

HOUSE BILL No. 1191

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-8.1-1-1; IC 6-9-48.5.

Synopsis: Uniform municipal food and beverage tax. Authorizes a municipal legislative body to impose by ordinance a municipal food and beverage tax. Provides that the tax may not exceed 1% of the gross retail income received from retail food and beverage transactions. Provides that the tax does not apply to a transaction that is exempt from the sales tax. Provides that the tax does not apply to a consolidated city, a municipality that has imposed a food and beverage tax under current law, or a municipality that is receiving county food and beverage tax revenue.

Effective: July 1, 2016.

Price, Morrison

January 7, 2016, read first time and referred to Committee on Ways and Means.



Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1191

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-8.1-1-1, AS AMENDED BY P.L.220-2014,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 1. "Listed taxes" or "taxes" includes only the
4 pari-mutuel taxes (IC 4-31-9-3 through IC 4-31-9-5); the riverboat
5 admissions tax (IC 4-33-12); the riverboat wagering tax (IC 4-33-13);
6 the slot machine wagering tax (IC 4-35-8); the type II gambling game
7 excise tax (IC 4-36-9); the gross income tax (IC 6-2.1) (repealed); the
8 utility receipts and utility services use taxes (IC 6-2.3); the state gross
9 retail and use taxes (IC 6-2.5); the adjusted gross income tax (IC 6-3);
10 the supplemental net income tax (IC 6-3-8) (repealed); the county
11 adjusted gross income tax (IC 6-3.5-1.1); the county option income tax
12 (IC 6-3.5-6); the county economic development income tax
13 (IC 6-3.5-7); the auto rental excise tax (IC 6-6-9); the financial
14 institutions tax (IC 6-5.5); the gasoline tax (IC 6-6-1.1); the special fuel
15 tax (IC 6-6-2.5); the motor carrier fuel tax (IC 6-6-4.1); a motor fuel tax
16 collected under a reciprocal agreement under IC 6-8.1-3; the motor
17 vehicle excise tax (IC 6-6-5); the aviation fuel excise tax (IC 6-6-13);



1 the commercial vehicle excise tax (IC 6-6-5.5); the excise tax imposed
 2 on recreational vehicles and truck campers (IC 6-6-5.1); the hazardous
 3 waste disposal tax (IC 6-6-6.6) (repealed); the cigarette tax (IC 6-7-1);
 4 the beer excise tax (IC 7.1-4-2); the liquor excise tax (IC 7.1-4-3); the
 5 wine excise tax (IC 7.1-4-4); the hard cider excise tax (IC 7.1-4-4.5);
 6 the malt excise tax (IC 7.1-4-5); the petroleum severance tax
 7 (IC 6-8-1); the various innkeeper's taxes (IC 6-9); the various food and
 8 beverage taxes (IC 6-9); the county admissions tax (IC 6-9-13 and
 9 IC 6-9-28); **a municipal food and beverage tax (IC 6-9-48.5)**; the
 10 regional transportation improvement income tax (IC 8-24-17); the oil
 11 inspection fee (IC 16-44-2); the emergency and hazardous chemical
 12 inventory form fee (IC 6-6-10); the penalties assessed for oversized
 13 vehicles (IC 9-20-3 and IC 9-30); the fees and penalties assessed for
 14 overweight vehicles (IC 9-20-4 and IC 9-30); and any other tax or fee
 15 that the department is required to collect or administer.

16 SECTION 2. IC 6-9-48.5 IS ADDED TO THE INDIANA CODE
 17 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2016]:

19 **Chapter 48.5. Uniform Municipal Food and Beverage Tax**

20 **Sec. 1. This chapter does not apply to any of the following:**

- 21 (1) A consolidated city.
 22 (2) A municipality imposing a food and beverage tax under
 23 any other provision of this article.
 24 (3) A municipality that is receiving county food and beverage
 25 tax revenue under this article.

26 **Sec. 2. The definitions in IC 6-2.5, IC 6-9-12-1, and IC 36-1-2**
 27 **apply throughout this chapter.**

28 **Sec. 3. As used in this chapter, "municipal food and beverage**
 29 **tax" refers to a tax imposed under section 4 of this chapter.**

30 **Sec. 4. (a) The legislative body of a municipality may adopt an**
 31 **ordinance to impose an excise tax, known as the _____**
 32 **(insert name of municipality) food and beverage tax, on those**
 33 **transactions described in section 5 of this chapter.**

34 **(b) If the legislative body adopts an ordinance under subsection**
 35 **(a), the legislative body shall immediately send a certified copy of**
 36 **the ordinance to the commissioner of the department of state**
 37 **revenue.**

38 **(c) If the legislative body adopts an ordinance under subsection**
 39 **(a), the municipal food and beverage tax applies to transactions**
 40 **that occur after the later of the following:**

- 41 (1) The day specified in the ordinance.
 42 (2) The last day of the month that succeeds the month in



1 which the ordinance is adopted.

