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## LOCALLY ADMINISTERED SALES AND USE TAXES

### A REPORT PREPARED FOR THE INSTITUTE FOR PROFESSIONALS IN TAXATION

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#### APPENDIX A: A REVIEW OF LOCALLY ADMINISTERED SALES AND USE TAXES: THEIR CHARACTERISTICS AND CONFORMITY TO COUNTERPART STATE TAXES

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Prepared by KPMG LLP  
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**Locally Administered Sales and Use Taxes**  
**A Report Prepared for the Institute for Professionals in Taxation**

**Locally Administered Sales and Use Taxes: Their Characteristics and  
Conformity to Counterpart State Taxes**

**Introduction**

This Appendix to Part I outlines the structure of locally administered sales taxes in each of the states in which we have identified such taxes. The discussion includes locally administered general sales and use taxes as well as locally administered specialty sales taxes on lodging and accommodations, food and beverages, and admissions and amusements. For each tax, the discussion includes an overview of the tax, the range of rates at which the tax is imposed, the number of localities imposing the tax (where available) key features regarding exemptions, and the manner in which the local tax conforms to and deviates from the counterpart state tax and from one another. The review also provides an overview of some of the administrative and procedural provisions of the tax, including filing dates and statutes of limitations, and the manner in which these provisions conform to the counterpart state tax.

**Alabama**

**Authorization for Local Tax**

Alabama law authorizes each county and municipality to levy three types of local option sales taxes – a general sales and use tax, a rental tax, and a lodging tax. The general authorization for the adoption of county sales, rental and lodging taxes is found at Ala. Code § 11-3-11. The authorization of municipal sales taxes is at Ala. Code §§ 11-51-200 (general sales tax), 11-51-202 (lodging tax), and 11-51-207 (rental tax).

The state sales tax is levied on the gross receipts from retail sales.<sup>1</sup> The general sales tax in Alabama is not applicable to the lease or rental of tangible property; such transactions are instead covered by a distinct rental tax that is administered separately from the sales tax. The state rental

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<sup>1</sup> Ala. Code § 40-23-2.

tax is levied on gross receipts from the lease of tangible personal property,<sup>2</sup> and state law provides that the definitions and procedures of the state sales tax are substantially incorporated into the state rental tax.<sup>3</sup> The state lodging tax is imposed on charges for the furnishing of rooms or lodging to transients in any place in which such accommodations are regularly furnished by a taxpayer engaged in the business of providing such accommodations.<sup>4</sup>

### **Local Tax Rates**

Alabama law does not limit the rate at which local governments may impose their sales, rental or lodging taxes. County sales tax rates range from 0.5 to 5 percent, with most counties falling in the 3 to 4 percent range. Where imposed, city taxes also fall within these same ranges. There appears to be some degree of rate coordination among Alabama local governments. When county and city sales tax rates are combined with the 4 percent state tax rate, the overall tax rate exceeds 10 percent in only Fort Deposit (as of September 2015). Of the over 750 zip codes in which at least one local sales tax is levied, the combined state, city and county rate ranges from 8 to 10 percent in over 400 of them and is between 7 and 8 percent in about 100 jurisdictions.<sup>5</sup> Cities and counties are each authorized to impose sales tax rates that differ from the general rate for autos, farm machinery, and manufacturing machinery, and to apply different rental tax rates to autos as compared to the general rental rate.<sup>6</sup>

Local rental and lodging tax rates are less variable. The local general rental rate is commonly in the 2 to 3 percent range, the automotive rental rate is roughly 1 percent, and the maximum local lodging tax rate is 12 percent.<sup>7</sup>

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<sup>2</sup> *Id.* § 40-12-222.

<sup>3</sup> *Id.* § 40-12-224.

<sup>4</sup> *Id.* § 40-26-1.

<sup>5</sup> All observations are based on a review of state and local sales tax rates obtained from Avalara Inc. at [www.taxrates.com](http://www.taxrates.com) (last visited Sept. 14, 2015).

<sup>6</sup> Ala. Code § 11-51-201.

<sup>7</sup> Ala. Dep't of Revenue, *Local Tax Rates Report for the Month of February, 2016*, available at <http://revenue.alabama.gov/salestax/localgovt.cfm> (last visited Feb. 3, 2016). Monitoring Alabama tax rates is no small task; this report for February 2016 runs to 180 pages.

## Conformity with State Base and Procedures

Although Alabama accords local governments considerable latitude in the adoption of local taxes and rates, state law consistently requires that local tax rules conform to the counterpart state tax in matters of tax base, administration and procedural requirements. Ala. Code § 11-51-201 provides:

All taxes levied or assessed by any municipality pursuant to [provisions authorizing municipal sales taxes] shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, provisions, rules and regulations promulgated under the Alabama Administrative Procedure Act, direct pay permit and drive-out certificate procedures, statutes of limitation, penalties, fines, punishments, and deductions for the corresponding state tax as are provided ... [references to state law providing uniform tax administration and assessment procedures and the state sales tax generally] except for those provisions relating to the tax rate, and 40-23-38, except where inapplicable or where otherwise provided in this article.

Further, Ala. Code § 11-51-202 authorizing adoption of municipal use taxes and lodging taxes indicates that the taxes adopted by the localities are to be “parallel to the state levy and assessment” of the counterpart state tax. Section 11-51-203 provides that any municipal use tax or lodging tax “shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, provisions, rules and regulations” for the corresponding state tax except where inapplicable or otherwise provided. Along the same lines, Ala. Code § 11-51-204 authorizes municipalities to adopt rules and regulations for the administration of their taxes (including sales, use, rental and lodging taxes) and provides that such rules “shall not be inconsistent with any rules and regulations which may be issued or promulgated by the Department of Revenue from time to time pursuant to the Alabama Administrative Procedure Act, for the corresponding state tax.”

With respect to county taxes, Ala. Code § 11-3-11.2(b) provides:

Any county commission which elects to administer and collect, or contract for the collection of, any local sales and use taxes or other local taxes, shall have the same rights, remedies, power and authority, including the right to adopt and implement the same procedures, as would be available to the Department of Revenue if the tax or taxes were being administered, enforced, and collected by the Department of Revenue. Any rules and regulations adopted or utilized by the county or its designee shall be consistent with the rules and regulations adopted through the provisions of the Alabama Administrative Procedure Act by the Department of Revenue for the corresponding state tax.

While state law provides a considerable degree of symmetry between state and local taxes, the legislature can and does authorize exceptions to the general rule. Local governments are required

to opt into the state-enacted back to school and emergency weather preparedness holidays annually<sup>8</sup> and may opt out of having tax protests heard by the Alabama Tax Tribunal which was created in 2014.<sup>9</sup>

### Administration of Local Taxes

Alabama law allows local sales, rental and lodging taxes to be administered directly by the local government or to be contracted to a third party. In addition, Alabama localities may opt to have the Alabama Department of Revenue administer the tax on their behalf. Each city and each county imposing a sales, rental, or lodging tax may elect to administer each of its taxes under any of the three approaches.

The pattern of administration for *county taxes* in February 2016 is presented below:

|               | Self-Administered | Third-Party Administered | State-Administered | Total |
|---------------|-------------------|--------------------------|--------------------|-------|
| Sales/Use Tax | 12                | 44                       | 11                 | 67    |
| Rental Tax    | 3                 | 1                        | 3                  | 7     |
| Lodging Tax   | 1                 | 12                       | 14                 | 27    |

The pattern of administration for *municipal taxes* in February 2016 is presented below:

|               | Self-Administered | Third-Party Administered | State-Administered | Total |
|---------------|-------------------|--------------------------|--------------------|-------|
| Sales/Use Tax | 38                | 233                      | 142                | 413   |
| Rental Tax    | 44                | 83                       | 52                 | 179   |
| Lodging Tax   | 60                | 59                       | 33                 | 152   |

There are approximately 460 municipalities and 67 counties in Alabama, meaning every county and about 90 percent of the cities levy a general sales tax. Substantially fewer counties impose a rental tax or a lodging tax. Fewer than half of the cities levy either a rental tax or a lodging tax.

<sup>8</sup> Ala. Code §§ 40-23-213; 40-23-233.

<sup>9</sup> *Id* § 40-2B-2(g)(2).

## Use Tax and Nexus

Alabama local governments also impose a use tax on the storage, use or other consumption of taxable property in the state. Alabama Department of Revenue rules provide, however:

A seller may only avoid the responsibility for collecting and remitting a local jurisdiction's sales or use tax when the seller lacks physical presence within the local jurisdiction that would be sufficient to create an obligation to collect and remit state sales or use tax if the sales transaction or use in question was an interstate transaction.<sup>10</sup>

In other words, with respect to the collection of sales or use tax on sales into a local jurisdiction, a seller must have the requisite physical presence nexus in the individual local jurisdiction before a collection requirement may be imposed by the locality, rather than nexus in the state being seen as satisfying the nexus requirement for all locally administered sales and use taxes.

## Efforts to Simplify Compliance

To address the issue of filing returns in such a large number of local jurisdictions, the Department of Revenue operates and maintains the Optional Network Election for Single Point Online Transactions (ONE SPOT). Simply stated, ONE SPOT permits Alabama sellers to file and remit payment of any Alabama municipal or county sales, use, or rental tax through the ONE SPOT portal, even if the tax is self-administered or administered by a third party.<sup>11</sup> In addition, some local governments and third-party administrators offer electronic filing options for taxpayers. In addition, the 2015 Alabama Legislature adopted the Simplified Seller Use Tax Remittance Act.<sup>12</sup> The Act allows electing sellers that are not otherwise subject to a tax collection obligation to collect, report, and remit an 8 percent simplified seller's use tax on sales of tangible personal property delivered to Alabama purchasers, regardless of the local jurisdiction involved. The 8 percent use tax is deemed to satisfy both state and local use tax obligations. The entire amount collected is remitted to the state which retains an amount equal to the 4 percent state use tax and distributes the remaining 4 percent among local governments on the basis of population. No reporting of tax by individual local jurisdiction is required.

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<sup>10</sup> Ala. Admin. Code r. 810-6-5-.04.02.

<sup>11</sup> Ala. Dep't of Revenue, *ONE SPOT Program*, available at [http://revenue.alabama.gov/salestax/one\\_spot.cfm](http://revenue.alabama.gov/salestax/one_spot.cfm) (last visited Feb. 3, 2016).

<sup>12</sup> 2015 Ala Acts 448.

## Alaska

### Authorization for Local Tax

Alaska does not impose a state-level sales or use tax. However, Alaska delegates the power to levy sales and use taxes to local governments.<sup>13</sup> Alaska has two types of local governments — boroughs and cities. There are 20 boroughs, which are similar to counties in other states, and 144 cities.<sup>14</sup> Nineteen of Alaska’s 20 boroughs are *organized* boroughs (i.e., maintain a borough-level government). The remaining borough is referred to as the unorganized borough.<sup>15</sup>

Both boroughs and cities are authorized to impose local sales taxes. Boroughs that impose a borough-level general sales tax are required to collect and administer all general sales taxes levied within their boundaries, including those imposed by incorporated cities within the borough limits.<sup>16</sup> However, cities in a borough that does not levy a borough-level tax must collect and administer their own city-level sales taxes in the same manner as a taxing borough.<sup>17</sup>

Of Alaska’s 164 total boroughs and cities, 107 impose a sales tax. Specifically, nine boroughs and 98 cities impose a local sales tax. The two largest cities, Anchorage and Fairbanks, do not impose a city sales tax and are not in a taxing borough. In 2014, all local governments in Alaska collected about \$233.5 million in sales taxes; approximately \$44 million was collected in Juneau and \$57 million was collected in the Kenai Peninsula Borough and the cities therein.<sup>18</sup>

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<sup>13</sup> Alaska Stat. §§ 29.45.650, 29.45.700.

<sup>14</sup> See Municipality Matrix, available at <http://commerce.state.ak.us/dnn/dcra/OfficeoftheStateAssessor/AlaskaTaxableDatabase.aspx> (last visited Feb. 3, 2016).

<sup>15</sup> The unorganized borough is located outside the 19 organized boroughs and constitutes more than 50 percent of Alaska’s total land.

<sup>16</sup> Alaska Stat. §§ 29.35.170(a)–(b).

<sup>17</sup> *Id.* § 29.45.700(a).

<sup>18</sup> Office of the State Assessor, *2015 Alaska Taxable* (Jan. 2016), available at <https://www.commerce.alaska.gov/web/Portals/4/pub/OSA/AlaskaTaxable.pdf>. (See Table 2, 2015 Municipal Sales Taxes, Special Taxes and Revenues.) (Hereinafter referred to as “2015 Alaska Taxable.”)

## Local Tax Rates

Borough sales tax rates currently range from 2.5 percent in Ketchikan Gateway Borough to 7 percent in the unified City and Borough of Wrangell. City sales tax rates range from 1 percent in White Mountain to 7 percent in Kodiak. The sales tax rate in some Alaska municipalities fluctuates depending on the season. For instance, the sales tax rate in the City and Borough of Sitka increases from 5 percent to 6 percent in the summer, while the City of Whittier imposes a city sales tax only in the summer.<sup>19</sup>

## Administration of Local Taxes

If a borough imposes a borough-level general sales tax, such as Ketchikan Gateway Borough, the borough collects and administers all general sales taxes within its borders, including any city-level taxes. If a borough does not impose a borough-level general sales tax, then any city within the borough is responsible for collecting and administering its tax.

The nine boroughs that impose a borough-level sales tax include:

- Three boroughs — Haines Borough, Skagway (Municipality of) and Petersburg Borough — where only a borough-level tax is imposed.
- Four boroughs that are considered *unified* boroughs because both the borough and city<sup>20</sup> are governed by consolidated single municipal government. The four unified boroughs — Juneau (City and Borough), Sitka (City and Borough), Wrangell (City and Borough), and Yakutat (City and Borough) — collect only one unified sales tax for the entire borough.<sup>21</sup>

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<sup>19</sup> *Id.*

<sup>20</sup> Technically, a unified borough does not contain a “city,” as such city is unified with the borough.

<sup>21</sup> Note that there is some conflicting information about whether Wrangell (City & Borough of) and Yakutat (City & Borough of) are considered *unified* boroughs because these municipalities are not large enough to even have a “city” within their boundaries. The distinction is not important for local sales tax because Wrangell and Yakutat only collect one level of sales tax regardless of whether they are considered to be *unified* boroughs or boroughs with no city-level sales tax.

- Two boroughs, Kenai Peninsula Borough and Ketchikan Gateway Borough, include cities that also impose a sales taxes.<sup>22</sup> These two boroughs collect and administer all borough-level and city-level general sales taxes within their respective borough boundaries. The borough tax and the city tax are each levied on transactions occurring within the boundaries of the city, while transactions outside the boundaries of a taxing city are subject to only the borough tax. Alaska statutes authorize boroughs to exempt from borough sales tax, partially or wholly, a taxable sale subject to a city-level sales tax within the borough.<sup>23</sup> Neither borough includes any such exemptions in its ordinance.

The remaining 11 boroughs, including the unorganized borough,<sup>24</sup> do not impose borough-level sales taxes. Ninety-one of the 107 cities in Alaska that impose a city sales tax are located in these 11 boroughs. Twenty-six of them are located in an organized borough, and 65 cities imposing a locally administered sales tax are located in the unorganized borough. Each of these cities is responsible for collecting and administering its own city sales tax.<sup>25</sup>

### **Conformity with State Tax Base and Procedures**

Because Alaska does not impose a state-level sales tax, there is no state sales tax to which the local taxes may conform. We did, however, review the governing documents for a number of local sales taxes. The results are summarized generally here.

Absent any specific exemption or exclusion, most municipalities will generally tax the sale of tangible personal property and certain services provided within the taxing jurisdiction. For instance, the unified city and borough of Juneau imposes tax on the selling price of “retail sales and rentals made and services performed within the City and Borough.”<sup>26</sup> Each borough and city

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<sup>22</sup> Five of the six cities in Kenai Peninsula Borough and both cities in Ketchikan Gateway Borough impose city-level sales taxes.

<sup>23</sup> Alaska Stat. § 29.45.650(a).

<sup>24</sup> As noted above, the unorganized borough does not maintain a borough-level government. Thus, there is no borough-level sales tax in the unorganized borough. Thus, Alaska Stat. § 29.45.700(c) provides that taxing cities outside of boroughs (i.e., cities located within the unorganized borough) are also treated as boroughs, per Alaska Stat. § 29.45.650, for purposes of local sales and use tax.

<sup>25</sup> *See id.* § 29.45.650.

<sup>26</sup> City & Borough of Juneau, Alaska Ordinances § 69.05.020(a).

has the power to determine its own tax base, within certain statutory limitations,<sup>27</sup> but taxing cities within a taxing borough generally conform to the borough tax base. For example, the sales tax laws for both Ketchikan Gateway Borough and the City of Ketchikan are almost identical, with the exception of different rates.<sup>28</sup>

Due dates for sales tax returns and statutes of limitations vary by municipality. For instance, the City and Borough of Sitka requires quarterly returns to be filed by the last day of the month following the end of the preceding quarter,<sup>29</sup> while also imposing a six-year statute of limitations for assessment.<sup>30</sup> Haines Borough, however, requires quarterly filers to file by the 20th day of the month following the end of each quarter,<sup>31</sup> and the Kenai Peninsula Borough uses a three-year statute of limitations for assessment.<sup>32</sup>

Each borough and city determines the sales tax exemptions it wishes to offer, within certain statutory limitations.<sup>33</sup> Some common exemptions include sales to the government, sales for resale, and casual or isolated sales.<sup>34</sup> However, Alaska municipalities may also have unique exemptions, such as exempting mortician and funeral services in the Kenai Peninsula Borough<sup>35</sup> or freight handling and dock charges in Skagway.<sup>36</sup> Some jurisdictions impose a cap on the amount of a transaction that is subject to tax, thereby exempting that part of the sales price over such amount. For instance, the City and Borough of Sitka imposes sales tax only on the first \$1,500 in sales price of a transaction.<sup>37</sup>

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<sup>27</sup> See Alaska Stat. §§ 29.45.650, 29.45.700.

<sup>28</sup> See, e.g., Ketchikan Gateway Borough, Alaska Ordinances § 4.50.020 and City of Ketchikan, Alaska Ordinances § 3.04.010(3) (adopting the same definitions for “retail sale” at both the borough and city levels).

<sup>29</sup> City & Borough of Sitka, Alaska Ordinances § 4.09.279(A)(1).

<sup>30</sup> *Id.* § 4.09.380.

<sup>31</sup> Haines Borough, Alaska Ordinances § 3.80.090(D)(2).

<sup>32</sup> Kenai Peninsula Borough, Alaska Ordinances § 5.18.555(C).

<sup>33</sup> See Alaska Stat. §§ 29.45.650, 29.45.700.

<sup>34</sup> See, e.g., Ketchikan, Alaska Ordinances § 3.04.100.

<sup>35</sup> Kenai Peninsula Borough, Alaska Ordinances § 5.18.200(A)(8).

<sup>36</sup> Skagway Borough, Alaska Ordinances § 4.08.060(20).

<sup>37</sup> City & Borough of Sitka, Alaska Ordinances § 4.09.100(N).

## **Use Tax and Nexus**

The local ordinances we reviewed did not contain specific “nexus” language or a definition of “engaged in business.” However, physical presence in the taxing jurisdiction related to a retail sale will generally create an obligation on the seller to collect local sales tax. For instance, the City and Borough of Sitka imposes sales tax on retail sales and services made or performed “within the city and borough of Sitka.”<sup>38</sup> Similar language exists in the City and Borough of Juneau<sup>39</sup> and the Kenai Peninsula Borough.<sup>40</sup> These ordinances impose an obligation to collect tax on the “seller,” but provide little specific language to define what constitutes a seller for tax collection purposes.

## **Efforts to Simplify Compliance**

Currently, compliance is simplified in the nine boroughs with borough-level sales taxes because these boroughs must collect and administer any city-level sales tax within their borough limits. However, there are no other efforts to streamline or simplify the local sales tax collection and administration on a broader scale.

## **Other Local Excise Taxes**

Alaska municipalities may also impose other local excise taxes, including a bed (lodging) tax, alcohol tax, and car rental tax. Forty-seven municipalities (15 boroughs and 32 cities) impose a local bed tax, ten municipalities (two boroughs and eight cities) impose an alcohol tax, and three municipalities (two boroughs and one city) impose a car rental tax.<sup>41</sup> Municipalities may impose these taxes even if they do not impose a local sales tax.<sup>42</sup> The bed, alcohol, and car rental taxes are each imposed at the point of sale and are separate from, and in addition to, any local sales tax. The taxes are also separate and apart from any state-level tax on similar charges.<sup>43</sup>

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<sup>38</sup> *Id.* § 4.09.010(A).

<sup>39</sup> City & Borough of Juneau, Alaska Ordinances § 69.05.020(a).

<sup>40</sup> Kenai Peninsula Borough, Alaska Ordinances § 5.18.100.

<sup>41</sup> 2015 Alaska Taxable.

<sup>42</sup> However, note that Alaska Stat. § 4.21.010 does impose some additional limitations on local alcohol taxes.

<sup>43</sup> For instance, Alaska imposes a state-level car rental tax. Thus, car rental companies separately remit the state-level car rental tax to the tax and remit the local-level car rental tax to the local municipality, if applicable.

Each of these taxes is collected by the local jurisdiction imposing the tax. A borough is not required to collect and administer the other excise taxes imposed by cities within the borough. These other local taxes are each remitted on separate returns for each tax type.

## Arizona

### Authorization for Local Tax

The Arizona Transaction Privilege Tax (TPT) is a tax on gross receipts and income for the privilege of engaging business in the state.<sup>44</sup> It is levied on 16 different classifications of business, and there are deductions and exemptions specific to each classification. In 2012, there were 98 deductions or exemptions.<sup>45</sup>

State law authorizes both counties and cities to levy a local TPT.<sup>46</sup> Each of the 15 counties imposes a county TPT, and the Arizona Department of Revenue administers the tax on behalf of each county. Each of the 91 cities and towns in the state also imposes a city TPT. Cities fall into two groups: there are currently 77 “program cities” for which the Department administers the local tax,<sup>47</sup> and 14 “non-program cities” each of which administers its own TPT. The non-program cities include some of the largest jurisdictions, including Phoenix, Scottsdale, and Tucson.<sup>48</sup>

### Local Tax Rates

Local TPT rates vary among the jurisdictions and by business classification. The general state TPT rate is 5.6 percent of gross receipts; however, the rate is 3.125 percent on gross receipts from mining and 5.5 percent on gross receipts from lodging.<sup>49</sup> General county-level TPT rates range from 0.25 percent to 2 percent in La Paz County. Most fall in the 0.5 to 1 percent range.<sup>50</sup>

For the 77 program cities, TPT rates range from 0.1 to 7 percent, depending on the jurisdiction and the activity subject to tax. Most program city rates are in the 3 to 4 percent range.<sup>51</sup> For non-

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<sup>44</sup> Ariz. Rev. Stat. Ann. § 42-5008.

<sup>45</sup> Transaction Privilege Tax Simplification Task Force, Final Report, December 13, 2012, p. 3, available from KPMG.

<sup>46</sup> Ariz. Rev. Stat. Ann. §§ 11-201; 9-240.

