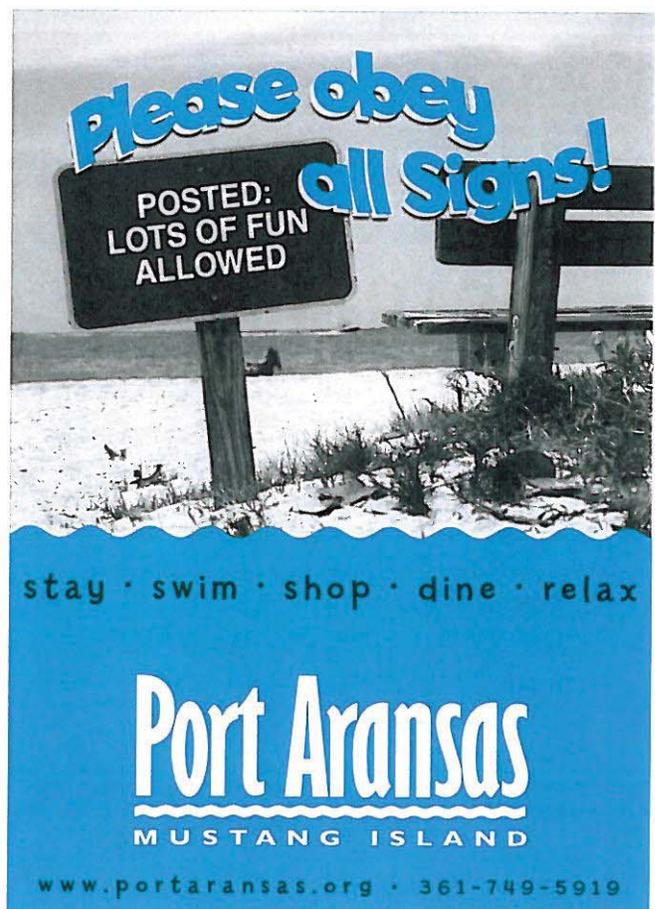
The prototype hotel tax controversy is an event like a fireworks show or a parade. Cities frequently ask if they can fund a fireworks show with hotel tax money.

Let's subject a fireworks show to the two-part test. Does a fireworks show put heads in beds? The answer is "probably not," unless it is a truly spectacular event. But let's give it the benefit of the doubt. Suppose the town of Pyrotechnic, Texas, truly does put on a fireworks extravaganza that attracts tourists from around the state. So far so good.

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

Sign of the Times?

Another frequent question concerns highway signs promoting the city. May a city fund a billboard touting the city's attractions, restaurants, and hotels? Let's put it to the



two-part test. Heads in beds? Well, why not? If a billboard encourages motorists to stop in town, those motorists might stay the night, whereas without the sign they would have driven on to the next city. This is exactly what the statute intends. The six categories? How about advertising? A billboard literally advertises the city it refers to. Conclusion—travel signs are a perfect fit for hotel occupancy tax expenditures.

Chambers of Commerce?

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

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

Arts Organizations

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

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

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

What Else?

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



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