2 (d) The legislative body may adopt an ordinance to require that
3 the tax be reported on forms approved by the municipal fiscal
4 officer and that the tax shall be paid monthly to the municipal
5 fiscal officer. If such an ordinance is adopted, the tax shall be paid
6 to the municipal fiscal officer not more than twenty (20) days after
7 the end of the month the tax is collected. If such an ordinance is not
8 adopted, the tax shall be imposed, paid, and collected in exactly the
9 same manner as the state gross retail tax is imposed, paid, and
10 collected under IC 6-2.5.

11 (e) All of the provisions of IC 6-2.5 relating to rights, duties,
12 liabilities, procedures, penalties, definitions, exemptions, and
13 administration are applicable to the imposition and administration
14 of the tax imposed under this section except to the extent those
15 provisions are in conflict or inconsistent with the specific
16 provisions of this chapter or the requirements of the municipal
17 fiscal officer. If the tax is paid to the department of state revenue,
18 the return to be filed for the payment of the tax under this section
19 may be either a separate return or may be combined with the
20 return filed for the payment of the state gross retail tax as the
21 department of state revenue may, by rule, determine.

22 (f) If the tax is paid to the department of state revenue, the
23 amounts received from the tax imposed under this section shall be
24 paid before the twentieth day of the following month by the
25 treasurer of state to the fiscal officer of the imposing municipality
26 upon warrants issued by the auditor of state.

27 (g) If the tax is paid to the department of state revenue, the
28 department shall notify the fiscal officer of the municipality of the
29 amount of tax paid in the municipality during the immediately
30 preceding three (3) month period.

31 Sec. 5. (a) Except as provided in subsection (c), a municipal food
32 and beverage tax applies to any transaction in which food or
33 beverage is furnished, prepared, or served:

- 34 (1) for consumption at a location or on equipment provided by
35 a retail merchant;
36 (2) in the municipality in which the tax is imposed; and
37 (3) by a retail merchant for consideration.

38 (b) Transactions described in subsection (a)(1) include
39 transactions in which food or beverage is:

- 40 (1) served by a retail merchant off the merchant's premises;
41 (2) food sold in a heated state or heated by a retail merchant;
42 (3) two (2) or more food ingredients mixed or combined by a



1 retail merchant for sale as a single item (other than food that
 2 is only cut, repackaged, or pasteurized by the seller, and eggs,
 3 fish, meat, poultry, and foods containing these raw animal
 4 foods requiring cooking by the consumer as recommended by
 5 the federal Food and Drug Administration in chapter 3,
 6 subpart 3-401.11 of its Food Code so as to prevent food borne
 7 illnesses); or

8 (4) food sold with eating utensils provided by a retail
 9 merchant, including plates, knives, forks, spoons, glasses,
 10 cups, napkins, or straws (for purposes of this subdivision, a
 11 plate does not include a container or packaging used to
 12 transport the food).

13 (c) The municipal food and beverage tax does not apply to the
 14 furnishing, preparing, or serving of any food or beverage in a
 15 transaction that is exempt, or to the extent exempt, from the state
 16 gross retail tax imposed by IC 6-2.5.

17 **Sec. 6.** A municipal food and beverage tax is in addition to any
 18 county food and beverage tax imposed under this article in the
 19 municipality.

20 **Sec. 7.** A municipal food and beverage tax is imposed on the
 21 gross retail income received by a retail merchant from a
 22 transaction described in section 5 of this chapter at a rate specified
 23 in the ordinance adopted under section 4 of this chapter. The tax
 24 rate:

25 (1) must be imposed in an increment of twenty-five
 26 hundredths percent (0.25%); and

27 (2) may not exceed one percent (1%).

28 **Sec. 8.** For purposes of this chapter, the gross retail income
 29 received by the retail merchant from a transaction that is subject
 30 to the municipal food and beverage tax does not include the
 31 following:

32 (1) The amount of tax imposed on the transaction under
 33 IC 6-2.5.

34 (2) The amount of tax imposed on the transaction by a county
 35 under this article, if any.

36 **Sec. 9. (a)** If a municipality has outstanding obligations that are
 37 payable from a municipal food and beverage tax, the legislative
 38 body of the municipality may not reduce the municipal food and
 39 beverage tax rate below a rate that would produce one and
 40 twenty-five hundredths (1.25) times the total of the highest annual
 41 payment requirements from the municipal food and beverage tax
 42 to their final maturity.



1 (b) For purposes of subsection (a), the determination of a tax
 2 rate sufficient to produce one and twenty-five hundredths (1.25)
 3 times the total of the highest annual payment requirements is based
 4 on an average of the immediately preceding three (3) years
 5 collections for the municipal food and beverage tax, if the tax has
 6 been imposed for the last preceding three (3) years. If the tax has
 7 not been imposed for the last preceding three (3) years, the
 8 legislative body of the municipality may not reduce the rate below
 9 a rate that would produce one and twenty-five hundredths (1.25)
 10 times the total of the highest annual payment requirements, based
 11 upon a study by a qualified accountant or financial advisor.