<sup>47</sup> Ariz. Dep’t of Revenue, *Transaction Privilege Tax (TPT)/Licensing*, available at <https://www.azdor.gov/Business/TransactionPrivilegeTax.aspx> (last visited Feb. 3, 2016).

<sup>48</sup> Ariz. Dep’t of Revenue, *TPT Non-Program Cities*, available at <https://www.azdor.gov/Business/TransactionPrivilegeTax/NonProgramCities.aspx> (last visited Feb. 3, 2016).

<sup>49</sup> Ariz. Rev. Stat. Ann. § 42-5010.

<sup>50</sup> Ariz. Dep’t of Revenue, *Transaction Privilege and Other Tax Rate Tables*, available at <http://www.azdor.gov> (last visited Feb. 3, 2016).

<sup>51</sup> Ariz. Dep’t of Revenue, *Transaction Privilege and Other Tax Rate Tables*, available at <http://www.azdor.gov/Portals/0/TPTRates/201506.pdf>. Effective January 1, 2016, the city of Sedona transitioned from being a non-program city to being a program city (last visited Feb. 3, 2016).

program cities, the TPT rates range from 1.4 to 6.1 percent, again depending on the business activity classification and the jurisdiction. In most non-program jurisdictions, the general rate falls in the 2 to 3 percent range.<sup>52</sup> Local TPT rates are cumulative and in addition to the TPT that is levied by the state, meaning that state, county and city rates are additive in determining the total rate applicable to a transaction.<sup>53</sup>

### **Conformity with State Tax Base and Procedures**

Arizona provides considerable flexibility to both program and non-program cities in structuring their tax base and, to a more limited extent, the other features of the tax. Over time, the state and local governments, along with the business community, have worked together to bring some consistency and uniformity to local TPTs.

The centerpiece of these efforts is the Model City Tax Code (MCTC).<sup>54</sup> The MCTC is a uniform local TPT law setting forth the structure, operation and administration of local TPTs. Each city and town has adopted the MCTC.<sup>55</sup> It contains a variety of options, particularly with respect to the tax base, from which cities may choose as they structure their own tax; it also contains language a city can use if it wishes to exercise that option. The self-described goal of the MCTC is to provide a greater degree of uniformity to local TPTs, while leaving the determination of the local tax base up to the individual city or town council. It accomplishes this generally by setting forth a model local tax code, then identifying various options from which an individual city may choose in structuring its TPT, and providing model language to implement the option.<sup>56</sup> Both program and

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<sup>52</sup> Ariz. Dep't of Revenue, *TPT Non-Program Cities*, available at <https://www.azdor.gov/Business/TransactionPrivilegeTax/NonProgramCities.aspx> (last visited Feb. 3, 2016).

<sup>53</sup> Model City Tax Code Art. IV § 400.

<sup>54</sup> The actual content of the MCTC is governed by the Municipal Tax Code Commission, consisting of nine local officials. The Department of Revenue maintains the official master version of the code, information on the options selected by each participating local government, and other information on the TPT in the various cities. See Ariz. Dep't of Revenue, *Introduction: Model City Tax Code*, available at <http://modelcitytaxcode.az.gov/intro/intro.htm> (last visited Feb. 3, 2016).

<sup>55</sup> Model City Tax Code, Ariz. Dep't of Revenue, *City Profile Listing of Cities*, available at [http://modelcitytaxcode.az.gov/City\\_profiles/City\\_profiles.htm](http://modelcitytaxcode.az.gov/City_profiles/City_profiles.htm) (last visited Feb. 3, 2016).

<sup>56</sup> Model City Tax Code, Arizona Department of Revenue, *Introduction*, available at <http://modelcitytaxcode.az.gov/intro/intro.htm>. See also TPT Simplification Task Force Report, p. 5 (last visited Feb. 3, 2016).

non-program cities may choose from the options contained in the MCTC.<sup>57</sup> The degree to which the MCTC actually accomplishes the intended simplification is arguable, given the number of options from which cities may choose.

The MCTC provides about 40 options to cities (both program and non-program) for adding or substituting language in the MCTC. It also allows just under 20 options for omitting language from the MCTC.<sup>58</sup> The Department of Revenue maintains on its website a listing of the available options and which jurisdictions have exercised them.<sup>59</sup> Options most frequently exercised by cities under the MCTC include taxing health spa memberships as amusement activities, imposing tax on certain rental occupancies, imposing a two-level tax on certain transactions over a specified amount, taxing complimentary meals provided to employees, exempting cable TV, and taxing municipal utility services provided to out-of-city customers where such service is not subject to an equivalent county TPT. In addition, a number of jurisdictions choose not to exempt certain items that are exempt under the MCTC, including food for home consumption, job printing by publishers, any lodging rentals, livestock, feed, and chemicals purchased for agricultural purposes. About 40 jurisdictions do not impose a use tax as complementary to the local TPT.<sup>60</sup> The most significant differences between the state and local tax bases are in the areas of advertising, speculative building, residential rentals, commercial leases, licenses for use, and food for home consumption.<sup>61</sup>

The administrative procedures for local TPTs are similar to the procedures for the state TPT. The statute of limitations for both the state and local TPTs is four years.<sup>62</sup> Both the state and local governments require records and information relating to the TPT to be kept for four years.<sup>63</sup> State tax law contains a Taxpayer's Bill of Rights, and the MCTC has similar provisions.<sup>64</sup>

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<sup>57</sup> This effectively means that the primary difference between a program city and a non-program city is that for non-program cities, a taxpayer must register or license with and file its returns separately with each jurisdiction, whereas such functions are handled by the Department of Revenue for program cities.

<sup>58</sup> See Model City Tax Code, Ariz. Dep't of Revenue, Appendices II and III, available at <http://modelcitytaxcode.az.gov/intro/intro.htm> (last visited Feb. 3, 2016).

<sup>59</sup> See [http://modelcitytaxcode.az.gov/Option\\_Charts/option\\_charts.htm](http://modelcitytaxcode.az.gov/Option_Charts/option_charts.htm).

<sup>60</sup> *Id.*

<sup>61</sup> Transaction Tax Simplification Report, p. 6.

<sup>62</sup> Ariz. Rev. Stat. Ann. § 42-1104; Model City Tax Code Art. V § 500.

<sup>63</sup> Ariz. Rev. Stat. Ann. § 42-1104; Model City Tax Code art. II, § 360.

<sup>64</sup> Ariz. Rev. Stat. Ann. § 42-2051 et seq.; Model City Tax Code art. V.

The processes for protest, appeal, and audit are the same for state and local taxes. A taxpayer may request an informal conference with the auditor and the auditor's supervisor or appeal the assessment by requesting a formal hearing at the Office of Administrative Appeals.<sup>65</sup> Effective January 1, 2015, the Department of Revenue assumed responsibility for audits of local TPTs for both program and non-program cities.

### **Administration of Local Taxes**

Non-program cities administer their taxes separately from the state. Taxpayers must register with each non-program city, and the city creates the tax forms required for filing TPT returns and collect the local TPT. The due date for the returns is the 20<sup>th</sup> day of the month following when the tax was collected. The return is not considered delinquent if it is received on or before the last business day of the month. The tax is due at the same time the return is due.<sup>66</sup>

The Department of Revenue administers and collects the local TPT on behalf of program cities and counties. The due date for program city and county returns is the same as for state returns: the returns are due and must be postmarked before the 25<sup>th</sup> day of the month following the month in which the tax was collected. If the return is filed electronically, the filing and payment must be received on or before the last business day of the month.<sup>67</sup> County and program city TPTs and the state TPT are filed on a single return.<sup>68</sup>

### **Efforts to Simplify Compliance**

Beyond the MCTC, Arizona has engaged recently in other simplification efforts. Current plans call for the Department to assume responsibility for the administration, collection and enforcement of all local TPTs — including those currently administered by non-program cities — sometime in calendar year 2016. The transition was originally scheduled for January 1, 2015, but has been postponed for various reasons. Once the Department administers and collects all local TPTs, taxpayers will be able to register for all local TPTs through the Department and file and pay all

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<sup>65</sup> TPT Audit Section, Ariz. Dep't of Revenue, *General Audit Manual*, available at <https://www.azdor.gov/Portals/0/Audit/Generalpercent20Auditpercent20Manual.pdf> (last visited Feb. 3, 2016).

<sup>66</sup> Model City Tax Code art. V, § 530.

<sup>67</sup> Ariz. Rev. Stat. § 42-5014

<sup>68</sup> Ariz. Form TPT-1 instructions.

TPT returns on a single return. Local TPT reporting will be on a by location basis as opposed to on a consolidated basis for all locations operated by a single taxpayer. The Department will be responsible for all audits.<sup>69</sup> Local jurisdictions will retain the ability to deviate from the state tax base as outlined above. The Department recently announced that all businesses with more than one location are required to file returns electronically with the Department for all tax periods beginning on or after June 1, 2016, and that the transition to state administration of local TPTs will continue throughout 2016.<sup>70</sup>

Effective January 1, 2015, the Department assumed responsibility for audits of local TPTs for both program and non-program cities. All audits must be approved by the Department, which is also responsible for issuing all assessments and training all auditors. Both program and non-program cities may employ additional auditors or retain contract auditors, but those individuals are also subject to training and direction by the Department of Revenue.<sup>71</sup>

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<sup>69</sup> Ariz. Dep't of Revenue, *TPT Simplification*, available at <https://www.azdor.gov/TPTSimplification/About.aspx> (last visited Feb. 3, 2016).

<sup>70</sup> Notice, Arizona Dept. of Rev., Transaction Privilege Tax (TPT) (June 29, 2016), available at [https://www.azdor.gov/TransactionPrivilegeTax\(TPT\).aspx](https://www.azdor.gov/TransactionPrivilegeTax(TPT).aspx) (last visited July 5, 2016).

<sup>71</sup> Interview with Tom Johnson, Arizona Department of Revenue, January 21, 2016.

## California

### Occupancy Tax

California does not levy a state-level sales tax on hotel occupancy, but permits cities and counties to levy a tax on occupants for the privilege of occupying a room or other living space in a hotel, inn, tourist home or house, motel, or other lodging.<sup>72</sup> The authorizing statute provides broad discretion to local jurisdictions to determine what constitutes taxable “lodging,”<sup>73</sup> but identifies several specific exemptions, including: (1) occupancies of more than 30 days; (2) time-shares; (3) facilities operated by a local government entity; and (4) California state park system campsites.

The statute leaves to the discretion of the local jurisdiction whether to impose the lodging tax on federal employees, state employees, and employees of any political subdivision of the state.<sup>74</sup> If the locality exempts such persons, the governing body is required to create a standard form meeting certain conditions to be used to claim the exemption.<sup>75</sup> Certain jurisdictions have enacted exemptions for minimum rental thresholds that vary from \$2.00 per day in the City of Los Angeles to \$25.00 per day in San Diego.<sup>76</sup>

California does not limit the rate at which the local occupancy tax may be imposed. Rates ranged from 4 to 15 percent as of fiscal year 2014.<sup>77</sup> California coordinates overlapping jurisdictions by permitting counties to impose the occupancy tax only in unincorporated areas of the county.<sup>78</sup>

Because California does not impose the state sales tax on lodging, local jurisdictions are free to establish their own administrative provisions for the occupancy tax. For example, return and payment due dates may occur on the 25<sup>th</sup> of the month or on the last day of the month.<sup>79</sup> The length

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<sup>72</sup> Cal. Rev. & Tax. Code § 7280(a).

<sup>73</sup> *Id.* §§ 7280 (a)-(c), (f), 7282.3.

<sup>74</sup> *Id.* § 7280(e)(1)(A).

<sup>75</sup> *Id.* § 7280(e)(1)(B).

<sup>76</sup> San Diego, Cal. Ordinance § 35.0111(a)(2); City of L.A., Cal. Ordinances § 21.7.4(d).

<sup>77</sup> Cal. State Comptroller’s Office, *Transient Lodging Tax Revenue for Fiscal Year Ending June 30, 2014* (August 14, 2015), available at <http://www.sco.ca.gov/Files-ARD-Local/LocRep/1314translodgtax.pdf>.

<sup>207</sup> Cal. Rev. & Tax. Code § 7280(a).

<sup>79</sup> City of L.A., Cal. Ordinances § 21.7.7; San Diego, Cal. Ordinance § 35.0114(b).

of time to protest a deficiency notice varies; for example, the protest period is ten days in Los Angeles County and 14 days in San Diego.<sup>80</sup>

A number of jurisdictions have enacted similar statutes referred to as the “Uniform Transient Occupancy Tax” to create consistency in the administration of the lodging tax among local governments. The largest county – Los Angeles County – has enacted the model tax code.<sup>81</sup> The Uniform Transient Occupancy Tax covers such items as definitions, exemptions, recordkeeping, appeals processes, penalties, and interest. Not all jurisdictions enacting the uniform code use the same exemptions,<sup>82</sup> but the administrative provisions remain rather consistent.

According to a report of the California State Controller, total transient taxes collected by local jurisdictions totaled \$1.8 billion dollars in fiscal year 2014.<sup>83</sup> At that time, approximately 465 local jurisdictions levied the transient tax.<sup>84</sup>

Local jurisdiction websites generally lack information on the occupancy tax, but local statutes and ordinances are available from third-party municipal code compilations. California agencies and some non-government groups provide some information on the locally administered occupancy taxes.

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<sup>80</sup> County of L.A., Cal. Ordinances § 4.72.220-4.72.300; San Diego, Cal. Ordinance § 35.0118.

<sup>81</sup> County of Monterey, Cal. Ordinances § 5.50.010 et seq.; Sacramento, Cal. Ordinances § 3.28.010; County of Santa Cruz, Cal. Ordinances § 4.24.010; County of L.A., Cal. Ordinances § 4.72.010 et seq.; City of Newport Beach, Cal. Ordinances § 3.16.010.

<sup>82</sup> City of Santa Clarita, Cal. Ordinances § 3.34.040 compared with County of L.A., Cal. Ordinances § 4.72.040.

<sup>83</sup> 102<sup>nd</sup> Ed. Cities Annual Report (Cal. State Controller Apr. 23, 2014).

<sup>84</sup> Cal. State Comptroller’s Office, *Transient Lodging Tax Revenue for Fiscal Year Ending June 30, 2014* (August 14, 2015), available at <http://www.sco.ca.gov/Files-ARD-Local/LocRep/1314translodgtax.pdf>.

## Colorado

### Authorization for Local Tax

Colorado sales tax is levied on the purchase price paid or charged on all sales and purchases of tangible personal property and enumerated services at retail.<sup>85</sup> In addition to the state, counties, cities and a variety of special districts also impose a retail sales tax. As of January 1, 2016, 50 counties levy a sales tax that is collected and administered by the Colorado Department of Revenue.<sup>86</sup> Two counties, Denver and Broomfield, which are consolidated city-county governments, each locally administers its sales tax. There are 222 municipalities that impose a city sales tax as of January 1, 2016,<sup>87</sup> including 151 “statutory municipalities” for which the Department of Revenue administers the local tax.<sup>88</sup> The remaining 70 municipalities are “home-rule municipalities” that collect and administer their own tax.<sup>89</sup> One home-rule city, Manitou Springs, has contracted with the Department to administer its tax.<sup>90</sup> The special districts imposing a sales tax include regional transportation districts, science and cultural facilities districts, local improvement districts, rural transportation authorities, and public safety improvement districts. The Department of Revenue collects and administers all special district taxes.<sup>91</sup> As of December 2013, there were over 750 areas with different rates and bases when overlapping taxing jurisdiction boundaries are taken into account.<sup>92</sup>

### Local Tax Rates

The state sales and use tax rate is currently 2.9 percent.<sup>93</sup> County sales tax rates range from 0.25 percent in Arapahoe County to 5 percent in San Juan County. Most counties fall in the 1 to 2

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<sup>85</sup> Colo. Rev. Stat. § 39-26-104(1).

<sup>86</sup> Colo. Dep’t of Revenue, *DR 1002 Colorado Sales/Use Tax Rates* (December 23, 2015).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> Colo. Dep’t of Revenue *Uniform Sales and Use Tax Base Throughout the State* (Dec. 15, 2013).

<sup>93</sup> Colo. Rev. Stat. § 39-26-106.

percent range.<sup>94</sup> Statutory city sales tax rates range from 1 to 5 percent, with most falling in the 2 to 4 percent range.<sup>95</sup> Home-rule municipality sales and use tax rates range from a 1 percent use tax in Woodland Park to a 5.5 percent sales tax in Black Hawk.<sup>96</sup> Sales taxes levied by local jurisdictions are in addition to the state sales tax levied, meaning that state, county, city, and special district rates are summed to determine the total rate applicable to a transaction.

### **Conformity with State Tax Base and Procedures**

Home-rule municipalities are given flexibility in structuring and administering their sales and use taxes. There are, however, some limitations including:

- Home-rule municipalities must follow, and conform their ordinances where necessary to, the statute of limitations applicable to the enforcement of state sales and use tax collections; the statute of limitations applicable to refunds of the state sales and use taxes; the amount of penalties and interest payable on delinquent remittances of state sales and use taxes; and the posting of bonds pursuant to C.R.S. § 39-21-105(4).<sup>97</sup>
- When interest is required or permitted to be charged in connection with interest on underpayment, nonpayment, extension of time payment, or overpayment, then such interest must be computed at an annual rate as stated in C.R.S. § 39-21-110.5.<sup>98</sup>
- For appeals of final determinations, within fifteen days after filing a notice of appeal, the taxpayer is required to file with the district court a surety bond in twice the amount of the taxes, interest and penalties and other charges stated in the final determination or provide otherwise satisfactory surety.<sup>99</sup>
- The executive director of the Department of Revenue shall, at no charge, administer, collect, and distribute the sales tax of any home-rule municipality, upon request of the

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<sup>94</sup> Colo. Dep't of Revenue, *DR 1002 Colorado Sales/Use Tax Rates* (June 24, 2015).

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> Colo. Rev. Stat. § 29-2-106(8).

<sup>98</sup> *Id.* § 39-21-110.5.

<sup>99</sup> *Id.* § 39-21-105(4).

governing body of such municipality, as long as certain provisions of state law are met and use tax is collected by the Department.<sup>100</sup>

- No sales tax of any home-rule municipality may apply to the sale of construction and building materials, if such materials are picked up by the purchaser and the purchaser presents to the retailer a building permit or other documentation evidencing that a local use tax has been paid or is required to be paid.<sup>101</sup>
- No sales tax of any home-rule municipality may apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user. A credit must be granted for the sales tax already paid.<sup>102</sup>
- A home-rule municipality may impose tax at a rate exceeding the general rate on prepared food or food for immediate consumption, but such rate shall not apply to food for domestic home consumption.<sup>103</sup>
- No sales or use tax of any home-rule municipality may apply to the sale of food purchased with federal nutrition programs.<sup>104</sup>
- Any statutory or home-rule municipality that provides an exemption for the sale of food must define “food” as defined under the state sales tax C.R.S. § 39-26-102(4.5).<sup>105</sup>
- Home-rule municipalities must have the same dispute resolution procedures as the state.<sup>106</sup>

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<sup>100</sup> Colo. Rev. Stat. § 29-2-106(4)(a).

<sup>101</sup> *Id.* § 29-2-105(2).

<sup>102</sup> *Id.* §§ 29-2-105(3)-(4).

<sup>103</sup> *Id.* § 29-2-105(5).

<sup>104</sup> *Id.* § 29-2-105(6).

<sup>105</sup> *Id.* § 29-2-105(8).

<sup>106</sup> *Id.* § 29-2-106.1.

- The use tax of any town, city, city and county, or county, whether home-rule or statutory, shall not apply to the storage of construction and building materials.<sup>107</sup>
- The state and the home-rule cities are bound by the Taxpayer Bill of Rights.<sup>108</sup>

Many of these provisions have yet to be litigated to determine if a home-rule municipality must follow the statutory mandate. Generally, the test that state courts have developed to determine if home-rule jurisdictions are constrained by (i.e., they must conform to) state law is whether there is a need for statewide conformity, and it is determined by the courts to be a matter of statewide concern.<sup>109</sup>

Aside from the mandatory provisions outlined above, home-rule municipalities have considerable independence within their taxing systems. Home-rule municipalities are generally free to adopt their own sales and use tax ordinances, create their own definitions, determine their own tax base, and promulgate their own rules and tax guides. Some significant differences between the state and local tax bases are in the taxation of freight services, software (custom and pre-written), information services, storage space, admissions, electricity and other utilities, machinery and machine tools, and food for domestic home consumption.<sup>110</sup> A report prepared by the Department of Revenue in 2013 found that 82 percent of home-rule municipalities taxed food for domestic home consumption and 89 percent taxed residential utilities; both items are exempt at the state level.<sup>111</sup> The same report compared an “average” home-rule tax base to the state tax base, using the city of Westminster as a model. The state had 79 exemptions from sales tax of which Westminster shared only 45.<sup>112</sup> Most of the non-common exemptions were of relatively small fiscal importance to the state, except for a few items including sales of food for home consumption

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<sup>107</sup> *Id.* § 29-2-109(7).

<sup>108</sup> Art. X, Sec. 20, Colorado Constitution.

<sup>109</sup> *Walgreen Co. v. Charnes*, 819 P.2d 1039 (Colo. 1991).

<sup>110</sup> As part of this project, data was collected on each home-rule municipality and how it treated sales of electricity and other utilities, machinery and machine tools, and food for home consumption. The data is presented in Part I, Appendix B.

<sup>111</sup> Colo. Dep’t of Revenue, *Uniform Sales and Use Tax Base Throughout the State* (Dec. 15, 2013).

<sup>112</sup> *Id.*

and residential power.<sup>113</sup> The only item that the state taxed, but most home-rule municipalities exempted, was cigarettes.<sup>114</sup>

Although the state administers sales and use taxes for counties, statutory cities and special districts, these jurisdictions are also provided flexibility with respect to the tax base. Each jurisdiction levying a sales tax may choose whether or not to exempt from its tax base the following items, which are exempt from the state sales tax:<sup>115</sup>

- Food for home consumption
- Machinery and machine tools
- Gas, electricity, and other utilities for residential use
- Occasional sales by charitable organizations
- Farm equipment
- Food sold through vending machines
- Low-emitting vehicles
- Renewable energy components
- Beetle wood products
- School-related sales
- Biogas production system components
- Property used in space flight

The administrative procedures for state and local taxes are similar, but contain some nuances that have not been tested in court. The statute of limitations for both state-collected jurisdictions and home-rule municipalities is mandated to be three years after the return is filed.<sup>116</sup> However, several

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<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> Colo. Dep't of Revenue, *DR 1002 Colorado Sales/Use Tax Rates* (Dec. 23, 2015).

<sup>116</sup> Colo. Rev. Stat. §§ 29-2-106(8), 39-21-107. The statute also provides that a return filed before the due date is considered to have been filed on the due date.

home-rule municipalities have a statute of limitations on refunds providing that “no refund shall be allowed or paid...more than 36 months after the *City’s receipt* of sales or use taxes in question (emphasis added).”<sup>117</sup> If a taxpayer remits city taxes before the due date of a return, the period in which that taxpayer is able to apply for a refund presumably does not extend to 36 months after the due date of the return on which it was paid.

