

SUBJECT: Revising collection of municipal hotel occupancy taxes

COMMITTEE: Local Government Ways and Means — favorable, without amendment

VOTE: 5 ayes — Hill, Hamilton, Laubenberg, Puente, Quintanilla
0 nays
2 absent — Elkins, Uresti

SENATE VOTE: On final passage, March 17 — 31-0, on Local and Uncontested Calendar

WITNESSES: *(On House companion bill, HB 352 by Goodman:)*
For — Brandon Aghamalian, City of Fort Worth; Shanna Igo, Texas Municipal League; Elizabeth Parmer, City of Fort Worth and Perdue, Brandon, Fielder, Collins & Mott

Against — None

On — Bryant Lomax, Office of the Comptroller

BACKGROUND: Tax Code, ch. 351 governs municipal collection of hotel occupancy taxes, which are dedicated to tourism and economic development. Sec. 351.004 allows a municipality, after making two attempts to contact a hotel owner, to file suit against a hotel failing to file a tax report or pay its occupancy taxes. Along with owing the delinquent tax, a hotel owner is liable for the municipality's attorney fees, plus a penalty up to 15 percent of the total tax owed. A municipality also may prohibit operation of the hotel until the tax report is filed or the tax is paid.

DIGEST: SB 174 would authorize municipalities to hold hotel owners liable for taxes delinquent for more than two fiscal quarters, or six months. The hotel owner would be responsible for any costs associated with an audit conducted by the municipality to determine the tax amount when a hotel owner did not file a tax report. The bill would permit municipalities to use as prima facie evidence previous years' tax filings, instead of an audit, to determine the amount due.

The bill would take effect September 1, 2005, and would apply only to taxes imposed on or after that date.

**SUPPORTERS
SAY:**

SB 174 would strengthen cost recovery mechanisms available to municipalities and shorten the process of determining taxes due from hotel owners who fail to file tax reports. Delinquent taxes cost municipalities valuable economic development and tourism funds. In 2003, for example, approximately \$216,000 in hotel taxes were delinquent in the city of Fort Worth.

The bill would permit a municipality to conduct an audit when the hotel tax is delinquent by two fiscal quarters. In addition, the bill would hold hotel owners liable not only for attorney fees but also audit costs. This is important because a municipality has no real admissible evidence of tax amounts due when a hotel does not disclose its financial information. Owners who owe delinquent taxes, rather than municipalities, should be liable for the cost of the audit to determine the amount owed.

While the option to conduct an audit is an improvement that this bill would implement, audits can be lengthy and expensive and pose an unfair burden on municipalities that are due hotel taxes. SB 174 also would offer a more timely alternative to the audit process by allowing municipalities to use previous years' tax filings to determine the amount due and collect the delinquent taxes more quickly.

The bill would give hotel owners a generous amount of time to remit their taxes before an audit or a previous year's tax filing could be used as evidence of delinquent taxes. There is no justification after this grace period for delinquent hotel tax payers to continue withholding taxpayer money.

**OPPONENTS
SAY:**

Tax dodging is not common hotel practice. The existing 15 percent penalty on delinquent hotel taxes already is stringent enough to ensure timely remittance. When a hotel experiences delay in paying taxes, it is generally due to administrative or management changes. The bill unfairly suggests that hotels use delinquent taxes as a common method of financing and would penalize hotel owners who have legitimate difficulties paying their taxes within two fiscal quarters.

NOTES:

The companion bill, HB 352 by Goodman, passed the House on March 29 and was reported favorably, without amendment, by the Senate Intergovernmental Relations Committee on May 5.