12 (c) If a municipality has no outstanding obligations that are
 13 payable from a municipal food and beverage tax imposed, the
 14 legislative body of the municipality may adopt an ordinance to
 15 reduce the tax rate imposed under section 4 of this chapter or to
 16 repeal the tax.

17 Sec. 10. A municipal food and beverage tax is a listed tax (as
 18 defined in IC 6-8.1-1-1).

19 Sec. 11. The department of local government finance may not
 20 reduce a municipality's property tax levy by the amount of revenue
 21 received by the municipality from a municipal food and beverage
 22 tax.

23 Sec. 12. (a) The fiscal officer of a municipality shall establish a
 24 food and beverage tax revenue fund for the deposit of all amounts
 25 received under this chapter.

26 (b) Money in a municipality's food and beverage tax revenue
 27 fund may be treated by the municipality as additional revenue for
 28 the purpose of fixing its budget for the budget year during which
 29 the revenues are to be distributed to the municipality.

30 Sec. 13. A municipality may pledge any revenues received from
 31 a municipal food and beverage tax in accordance with IC 5-1-14-4.

32 Sec. 14. (a) A municipality may use municipal food and
 33 beverage tax revenue for one (1) or more of the following purposes:

- 34 (1) Reducing the municipality's property tax levy for the
 35 ensuing budget year.
- 36 (2) Providing property tax relief to taxpayers or classes of
 37 taxpayers, to the extent permitted by the Constitution of the
 38 State of Indiana.
- 39 (3) Replacing revenues of the municipality lost as a result of
 40 the credit provided by IC 6-1.1-20.6.
- 41 (4) Paying debt service or lease rentals on:
 42 (A) bonds;



- 1 **(B) leases;**
 2 **(C) obligations; or**
 3 **(D) any other evidence of indebtedness of the municipality.**
 4 **(5) Paying the costs of any capital project.**
 5 **(6) Paying the costs of local road and street maintenance,**
 6 **repairs, or improvements.**
 7 **(7) Paying the obligations incurred by the municipality as a**
 8 **party to an interlocal agreement under IC 36-1-7.**
 9 **(8) As operating revenue.**
 10 **(b) Bonds or other obligations issued under this section:**
 11 **(1) are payable from money provided in this chapter, any**
 12 **other revenues available to the municipality, or any**
 13 **combination of these sources, in accordance with a pledge**
 14 **made under IC 5-1-14-4;**
 15 **(2) must be issued in the manner prescribed by:**
 16 **(A) IC 36-4-6-19 through IC 36-4-6-20; or**
 17 **(B) IC 36-5-2-11 through IC 36-5-2-12;**
 18 **(3) may, in the discretion of the municipality, be sold at a**
 19 **negotiated sale at a price to be determined by the county or in**
 20 **accordance with IC 5-1-11 and IC 5-3-1; and**
 21 **(4) may be issued for a term not to exceed twenty-five (25)**
 22 **years, and the term must include any refunding bonds issued**
 23 **to refund bonds originally issued under this section.**
 24 **(c) Leases entered into under this section:**
 25 **(1) may be for a term not to exceed twenty-five (25) years;**
 26 **(2) may provide for payments from revenues under this**
 27 **chapter, any other revenues available to the municipality, or**
 28 **any combination of these sources;**
 29 **(3) may provide that payments by the municipality to the**
 30 **lessor are required only to the extent and only for the time**
 31 **that the lessor is able to provide the leased facilities in**
 32 **accordance with the lease;**
 33 **(4) must be based upon the value of the facilities leased; and**
 34 **(5) may not create a debt of the municipality for purposes of**
 35 **the Constitution of the State of Indiana.**
 36 **(d) A lease may be entered into by the executive of the**
 37 **municipality under this section only after a public hearing with**
 38 **notice given in accordance with IC 5-3-1 at which all interested**
 39 **parties are provided the opportunity to be heard. After the public**
 40 **hearing, the executive may approve the execution of the lease on**
 41 **behalf of the municipality only if the executive finds that the**
 42 **service to be provided throughout the life of the lease will serve the**



1 public purpose of the municipality and is in the best interests of its
2 residents. A lease approved by the executive must also be approved
3 by an ordinance of the municipal legislative body.

4 (e) Upon execution of a lease under this section, and after
5 approval of the lease by the municipal legislative body, the
6 executive of the municipality shall publish notice of the execution
7 of the lease and the approval of the lease in accordance with
8 IC 5-3-1.

9 (f) An action to contest the validity of bonds issued or leases
10 entered into under this section must be brought within thirty (30)
11 days after the adoption of a bond ordinance or notice of the
12 execution and approval of the lease, as applicable.

13 **Sec. 15. The general assembly covenants with:**

14 (1) each municipality imposing a municipal food and beverage
15 tax; and

16 (2) the purchasers and owners of obligations of a municipality
17 payable from a municipal food and beverage tax;

18 that this chapter will not be repealed or amended in any manner
19 that will adversely affect the imposition or collection of a municipal
20 food and beverage tax so long as the principal, interest, or lease
21 rentals due under those obligations of a municipality that are
22 payable from a municipal food and beverage tax remain unpaid.