Another mandatory provision where home-rule municipalities often seem to differ from the state is in protest and appeal procedures. The state requires home-rule municipalities to provide taxpayers 30 calendar days to protest a notice and 30 calendar days to appeal the result of a local government hearing.<sup>118</sup> Many home-rule municipalities have not updated their codes and still call for less than 30 days in which to protest a notice.<sup>119</sup>

Home-rule municipalities also commonly have an “Intercity Claim for Recovery” mechanism to correct errors in which local sales tax is remitted to the wrong municipality.<sup>120</sup> The state has no similar provision for home-rule municipality taxes remitted erroneously to the state.

### **Administration of Local Taxes**

The Department of Revenue collects and administers all special district sales and use taxes, all county taxes (except Broomfield and Denver), and the local sales and use tax for all statutory cities. The Department is also the sole auditor for the taxes of the entities for which it collects the tax.

Home-rule cities collect and administer their sales and use taxes independently and separately from the state. Each home-rule city has its own form for filing sales and use tax returns and collects the tax that is due to it. Some home-rule cities provide an electronic filing option. Home-rule municipalities also have the authority to audit taxpayers with respect to local tax compliance.

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<sup>117</sup> Centennial, Colo. Ordinances § 4-1-720.

<sup>118</sup> Colo. Rev. Stat. § 29-2-106.1.

<sup>119</sup> See Aspen, Colo. Ordinances § 23.24.010; Boulder, Colo. Ordinances § 3-2-25; Littleton, Colo. Ordinances § 3-9-1-10.

<sup>120</sup> See Aurora, Colo. Ordinances § 130-112; Denver, Colo. Ordinances § 53-82; Greenwood Village, Colo. Ordinances § 4-3-520.

## Use Tax and Nexus

Colorado use tax is imposed on the privilege of storing, using, or consuming in the state any articles of tangible personal property purchased from retailers.<sup>121</sup> Counties (other than Denver and Broomfield) and statutory cities may impose a use tax only on sales of motor vehicles and building materials.<sup>122</sup> 85 counties and statutory cities do not impose any use tax.<sup>123</sup> Based on our research, home-rule municipalities, which have broader discretion in determining their use tax base, generally fall into one of three categories in terms of the breadth of the use tax base:

- Storage, use or consumption in the city of any articles of tangible personal property purchased from retailers;<sup>124</sup>
- Storage, use or consumption in the city of any articles of tangible personal property *or taxable services* purchased at retail;<sup>125</sup> and,
- Purchases of building materials and motor vehicles.<sup>126</sup>

As to nexus, a seller is required to have nexus in an individual local tax jurisdiction (including counties, statutory cities, special districts and home-rule cities) before it may be required to collect tax on sales sourced to that jurisdiction.<sup>127</sup>

## Efforts to Simplify Compliance

The Department of Revenue, local governments, and various business organizations have undertaken several efforts to streamline sales and use tax definitions across jurisdictions in recent years. The recommendations emanating from these efforts have not yet been implemented.

In December 2013, the Department, in collaboration with organizations representing various municipalities, prepared a report providing recommendations for the establishment of a uniform

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<sup>121</sup> Colo. Rev. Stat. § 39-26-202.

<sup>122</sup> *Id.* § 29-2-109.

<sup>123</sup> DR 1002.

<sup>124</sup> *See* Lone Tree, Colo. Ordinances § 4-3-120(c); Edgewater, Colo. Ordinances § 4-2-310.

<sup>125</sup> *See* Alamosa, Colo. Ordinances § 18-86; Wheat Ridge, Colo. Ordinances § 22-66(a).

<sup>126</sup> *See* Broomfield, Colo. Ordinances § 3-08-010; Parker, Colo. Ordinances § 4.03.150.

<sup>127</sup> *See* Col. Dep't of Revenue, General Information Letter 14-005 (Apr. 28, 2014).

sales and use tax base throughout the state. The recommendations were required to be revenue neutral for each taxing jurisdiction. It was noted that some home-rule municipalities depended on sales and use tax for up to 80 percent of their revenues, while the state received approximately 35 percent of its revenues from sales, use, and excise taxes.<sup>128</sup> The greater dependency on sales tax revenue meant that home-rule municipalities tended to have a broader tax base than the state.<sup>129</sup> As a result, it was determined that to implement a uniform tax base while remaining revenue neutral, the state tax base should be expanded and the overall rate be lowered.<sup>130</sup> Recommendations included uniform exemptions, uniform definitions of exempt items, a uniform definition of tangible personal property, and changes in rates to achieve revenue neutrality with the proposed uniform base.<sup>131</sup>

Similarly, the Colorado Association of Commerce and Industry has been working with the Colorado Municipal League and the Colorado Retail Council to standardize sales and use tax definitions. As of May 2015, the group had reached an agreement with the home-rule municipalities on at least 50 definitions.

In 2015, a resolution that would have created a commission to devise uniform sales and use tax definitions and provide official guidance regarding the definitions was introduced, but not acted on, in the Colorado Legislature.<sup>132</sup> Had it been enacted, the state, as well as statutory and home-rule cities, would have been required to use the uniform definitions and guidance in administering their sales and use tax under the terms of the resolution.<sup>133</sup>

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<sup>128</sup> Colo. Dep't of Revenue, *Uniform Sales and Use Tax Base Throughout the State* (Dec. 15, 2013).

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> Colorado (State). Legislature. House of Representatives. *Statewide Uniform Sales & Use Tax Definitions 2014-2015 Reg. Sess.* (April 28, 2015). *Colorado General Assembly*. Web. Sept. 18, 2015.

<sup>133</sup> *Id.*

## Florida

### Lodging Taxes

Florida authorizes local jurisdictions to impose several different types of taxes on certain accommodations. Most of the authorizing statutes are targeted to specific jurisdictions or specific purposes. For example, the state Tourist Impact Tax allows counties that have designated an “area of critical state concern” to impose a 1 percent tax on accommodations within the designated area.<sup>134</sup> Only Monroe County imposes the tax.<sup>135</sup> The Convention Development Tax is another tax with limited applicability that only three counties have enacted.<sup>136</sup> The Municipal Resort Tax, as authorized by Florida law, applies to only three municipalities in Miami-Dade County. The Municipal Resort Tax permits these three cities to impose a tax on the sale of food and beverages consumed in restaurants and bars, as well as on hotel accommodations.<sup>137</sup>

One tax of general applicability is the Florida Tourist Development Tax, which has been adopted in all but five counties.<sup>138</sup> The tax base and exemptions for the Tourist Development Tax reference the state sales tax as it is imposed on lodging and accommodations.<sup>139</sup> According to the Florida Department of Revenue, locally administered Tourist Development Tax rates range from 2 to 6 percent.<sup>140</sup> Florida law controls the imposition of multiple county taxes on the same accommodation by requiring a county to reduce its Tourist Development Tax rate to no more than 2 percent if the county also imposes a Convention Development Tax.<sup>141</sup>

The Tourist Development Tax authorizing statute provides some guidance on administration of the tax, but numerous matters are left to county discretion. For example, the state requires that a

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<sup>134</sup> Fla. Stat. § 125.0108.

<sup>135</sup> DR-15TDT (Fla. Dep’t of Revenue Revised Jan. 2016).

<sup>136</sup> *Id.*; Fla. Dep’t of Revenue, *Local Option Taxes Authorized by the Legislature*, available at [http://dor.myflorida.com/dor/taxes/local\\_option.html](http://dor.myflorida.com/dor/taxes/local_option.html) (last visited Feb. 3, 2016).

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> Fla. Stat. § 125.0104(3)(a)(2). Note, several of the county hotel taxes—the Tourist Impact Tax and the Convention Development Tax—share the same tax base and exemptions as the state’s sales tax on accommodations. Fla. Stat. §§ 125.0108(b)(1); 212.0305(3)(a)(1).

<sup>140</sup> DR-15TDT (Fla. Dep’t of Revenue Revised Jan. 2016).

<sup>141</sup> Fla. Stat. § 125.0104(3)(b).

county's "initial collection of the tax ... be made in the same manner as the tax imposed under" the state sales tax laws.<sup>142</sup> State law also provides that counties are bound by "the rules pertaining to the sales and use tax on transient rentals."<sup>143</sup> While these provisions provide a substantial degree of congruity between the Florida state taxes on transient accommodations and locally administered ones, our research did identify some differences. For example, state appeal rights and procedures are not necessarily observed at the local level.<sup>144</sup> Specifically, the state provides a taxpayer 60 days from the issuance of a proposed assessment or notice of a denial of a refund to file a written protest, as compared to Broward County which provides only 30 days.<sup>145</sup>

Currently, 62 Florida counties impose the Tourist Development Tax, of which 22 are administered by the state; the remainder are locally administered. The Florida Department of Revenue provides significant information on local lodging taxes. Local jurisdiction websites provide some information, but generally lack any details on administration of the tax or the implementing ordinance.

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<sup>142</sup> Fla. Stat. § 125.0104(10)(b)(1).

<sup>143</sup> Fla. Stat. § 125.0104(10)(c). The reference to Fla. Stat. § 212.03 is a reference to the state's sales tax provision on accommodations.

<sup>144</sup> Phone contact with Lee County, Suwannee County, Polk County, St. Lucie County and Broward County taxing authorities.

<sup>145</sup> Broward County, Fla. Ordinances § 31 1/2-20(5)(b).

## Georgia

### Lodging Tax

The state of Georgia and its counties and cities may levy a tax on rooms, lodgings, and accommodations. The tax applies to the sale or charges for any room, lodgings, or accommodations furnished to transients by any hotel, inn, tourist camp, tourist cabin, campground, or any place in which rooms, lodgings, or accommodations are regularly furnished to transients for consideration.<sup>146</sup> A number of exemptions apply at both the state and local levels. Georgia state and local government officials or employees traveling on official business are exempt, and an individual staying at a place of accommodation because of destruction of his/her residence due to fire or other casualty is exempt.<sup>147</sup> There are also some differences between state and local lodging tax exemptions. For example, the state lodging tax does not apply to accommodations occupied continuously for a period of 90 days or more,<sup>148</sup> but the local lodging tax exempts accommodations of more than 30 days of continuous occupancy.<sup>149</sup>

County and municipal occupancy tax rates vary based on location and characteristics, but typically range from 3 to 8 percent, with most falling in the 5 to 8 percent range<sup>150</sup>. State law limits the maximum rate to 8 percent.<sup>151</sup> A substantial portion of local lodging tax receipts must be used to promote tourism, conventions, and trade shows.<sup>152</sup> Each lodging rental may be subject to tax by only one local jurisdiction, and state law prohibits a county from imposing a lodging tax within the boundaries of an incorporated city that also imposes a lodging tax.<sup>153</sup>

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<sup>146</sup> Ga. Code. Ann. §§ 48-8-2(31)(B), 48-13-51(a)(1)(A).

<sup>147</sup> Ga. Comp. R. & Regs. 560-12-2-.51(A); Ga. Code Ann. § 48-13-51(h).

<sup>148</sup> Ga. Code. Ann. § 48-8-2(31)(B).

<sup>149</sup> *Id.* § 48-13-51(h)(4).

<sup>150</sup> Ga. Dep't of Community Affairs, *List of Georgia Governments Imposing a Hotel and Motel Tax*, available at [http://www.dca.state.ga.us/development/research/programs/documents/GovernmentHMList\\_Rpt\\_12-4-15.pdf](http://www.dca.state.ga.us/development/research/programs/documents/GovernmentHMList_Rpt_12-4-15.pdf) (last visited Feb. 3, 2016).

<sup>151</sup> Ga. Code Ann. § 48-13-51.

<sup>152</sup> *Id.* § 48-13-51(a)(2).

<sup>153</sup> *Id.* § 48-13-50.1.

State law provides that local governments are responsible for the administration of the lodging tax;<sup>154</sup> it does, however, provide several parameters within which local governments are required to operate. For example, state law specifies that local returns and remittances of tax are due on the 20<sup>th</sup> of the month.<sup>155</sup> The state law also specifies penalties that may be imposed for failing to file returns or payments.<sup>156</sup> Moreover, the procedural provisions under the local lodging tax mirror, if not specifically reference, the state sales tax, helping to minimize the differences between state and local tax administration. The state sales tax statute of limitations for assessment is three years.<sup>157</sup> The local lodging tax specifically references the state sales tax statute of limitations for assessment as the period to be followed by local governments — which Atlanta and Dunwoody mirror.<sup>158</sup> Although not addressed in the local lodging tax authorizing statute, the record retention period in Hiram, Atlanta, and Dunwoody is also three years,<sup>159</sup> the same as the state requirement.<sup>160</sup> The local lodging tax also incorporates by reference the state sales tax statutes governing the ability to waive penalty and interest.<sup>161</sup>

According to a report published by the Georgia Department of Community Affairs in 2015, 75 counties and 192 municipalities impose a locally administered lodging tax.<sup>162</sup> In 2014, local governments collected about \$186 million from the local lodging tax, approximately 75 percent of which was collected by municipalities.<sup>163</sup>

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<sup>154</sup> Ga. Code Ann. § 48-13-53.

<sup>155</sup> *Id.* § 48-13-53.2(a).

<sup>156</sup> *Id.* § 48-13-58(a).

<sup>157</sup> *Id.* § 48-2-49(b).

<sup>158</sup> Ga. Code Ann. § 48-13-57; City of Atlanta, Ga. Ordinances § 10-189(g); Dunwoody, Ga. Ordinances § 4-218(d).

<sup>159</sup> City of Hiram, Ga. Ordinances § 12-203(b); City of Atlanta, Ga. Ordinances § 10-189; Dunwoody, Ga. Ordinances § 4-218.

<sup>160</sup> Ga. Comp. R. & Regs. 560-12-1-.15.

<sup>161</sup> Ga. Code Ann. § 48-13-57.

<sup>162</sup> Ga. Dep't of Community Affairs, *List of Georgia Governments Imposing a Hotel and Motel Tax*, available at [http://www.dca.state.ga.us/development/research/programs/documents/GovernmentHMList\\_Rpt\\_12-4-15.pdf](http://www.dca.state.ga.us/development/research/programs/documents/GovernmentHMList_Rpt_12-4-15.pdf) (last visited Feb. 3, 2016).

<sup>163</sup> Georgia Local Government Finance Highlights, *County Government Revenues by Population Group*, available at [http://dca.state.ga.us/development/Research/programs/documents/2015HighlightsReport\\_FINAL.pdf](http://dca.state.ga.us/development/Research/programs/documents/2015HighlightsReport_FINAL.pdf) (last visited Feb. 3, 2016).

Local jurisdiction websites generally lack information on the local lodging tax, but the local ordinances are available from third-party municipal code compilations.

### **Liquor-by-the-Drink Tax**

Georgia authorizes counties and cities to impose a tax on the sale of distilled spirits by the drink.<sup>164</sup> This tax does not include the sale of fermented beverages.<sup>165</sup> The tax is limited to 3 percent of the purchase price of the distilled spirits by the drink,<sup>166</sup> and no county may impose the liquor-by-the-drink tax within the boundaries of any municipality that imposes a similar tax.<sup>167</sup>

Local governments independently administer and enforce the tax, but similar to the local lodging tax, our selected review indicates that local jurisdictions administer the liquor-by-the-drink tax in a manner similar to the state sales tax. Local jurisdictions require returns to be filed on the 20<sup>th</sup> of the month following collection,<sup>168</sup> the statute of limitations on assessment is three years,<sup>169</sup> and the record retention requirements are three years.<sup>170</sup> Similarly, operators of establishments that serve distilled spirits by the drink are permitted a vendor reimbursement at the same rate as under Georgia sales tax.<sup>171</sup>

In 2014, Atlanta collected in excess of \$4.5 million from the tax.<sup>172</sup> Local jurisdiction websites generally lack information on the liquor-by-the-drink tax, but local statutes and ordinances are available from third-party municipal code compilations. No central source of information on those cities and counties imposing local liquor-by-the-drink taxes is available.

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<sup>164</sup> Ga. Code Ann. §§ 3-4-130(a)-(b).

<sup>165</sup> *Id.* §§ 3-4-131(a)-(c).

<sup>166</sup> *Id.* § 3-4-131.

<sup>167</sup> *Id.* § 3-4-131(b).

<sup>168</sup> City of Atlanta, Ga. Ordinances § 10-188; Dunwoody, Ga. Ordinances §§ 4-216(a)-(b).

<sup>169</sup> City of Atlanta, Ga. Ordinances § 10-189(g); Dunwoody, Ga. Ordinances § 4-218(d).

<sup>170</sup> *Id.*

<sup>171</sup> Ga. Code Ann. § 3-4-133; City of Atlanta, Ga. Ordinances § 10-188(d); Dunwoody, Ga. Ordinances § 4-216(c).

<sup>172</sup> City of Atlanta Office of Revenue, *Revenue Manual FY 2014*, available at <http://www.atlantaga.gov/modules/showdocument.aspx?documentid=15539> (last visited Feb. 3, 2016).

## Idaho

### Sales Tax

Idaho permits voters of resort cities to enact and locally administer sales taxes on items and activities subject to the state sales tax.<sup>173</sup> A resort city is defined as a city with a population not exceeding 10,000.<sup>174</sup> The local sales tax may be levied on all or part of sales subject to the state sales tax,<sup>175</sup> including any food or meals prepared and sold by restaurants, cafes and bars within the city which are similarly taxed by the state under the state sales tax.<sup>176</sup>

All sales exempt from the state sales tax are similarly exempt from the local tax. In addition, local jurisdictions are permitted to exempt items not exempt from the state sales tax. For example, the City of Lava Hot Springs exempts groceries, certain building materials, and lease-purchase agreements or leases with the option to purchase motor vehicles.<sup>177</sup> The state does not limit the rate of tax that may be imposed; Idaho resort city sales taxes are generally in the 1 to 5 percent range.<sup>178</sup>

Idaho permits local jurisdictions to adopt their own procedures for reporting and collecting the locally administered sales taxes.<sup>179</sup> For example, the City of Sun Valley requires the return and payment of tax on the 20<sup>th</sup> of the month following the month in which it was collected, while the City of Lava Hot Springs requires the return and payment of tax on the 25<sup>th</sup> of the following month.<sup>180</sup> The resort cities also have protest and appeal provisions that differ from the state, but are similar to one another. The state allows taxpayers 63 days from the date of a notice of deficiency, determination, or proposed revocation or suspension to file a petition for

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<sup>173</sup> Idaho Code §§ 50-1044; 50-1046.

<sup>174</sup> *Id.* § 50-1044.

<sup>175</sup> *Id.* § 50-1046.

<sup>176</sup> Idaho Admin. Code r. 35.01.02.126(01).

<sup>177</sup> City of Lava Hot Springs, Idaho Code § 3-3-3(C).

<sup>178</sup> Idaho Code § 50-1046; Sun Valley, Idaho Code § 3-1-3; City of Donnelly, Idaho Code § 197-3(A); Sandpoint, Idaho Code § 3-10-3(A).

<sup>179</sup> Idaho Code § 50-1047.

<sup>180</sup> Sun Valley, Idaho Code § 3-1-9; City of Lava Hot Springs, Idaho Code § 3-3-9(D); City of Lava Hot Springs, Idaho Return of Non-Property Tax.

redetermination;<sup>181</sup> the City of Lava Hot Springs and Sun Valley require such appeals to be filed within 30 days of the mailing or service of a notice of redetermination.<sup>182</sup> Taxpayers in both jurisdictions are permitted to file either an appeal with the city council or a complaint with the district court for review of the city clerk's redetermination.<sup>183</sup>

Nine of the 13 resort cities impose the local sales tax on some items such as prepared meals in certain establishments and liquor-by-the-drink sales.<sup>184</sup> The Idaho State Tax Commission provides no information on local taxes beyond which jurisdictions impose a locally administered sales tax. Local ordinances are available from third-party municipal code compilations.

### **Hotel Tax**

The Idaho state sales tax is imposed on accommodations, such as hotels, motels, campgrounds, or trailer courts.<sup>185</sup> Resort cities may also impose a locally administered tax on similar lodging accommodations.<sup>186</sup> Both the state and local jurisdictions exempt occupancies of more than 30 days.<sup>187</sup>

Each of the 13 resort cities imposes a local lodging tax.<sup>188</sup> As with the locally administered sales tax, the Idaho legislature does not limit the rate at which resort cities may impose the tax. Not all resort cities impose their local taxes at a uniform rate; the City of Lava Hot Springs imposes a 3 percent tax on hotel occupancy and a 2 percent tax on other sales and liquor-by-the-drink.<sup>189</sup>

Administratively, the resort city lodging tax falls under the same statutory structure as other locally administered resort taxes; the administration and procedures for the hotel tax are identical to that

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<sup>181</sup> Idaho Code §§ 63-3631(1); 63-3045(1).

<sup>182</sup> City of Lava Hot Springs, Idaho Code § 3-3-12(A)-(D); Sun Valley, Idaho Code § 3-1-12(A).

<sup>183</sup> *Id.*

<sup>184</sup> Idaho State Tax Commission, *Local Sales Tax*, available at <https://tax.idaho.gov/i-1117.cfm> (last visited Sept. 15, 2015).

<sup>185</sup> Idaho Code § 63-3612(2)(g).

<sup>186</sup> Idaho Code §§ 50-1046; 63-3612(g); City of Lava Hot Springs, Idaho Code § 3-3-2.

<sup>187</sup> Idaho Code §§ 63-3612(2)(g); 50-1046; City of Lava Hot Springs, Idaho Code § 3-3-3(C).

<sup>188</sup> Idaho State Tax Commission, *Local Sales Tax*, available at <https://tax.idaho.gov/i-1117.cfm> (last visited Sept. 15, 2015).

<sup>189</sup> City of Lava Hot Springs, Idaho Code §§ 3-3-3(A)-(C).

of the local sales tax. A lodging tax return is filed monthly in each of the 13 jurisdictions, and it is combined with the local sales tax where a sales tax is levied.

Idaho also authorizes “auditorium districts” to impose taxes on accommodations.<sup>190</sup> Auditorium districts are created through local elections to build, operate, and maintain public auditoriums, sports arenas and similar facilities for the benefit of the local jurisdiction.<sup>191</sup> The tax base of the auditorium district tax is similar to the state sales tax, including an exemption for accommodations rented or leased for a period of 30 days or more and a specific exception for rooms in the Idaho Ronald McDonald House.<sup>192</sup> Unlike the locally administered resort city taxes, auditorium districts are prohibited from levying taxes on accommodations exceeding 5 percent.<sup>193</sup> Auditorium districts may self-administer the lodging tax or contract with the state.<sup>194</sup> According to the Idaho State Tax Commission, there are three auditorium district taxes, one of which is administered by the Tax Commission.<sup>195</sup> For the state-administered district, the hotel tax is administered in the same manner as the state sales tax.<sup>196</sup> Self-administered districts have the authority to collect and administer the tax.<sup>197</sup> Information on the administration of the self-administered district taxes is not generally available.

### **Liquor-by-the-Drink**

Resort cities are also permitted to impose a separate, locally administered tax on liquor-by-the-drink, wine, and beer sold at retail for consumption on the licensed premises;<sup>198</sup> these items are similarly taxed by the state under the Idaho sales tax.<sup>199</sup> Similar to the resort city sales tax, the state does not limit the rate of tax that may be levied. Procedurally, the resort city tax on liquor-by-the-

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<sup>190</sup> Idaho Code § 67-4917B.

<sup>191</sup> *Id.* §§ 67-4902; 67-4904.

<sup>192</sup> *Id.* § 67-4917B.

<sup>193</sup> *Id.* § 67-4917B.

<sup>194</sup> *Id.* § 67-4917C(1).

<sup>195</sup> Idaho State Tax Commission, *Local Sales Tax*, available at <https://tax.idaho.gov/i-1117.cfm> (last visited Sept. 15, 2015).

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> Idaho Code § 50-1046.

<sup>199</sup> Idaho Admin. Code r. 35.01.02.126(01).

drink is administered in the same fashion as the locally administered sales and lodging taxes. Nine of the 13 resort cities impose a liquor-by-the-drink tax.<sup>200</sup>

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<sup>200</sup> Idaho State Tax Commission, *Local Sales Tax*, available at <https://tax.idaho.gov/i-1117.cfm> (last visited Sept. 15, 2015).

## Illinois

### Amusement Tax

Illinois authorizes municipalities to impose taxes on amusement activities.<sup>201</sup> Local jurisdictions have largely been free, under a grant of general licensing and police powers, to impose amusement taxes on activities of their choosing because Illinois does not tax amusement activities at the state level,<sup>202</sup> and the state authorizing statutes provide little guidance and few restrictions on local taxes.<sup>203</sup> Chicago, for example, has broadly interpreted amusement activities to include musical performances, sporting events (baseball, basketball, and hockey), billiards, paid television programming,<sup>204</sup> and “electronically delivered amusement” such as streaming video and music.<sup>205</sup>

The state authorization statute similarly provides no guidance on what activities should qualify for exemption, thereby leaving the determination to local jurisdictions. The Chicago amusement tax ordinance exempts an extensive list of activities, including:

- Participation in certain amateur events, such as an amateur athletic event, that promote or celebrate Chicago and its civic institutions; and
- Witnessing or participating in any amusement activity in which the proceeds inure exclusively to the benefit of: (a) charitable organizations; (b) organizations for civic improvement; (c) fraternal organizations, legion posts, social and political groups; (d) members of the armed services or their families; (e) police or fire departments; or (f) societies or organizations conducted for the sole purpose of maintaining symphony orchestras, opera performances or artistic presentations.<sup>206</sup>

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<sup>201</sup> 65 Ill. Comp. Stat. 5/11-42-1; 5/11-42-2; 5/11-42-5; 5/11-54-1.

<sup>202</sup> Ill. Admin. Code tit. 86, § 130.2030(b).

<sup>203</sup> 65 Ill. Comp. Stat. 5/5/11-42-1; 5/11-42-2; 5/11-42-5; 5/11-54-1.

<sup>204</sup> Chi., Ill. Muni. Code § 4-156-010.

<sup>205</sup> Chi., Ill. Dep’t of Fin., Amusement Tax Ruling No. 5, effective July 1, 2015.

<sup>206</sup> Chi., Ill. Muni. Code § 4-156-020(B).

Also excluded from the amusement tax are membership fees to health clubs and admissions to live theatrical, musical or other cultural performances in venues with a maximum capacity of less than 750 persons.<sup>207</sup>

With one exception, state law does not limit the rate of tax that municipalities may impose on amusement activities. The rate on athletic contests and exhibitions for gain is limited to 3 percent.<sup>208</sup> The general Chicago amusement tax rate is 9 percent, and the tax is imposed on patrons of amusement activities within the city limits.<sup>209</sup> Chicago taxes live theatrical, musical or other cultural performances in venues with maximum capacities of more than 750 persons at a reduced rate of 5 percent.<sup>210</sup>

Illinois statutes do not address amusement tax administration or procedures. Chicago has created its own procedural regime that differs in many regards from the state sales tax. For example, Chicago requires that the amusement tax return and remittance be submitted annually on August 15.<sup>211</sup> Illinois retailer's occupation tax (sales tax) returns and payments are due on the 20<sup>th</sup> of each month.<sup>212</sup> The state statute of limitations to issue a notice of deficiency may be as long three years and six months, whereas the Chicago statute of limitations is four years.<sup>213</sup> Chicago requires a written protest be filed within 35 days of receiving the notice of tax determination and assessment. The administrative law officer's decision may be further appealed by filing a petition for review with the director of the department of administrative hearings within ten business days of receiving the final decision.<sup>214</sup> The Chicago administrative regime provides for confidentiality of taxpayer information.<sup>215</sup> Chicago also has an ordinance establishing a voluntary disclosure program, a feature not commonly found in most locally administered taxes, at least as a matter of law.<sup>216</sup>

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<sup>207</sup> Chi., Ill. Muni. Code § 4-156-020(D)(1)-(2).

<sup>208</sup> 65 Ill. Comp. Stat. 5/11-54-1.

<sup>209</sup> Chi., Ill. Muni. Code § 4-156-020(A).

<sup>210</sup> *Id.* § 4-156-020(E).

<sup>211</sup> *Id.* §§ 4-156-030(G); 3-4-186(A)-(B).

<sup>212</sup> 35 Ill. Comp. Stat. 120/3.

<sup>213</sup> Chi., Ill. Muni. Code §§ 4-156-035; 3-4-120(A); 35 Ill. Comp. Stat. 120/4.

<sup>214</sup> Chi., Ill. Muni. Code §§ 4-156-035; 3-4-330(A); 3-4-340(H)(5).

<sup>215</sup> *Id.* §§ 4-156-035; 3-4-080.

<sup>216</sup> *Id.* §§ 4-156-035; 3-4-265.

In 2014, Chicago collected \$112.9 million in amusement taxes.<sup>217</sup> Information on Chicago’s amusement tax is accessible through the city website and is more developed than nearly all other jurisdictions that self-administer their taxes. While other localities are authorized to impose an amusement tax, we were unable to locate any source identifying the jurisdictions that do so.

## **Lodging Tax**

Illinois authorizes county and municipal governments to impose a variety of hotel taxes, including the Municipal Hotel Operators’ Occupation Tax,<sup>218</sup> Municipal Hotel Use Tax,<sup>219</sup> Metropolitan Pier and Exposition Authority Hotel Operators’ Occupation Tax,<sup>220</sup> and the Sports Facilities Authority Tax.<sup>221</sup> Of these different tax regimes, only the Municipal Hotel Use Tax is locally administered in contrast to being administered by the Illinois Department of Revenue. Chicago has additionally enacted the self-administered Chicago Hotel Accommodations Tax.<sup>222</sup>

The authorization statute for the Municipal Hotel Use Tax specifically ties the definition of hotel to the definition provided under the state-level Illinois Hotel Occupation Tax Act.<sup>223</sup> The Chicago Hotel Accommodations tax base appears to match the state definition with the exception of bed-and-breakfast establishments and vacation rentals, which are taxed by the city, but not the state.<sup>224</sup> Exemptions from the hotel taxes are varied. The Illinois Hotel Occupation Tax exempts “permanent residents,” which is anyone that has rented a hotel room for at least 30 consecutive days.<sup>225</sup> The Hotel Use Tax and the Chicago Hotel Accommodations Tax both exempt “permanent residents” of a hotel, but neither statutory scheme defines the term.<sup>226</sup> Chicago has released an information bulletin indicating that 30 continuous days may qualify as “permanent,” but only if

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<sup>217</sup> Chi., Ill. Dep’t of Fin., *Chi., Ill. Comprehensive Annual Financial Report for the Year Ended Dec. 31, 2014*, available at [http://www.cityofchicago.org/content/dam/city/depts/fin/supp\\_info/CAFR/2014CAFR/CAFR\\_2014.pdf](http://www.cityofchicago.org/content/dam/city/depts/fin/supp_info/CAFR/2014CAFR/CAFR_2014.pdf).

<sup>218</sup> 65 Ill. Comp. Stat. 5/8-3-14; 5/5-1030(a).

<sup>219</sup> *Id.* 5/8-3-14a(a).

<sup>220</sup> 70 Ill. Comp. Stat. 210/13(c).

<sup>221</sup> *Id.* 3205/19.

<sup>222</sup> Chi., Ill. Muni. Code § 3-24-030.

<sup>223</sup> 65 Ill. Comp. Stat. 5/8-3-14a(e).

<sup>224</sup> Chi., Ill. Muni. Code § 3-24-020(4).

<sup>225</sup> 35 Ill. Comp. Stat. 145/2(5).

<sup>226</sup> 65 Ill. Comp. Stat. 5/8-3-14a(c); Chi., Ill. Muni. Code § 3-24-020(4).

several additional requirements are satisfied as provided for in a tax ruling.<sup>227</sup> The Village of Morton Grove does not define or specifically adopt the “permanent resident” exemption, but rather provides an exemption stating “tax shall not be levied and imposed upon any person who works and lives in the same hotel or motel.”<sup>228</sup> In addition, Chicago exempts any temporary accommodation provided in any building or structure owned or operated, directly or indirectly, by or on behalf of a not-for-profit medical institution, hospital, or allied educational institution as well as certain licensed bed-and-breakfast establishments.<sup>229</sup>

Municipal Hotel Use Tax rates are limited to 5 percent.<sup>230</sup> Few local jurisdictions impose the Municipal Hotel Use Tax; instead, most impose the Municipal Hotel Operators' Occupation Tax which is administered by the state and may be imposed at a 6 percent rate.<sup>231</sup> Municipalities may not enact both the Municipal Hotel Use Tax and the Municipal Hotel Operators' Occupation Tax.<sup>232</sup> The Chicago Hotel Accommodations Tax is imposed at the rate of 4.5 percent.<sup>233</sup>

The authorizing statutes for the locally administered hotel taxes do not address the administrative and procedural aspects of the tax. As a result, local jurisdictions enact their own rules and regulations.<sup>234</sup> Chicago and Morton Grove — a municipality that imposes the Hotel Use Tax — have extensive ordinances to address their respective hotel taxes. In particular, each jurisdiction outlines the audit and protest procedures in some detail, including the time frames within which protests must be filed once a notice of deficiency is provided to a taxpayer — within 35 days of

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<sup>227</sup> Informational Bulletin—Chicago Hotel Tax Matrix—Exemptions (Chi., Ill. Dep’t of Fin. Apr. 2008), *available at* [https://www.cityofchicago.org/content/dam/city/depts/rev/supp\\_info/TaxSupportingInformation/ExemptionHotelMatrix.pdf](https://www.cityofchicago.org/content/dam/city/depts/rev/supp_info/TaxSupportingInformation/ExemptionHotelMatrix.pdf); Hotel Accommodations Tax Ruling #1 (Chi., Ill. Dep’t of Finance June 1, 2004).

<sup>228</sup> Morton Grove, Ill. Muni. Code § 1-10H-2(A).

<sup>229</sup> Chi., Ill. Muni. Code § 3-24-020(4).

<sup>230</sup> 65 Ill. Comp. Stat. 5/8-3-14a(a).

<sup>231</sup> *Id.* 5/8-3-14.

<sup>232</sup> *Id.* 5/8-3-14.

<sup>233</sup> Chi., Ill. Muni. Code § 3-24-030.

<sup>234</sup> Chi., Ill. Muni. Code § 4-156-034; Morton Grove, Ill. Muni. Code § 1-10A-1.

receiving the notice in Chicago and 45 days of receiving the notice in Morton Grove.<sup>235</sup> Both Chicago and Morton Grove ordinances provide for voluntary disclosure programs.<sup>236</sup>

In 2014, the Village of Morton Grove's total revenue from the Municipal Hotel Use Tax was roughly \$76,000.<sup>237</sup> During the same period, the total revenue raised by the Chicago Hotel Accommodations Tax was approximately \$100.4 million.<sup>238</sup> Information on Illinois hotel taxes is generally available on local jurisdiction websites, but there is no centralized source of information for all jurisdictions.

### **Chicago Personal Property Lease Transaction Tax**

Chicago also imposes a personal property lease transaction tax, administered by the Chicago Department of Finance. The tax is imposed on the lease or rental in the city of personal property, or the privilege of using in the city personal property that is leased or rented outside the city.<sup>239</sup> While the incidence of tax falls on the lessee,<sup>240</sup> the lessor is obligated to register, collect, and remit the tax.<sup>241</sup> The tax does not apply if the lessee is a governmental body, charitable organization, or insurance company.<sup>242</sup> Twelve types of leases are exempt. Examples include property leased and primarily used (more than 50 percent) outside the city,<sup>243</sup> and property leased by a lessor subject to another tax (e.g., Illinois public utilities tax or Chicago amusement tax). Chicago also imposes the lease transaction tax on non-possessory computer leases, but exempts

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<sup>235</sup> Chi., Ill. Muni. Code §§ 4-156-035; 3-4-330(A); 3-4-340(H)(5); Morton Grove, Ill. Muni. Code § 1-10A-9.

<sup>236</sup> Chi., Ill. Muni. Code §§ 4-156-035; 3-4-265; Morton Grove, Ill. Muni. Code § 1-10A-15. The Village of Morton Grove has a population of less than 25,000, which makes the existence of a local voluntary disclosure ordinance all the more surprising.

<sup>237</sup> Morton Grove, Ill. Fin. Dep't, *Morton Grove, Ill. Comprehensive Annual Financial Report For The Fiscal Year Ended December 31, 2014* (June 18, 2015), available at [http://www.mortongroveil.org/assets/1/6/2014\\_CAFR\\_rev.pdf](http://www.mortongroveil.org/assets/1/6/2014_CAFR_rev.pdf).

<sup>238</sup> Chi., Ill. Dep't of Fin., *Chi., Ill. Comprehensive Annual Financial Report for the Year Ended Dec. 31, 2014* (June 30, 2015), available at [http://www.cityofchicago.org/content/dam/city/depts/fin/supp\\_info/CAFR/2014CAFR/CAFR\\_2014.pdf](http://www.cityofchicago.org/content/dam/city/depts/fin/supp_info/CAFR/2014CAFR/CAFR_2014.pdf). It should be noted that the reported revenue from hotel taxes in Chicago likely encompass more than the Chicago Hotel Accommodations Tax and may have included Metropolitan Pier and Exposition Authority Hotel Operators' Occupation Tax and Sports Facilities Authority Tax.

<sup>239</sup> Chi., Ill. Muni. Code § 3-32-030.

<sup>240</sup> *Id.*

<sup>241</sup> *Id.* § 3-32-070.

<sup>242</sup> *Id.* § 3-32-040.

<sup>243</sup> *Id.* § 3-32-050.

such leases if the customer’s use or control of the computer is *de minimis* and the related charge is predominantly for information transferred. The Department of Finance has interpreted this to mean that the use in Chicago of most software hosted on a server outside the city is taxable in the city.<sup>244</sup> The tax is generally imposed at a rate of 9 percent of the lease or rental price. However, effective January 1, 2016, a non-possessory computer lease that is “primarily for the purpose of allowing the customer to use the provider’s computer and software to input, modify or retrieve data or information supplied by the customer” will be subject to tax at a rate of 5.25 percent. If the customer is accessing the data of a third party, the tax rate will remain 9 percent.<sup>245</sup>

The Chicago municipal code contains detailed provisions for administering the lease transaction tax. For example, it provides that lessors must remit tax on a monthly basis, by the last day of the month after the reporting period,<sup>246</sup> and must maintain books and records for at least five years.<sup>247</sup> Any administrative gaps are supplemented through the Uniform Revenue Procedure Ordinance, which provides additional rules regarding topics such as taxpayer confidentiality, application of payment amounts, and the publication of regulations.<sup>248</sup>

The Personal Property Lease Transaction Tax appears to be unique among local jurisdictions and is designed to capture certain transactions not subject to the state retail sales tax. In 2014, Chicago collected \$152.5 million in personal property lease transaction tax.<sup>249</sup> Information on Chicago’s personal property lease transaction tax is generally available on the city’s website.

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<sup>244</sup> Chi., Ill. Muni. Code § 3-32-050; *see also* Chi., Ill. Dep’t of Revenue Personal Property Lease Transaction Tax Ruling No. 12 (June 9, 2015).

<sup>245</sup> Chicago Revenue Ordinance for 2016, adopted October 28, 2015.

<sup>246</sup> Chi., Ill. Muni. Code § 3-32-080(A)(1).

<sup>247</sup> *Id.* § 3-32-110.

<sup>248</sup> *Id.* §§ 3-32-130, 3-4-010.

<sup>249</sup> Chi., Ill. Dep’t of Fin., *Chi., Ill. Comprehensive Annual Financial Report for the Year Ended Dec. 31, 2014* (June 30, 2015), *available at* [http://www.cityofchicago.org/content/dam/city/depts/fin/supp\\_info/CAFR/2014CAFR/CAFR\\_2014.pdf](http://www.cityofchicago.org/content/dam/city/depts/fin/supp_info/CAFR/2014CAFR/CAFR_2014.pdf).

## Indiana

### Food and Beverage Tax

Indiana counties and municipalities are authorized to impose a tax on food and beverage transactions.<sup>250</sup> The local food and beverage tax is imposed on the same transactions that are subject to the state sales and use tax and does not apply to food and beverage purchases that are exempt from the state sales tax.<sup>251</sup> The state limits the local food and beverage tax rate to 1 percent of the gross retail income from food and beverage transactions; however, counties and municipalities are each permitted to tax the same transaction resulting in a local food and beverage tax of up to 2 percent in certain areas.<sup>252</sup>

In general, Indiana law requires that the local food and beverage tax be administered by the Indiana Department of Revenue; only a limited number of jurisdictions are permitted to self-administer the food and beverage tax.<sup>253</sup> According to the Department, Johnson County is the only local government in Indiana that administers and collects its own food and beverage tax.<sup>254</sup> All counties imposing a local food and beverage tax, including Johnson County, follow the administrative rules of the state sales and use tax.<sup>255</sup>

Information on the receipts collected by Johnson County are not available. The Department provides information on local food and beverage taxes, but minimal information is published by Johnson County on its locally administered food and beverage tax.

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<sup>250</sup> Ind. Dep't of Revenue, Comm'r Directive 30, Local Food and Beverage Taxes (Sep 1, 2015).

<sup>251</sup> Johnson County, Ind. Ord. No. 2005-03; Ind. Code § 6-9-12-4; Ind. Dep't of Revenue, Comm'r Directive 30, Local Food and Beverage Taxes (Sep. 1, 2015).

<sup>252</sup> Johnson County, Ind. Ord. No. 2005-03(1)(a).

<sup>253</sup> The Indiana legislature has limited the option to self-administer the food and beverage tax to Boone, Johnson, Hamilton, Hancock, Hendricks, Morgan, and Shelby counties and to the cities or towns of Carmel, Fishers, Greenfield, Lebanon, Noblesville, Westfield, and Zionsville that are located in those counties. Ind. Code Ann. § 6-9-35-1.

<sup>254</sup> Ind. Dep't of Revenue, Comm'r Directive 30, Local Food and Beverage Taxes (Sep 1, 2015).

<sup>255</sup> Johnson County, Ind. Ord. No. 2005-03 (2)(c).

## Louisiana

### Authorization for Local Tax

The Louisiana Constitution authorizes local government subdivisions (parishes and cities) and school boards to levy and collect a tax on

the sale at retail, the use, the lease or rental, the consumption, and the storage for use or consumption, of tangible personal property and on sales of services as defined by law, if approved by a majority of the electors voting thereon in an election held for that purpose.<sup>256</sup>

The constitution further provides that other political subdivisions (special purpose districts) may impose sales and use taxes as authorized by statute.<sup>257</sup> All but one parish, many municipalities (cities), and a variety of special districts impose a local sales tax. There are over 370 different tax rates levied within the various taxing districts when individual parish, city and special district taxes are each considered.<sup>258</sup> The resulting layering and overlapping of taxing district boundaries can be complex. The state has, over time, instituted certain measures to reduce the complexity of Louisiana local taxes.

### Local Tax Rates

Local sales tax rates vary from jurisdiction to jurisdiction. The state constitution limits the combined rate of all local taxes in any one jurisdiction to 3 percent, but also provides that local governments may impose taxes at rates in excess of this if the additional tax is authorized by general or special legislation and is approved by the voters in that jurisdiction.<sup>259</sup> The state legislature and voters have frequently approved such authority. As a result, the combined local tax rate in those parishes with at least one local tax ranges up to 7.66 percent for the portion of Iberville parish located within the University Club Center Economic Development District,<sup>260</sup> producing a

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<sup>256</sup> La. Const. Art. VI § 30

<sup>257</sup> *Id.* § 29

<sup>258</sup> Based on rates available through the Parish E-File system maintained by the Louisiana Department of Revenue (last visited Feb. 3, 2016), *available at* <https://parishe-file.revenue.louisiana.gov/lookup/lookup.aspx>.

<sup>259</sup> La. Const. Art. VI § 29

<sup>260</sup> Based on rates available through the Parish E-File system maintained by the Louisiana Department of Revenue (last visited Feb. 3, 2016), *available at* <https://parishe-file.revenue.louisiana.gov/lookup/lookup.aspx>. For a listing all local sales tax rates, *see* Louisiana Department of Revenue, Local Sales Tax Collecting Agencies and Rates (last visited on Feb. 3, 2016), *available at* [www.revenue.louisiana.gov/taxforms/1003\(10\\_02\).pdf](http://www.revenue.louisiana.gov/taxforms/1003(10_02).pdf).

combined state and local sales tax rate that ranges from 11.66 percent in this portion of Iberville Parish to 4 percent in Cameron Parish (where there is no local tax).

### **Conformity with State Tax Base and Procedures**

The relationship of local sales taxes to the state sales tax largely is defined by the Louisiana Uniform Local Sales Tax Code (UTC), which establishes a set of governing, procedural and substantive parameters regarding the structure and administration of local sales taxes throughout the state.<sup>261</sup> The UTC became effective July 1, 2003. It establishes a uniform local sales tax code, a uniform local tax return and remittance system, and uniform administrative provisions for all local sales taxes.

The UTC applies to the assessment, collection, administration, and enforcement of the sales taxes of all local taxing authorities, except that local ordinances continue to control local tax rates, the effective dates and terms of the taxes, the purpose for which proceeds are used, and vendor compensation allowed for the collection of the local tax. In addition, localities retain some flexibility in determining their own tax base, within the constraints of the UTC, as discussed below.

Local ordinances adopted by political subdivisions imposing a local sales and use tax after July 1, 2003 must incorporate the provisions of the UTC by reference, and the incorporation is applied on a prospective basis. Political subdivisions with local sales taxes in effect before July 1, 2003 are required to collect and administer their taxes in accord with the UTC, without effect on the measures imposing the tax and without having to impose, levy, or enact the local ordinance again. Political subdivisions levying a tax before July 1, 2003 may also incorporate the UTC by reference in their ordinances.

Local sales tax ordinances are subject to the definitions of the tax base in Louisiana Revised Statutes § 47:301-317. Therefore, the basic parameters of the tax base for state and local taxes should be the same, except for variances allowed by state law and exercised by the localities.

The UTC sets forth two types of exemptions. First are exemptions that apply to all local sales taxes. They are found in Louisiana Revised Statutes § 47:337.9 and are drawn largely from the list

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<sup>261</sup> The UTC was enacted as Act 73 of the 2003 Regular Legislative Session. It is codified at La. Rev. Stat. §§ 47:337.1 through 47:337.101.

of exemptions from the state sales tax in Louisiana Revised Statutes § 47:305. These exemptions include a wide (and eclectic) range of goods and services, including advertising and broadcasting services, certain dental and medical equipment and devices, drilling rigs, a variety of fuel and utilities, and certain non-profit related matters. These exemptions must be incorporated into each local tax.

The second type of exemption includes those that are optional to local governments. These exemptions are listed in Louisiana Revised Statutes § 47:337.10. The local sales tax ordinance must incorporate an optional exemption for it to apply at the local level. Each local taxing authority (e.g., parish, school board, or city) in the parish must pass the resolution for it to apply to its portion of the combined local taxes in the parish. Otherwise, an item is only partially exempt at the local level. The optional exemptions include such items as prescription drugs, farm equipment, and manufacturing machinery and equipment.

There are also exemptions that may apply to local sales taxes that are found outside the sales tax statutes; they are listed in Louisiana Revised Statutes § 47:337.11. There are also certain exemptions that are limited to the state sales tax, such as prescription drugs, food for home consumption, and various orthotic, prosthetic and medical devices.<sup>262</sup>

As part of the research for this project, we cataloged the exemptions and exclusions (including state-only, mandatory and optional) in Louisiana law and reviewed local materials to determine if the exemption had been adopted by each parish. The results are presented in the “Parish Table” worksheet of the Louisiana Data Collection Tool in Part I, Appendix B.<sup>263</sup> Local tax bases tend to be relatively uniform across parishes, meaning local governments generally all adopt an optional exemption or exclusion or they all do not adopt it. Of the 179 exemptions and exclusions, all parishes incorporate about 125 of them. Of the remaining, there are about 40 that are not incorporated into any parish ordinance (including some that are characterized in state law as applying only to the state tax), and about ten where five or fewer parishes have adopted the exemption or exclusion. In other words, there appears to be significant similarity in the tax base across parishes, but the local base differs from the state base in about 30 percent of the areas

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<sup>262</sup> La. Rev. Stat. Ann. § 47:305D(1).

<sup>263</sup> Available from IPT.

examined – either because the exemption applies only at the state level or local governments generally opt out of the state exemption. The major areas in which local tax bases differ from the state base include purchases of manufacturing machinery and equipment, machinery and equipment for various other businesses and industries, interstate telecommunications purchased by certain call centers, purchases of certain custom computer software, and food for home consumption. These items are exempt at the state level and generally taxable at the local level.

The UTC contains a comprehensive set of tax administration provisions, collection procedures, penalties and other enforcement procedures to govern the administration of all local sales and use taxes. The UTC provisions are substantially similar to the state procedures. The statute of limitations for both the state and local taxes is three years. Both the state and local governments require records and information relating to sales taxes be retained for three years. Louisiana has a state Taxpayer Bill of Rights, but the local jurisdictions in Louisiana do not.

### **Administration of Local Taxes**

Louisiana has over time changed its system for administering local sales taxes significantly. In 1992, the state substantially consolidated local tax collection by moving from a system in which each individual local government was responsible for its own tax collection to collection by a single entity in each parish.<sup>264</sup> Currently, one or more local taxes are levied in 63 of the 64 parishes. Central collectors have been established in 59 separate parishes, with the collector in Concordia parish also serving as the collector for Caldwell, Catahoula, LaSalle, and Tensas parishes. The designated collector in each parish is responsible for administering the tax for all jurisdictions in the parish.

Returns are filed with the individual parish collectors. A number of parishes offer an electronic filing option. As a part of the UTC, the Louisiana Department of Revenue now operates a Parish E-File system that allows taxpayers and practitioners to file returns electronically through a single portal.<sup>265</sup> The parish collection entity is also responsible for auditing local sales taxes. Local governments rely heavily on third-party contract auditing firms.<sup>266</sup> The Department also uses

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<sup>264</sup> La. Rev. Stat. Ann. § 47:333.14.

<sup>265</sup> La. Parish E-File Website, *available at* [https://parishe-file.revenue.louisiana.gov/default\\_1.aspx](https://parishe-file.revenue.louisiana.gov/default_1.aspx) (last visited Feb. 3, 2016).

<sup>266</sup> La. Rev. Stat. Ann. § 47:337.26(B).

contract auditing firms, but to a significantly lesser extent. All contract auditing firms are bound by the confidentiality provisions found in state law. Once data is provided to a contract firm for one parish audit, that data may not be disclosed to any other person, including another taxing jurisdiction; information discovered during an audit may also not be disclosed to another jurisdiction.<sup>267</sup>

### **Use Tax and Nexus**

Louisiana law does not provide any *de minimis* standards for the establishment of nexus. Louisiana imposes tax collection obligations on those “engaged in business in the taxing jurisdiction” with “in the taxing jurisdiction” defined as “within the physical boundaries of the taxing authority,” meaning the parish or other taxing jurisdiction in the case of local taxes.<sup>268</sup> As a result, each parish is treated as a “state” for nexus purposes in that a seller must have the requisite nexus in the parish before a collection responsibility ensues.

### **Efforts to Simplify Compliance**

In 2015, the Louisiana Legislature enacted HB 471 creating the Sales Tax Streamlining and Modernization Commission. This commission comprises 20 individuals and stakeholders including representatives of the legislature, Department of Revenue, and local tax authorities. The purpose of the commission is to conduct studies relating to how current Louisiana state and local sales tax policy affects the state economy in comparison to areas with similar demographics and economies. The commission is also tasked with studying how the introduction of a broad-based tax on services might affect revenue, the efficiency of Louisiana’s sales tax collection and audit procedures, and a comprehensive study of various tax preferences, including credits, deductions, exclusions, exemptions, and rebates.

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<sup>267</sup> *Id.* § 47:1508.

<sup>268</sup> *See id.* §§ 47:301(4)(d), 47:301(26).

## Maryland

### Lodging Tax

Under Maryland law, there are three types of counties — charter, code, and commissioner counties. Each type of county is authorized to impose a hotel rental tax on the amount charged by a hotel for room rentals.<sup>269</sup> Charges for sleeping accommodations do not include charges for services or other accommodations besides sleeping, and the tax is imposed on “transients,” which is defined as an accommodation period of fewer than four months. However, the Maryland code includes other, shorter time periods that are specific to an individual county. For example, Carroll County may impose a hotel tax only for accommodation periods lasting 15 days or less.<sup>270</sup> This is just one example of the many variations that exist on a county-by-county basis throughout the Maryland code concerning the transient room tax. Historically, Maryland did not permit home-rule, as it does now through allowing charter and code counties.<sup>271</sup> Instead, most local government activity was controlled by special legislation enacted by the state legislature. Therefore, much of the Maryland code concerns local issues, and special laws applying to a single jurisdiction are common.

State law also exempts facilities that do not offer lodging services to the general public, but are instead operated by an organization to provide lodging solely for employees and other invitees.<sup>272</sup> There are other county-specific exemptions to the hotel rental tax. For example, in Carroll County, the hotel rental tax does not apply to a hotel with ten or fewer sleeping rooms.<sup>273</sup>

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<sup>269</sup> Md. Code Ann. Local Gov’t §§ 20-401, 20-402. This section was amended effective June 1, 2014. The previous version applied to code counties and listed counties. In general, code home-rule counties are not permitted to impose new taxes unless authorized by the Maryland General Assembly through a law that applies in one or more of the county classes. Charter counties are permitted to impose certain taxes independent of the Maryland General Assembly. Maryland Department of Legislative Services, Office of Policy Analysis, *Local Taxing Authority and Revenue Sources*, available at [http://dls.state.md.us/data/polanasubare/polanasubare\\_intmatnpubadm/polanasubare\\_intmatnpubadm\\_annrep/Local-Taxing-Authority-and-Revenue-Sources.pdf](http://dls.state.md.us/data/polanasubare/polanasubare_intmatnpubadm/polanasubare_intmatnpubadm_annrep/Local-Taxing-Authority-and-Revenue-Sources.pdf) (last visited Feb. 3, 2016).

<sup>270</sup> Md. Code Ann. Local Gov’t § 20-401(d).

<sup>271</sup> Maryland State Archives, *Maryland at a Glance*, available at <http://msa.maryland.gov/msa/mdmanual/01glance/html/govern.html> (last visited Feb. 3, 2016).

<sup>272</sup> Md. Code Ann. Local Gov’t § 20-404(a).

<sup>273</sup> *Id.* § 20-404(c).

The transient lodging tax rate varies by county.<sup>274</sup> The rate for the six “commissioner counties” that have not become charter or code counties is specified by statute.<sup>275</sup> The rate for most code counties is 3 percent.<sup>276</sup> However, code counties may vote to increase the rate to 5 percent, and a “Western Maryland code county” may vote to increase the rate to 8 percent.<sup>277</sup> The City of Baltimore imposes a 9.5 percent tax on transient lodging charges.<sup>278</sup>

State authorizing statutes specify most administrative provisions including return due dates, payment dates, and interest. For example, payments and returns are required to be submitted on a monthly basis as required by state law.<sup>279</sup> As a default rule, the return is due before the 10<sup>th</sup> day of the month following collection, except certain counties have different due dates.<sup>280</sup> State law also permits counties to adopt regulations to implement and administer the county hotel rental tax, but only to the extent that they are consistent with the authorizing statute and conform to the applicable provisions and regulations of the state sales tax.<sup>281</sup>

All but one of Maryland’s 23 counties and the one county-equivalent (Baltimore) imposes a hotel rental tax.<sup>282</sup> Montgomery County, the most populous county, reported over \$17 million in “hotel-

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<sup>274</sup> Under certain circumstances, municipalities may impose an additional hotel rental tax of up to 2 percent. Both Rockville and Gaithersburg in Montgomery County have enacted a 2 percent tax. Maryland Department of Legislative Services, Office of Policy Analysis, *Local Taxing Authority and Revenue Sources*, available at [http://dls.state.md.us/data/polanasubare/polanasubare\\_intmatnpubadm/polanasubare\\_intmatnpubadm\\_annrep/Local-Taxing-Authority-and-Revenue-Sources.pdf](http://dls.state.md.us/data/polanasubare/polanasubare_intmatnpubadm/polanasubare_intmatnpubadm_annrep/Local-Taxing-Authority-and-Revenue-Sources.pdf) (last visited Feb. 3, 2016).

<sup>275</sup> Md. Code Ann. Local Gov’t § 20-405. For most, the rate is set at 5 percent, while Garret and Washington Counties are set at 6 percent.

<sup>276</sup> But for Charles County, a code county since 2002, the rate is 5 percent.

<sup>277</sup> Md. Code Ann. Local Gov’t § 20-405(c).

<sup>278</sup> Balt. County, Md. Code § 21-2.

<sup>279</sup> Md. Code Ann. Local Gov’t. § 20-410.

<sup>280</sup> *Id.* § 20-408.

<sup>281</sup> *Id.* § 20-412.

<sup>282</sup> Maryland Department of Legislative Services, *Overview of Maryland Local Governments, Finances and Demographic Information*, available at [http://dls.state.md.us/data/polanasubare/polanasubare\\_intmatnpubadm/polanasubare\\_intmatnpubadm\\_annrep/2015-Overview-of-Maryland-Local-Governments.pdf](http://dls.state.md.us/data/polanasubare/polanasubare_intmatnpubadm/polanasubare_intmatnpubadm_annrep/2015-Overview-of-Maryland-Local-Governments.pdf) (last visited Feb. 3, 2016). Harford County approved Bill No. 14-035 on January 22, 2015, which permitting a county levied hotel tax.

motel” tax revenue in 2014.<sup>283</sup> Total local hotel rental tax revenue estimated for fiscal year 2013 for the state was \$96.3 million.<sup>284</sup>

Local jurisdiction websites provide some information, including revenue generated from the tax, on their respective webpages, while local statutes and ordinances are available from third-party municipal code compilations. The Maryland Comptroller’s website provides no central information on local hotel rental taxes.

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<sup>283</sup> Montgomery County, Comprehensive Annual Financial Report, Fiscal Year 2014 (Dec. 17, 2014), *available at* [https://www.montgomerycountymd.gov/finance/resources/files/data/financial/cafr/FY2014\\_CAFR\\_print.pdf](https://www.montgomerycountymd.gov/finance/resources/files/data/financial/cafr/FY2014_CAFR_print.pdf).

<sup>284</sup> Maryland Department of Legislative Services, Office of Policy Analysis, Local Taxing Authority and Revenue Sources; *available at* [http://dls.state.md.us/data/polanasubare/polanasubare\\_intmatnpubadm/polanasubareintmatnpubadmannrep/Local-Taxing-Authority-and-Revenue-Sources.pdf](http://dls.state.md.us/data/polanasubare/polanasubare_intmatnpubadm/polanasubareintmatnpubadmannrep/Local-Taxing-Authority-and-Revenue-Sources.pdf) (last visited Feb. 3, 2016).

## Minnesota

### Lodging Tax

State law authorizes local jurisdictions in Minnesota to impose lodging taxes on hotel and motel guests. Minnesota authorizes local taxes under three methods: (1) general statutory authorization, (2) lodging taxes enacted prior to 1972 by home-rule charter cities, and (3) special laws.

In 1983, Minnesota enacted general statutory authority permitting local jurisdictions to impose a lodging tax.<sup>285</sup> Specifically, cities, towns, and counties on behalf of unorganized townships may impose the tax.<sup>286</sup> The local lodging tax is in addition to the state sales tax,<sup>287</sup> which applies to lodging and related services provided by a hotel. The state sales tax base for lodging is slightly different from the local tax.<sup>288</sup> For example, the state sales tax on lodging specifically includes fees charged by online travel companies,<sup>289</sup> while the local general lodging tax does not. The local lodging tax exempts stays of more than 30 days.

The local lodging tax may not exceed 3 percent.<sup>290</sup> Moreover, no home-rule charter city imposing a lodging tax before 1972 and not a city with special authorization to impose a lodging tax may impose a tax under this general authority that would cause the total local tax on lodging to exceed 3 percent.<sup>291</sup>

A city may agree to have the Minnesota Department of Revenue collect the tax together with the state sales tax and remit the lodging tax to the city less the cost of collection.<sup>292</sup> If the Department collects the lodging tax for a city, the tax will be subject to the same definitions, procedures, rules, interest, and penalties as the state sales tax.<sup>293</sup> As of 2015, the Department administers the local lodging tax for four jurisdictions: Minneapolis, Rochester, St. Paul, and Giants Ridge Recreation

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<sup>285</sup> Minn. Stat. § 469.190, Subd. 1, 4.

<sup>286</sup> *Id.*

<sup>287</sup> *Id.* § 297A.62.

<sup>288</sup> *Id.* § 297A.61, Subd. 3(g)(2).

<sup>289</sup> *Id.*; Minn. Revenue Notice, No. 12-07 (June 11, 2012).

<sup>290</sup> *Id.* § 469.190, Subd. 1.

<sup>291</sup> *Id.* § 469.190, Subd. 2.

<sup>292</sup> *Id.* § 469.190, Subd. 7.

<sup>293</sup> *Id.*

Area (City of Biwabik).<sup>294</sup> Most local jurisdictions have chosen to self-administer the hotel tax. There are approximately 120 jurisdictions imposing a local lodging tax under the general statutory authority.<sup>295</sup> Jurisdictions that self-administer the tax are permitted to create their own rules for administering the tax.

In 1981, the state legislature prohibited new or increased local taxes on sales or income, but allowed preexisting taxes to continue.<sup>296</sup> Lodging taxes in place in the home-rule cities of Minneapolis, Bloomington, Duluth, St. Paul, and Rochester have continued in place under this authority. Moreover, since 1981, the legislature has authorized various cities under special law to enact transient lodging taxes outside the general grant of authority discussed above. In 2013, 12 cities had such a tax under special laws.<sup>297</sup> These taxes do not have any of the restrictions of the generally authorized local lodging tax and may have rates as high as 7 percent.

For example, Minneapolis currently imposes two taxes on short term lodging. First, the city's 3 percent entertainment tax applies to lodging (in addition the state sales tax, and two local sales taxes).<sup>298</sup> In addition, the city imposes a lodging tax of 2.65 percent on lodging at hotels with more than 50 rooms. Each of the Minneapolis special taxes are administered by the Department of Revenue.<sup>299</sup>

Bloomington imposes a lodging tax, which it self-administers, at a rate of 7 percent.<sup>300</sup> Its 30-day exemption requires an enforceable contract, and unlike the state tax or general statutorily authorized tax, the contract must require at least a 30-day notice before termination to qualify for

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<sup>294</sup> Minnesota Dep't of Rev., Fact Sheet 164: Sales Tax Fact Sheet (July 2015), (stating that the only lodging taxes administered by the Department are the ones listed in the chart).

<sup>295</sup> Minn. Dep't of Revenue, Tax Research Division, Local Special Sales and Use Tax, CY 2014, *available at* [http://www.revenue.state.mn.us/research\\_stats/Pages/Local-Sales-and-Use-Tax.aspx](http://www.revenue.state.mn.us/research_stats/Pages/Local-Sales-and-Use-Tax.aspx) (last visited Sept. 14, 2015).

<sup>296</sup> Minn. Stat. § 477A.016.

<sup>297</sup> Minn. Dep't of Revenue, Tax Research Division, Local Special Sales and Use Tax, CY 2014, *available at* [http://www.revenue.state.mn.us/research\\_stats/Pages/Local-Sales-and-Use-Tax.aspx](http://www.revenue.state.mn.us/research_stats/Pages/Local-Sales-and-Use-Tax.aspx) (last visited Sept. 14, 2015).

<sup>298</sup> Minnesota Dep't of Rev., Fact Sheet 164M, Minneapolis Special Local Taxes; *see also* Information Brief, Research Department, Minnesota House of Representatives, Local Lodging Taxes in Minnesota.

<sup>299</sup> *Id.*

<sup>300</sup> The 7 percent tax is made up of four separate taxes. Bloomington, Minn. Ordinances § 4.03.

the exemption.<sup>301</sup> Tax remittances are due monthly, 25 days after the reporting period.<sup>302</sup> The state tax on lodging is due 20 days after the reporting period.<sup>303</sup>

In total, there are approximately 132 self-administered local lodging taxes in Minnesota.<sup>304</sup> The 12 cities with a specially authorized lodging tax collected about \$35 million in 2014.<sup>305</sup> In the same period, the cities imposing a generally authorized lodging tax collected about \$11.5 million.<sup>306</sup>

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<sup>301</sup> Bloomington, Minn. Ordinances § 4.05.

<sup>302</sup> *Id.*

<sup>303</sup> Minn. Stat. § 289A.18, Subd. 4(a).

<sup>304</sup> Minn. Dep't of Revenue, Tax Research Division, Local Special Sales and Use Tax, CY 2014, *available at* [http://www.revenue.state.mn.us/research\\_stats/Pages/Local-Sales-and-Use-Tax.aspx](http://www.revenue.state.mn.us/research_stats/Pages/Local-Sales-and-Use-Tax.aspx) (last visited Feb. 3, 2016).

<sup>305</sup> *Id.*

<sup>306</sup> Minn. Dep't of Revenue, *Tax Research Division, Minnesota Tax Handbook*, p. 73 (Jan. 2015), *available at* [http://www.revenue.state.mn.us/research\\_stats/research\\_reports/2014/2014\\_handbook\\_links\\_2\\_on\\_a\\_page.pdf](http://www.revenue.state.mn.us/research_stats/research_reports/2014/2014_handbook_links_2_on_a_page.pdf)

## New York

### Hotel Occupancy Tax

Both the state and local governments in New York may levy a tax on accommodations. The tax applies to the rent for every occupancy of a room or rooms in a hotel, motel, or similar establishment.<sup>307</sup> Local governments have enacted various exemptions to the accommodations tax. For example, New York City considers a permanent resident to be any occupant that rents for at least 180 consecutive days<sup>308</sup> compared to Westchester County where the threshold is 90 consecutive days.<sup>309</sup> New York City provides a tax exemption for any rental with a daily rate of \$2.00 or less.<sup>310</sup>

Local hotel occupancy tax rates vary depending on jurisdiction. The tax rate for New York City is 5.875 percent, while the rate for Westchester County is 3 percent.<sup>311</sup> New York City also imposes an additional charge on the rental of hotel rooms that ranges from \$0.50 to \$2 per day on rentals costing more than \$40 per night.<sup>312</sup>

Local governments levying the hotel occupancy tax are responsible for collecting and administering the tax, which results in a mixture of similarities and differences across local jurisdictions. Tax returns and remittance of the tax are typically due quarterly.<sup>313</sup> The record keeping retention requirement and statute of limitations for the hotel occupancy tax in New York City and Westchester County are both three years, which also matches the state sales tax requirements.<sup>314</sup> The time period to appeal a deficiency notice, however, depends on the county or the municipality. For example, New York City permits a taxpayer 90 days after receiving a

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<sup>307</sup> N.Y. Comp. Codes R. & Regs. tit. 20, § 527.9(a); N.Y.C. Admin. Code § 11-2502(a)(3); Westchester County, N.Y. Admin. Code § 285.02.

<sup>308</sup> N.Y.C. Admin. Code § 11-2501(8).

<sup>309</sup> Westchester County, N.Y. Admin. Code § 285.01(f).

<sup>310</sup> N.Y.C. Admin. Code § 11-2502(a).

<sup>311</sup> N.Y.C. Admin. Code § 11-2502(a)(3); Westchester County, N.Y. Admin. Code § 285.02.

<sup>312</sup> N.Y.C. Admin. Code § 11-2502(a)(2).

<sup>313</sup> N.Y.C. Admin. Code § 11-2504(a); Westchester County, N.Y. Admin. Code § 285.09(1).

<sup>314</sup> N.Y. Tax Law §§ 1135(g); 1147(b); N.Y.C. Admin. Code §§ 11-2503(a); 11-2517(b); Westchester County, N.Y. Admin. Code §§ 285.08; 285.22(2).

deficiency notice to file an appeal,<sup>315</sup> whereas Westchester County permits only 30 days to file an appeal once a deficiency notice is received.<sup>316</sup>

In 2014, New York City generated \$541.3 million in receipts from the hotel occupancy tax.<sup>317</sup> During the same period, Westchester County raised \$5.6 million in hotel tax receipts.<sup>318</sup>

Local New York jurisdictions generally provide useful information on the administration of the local hotel taxes, including returns, rates, and other pertinent information, but there is no centralized source of information on localities imposing the tax or the rate at which it is levied.

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<sup>315</sup> N.Y.C. Admin. Code § 11-2506.

<sup>316</sup> Westchester County, N.Y. Admin. Code § 285.11.

<sup>317</sup> N.Y.C. Office of Comptroller, *N.Y.C Comprehensive Annual Financial Report of the Comptroller* (Oct. 29, 2014), available at <http://comptroller.nyc.gov/wp-content/uploads/documents/CAFR2014.pdf>.

<sup>318</sup> Westchester County, N.Y. Finance, *Comprehensive Annual Financial Report 2014* (June 22, 2015), available at: <http://finance.westchestergov.com/images/stories/pdfs/CAFR/2014CAFR.pdf>.

## North Carolina

### Prepared Food and Beverage Tax

North Carolina law permits certain counties and cities to impose a tax on the sale of prepared food and beverages sold at retail for consumption on or off the premises. The tax is in addition to the state sales tax and other taxes levied on prepared food.<sup>319</sup>

Exemptions from the prepared food and beverage tax identified during the review of various municipal ordinances, include:

- Food exempt under the state sales tax;<sup>320</sup>
- Retail sales by grocery stores or other diversified retail establishments *other than* sales of prepared foods and beverages in the delicatessen or similar department of the grocery store;<sup>321</sup>
- Prepared food and beverages furnished without charge to an employee by an employer;<sup>322</sup> and
- Bakery items sold without eating utensils by an “artisan bakery.”<sup>323</sup>

The local general tax rate on prepared food and beverage is 1 percent.<sup>324</sup> Although each jurisdiction is responsible for administering its own tax, the state authorizing statutes require that the general provisions, general administration, and penalties and remedies of the state sales tax be applied in administering the tax.<sup>325</sup> One area of inconsistency between local and state administration is in return and remittance due dates. Specifically, the state sales tax return is due on the 20<sup>th</sup> of the

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<sup>319</sup> Town of Hillsborough, N.C. Ordinance § 8-60.

<sup>320</sup> *Id.* § 8-61.

<sup>321</sup> Cumberland County, N.C. Ordinance § 7-328.

<sup>322</sup> *Id.* § 7-328.

<sup>323</sup> Wake County, N.C. Revenue Dep’t, *Prepared Food & Beverage Tax*, available at <http://www.wakegov.com/tax/business/preparedfood/Pages/default.aspx>. Wake County defines an artisan bakery as a bakery that derives over 80 percent of its gross receipts from bakery items and whose annual gross receipts, combined with the gross receipts of all related persons, as defined by law, do not exceed \$1,800,000 (last visited Sept. 14, 2015).

<sup>324</sup> Town of Hillsborough, N.C. Ordinance § 8-60(a); Wake County, N.C. Prepared Food & Beverage Tax Return, Mecklenburg County, N.C. Prepared Food & Beverage Tax Return.

<sup>325</sup> Town of Hillsborough, N.C. Ordinance § 8-60(c); N.C. 1993 S.L. Chapter 449, S.B. 808, Sec. 1(b).

month following the reporting period, which is followed by Wake County and Mecklenburg County.<sup>326</sup> The City of Hillsborough, by contrast, requires the return and remittance on the 25<sup>th</sup> day of the following month.<sup>327</sup>

The prepared food and beverage tax is currently imposed only in the counties of Cumberland, Dare, Mecklenburg, and Wake, as well as the Town of Hillsborough, out of 100 counties and more than 500 municipalities in North Carolina.<sup>328</sup> In fiscal year 2014, Wake County received approximately \$22 million from the prepared food and beverage tax.<sup>329</sup>

The North Carolina Department of Revenue and the local jurisdictions provide little information on the imposition of the prepared food and beverage tax. The listing of jurisdictions imposing the tax was obtained from a trade association. In addition, not all local jurisdictions provide complete municipal codes, and the codes of those jurisdictions that do publish are typically not extensive on the subject matter.

## **Lodging Tax**

North Carolina allows counties and municipalities to levy an occupancy tax on lodging. The room occupancy tax applies to the same gross receipts as the state sales tax on accommodations and is calculated in the same manner as that tax.<sup>330</sup> The tax does not apply to private residences that are rented for fewer than 15 days in a calendar year or to accommodations rented to the same person for a period of 90 or more continuous days. It also does not apply to an accommodation arranged or provided to a person by a school, camp, or similar entity where a tuition or fee is charged to the person for enrollment in the program.<sup>331</sup> The state statute is silent on the minimum and maximum occupancy tax rate that may be imposed by a local government. No combination of county and

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<sup>326</sup> N.C. Gen. Stat. § 105-164.16(b1); Wake County, N.C. Prepared Food & Beverage Tax Return, Mecklenburg County, N.C. Prepared Food & Beverage Tax Return.

<sup>327</sup> Town of Hillsborough, N.C. Ordinance § 8-63.

<sup>328</sup> N.C. Restaurant & Lodging Associate, *North Carolina Meals Taxes*, available at <http://www.ncrla.org/?page=MealsTax> (last visited Sept. 15, 2015).

<sup>329</sup> Wake County Basic Financial Statement, Wake County Board of Commissioners, p. 31 (Dec. 1, 2014), available at [http://www.wakegov.com/finance/annualreports/Documents/FY2014/02.3\\_Basic%20Finanicial%20Statements.pdf](http://www.wakegov.com/finance/annualreports/Documents/FY2014/02.3_Basic%20Finanicial%20Statements.pdf).

<sup>330</sup> N.C. Gen. Stat. § 105-164.4(a)(3).

<sup>331</sup> *Id.* § 105-164.4F.

city occupancy taxes exceeds 6 percent, with the exception of Mecklenburg, which levies an 8 percent tax.<sup>332</sup>

Although state law requires that the tax be administered by the local jurisdiction imposing the tax, the return and tax remittance due dates, interest and penalties, and the discount provided operators of lodging facilities for collecting and remitting the tax are specified in state law.<sup>333</sup>

There are approximately 80 counties and 79 municipalities that impose the local occupancy tax in North Carolina.<sup>334</sup> Mecklenburg County reported about \$40.8 million in revenue from the occupancy tax in 2013. For the same period, the City of Greensboro reported about \$4 million in revenue.<sup>335</sup>

There is no regularly available listing of jurisdictions imposing the tax and the rate at which it is imposed. Local jurisdiction websites provide some information, and local ordinances are available from third-party municipal code compilations.

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<sup>332</sup> A Profile of North Carolina Occupancy Taxes and Their Allocations, Updated and Revised for 2014, *available at* [http://c.ymcdn.com/sites/www.ncrla.org/resource/resmgr/Advocacy/nc-occupancy-tax-profile\\_red.pdf](http://c.ymcdn.com/sites/www.ncrla.org/resource/resmgr/Advocacy/nc-occupancy-tax-profile_red.pdf) (last visited Sept. 15, 2015).

<sup>333</sup> N.C. Gen. Stat. § 160A-215.

<sup>334</sup> A Profile of North Carolina Occupancy Taxes and Their Allocations, Updated and Revised for 2014, *available at* [http://c.ymcdn.com/sites/www.ncrla.org/resource/resmgr/Advocacy/nc-occupancy-tax-profile\\_red.pdf](http://c.ymcdn.com/sites/www.ncrla.org/resource/resmgr/Advocacy/nc-occupancy-tax-profile_red.pdf) (last visited Sept. 15, 2015).

<sup>335</sup> *Id.*

## Ohio

### Hotel Tax

An Ohio municipal corporation, township, or county may levy a tax on lodging provided to transient guests.<sup>336</sup> This tax is in addition to the state sales tax on accommodations.<sup>337</sup> Although the state sales tax on lodging is imposed only on establishments in which five or more rooms are used for guest accommodations,<sup>338</sup> state law permits local lodging taxes to be imposed on establishments with fewer than five rooms.<sup>339</sup> The applicable state definition of a transient guest means no tax is required when a guest occupies a room for 30 or more consecutive days.<sup>340</sup> No general exemptions are prescribed by state law; however, certain exemptions are prescribed by local ordinance. For example, the City of Cleveland exempts transactions of lodging furnished to the federal government, the State of Ohio, or any of its political subdivisions.<sup>341</sup> The City of Cincinnati likewise exempts rents paid by the State of Ohio and its political subdivisions, as well as rents of less than \$2 per day.<sup>342</sup>

Ohio law limits the local tax on lodging to 3 percent,<sup>343</sup> but there are numerous special taxes that can result in a higher effective tax on accommodations. A municipality or township may levy an additional lodging tax of up to 3 percent for a convention and visitors' bureau.<sup>344</sup> In addition, various special county lodging taxes have been authorized under state law.<sup>345</sup> Thus, while the maximum rate permitted in many locations is 6 percent, the maximum combined municipal and

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<sup>336</sup> Ohio Rev. Code Ann. § 5739.08(A), (C).

<sup>337</sup> *Id.*; see Ohio Rev. Code Ann. § 5739.02.

<sup>338</sup> *Id.* § 5739.01(M).

<sup>339</sup> *Id.* § 5739.09(G).

<sup>340</sup> *Id.* § 5739.01(N).

<sup>341</sup> City of Cleveland, Ohio Ordinances § 193.03(c)(1); City of Cincinnati, Ohio Ordinances § 312-5.

<sup>342</sup> City of Cincinnati, Ohio Ordinances § 312-5.

<sup>343</sup> Ohio Rev. Code Ann. §§ 5739.08(A); (C).

<sup>344</sup> *Id.* §§ 5739.08(B), 5739.09.

<sup>345</sup> *Id.* § 5739.09.

county rates sometimes exceed 6 percent. For example, the highest combined rate in Lucas County is currently 10 percent.<sup>346</sup> At least ten counties have enacted special county lodging taxes.<sup>347</sup>

Pursuant to state law, local jurisdictions may prescribe regulations necessary for administration of the tax to include establishing the time for payment of the tax, prescribing penalties not to exceed 10 percent of the tax due, and setting interest on unpaid taxes at a rate not to exceed the rate applied to taxes administered by the state.<sup>348</sup> Administration of the tax differs slightly from jurisdiction to jurisdiction. For example, Cincinnati imposes interest at a rate of 1 percent per month, while Cleveland imposes interest at a rate of 1.5 percent per month.<sup>349</sup> Cincinnati tax reports are due on the last day of the month following the close of each calendar quarter, while Cleveland tax reports are due on the last day of the month for the preceding month.<sup>350</sup> Local ordinances further provide appeal procedures and record-keeping requirements. For example, Cincinnati requires each lodging establishment to maintain its tax records and any records that show payment of the tax due for three years.<sup>351</sup> An operator may appeal a notice that it receives within 15 days of the serving or mailing of the determination of tax due.<sup>352</sup>

As of 2013, 67 counties, 139 townships, and 204 municipalities in Ohio imposed local lodging taxes.<sup>353</sup> In 2013, counties, townships, and municipalities reported collecting \$159.8 million in lodging tax revenues.<sup>354</sup> Information on local lodging taxes is published periodically by the Ohio Department of Taxation, but a regularly updated listing is not available on its website.

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<sup>346</sup> Lucas County, Ohio Hotel/Motel Transient Occupancy Tax.

<sup>347</sup> 2013 Brief Summary of Ohio's Taxes – Lodging Tax, *available at* [http://www.tax.ohio.gov/Portals/0/communications/publications/brief\\_summaries/2013\\_Brief\\_Summary/2013\\_BSO\\_T\\_Section3\\_Lodging\\_Tax.pdf](http://www.tax.ohio.gov/Portals/0/communications/publications/brief_summaries/2013_Brief_Summary/2013_BSO_T_Section3_Lodging_Tax.pdf) (Counties of Ashtabula, Cuyahoga, Fairfield, Franklin, Guernsey, Hamilton, Lucas, Muskingum, Ross, Summit, Trumbull) (last visited on Sept. 9, 2015).

<sup>348</sup> Ohio Rev. Code Ann §§ 5739.09(A)(1); (B)(1).

<sup>349</sup> City of Cincinnati, Ohio Ordinances § 312-11; City of Cleveland, Ohio Ordinances § 193.12.

<sup>350</sup> City of Cincinnati, Ohio Ordinances § 312-11; City of Cleveland, Ohio Ordinances § 193.07.

<sup>351</sup> City of Cleveland, Ohio Ordinances § 312-19.

<sup>352</sup> *Id.* § 312-17.

<sup>353</sup> 2015 Annual Report Lodging Tax, *available at* [http://www.tax.ohio.gov/Portals/0/communications/publications/annual\\_reports/2015\\_annual\\_report/2015\\_AR\\_Section\\_5\\_Lodging\\_Tax.pdf](http://www.tax.ohio.gov/Portals/0/communications/publications/annual_reports/2015_annual_report/2015_AR_Section_5_Lodging_Tax.pdf) (last visited on Feb. 3, 2016).

<sup>354</sup> 2013 Brief Summary of Ohio's Taxes – Lodging Tax, *available at* [http://www.tax.ohio.gov/Portals/0/communications/publications/brief\\_summaries/2013\\_Brief\\_Summary/2013\\_BSO\\_T\\_Section3\\_Lodging\\_Tax.pdf](http://www.tax.ohio.gov/Portals/0/communications/publications/brief_summaries/2013_Brief_Summary/2013_BSO_T_Section3_Lodging_Tax.pdf) (last visited on Sept. 9, 2015).

## Amusement Tax

State law authorizes Ohio municipalities to levy a tax on amounts received for admission to any place.<sup>355</sup> The state does not impose a similar tax on admissions. Authority for the tax derives from the general powers of municipal entities with little guidance or limitation, which results in the imposition language and exemptions varying among jurisdictions. We reviewed the amusement tax ordinances for Cleveland and Cincinnati for this report.

Both cities impose tax on amounts paid for admission to any place, including admission by season ticket or subscription.<sup>356</sup> The two cities specifically impose tax on admissions in the form of service charges or cover charges and on annual golf membership dues.<sup>357</sup> The Cleveland ordinance further specifically imposes a tax on the mark-up charged on certain ticket prices by third-party sellers.<sup>358</sup> Generally, the amusement tax applies to admissions to events that occur within taxing jurisdiction regardless of whether the sale of the admission is made outside the jurisdiction.<sup>359</sup> Both Cleveland and Cincinnati exempt certain admissions including those that exclusively benefit religious, educational or charitable institutions, as well as those benefitting persons in the armed forces of the United States.<sup>360</sup> Each jurisdiction provides various other exemptions and has differing language for exceptions to those exemptions. For example, Cleveland exempts admissions to small capacity live entertainment venues with an occupant load of less than 150 people.<sup>361</sup> Cincinnati exempts the first \$1.05 of admissions.<sup>362</sup> Tax rates range from 0.5 percent to as high as 8 percent, with the majority of jurisdictions imposing a 3 percent rate.<sup>363</sup>

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<sup>355</sup> Ohio Rev Code Ann. § 715.013(B)(1).

<sup>356</sup> City of Cleveland, Ohio Ordinances § 195.02(a); City of Cincinnati, Ohio Ordinances § 309-3(a).

<sup>357</sup> City of Cleveland, Ohio Ordinances §§ 195.02(c)-(d); City of Cincinnati, Ohio Ordinances §§ 309-3(b)-(c).

<sup>358</sup> *Id.* § 195.02(b).

<sup>359</sup> *See* City of Cleveland, Ohio Ordinances § 195.02.

<sup>360</sup> City of Cleveland, Ohio Ordinances §§ 195.03(a)(1)-(2); City of Cincinnati, Ohio Ordinances § 309-5(d).

<sup>361</sup> *Id.* § 195.03(a)(5).

<sup>362</sup> City of Cincinnati, Ohio Ordinances § 309-5(c).

<sup>363</sup> *Id.*; City of Cleveland, Ohio Ordinances § 195.02 (8% rate applies to amounts paid for admission to any place including the admission by season ticket or subscription; lower rates apply to small capacity live entertainment venues and museums on land leased by the City); City of Cincinnati, Ohio Ordinances § 309-3 (3% rate applies to amounts paid for admission to any place in the City).

The amusement taxes are locally administered by each jurisdiction.<sup>364</sup> Local ordinances provide for the administration of the tax, including collection and remittance of the tax, appeal procedures, and record keeping requirements. Cleveland provides that returns and remittances are due by the 30<sup>th</sup> day of the month following the end of the month in which the tax is collect or received.<sup>365</sup> Cleveland taxpayers are required to keep records for a period of five years,<sup>366</sup> but the statute of limitations to assess tax is the later of three years after the return due date or the date the return is filed.<sup>367</sup> A taxpayer may appeal a ruling issued by the commissioner of assessments to the Board of Review within 30 days of the ruling.<sup>368</sup> A taxpayer may appeal the decision of the Board of Review to the court of common pleas.<sup>369</sup> Further, Cleveland provides that the information gained from the returns is treated as confidential and is not to be disclosed except in accordance with a proper judicial order or in connection with the performance of a person's official duties or the official business Cleveland.<sup>370</sup>

According to the most recent state amusement tax publication, 63 municipalities levied the tax in 2013, resulting in \$26.3 million of revenues.<sup>371</sup> There is no centrally available, regularly updated source of information on which cities levy the tax or the rate at which it is imposed.

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<sup>364</sup> 2013 Brief Summary of Ohio's Taxes – Admissions Tax.

<sup>365</sup> City of Cleveland, Ohio Ordinances § 195.04(b)(1); City of Cincinnati, Ohio Ordinances § 309-9 (City of Cincinnati likewise has monthly reporting, but reports are due on the 20<sup>th</sup> day of the month).

<sup>366</sup> City of Cleveland, Ohio Ordinances § 195.31; City of Cincinnati, Ohio Ordinances § 309-11 (3-year recordkeeping requirement).

<sup>367</sup> City of Cleveland, Ohio Ordinances § 195.05.

<sup>368</sup> *Id.* § 195.16.

<sup>369</sup> *Id.*

<sup>370</sup> City of Cleveland, Ohio Ordinances § 195.17.

<sup>371</sup> 2015 Annual Report – Admissions Tax, available at [http://www.tax.ohio.gov/Portals/0/communications/publications/annual\\_reports/2015\\_annual\\_report/2015\\_AR\\_Section\\_5\\_Admissions\\_Tax.pdf](http://www.tax.ohio.gov/Portals/0/communications/publications/annual_reports/2015_annual_report/2015_AR_Section_5_Admissions_Tax.pdf) (last visited on Feb. 3, 2016).

## Oklahoma

### Occupancy Tax

Oklahoma permits municipalities and counties with a population of less than 200,000 residents to levy an occupancy tax on lodging.<sup>372</sup> The local lodging tax applies generally to the same accommodations that are subject to the state sales tax on accommodations<sup>373</sup> with the exception that counties are prohibited from taxing campsites.<sup>374</sup> In contrast to the state sales tax that applies to accommodations without regard to the length of a guest's stay,<sup>375</sup> local lodging taxes may exempt transactions involving guests that occupy an accommodation exceeding 30 days.<sup>376</sup> Municipalities may also provide exemptions to: (1) the United States government or any agency or division when paid directly by the United States government; (2) the State of Oklahoma or any political subdivision when paid directly by the State of Oklahoma or the respective subdivision; (3) any public school or state-accredited private school when paid directly by the school, provided that its primary purpose is not carrying on a for-profit business; and (4) any church when paid directly by the church, provided that its primary purpose is not carrying on a for-profit business.<sup>377</sup>

While the state-administered county lodging tax<sup>378</sup> may not exceed 5 percent,<sup>379</sup> there is no limitation on the rate at which a municipality may impose a lodging tax.<sup>380</sup> For municipalities that do impose the tax, the rates are reported to range from 2 percent to 5.5 percent, with the highest rate being in Oklahoma City.<sup>381</sup> If a county and a municipality within the county have both enacted a lodging tax, the county lodging tax will not apply.<sup>382</sup>

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<sup>372</sup> Okla. Stat. tit. 68, §§ 1370.9; 2701.

<sup>373</sup> *Id.* §§ 1354(7), 1370.9(A), 2701.

<sup>374</sup> *Id.* § 1370.9(A).

<sup>375</sup> Okla. Admin. Code § 710:65-19-143(a).

<sup>376</sup> Okla. City, Okla. Mun. Code § 52-64.1(a)(1).

<sup>377</sup> *Id.* § 52-64.1(a)(2)-(5).

<sup>378</sup> Okla. Stat. tit. 68, § 1371.

<sup>379</sup> *Id.* § 1370.9(A).

<sup>380</sup> *Id.* § 2701.

<sup>381</sup> Otie Lansford & Mike Woods, *Hospitality or Lodging Taxes as a Source of Revenue for Tourism Economic Development Efforts*, Oklahoma State University; Okla. City, Okla. Mun. Code § 52-63.1.

<sup>382</sup> Okla. Stat. tit. 68, § 1370.9(B).

Oklahoma law accords municipalities' substantial autonomy in the administration, enforcement, and collection of lodging taxes, with the result being some differences between the local lodging tax and the state sales tax with respect to administration.<sup>383</sup> For example, state sales tax returns are due on the 20<sup>th</sup> of each month with the payment required on the 1<sup>st</sup> of each month.<sup>384</sup> However, Oklahoma City requires the report and payment of the city lodging tax on the 15<sup>th</sup> of each month.<sup>385</sup>

There is no central source of information regarding locally administered city lodging taxes. One published report indicates that over 40 municipalities and 13 counties levy a lodging tax, with all 13 counties and two municipalities being administered by the Oklahoma Tax Commission.<sup>386</sup> In fiscal year 2015, Oklahoma City collected roughly \$14.5 million in lodging taxes.<sup>387</sup> Local jurisdiction websites did provide useful information, such as local ordinances and information on the tax.

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<sup>383</sup> *Id.* § 2703.

<sup>384</sup> *Id.* § 1365(A).

<sup>385</sup> Okla. City, Okla. Mun. Code § 52-69(a).

<sup>386</sup> *Jered T. Davidson, Sweet Dreams: Revenue Opportunities and Collection Challenges for Municipal Lodging Taxes in Oklahoma*, Okla. Bar J., Vol. 86, No. 8 (Mar. 14, 2015).

<sup>387</sup> *Okla. City, Okla., Comprehensive Annual Financial Report for Fiscal Year ended June 30, 2015*, Okla. City, Okla. Finance Department (Dec. 4, 2015).

## Oregon

### Transient Lodging Tax

Oregon authorizes units of local government<sup>388</sup> to levy a tax on the privilege of occupancy in transient lodging.<sup>389</sup> The state imposes a similar tax. Transient lodging for state and local purposes is defined to include hotels, spaces used for parking recreational vehicles or erecting tents during periods of human occupancy, and houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units, that are used for temporary human occupancy.<sup>390</sup>

There are several exemptions from the state transient occupancy tax. Localities appear generally to follow the state exemptions, but have latitude to vary from them. For example, the state transient lodging tax exempts lodging stays of more than 30 consecutive days. At least one local jurisdiction exempts lodging stays of over 27 consecutive days.<sup>391</sup> Local jurisdictions also provide threshold rental amounts not incorporated in the state tax code. In Clackamas, rents of \$15 per day or less are not taxable, whereas in Salem rents of less than \$2 per day are not taxable.<sup>392</sup> Additionally, certain jurisdictions exempt employees and officials of foreign and or domestic governments.<sup>393</sup>

State law does not limit the rate at which the tax may be imposed by local jurisdictions, and transient lodging tax rates generally range from 3 to 12 percent.<sup>394</sup> With certain limitations, any jurisdiction that did not impose the transient lodging tax prior to July 1, 2003, is prohibited from enacting the tax, and any jurisdiction that had previously enacted the tax is no longer permitted to

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<sup>388</sup> “Unit of local government” is not defined in the transient lodging tax code. The term is defined elsewhere in Oregon’s state statute as including a county, city, district or other public corporation, commission, authority or entity organized and existing under statute or city or county charter. Or. Rev. Stat. § 190.003.

<sup>389</sup> Or. Rev. Stat. § 320.345.

<sup>390</sup> *Id.* § 320.300(11).

<sup>391</sup> *Id.* § 320.308; Clackamas, Or. Ordinances § 8.02.060; City of Salem, Or. Ordinances § 37.060.

<sup>392</sup> *Id.* [This citation cannot be “id” – need full citation]

<sup>393</sup> *Id.*

<sup>394</sup> Or. Dep’t of Revenue, Local City and County Room Tax Contact Information (Rev. Oct. 2015), *available at* [http://www.oregon.gov/dor/BUS/docs/local-city-county-room-tax\\_604-100.pdf](http://www.oregon.gov/dor/BUS/docs/local-city-county-room-tax_604-100.pdf).

increase the tax rate unless at least 70 percent of the net revenue from the tax is used to fund tourism promotion or finance debt related to tourism promotion and tourism-related facilities.<sup>395</sup>

Oregon law is silent on matters of administration and procedure, which makes local jurisdictions responsible for administration of the tax.<sup>396</sup> For example, the state return due date is on or before the last day of the month following the end of the calendar quarter.<sup>397</sup> Clackamas requires the return and payment on or before the 15th day of the month following the month in which the tax was collected, and returns are delinquent on the last day of the month in which they are due.<sup>398</sup> Salem provides that the return and payment are due on the 15th day of the month following the month in which the tax was collected and are delinquent on the 20th day of the month in which they are due.<sup>399</sup> At least two jurisdictions follow similar rules to protest deficiency assessments, requiring that taxpayers appeal a deficiency within ten days of receiving a notice of deficiency and allowing taxpayers at least one additional appeal beyond the tax administrator to the local governing boards.<sup>400</sup>

As of June 2015, 32 Oregon counties and 92 cities imposed transient lodging taxes.<sup>401</sup> Data on transient tax collections is not readily available, but a survey of Oregon local governments in 2008 estimated that transient tax collections totaled roughly \$100 million.<sup>402</sup> Local jurisdiction websites generally lack information on the hotel tax, but the local ordinances are available from third-party municipal code compilations.

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<sup>395</sup> Or. Rev. Stat. § 320.350(1)-(5).

<sup>396</sup> Clackamas, Or. Ordinances § 8.02.150(C); City of Salem, Or. Ordinances § 37.160(c).

<sup>397</sup> Or. Rev. Stat. § 320.315(1).

<sup>398</sup> Clackamas, Or. Ordinances § 8.02.080(A)-(B).

<sup>399</sup> City of Salem, Or. Ordinances § 37.080(a)-(b).

<sup>400</sup> Clackamas, Or. Ordinances § 8.02.110(A), 8.02.110(A)(4); City of Salem, Or. Ordinances § 37.110(a), 37.110(a)(4).

<sup>401</sup> Or. Dep't of Revenue, Local City and County Room Tax Contact Information (Rev. Oct. 2015), *available at* [http://www.oregon.gov/DOR/forms/FormsPubs/local-city-county-room-tax\\_604-100.pdf](http://www.oregon.gov/DOR/forms/FormsPubs/local-city-county-room-tax_604-100.pdf).

<sup>402</sup> Local Transient Lodging Tax Survey, Oregon Tourism Commission (Sept. 5, 2015), *available at* <http://industry.traveloregon.com/content/uploads/2013/02/finaltltsurveyresults.pdf>.

## Pennsylvania

### Hotel Occupancy Tax

Pennsylvania imposes a state-level hotel occupancy tax rather than a sales tax on lodging.<sup>403</sup> Counties may also impose a hotel occupancy tax. To impose the tax, the county must have a “recognized tourist promotion agency”<sup>404</sup> and receipts from the local tax must be provided to this agency which must use the funds to market the county as a leisure or business travel destination. The state and county hotel tax statutes similarly define the term “hotel” to mean establishments that provide temporary overnight lodging.<sup>405</sup> County hotel taxes are limited to sleeping rooms or living quarters,<sup>406</sup> while the state tax also applies to “function rooms, meeting rooms, banquet and dining rooms, ballrooms, theaters, auditoriums, kitchens, offices, lobby space, garage facilities and commercial establishments.”<sup>407</sup>

In general, the maximum county hotel tax is limited to 3 percent of the consideration received from renting a room to temporary residents.<sup>408</sup> However, various state statutes permit certain counties to impose rates up to 7 percent — depending on factors such as population or the existence of a convention center. In addition, the imposition of other taxes can affect the hotel tax rate. For example, the state legislature permits second-class counties to increase the hotel tax by 2 percent, but requires a reduction of 1.5 percent of the hotel tax increase if the county opts to increase its local sales and use tax by 0.5 percent.<sup>409</sup>

State law authorizes counties to adopt ordinances governing administration of the tax. Specifically, counties may “by ordinance impose requirements for keeping of records, the filing of tax returns

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<sup>403</sup> 72 Pa. Stat. Ann. §§ 7210, 7202. Note that both the state hotel occupancy tax and the state sales tax are 6 percent.

<sup>404</sup> 16 Pa. Stat. Ann. §§ 1770.2(a), 1770.6(c).

<sup>405</sup> Compare 61 Pa. Code § 38.3 (state definition), with Pa. Cons. Stat. Ann. § 8721(h) (county definition (second class counties)).

<sup>406</sup> 16 Pa. Stat. Ann. § 1770.2(f) (definition of “room”).

<sup>407</sup> 61 Pa. Code § 38.1(c).

<sup>408</sup> 16 Pa. Stat. Ann. §§ 1770.2(a), 1770.6.

<sup>409</sup> *Id.* § 3000.3054(i).

and the time and manner of collection and payment of tax.”<sup>410</sup> Counties may decide when returns are due; however, they can be due no more frequently than monthly and no less than quarterly.<sup>411</sup>

While state law grants counties flexibility in administering the tax, counties must still comply with the Local Taxpayer’s Bill of Rights (LTBR), which requires counties to adopt rules establishing the rights and obligations of the county and taxpayers regarding audits, administrative appeals, refunds, and enforcement and collection actions.<sup>412</sup> For example, the LTBR requires counties to permit taxpayers to appeal any decision of the local taxing authority by filing a petition for reassessment within 90 days of the date of the assessment notice. Counties must allow a taxpayer at least 30 days to respond to requests for information.<sup>413</sup> The LTBR sets the period of limitations for refunds at three years after the due date for filing the report or one year after payment of the tax, whichever is later.<sup>414</sup> A county must pay interest on overpayments at the same rate the state is required to pay.<sup>415</sup>

The Pennsylvania Department of Community and Economic Development reports that 60 counties imposed a hotel tax as of December 2015.<sup>416</sup> In 2013, Allegheny County (which includes Pittsburgh) raised about \$5 million through its hotel taxes.<sup>417</sup> Certain local jurisdictions publish information about the tax on their websites, and local ordinances are available from third-party municipal code compilations. The Pennsylvania Department of Community and Economic Development provides a centralized source of information on which jurisdictions impose the local hotel occupancy tax, the rates imposed, and the revenue generated by each jurisdiction.

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<sup>410</sup> 16 Pa. Stat. Ann. § 1770.2(b).

<sup>411</sup> *Id.* § 2399.72(j).

<sup>412</sup> 53 Pa. Cons. Stat. § 8421 *et seq.*

<sup>413</sup> *Id.* § 8424.

<sup>414</sup> *Id.* § 8425.

<sup>415</sup> *Id.* § 8426.

<sup>416</sup> Municipal Statistics Reports, Annual Financial Report, available at [http://munstats.pa.gov/Reports/ReportInformation2.aspx?report=CountyTaxSummary\\_Dyn\\_Excel](http://munstats.pa.gov/Reports/ReportInformation2.aspx?report=CountyTaxSummary_Dyn_Excel) (last visited Feb. 3, 2016). There are currently 67 counties in Pennsylvania.

<sup>417</sup> Municipal Statistics Reports, Annual Financial Report, available at <http://munstats.pa.gov/Reports/ReportInformation2.aspx?report=cAfrForm> (last visited Feb. 3, 2016).

## Amusement Tax

The Pennsylvania sales tax does not apply to admission and entertainment charges.<sup>418</sup>

Municipalities may not tax the privilege of employing tangible personal property for amusement purposes.<sup>419</sup> However, municipalities may tax sales of admission to places of amusement.<sup>420</sup>

Philadelphia defines amusement as:

any theatrical or operatic performance, concerts, motion picture shows, vaudeville, circuses, carnivals, side shows, exhibitions, shows, displays, dancing, all forms of entertainment at fair grounds, amusement parks and athletic contests, including wrestling matches, boxing and sparring exhibitions, baseball, football and basketball games, golfing, tennis, hockey, archery and shooting, where a charge, donation, contribution or monetary charge of any character is made for admission.<sup>421</sup>

Certain specific state statutory exemptions exist. For instance, admissions to ski facilities are exempt.<sup>422</sup> Further, a tax may not be levied on admission to professional baseball events “in a city of the third class with a population of not less than [106,000] and not more than [107,000] based on the 2000 Federal decennial census.”<sup>423</sup> Admissions to golf courses, while subject to a tax of not more than 10 percent, may not be taxed at more than 40 percent of the “green fees.”<sup>424</sup> Only second-class cities (i.e., Pittsburgh) may levy a tax (up to 10 percent) on movie theatre admissions.<sup>425</sup> The City of Pittsburgh imposes such a tax.<sup>426</sup> Nonetheless, Philadelphia (a first class city) imposes its amusement tax on “motion picture shows.”<sup>427</sup>

In addition to these state-required limitations, municipalities may adopt additional exemptions. For instance, Pittsburgh generally exempts “private annual affairs sponsored by nonprofit

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<sup>418</sup> 72 Pa. Stat. Ann. § 7201(k).

<sup>419</sup> 53 Pa. Cons. Stat. § 6924.301.1(f)(3).

<sup>420</sup> *Id.*

<sup>421</sup> Phila., Pa. Code § 19-603.

<sup>422</sup> 72 Pa. Stat. Ann. §§ 5020-201.3; 5020-203.3. Previously, the tax was limited to 50 percent of the cost of the lift ticket. 53 Pa. Cons. Stat. § 6924.311(9).

<sup>423</sup> 53 Pa. Cons. Stat. § 6924.301.1(f)(3). The exemption appears to be aimed at one or more of the minor league teams in the state.

<sup>424</sup> 53 Pa. Cons. Stat. § 6924.311(10).

<sup>425</sup> *Id.* § 6924.311(6).

<sup>426</sup> Pittsburgh, Pa. Code § 241.01; City of Pittsburgh Amusement Tax Regulations, Sec. 201 (effective Jan. 1, 2006).

<sup>427</sup> Phila., Pa. Code § 19-603.

organizations for members and their guests” when the admission charges approximate the expenses.<sup>428</sup> Philadelphia exempts “persons participating in any athletic game or contest,” “legitimate theater shows,” and entertainment where the proceeds go to defined charitable causes, the armed forces, or police or fire departments.<sup>429</sup>

Generally, the amusement tax rate may not exceed 10 percent,<sup>430</sup> but there are certain limits based on when a jurisdiction enacted its tax.<sup>431</sup> Both Philadelphia and Pittsburgh impose an amusement tax of 5 percent.<sup>432</sup>

The state code does not provide uniform administrative provisions for municipal amusement taxes. For instance, the state does not require municipalities to have a specific return due date, audit procedures, recordkeeping requirements, statutes of limitations, or appeals procedures. This lack of guidance results in variation among municipalities. For instance, Philadelphia requires retailers to submit a return by the 25<sup>th</sup> day of the month following collection of the tax.<sup>433</sup> In Pittsburgh, the return is due the 15<sup>th</sup> day of the month following collection.<sup>434</sup> Moreover, some jurisdictions provide rules for places of amusement that are temporary in nature, such as a circus. Philadelphia requires that returns from temporary places of amusement must be paid within five days after the performance.<sup>435</sup> Pittsburgh has not developed rules for temporary events.

Amusement taxes are subject to the LTBR, in the same fashion as the county hotel tax.<sup>436</sup> Thus, municipalities must adopt rules for administering amusement taxes similar to the rules described earlier for matters such as audits, assessments, appeals, and refunds.

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<sup>428</sup> Pittsburgh, Pa. Code § 241.04; *see also* Amusement Tax Regulation, Section 101.

<sup>429</sup> Phila., Pa. Code § 19-601.

<sup>430</sup> 53 Pa. Cons. Stat. § 6924.311(6).

<sup>431</sup> *Id.* § 8402(c)(2).

<sup>432</sup> Phila., Pa. Code § 19-603(1)(b); Pittsburgh City Code § 241.04(a).

<sup>433</sup> Phila. Pa. Code § 19-604(6)(a)-(b).

<sup>434</sup> Pittsburgh, Pa. Code § 241.05(d).

<sup>435</sup> Phila. Pa. Code § 19-604(6)(a)-(b).

<sup>436</sup> 53 Pa. Cons. Stat. Ann. § 8422(7).

In 2015, 349 municipalities collected an amusement tax.<sup>437</sup> The total amount collected in 2013 was about \$43 million. (Philadelphia collected \$19.1 million.)<sup>438</sup> Philadelphia collected over \$21 million in amusement tax in each of fiscal years 2008 to 2012.<sup>439</sup> In 2014, Pittsburgh collected nearly \$13 million in amusement taxes.<sup>440</sup> Except for some of the large jurisdictions, the local government websites lack information on the admissions and amusement tax, but local ordinances are generally available from third-party municipal code compilations. The Pennsylvania Department of Community and Economic Development provides a centralized source of information on which jurisdictions impose the local amusement tax, the rates imposed, and the revenue generated by each jurisdiction.

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<sup>437</sup> Municipal Statistics Reports, Annual Financial Report, *available at* [http://munstats.pa.gov/Reports/ReportInformation2.aspx?report=taxes\\_Dyn\\_Excel](http://munstats.pa.gov/Reports/ReportInformation2.aspx?report=taxes_Dyn_Excel) (last visited Feb. 3, 2016).

<sup>438</sup> Municipal Statistics Reports, Annual Financial Report, *available at* <http://munstats.pa.gov/Reports/ReportInformation2.aspx?report=StatewideMuniAfr> (last visited Feb. 3, 2016).

<sup>439</sup> City of Philadelphia, Revenue Collections Year By Year Report, *available at* [http://www.phila.gov/Revenue/Reports/researchrevenuereport\\_fy2000thrufy2012.pdf](http://www.phila.gov/Revenue/Reports/researchrevenuereport_fy2000thrufy2012.pdf).

<sup>440</sup> City of Pittsburgh, Statement of Estimated and Actual Revenues by Fund, *available at* [http://apps.pittsburghpa.gov/co/R5609RVFND\\_CPGH000\\_436991\\_PDF.pdf](http://apps.pittsburghpa.gov/co/R5609RVFND_CPGH000_436991_PDF.pdf).

## South Carolina

### Hospitality Tax

South Carolina allows counties and municipalities to impose a local hospitality tax on purchases of prepared food and beverages.<sup>441</sup> This tax is in addition to the state sales tax imposed on prepared foods.<sup>442</sup> The local hospitality tax is imposed on sales of prepared meals and beverages sold in certain establishments, including establishments licensed for on-premise consumption of alcoholic beverages.<sup>443</sup> Counties and municipalities may further define these terms. For example, Richland County defines prepared meals and beverages to include products sold for consumption either on or off premises by businesses including lunch counters, restaurants, and bars.<sup>444</sup> Information on the Richland County website also indicates that covered establishments include convenience stores, grocery stores, festivals, and mobile businesses.<sup>445</sup> State law provides that when breweries sell beer in conjunction with a beer tasting on their licensed premises, they must remit appropriate local hospitality taxes.<sup>446</sup>

In general, counties and municipalities may impose a hospitality tax at a rate up to 2 percent.<sup>447</sup> However, the cumulative rate of county and municipal hospitality taxes may not exceed 2 percent unless the cumulative rate exceeded 2 percent before December 31, 1996, in which case the cumulative rate may not exceed the rate in effect on that date.<sup>448</sup> A county may not impose a hospitality tax in excess of 1 percent within the boundaries of a municipality without the consent, by resolution, of the municipality.<sup>449</sup>

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<sup>441</sup> S.C. Code Ann. § 6-1-720.

<sup>442</sup> S.C. Code Ann. Regs. § 117-337.2(A).

<sup>443</sup> S.C. Code Ann. § 6-1-710.

<sup>444</sup> Richland County, S.C. Code § 23-65.

<sup>445</sup> Richland County, Hospitality Tax Information, *available at* <http://www.richlandonline.com/Businesses/RunningaBusiness/HospitalityTaxInformation.aspx>.

<sup>446</sup> S.C. Code Ann. § 61-4-1515(B)(6).

<sup>447</sup> *Id.* § 6-1-720.

<sup>448</sup> *Id.* § 6-1-740.

<sup>449</sup> *Id.* § 6-1-720.

With the exception of the remittance periods, South Carolina state law provides little detail as to the administration of the tax, leaving that to local determination. However, it appears that local governments have adopted similar ordinances, with the main difference being the level of detail. For instance, the City of Columbia and the Counties of Richland and Greenville each require returns by the 20<sup>th</sup> day of the month after the collection period,<sup>450</sup> which is also the rule for state sales taxes.<sup>451</sup> Local jurisdictions also have similar audit and penalty provisions.<sup>452</sup>

According to the South Carolina Revenue and Fiscal Affairs Office, as of the end of fiscal year 2014, there were 114 municipalities and 15 counties that imposed the South Carolina hospitality tax.<sup>453</sup> Municipalities and counties collected \$111.6 million and \$68.1 million, respectively, in fiscal year 2014.<sup>454</sup>

In general, local jurisdiction websites lack information on the hospitality tax, but local ordinances are commonly available from third-party municipal code compilations. The South Carolina Revenue and Fiscal Affairs Office provides a centralized source of information on which jurisdictions impose the local hospitality tax, the rates imposed, and the revenue generated by each jurisdiction.

### **Accommodations Tax**

South Carolina counties and municipalities may levy a local accommodations tax. The tax is levied on the gross proceeds derived from charges for accommodations furnished to transients, as defined in the state accommodations tax statute.<sup>455</sup> Accommodations subject to tax include any room, campground, residence, or any place in which sleeping accommodations are furnished to transients for a consideration.”<sup>456</sup>

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<sup>450</sup> Columbia, S.C. Code § 20-53; Richland County, S.C. Code § 23-67; Greenville, S.C. Ordinance No. 4079, Section 3.

<sup>451</sup> S.C. Code Ann. § 12-36-2570.

<sup>452</sup> Columbia, S.C. Code § 20-36; Richland County, S.C. Code § 23-71; Greenville, S.C. Ordinance No. 4079, Section 6.

<sup>453</sup> Information was obtained from the South Carolina Revenue and Fiscal Affairs Office. Email received February 2016.

<sup>454</sup> *Id.*

<sup>455</sup> S.C. Code Ann. § 6-1-510.

<sup>456</sup> *Id.* § 12-36-920.

The local accommodations tax references the state accommodations tax exemptions and exclusions. Thus, the local tax does not apply to: gross receipts for sleeping accommodations in an individual's place of abode with less than six sleeping rooms; gross proceeds from renting a room in an individual's residence for less than 15 days in a year; gross proceeds from renting to the same person for 90 days or more; and separately stated, optional charges for amenities, entertainment, or other guest services.<sup>457</sup> Further, while the state also imposes tax at a lesser rate on "additional guest charges," (e.g., room service, dry cleaning, in-room movies), the local tax does not apply to these additional charges.<sup>458</sup> Interestingly, Columbia, Kiawah Island, and Richland County shorten the exemption for a continuous rental period from at least 90 days to 30 days.<sup>459</sup>

In general, counties and municipalities may impose the tax at a rate up to 3 percent.<sup>460</sup> Similar to the hospitality tax, the cumulative rate of county and municipal accommodations taxes is capped at this rate unless the cumulative rate exceeded 3 percent before December 31, 1966.<sup>461</sup> A county may not impose an accommodations tax in excess of 1.5 percent within the boundaries of a municipality without the consent, by resolution, of the municipality.<sup>462</sup>

Besides the remittance periods, state law provides little direction on administration of the tax. The remittance period is determined in the same manner as the hospitality tax, based on estimated tax remittances per month.<sup>463</sup> Interestingly, despite statutory language to the contrary, Columbia, Kiawah Island, and Richland County provide for only monthly returns (due the 20<sup>th</sup> day of the month after the reporting period) and not quarterly or annual returns.<sup>464</sup>

According to the South Carolina Revenue and Fiscal Affairs Office, as of the end of fiscal year 2014, there were 98 municipalities and 24 counties that imposed a locally administered

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<sup>457</sup> *Id.* § 12-36-920(A).

<sup>458</sup> *Id.* §§ 6-1-510, 12-36-920(B).

<sup>459</sup> Columbia, S.C. Code § 20-31; Richland County, S.C. Ordinance No. 96-096HR, § 1.

<sup>460</sup> S.C. Code Ann. § 6-1-520.

<sup>461</sup> *Id.* § 6-1-540.

<sup>462</sup> *Id.* § 6-1-720.

<sup>463</sup> *Id.* § 6-1-570.

<sup>464</sup> Columbia, S.C. Code § 20-33; Kiawah Island, S.C. Code § 4-703(b); Richland County, S.C. Ordinance No. 96-096HR, § VI.

accommodations tax.<sup>465</sup> Columbia, the largest city, reported about \$2 million in revenue from the accommodations tax.<sup>466</sup> Charleston County, the third largest county, reported about \$13.4 million in revenue.<sup>467</sup> Tax collections for fiscal year 2014 for municipalities and counties was \$37 million and \$25.7 million, respectively.<sup>468</sup>

In general, the local jurisdiction websites lack information on the accommodations tax, but local ordinances are available from third-party municipal code compilations. The South Carolina Revenue and Fiscal Affairs Office provides a centralized source of information on which jurisdictions impose the local accommodations tax, the rates imposed, and the revenue generated by each jurisdiction.

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<sup>465</sup> Information was obtained from the South Carolina Revenue and Fiscal Affairs Office. Email received February 2016.

<sup>466</sup> City of Columbia, Comprehensive Annual Financial Report (2014 fiscal year), page 103, *available at* [https://www.columbiasc.net/depts/financial-reporting/cafr/columbia\\_cafr.pdf](https://www.columbiasc.net/depts/financial-reporting/cafr/columbia_cafr.pdf).

<sup>467</sup> Richland County, Comprehensive Annual Financial Report (2014 fiscal year), page 81, *available at* <http://www.richlandonline.com/Portals/0/Departments/Finance/CAFR/CAFR%20FY2014.pdf>.

<sup>468</sup> Information was obtained from the South Carolina Revenue and Fiscal Affairs Office.

## Tennessee

### Lodging Tax

Tennessee imposes the state sales tax on the sale, rental, or charges for any lodging.<sup>469</sup> Tennessee also permits counties and municipalities to levy a privilege tax on lodging.<sup>470</sup> Although not required by state law, local jurisdictions have a tax base nearly identical to the state sales tax due to the adoption of the state definition of hotel.<sup>471</sup> For local lodging purposes, a municipality is defined as an incorporated city that has adopted home-rule in accordance with the Tennessee Constitution.<sup>472</sup> Tennessee sales tax and local lodging taxes provide few exemptions, and these are largely limited to the length of the rental. Under state law, an exemption for rental periods begins after 90 days of continuous stay;<sup>473</sup> local jurisdictions exempt occupancies of 30 days or more.<sup>474</sup>

Tennessee law limits municipal lodging tax rates to 3 percent. County tax rates are also generally limited to 3 percent, but higher rates are allowed for certain counties meeting specified population limits. Counties with a metropolitan government may impose an additional 1 percent tax if they have a population greater than 100,000, if they entered into an agreement to build a convention center provided the population is between 400,000 and 500,000, or if the county has a population greater than 500,000.<sup>475</sup> Nashville-Davidson County metropolitan government is also allowed additional taxing authority. The Tennessee legislature has enacted various coordinating provisions limiting private act taxes (i.e., taxes specifically enacted for one jurisdiction), but has not done so for general act taxes, which may be imposed by any jurisdiction meeting the requirements of the authorizing statutes.<sup>476</sup>

Administratively, the Tennessee county and municipal hotel tax procedures are similar to the state sales tax procedures. The returns and tax payments for this tax are due on the 20<sup>th</sup> of each month

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<sup>469</sup> Tenn. Code Ann. § 67-6-205(c)(1).

<sup>470</sup> *Id.* §§ 7-4-102(a)-(b); 67-4-1402(a).

<sup>471</sup> Memphis, Tenn. Ordinances § 5-20-1 (*see* “Hotel”).

<sup>472</sup> Tenn. Code Ann. § 67-4-1401(3).

<sup>473</sup> *Id.* § 67-6-205(c)(1).

<sup>474</sup> Davidson County, Tenn. Ordinances § 5.12.010; Memphis, Tenn. Ordinances § 5-20-1 (*see* “Transient”).

<sup>475</sup> Tenn. Code Ann. § 7-4-102(a)(2), (b)(1)-(2).

<sup>476</sup> *Id.* § 67-4-1425(a).

following the reporting period, which is the same for state sales tax.<sup>477</sup> The record retention period for both the state sales tax and local lodging taxes is three years.<sup>478</sup> Taxpayers have the same remedies provided under the state sales tax for illegal assessments and collections and for refund claims.<sup>479</sup> Operators of hotels are also allowed to retain 2 percent of the amount of tax remitted in the form of a deduction for vendor compensation.<sup>480</sup>

In 2012, there were 73 counties and 60 municipalities that imposed hotel taxes.<sup>481</sup> Memphis, Tennessee in fiscal year ending June 30, 2014, raised \$4.2 million in hotel taxes.<sup>482</sup>

The adoption of private acts to create special taxing regimes at the local level or to modify existing general act taxes makes Tennessee a particularly difficult state for taxpayers to understand the various taxes in place. Some information is available online from local jurisdictions and from third-party municipal code compilations. There is no regularly updated, centralized source of information available on the jurisdictions imposing the tax or the rate at which it is imposed.

## **Tourist Tax**

Tennessee law permits any municipality located within a tourist resort county that has two premier-type tourist resort municipalities to impose a privilege tax on charges by restaurants, cafes, cafeterias, caterers and other similar establishments, and on admissions to certain amusement activities.<sup>483</sup> The combination of definitions is such that only Gatlinburg, Pigeon Forge, and

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<sup>477</sup> Tenn. Code Ann. §§ 67-6-504(a), 67-4-1405(a), 7-4-104(a).

<sup>478</sup> *Id.* §§ 67-6-523(a), 7-4-107, 67-4-1409; Tenn. Comp. R. & Regs. § 1320-5-1-.80(1); Davidson County, Tenn. Ordinances § 5.12.070.

<sup>479</sup> Davidson County, Tenn. Ordinances § 5.12.100; Memphis, Tenn. Ordinances §§ 5-20-8(B)-(C).

<sup>480</sup> Tenn. Code Ann. §§ 7-4-104(b), 67-4-1405(b).

<sup>481</sup> Ron Darden, *Hotel-Motel Tax in Tennessee Cities*, University of Tennessee Municipal Technical Advisory Service (July 12, 2012), available at [http://trace.tennessee.edu/cgi/viewcontent.cgi?article=1046&context=utk\\_mtastech&sei-redir=1&referer=http%3A%2F%2Fwww.bing.com%2Fsearch%3Fq%3Dtennessee%2Bcounty%2Blodging%2Btax%26src%3die9tr#search=%22tennessee%20county%20lodging%20tax%22](http://trace.tennessee.edu/cgi/viewcontent.cgi?article=1046&context=utk_mtastech&sei-redir=1&referer=http%3A%2F%2Fwww.bing.com%2Fsearch%3Fq%3Dtennessee%2Bcounty%2Blodging%2Btax%26src%3Die9tr#search=%22tennessee%20county%20lodging%20tax%22).

<sup>482</sup> Comprehensive Annual Financial Report Year ending June 30, 2014 (Memphis, Tenn. Div. of Finance Jan 9, 2015), available at [http://www.memphistn.gov/Portals/0/pdf\\_forms/CAFR\\_2014.pdf](http://www.memphistn.gov/Portals/0/pdf_forms/CAFR_2014.pdf).

<sup>483</sup> Tenn. Code Ann. § 67-4-504(a). Inherent in the authorization statute is that other municipalities within these tourist resort counties were already imposing such taxes based upon previously enacted private acts by the Tennessee legislature (i.e., “impose the following taxes currently levied and imposed by private act by other municipalities located within such county.” Tenn. Code Ann. § 67-4-504(a)). In general, Tennessee private acts are not part of Tennessee’s codified law and therefore are not easily accessible. This, of course, complicates compliance.

Sevierville in Sevier County, Tennessee may levy these taxes.<sup>484</sup> The state authorizing statute limits the maximum rates that may be imposed to 2 percent for the restaurant tax and 3 percent for the amusement tax.<sup>485</sup>

The City of Sevierville levies the tax on the privilege of purchasing food from any establishment selling prepared food, whether for consumption on- or off-premises, including but not limited to restaurants, cafes, cafeterias, caterers delicatessens, snack bars, ice cream parlors, lunch rooms or counters within other retail businesses, and other similar establishments engaged in selling prepared food.<sup>486</sup> Alcohol and any food prepared to be served at churches, senior citizen centers, and nursing homes or at boarding homes where the cost of foods is included in the rental rate are exempt from the tax.<sup>487</sup>

As used in the amusement tax, the term “amusement” is defined by local statute to include activities and venues such as cinemas, athletic contests, circuses, carnivals, nightclubs, and shooting galleries.<sup>488</sup> The amusement tax exempts activities sponsored by religious or charitable organizations or any public or private education institution if the receipts are devoted exclusively to the use of such organization or institution. The tax also does not apply to charges for admission to any activity sponsored or operated by a city.<sup>489</sup>

Similar to the hotel tax, tourist resort taxes follow state sales tax procedures. The returns and tax payments for this tax are due by the 20<sup>th</sup> of the month following collection.<sup>490</sup> The record retention period for both the state and local taxes is three years.<sup>491</sup> Taxpayers have the same remedies provided under the state sales tax for illegal assessments and collections and for refund claims.<sup>492</sup>

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<sup>484</sup> See Tennessee Advisory Commission on Intergovernmental Relations, *State Tax Sharing with Cities: Premier Type Resort Cities as a Model*, A Staff Report, Sept. 2004.

<sup>485</sup> Tenn. Code Ann. § 67-4-504(a).

<sup>486</sup> Sevierville, Tenn. Ordinances § 5-901.

<sup>487</sup> *Id.* § 5-904.

<sup>488</sup> *Id.* §§ 5-1001(2), 5-1002.

<sup>489</sup> *Id.* § 5-1006.

<sup>490</sup> *Id.* §§ 5-903, 5-1004.

<sup>491</sup> Tenn. Code Ann. § 67-6-523(a); Sevierville, Tenn. Ordinances §§ 5-906, 5-1008.

<sup>492</sup> Tenn. Code Ann. § 67-1-707; Sevierville, Tenn. Ordinances §§ 5-907, 5-1009.

## Vermont

### Lodging Tax

Vermont permits certain municipalities that meet specified criteria regarding the levy of property tax for education purposes to impose a local option tax on lodging with approval of the voters.<sup>493</sup> The local lodging tax applies generally to the same accommodations that are subject to the state sales tax on accommodations. In general, Vermont law requires that the local lodging tax be administered by the Vermont Department of Taxes; only two municipalities are permitted to self-administer the lodging tax.<sup>494</sup> According to the Department, the cities of Burlington and Rutland administer and collect their own lodging tax. While the state-administered local lodging tax may not exceed 1 percent, the City of Burlington imposes a 2 percent tax on such transactions.<sup>495</sup>

A number of exemptions apply at both the state and local levels. Tax does not apply to rentals of sleeping accommodations for a total of less than 15 days in any one year, rentals of sleeping accommodations provided by a nonprofit organization on premises owned and operated by the nonprofit, or to rentals of a plot or parcel of land in a campground on which a customer may park a recreational vehicle or pitch a tent, unless the recreational vehicle or tent is provided by the operator.<sup>496</sup> While there are similarities in tax base between the state and local taxes, there are some notable differences in administrative provisions. State law specifically requires that returns and remittance of tax are due on the 25<sup>th</sup> of the month<sup>497</sup>, however, the City of Burlington requires return and remittance by the 20<sup>th</sup> of the month and City of Rutland by the end of the month.

### Meals tax

Vermont permits those municipalities that qualify to impose a local option lodging tax to also impose a local option tax on meals and alcoholic beverages.<sup>498</sup> The local option tax applies

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<sup>493</sup> Vt. Stat. Ann. tit. 24, § 138(a)(3).

<sup>494</sup> Vt. Stat. Ann. tit. 24, § 138(c); Vermont Department of Taxes – Local Option Tax Participating Municipalities Listing available at <http://tax.vermont.gov/business-and-corp/sales-and-use-tax/local-option-tax/municipalities>.

<sup>495</sup> Vt. City, Burlington Mun. Code § 21-31(II).

<sup>496</sup> 10-060-023 Vt. Code R. § 1.9202(3)-2.B.

<sup>497</sup> Vt. City, Burlington Mun. Code § 21-31(II).

<sup>498</sup> 10-060-023 Vt. Code R. § 1.9202(15)-4.

generally to the same meals and beverages that are subject to the state meals and room tax. Generally, taxable meals are defined as food or beverage offered for a charge, to be consumed on or off premises, that is available for immediate consumption. With few exceptions, food or beverages furnished by restaurants, are subject to the meals tax. Only certain food or beverages typically sold for immediate consumption - such as heated food or beverage - are subject to the tax when furnished by an establishment that does not qualify as a restaurant. For example, items considered grocery items are not taxable meals.<sup>499</sup>

Similar to the lodging tax, Vermont law requires that the local meals tax be administered by the Vermont Department of Taxes; only the cities of Burlington and Rutland are permitted to administer and collect their own meals taxes.<sup>500</sup> While the state-administered local meal tax may not exceed 1 percent, the City of Burlington imposes a 2 percent tax on such transactions.<sup>501</sup>

### **Entertainment Tax**

The State of Vermont taxes admissions to places of amusement and entertainment as part of the general retail sale tax.<sup>502</sup> Certain cities (as with the lodging tax) are authorized to levy a local option sales tax that is administered by the Department of Taxes.<sup>503</sup> Burlington and Rutland, however, impose a separate admissions and amusement or entertainment tax that they each administer independently of the state. The Rutland tax is imposed at a rate of 1 percent, and the Burlington tax is imposed at a rate of 2 percent.<sup>504</sup>

The local entertainment tax applies generally to the same amusement and admission services that are subject to the state tax on entertainment. The entertainment tax applies to entertainment of every kind exhibited for money, including but not limited to; athletic events, exhibitions, dramatic and musical performances, motion pictures, golf courses and ski areas, and access to cable television systems or other audio or video programming systems that operate by wire, coaxial cable, lightwave, microwave, satellite transmission, or by other similar means, and access to any

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<sup>499</sup> *Id.* § 1.9202(10)-1.

<sup>500</sup> *Id.* § 1.9202(15)-4.A.

<sup>501</sup> Vt. City, Burlington Mun. Code § 21-31(II).

<sup>502</sup> Vt. Stat. Ann. tit. 32, § 9771(4).

<sup>503</sup> *Id.* tit. 24, § 138(a)(3).

<sup>504</sup> Rutland City Ordinances, Title 12; Vt. City, Burlington Mun. Code §21-31(II).

game or gaming or amusement machine, apparatus or device, excluding video game, pinball, musical, vocal or visual entertainment machines which are operated by coin, token or bills.<sup>505</sup> Entertainment provided by educational and non-profit institutions or organizations or wholly for charitable purposes is excluded from the entertainment tax.

In general, local jurisdiction websites provide useful information, such as local ordinances and information on the tax. There is limited information on the number of locally administered taxes and the rates at which they are imposed from the Vermont Department of Taxes.

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<sup>505</sup> Vt. Stat. Ann. tit. 32, § 9771(4).

## Virginia

### Admissions Tax

Virginia does not impose the state sales tax on admissions to amusement, entertainment, exhibitions, or displays.<sup>506</sup> However, the state authorizes counties, cities, and towns to impose a tax on persons who pay an admission charge to attend certain categories of events.<sup>507</sup> Virginia law defines the general categories of admissions that may be subject to tax, but within that authorization, local governments are free to determine the tax base. Exemptions from the admissions tax can include events held for charitable purposes and schools or entry fees to museums, botanical gardens, and zoos.<sup>508</sup> Some jurisdictions also exempt admissions charges below certain thresholds.<sup>509</sup>

Local tax rates on admissions vary, but are generally limited to 10 percent.<sup>510</sup> Cities and towns may impose the admissions tax at a lower rate for any event held in facilities that are not owned by the local government than the rate imposed on events held in city-or town-owned facilities, such as civic centers, stadiums and amphitheaters.<sup>511</sup>

Virginia law specifies little about administering the tax. As a result, local jurisdictions have developed varying rules to address return and payment due dates, statutes of limitations, recordkeeping procedures, and other administrative procedures. For example, Alexandria requires the remittance of tax and the filing of the monthly return on the last day of the month following collection.<sup>512</sup> Roanoke requires the remittance of tax and the filing of the monthly return on the 20th day of the month following the reporting period.<sup>513</sup> Both Alexandria and Roanoke have enacted specific return filing requirements for temporary or transitory events. The statute of limitations for assessment and record retention periods also vary among jurisdictions. Roanoke

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<sup>506</sup> 23 Va. Admin. Code §10-210-30.

<sup>507</sup> Va. Code Ann. §§ 58.1-3840(A), 58.1-3818.

<sup>508</sup> Alexandria, Va. Ordinances § 3-2-384(1)-(4).

<sup>509</sup> Roanoke, Va. Ordinances § 32-219.

<sup>510</sup> Va. Code Ann. § 58.1-3818(A).

<sup>511</sup> *Id.* § 58.1-3840(C).

<sup>512</sup> Alexandria, Va. Ordinances §§ 3-2-387, 3-2-388(a).

<sup>513</sup> Roanoke, Va. Ordinances §§ 32-221(a), 32-225(a).

requires records to be retained for three years, and Alexandria requires records to be retained for two years.<sup>514</sup>

There are 16 cities, three counties, and three towns that impose a local admissions tax.<sup>515</sup> In general, the local jurisdiction websites lack information on the admissions tax, but local ordinances are available from third-party municipal code compilations. There is limited information on the number of locally administered amusement taxes and the rates at which they are imposed from the University of Virginia.

### **Transient Lodging Tax**

Virginia authorizes counties, cities, and towns to impose a tax on lodging, which may include hotels, tourist camps, tourist cabins, camping grounds, clubs, or any other place regularly furnished to transients for consideration.<sup>516</sup> Exemptions differ among local jurisdictions. For example, the state sales tax exempts rooms furnished to transients for more than 90 continuous days,<sup>517</sup> as does the City of Alexandria.<sup>518</sup> The county statutory scheme exempts room rentals over 30 days, as does Arlington County.<sup>519</sup>

In general, the county tax rate may not exceed 2 percent of the amount charged for lodging.<sup>520</sup> However, several counties may impose a tax of up to 7 percent. City and town tax rates are not statutorily limited.<sup>521</sup> The City of Alexandria imposes a tax of 6.5 percent with an additional tax of \$1 per day.<sup>522</sup>

Virginia law restricts a county from imposing its lodging tax in other local jurisdictions that impose a similar tax. The county tax may only be imposed within the limits of the town that already

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<sup>514</sup> *Id.* § 32-223; Alexandria, Va. Ordinances § 3-2-391.

<sup>515</sup> Virginia Local Tax Rates 2013, available at <http://www.coopercenter.org/sites/default/files/econ/TaxRates/taxrates2013/tr1613.pdf>.

<sup>516</sup> Va. Code Ann. §§ 58.1-609.5(8); 58.1-3819(A); 58.1-3826; 58.1-3840(A).

<sup>517</sup> *Id.* § 58.1-609.5(8).

<sup>518</sup> Alexandria, Va. Ordinances § 3-2-141(5).

<sup>519</sup> Va. Code Ann. § 58.1-3819(A); Arlington County, Va. Ordinances § 40-3.

<sup>520</sup> Va. Code Ann. § 58.1-3819(A).

<sup>521</sup> *Id.* § 58.1-3840.

<sup>522</sup> Alexandria, Va. Ordinances § 3-2-142.

imposes a lodging tax if the governing body of any town within the county approves the imposition of the county tax.<sup>523</sup>

The authorizing statute does not require local jurisdictions to follow state rules in administering the transient lodging tax. As a result, there are various differences among them. Arlington County, similar to the state sales tax rules, requires returns and remittances on the 20<sup>th</sup> day of the month following collection, whereas the Alexandria requires returns and remittances on the last day of the month following collection.<sup>524</sup> The state and local jurisdictions do appear to have three-year statute of limitations and record retention requirements.<sup>525</sup> Other regulations regarding the administration of the tax, such as audit procedures and protests, are generally not available electronically.

There are 75 counties and 109 cities and towns that impose the local lodging tax.<sup>526</sup> In general, local jurisdiction websites lack information on the lodging tax, but local ordinances are available from third-party municipal code compilations. There is limited information from the University of Virginia on the number of locally administered lodging taxes and the rates at which they are imposed.

### **Food and Beverage Tax**

Virginia authorizes counties, cities, or towns to impose tax on the purchase of food and beverages sold by a restaurant.<sup>527</sup> The tax is based on the sales price of the meal, not including gratuities (unless it is a mandatory gratuity that does not exceed 20 percent of the sales price).<sup>528</sup> State law provides numerous exclusions from the local food and beverage tax base that all localities must follow, including (1) food and beverages sold through vending machines; (2) cafeterias operated by industrial plants for employees only; (3) charitable fund raisers for volunteer fire departments

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<sup>523</sup> *Id.*

<sup>524</sup> Va. Code Ann. § 58.1-615(A); Alexandria, Va. Ordinances § 3-2-145; Arlington County, Va. Ordinances § 40-5.

<sup>525</sup> Va. Code Ann. § 58.1-634; Alexandria, Va. Ordinances § 3-2-500; Va. Code Ann. § 58.1-2299.14(A); Alexandria, Va. Ordinances § 3-2-148.

<sup>526</sup> Virginia Local Tax Rates 2013, *available at* <http://www.coopercenter.org/sites/default/files/econ/TaxRates/taxrates2013/tr1613.pdf>.

<sup>527</sup> Va. Code Ann. §§ 58.1-3833(A); 58.1-3840(A).

<sup>528</sup> *Id.* § 58.1-3833(E).

and rescue squads, nonprofit churches or other religious bodies, or educational, charitable, fraternal, or benevolent organizations; (4) schools; and (5) when used or consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the United States.<sup>529</sup>

The local food and beverage tax rate may not exceed 4 percent.<sup>530</sup> The state also provides specific guidance on sourcing and cross-boundary transactions. The situs of the tax shall be the county, city, or town in which the sales are made, namely the locality in which each place of business is located and not the locality of delivery to the purchaser.<sup>531</sup> A county may impose its food and beverage tax in a city or town that also impose a food and beverage tax if approved by the city or town.<sup>532</sup> As with the hotel tax, the authorizing statute does not specify whether the local jurisdictions are required to follow the state rules in administering the food and beverage tax, resulting in differences among the jurisdictions similar to those discussed under the Virginia lodging tax.

There are 47 counties that impose a local food and beverage tax, and 143 cities and towns that impose the tax.<sup>533</sup> In general, the local jurisdiction websites lack information on the food and beverage tax, but local ordinances are available from third-party municipal code compilations. There is limited information on the number of locally administered food and beverage taxes and the rates at which they are imposed from the University of Virginia.

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<sup>529</sup> *Id.* §§ 58.1-3833(A), 58.1-3840(A).

<sup>530</sup> *Id.* § 58.1-3833(A).

<sup>531</sup> *Id.* § 58.1-3841(A).

<sup>532</sup> *Id.* §§ 58.1-3833(C), 58.1-3711(A).

<sup>533</sup> Virginia Local Tax Rates 2013, *available at* <http://www.coopercenter.org/sites/default/files/econ/TaxRates/taxrates2013/tr1613.pdf>.

## Washington

### Admissions Tax

Washington State authorizes counties, cities, and towns to levy a tax on persons who pay an admission charge to any place.<sup>534</sup> Washington also imposes retail sales tax on certain amusement and recreation services including golf, billiards, bowling, skiing, tennis, and batting cages.<sup>535</sup> However, the state sales tax does not include charges made for providing facilities where a person is merely a spectator.<sup>536</sup> By contrast, local jurisdictions are authorized to tax spectators or non-participatory activities through the local admissions tax. The definition of “admission charge” includes items such as: (a) charges for season tickets or subscriptions; (b) cover charges; (c) certain rental charges for equipment; and (d) some automobile parking.<sup>537</sup> State law specifies few exceptions to the local admissions tax.<sup>538</sup>

In general, the permissible admissions tax rate is limited to 5 percent of the admission charge with certain counties permitted to charge higher rates for public stadiums.<sup>539</sup> Washington statutorily coordinates overlapping admissions taxes by generally prohibiting a county from imposing the admissions tax when a city or town already levies one.<sup>540</sup> The state provides a number of exceptions to this rule, including where counties with a population of one million or more levy the tax on events at stadiums constructed after January, 1, 1995, and that are publicly owned.<sup>541</sup>

The state authorizing statute does not specify whether the local jurisdictions are required to follow state rules in administering the tax. Nonetheless, localities that impose the admissions tax generally follow the state sales tax regulations as a model to self-administer the tax. For example, local

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<sup>534</sup> Wash. Rev. Code §§ 35.21.280(1), 36.38.010(1).

<sup>535</sup> Wash. Admin. Code 458-20-183(2)(b).

<sup>536</sup> *Id.* 458-20-183(2)(m).

<sup>537</sup> Wash. Rev. Code § 35.21.280(3).

<sup>538</sup> *Id.* § 35.21.280(1), (2).

<sup>539</sup> *Id.* §§ 35.21.280(1), 36.38.010(1), 36.38.010(5)(d).

<sup>540</sup> *Id.* § 36.38.010(3)-(5).

<sup>541</sup> *Id.* § 36.38.010(4)-(5).

assessment and appeals procedures largely mirror those applied by the state.<sup>542</sup> Similarly, the local jurisdictions have taxpayer confidentiality statutes nearly identical to the state.<sup>543</sup>

In 2014, there were 52 cities that imposed an admissions tax and collected \$24.4 million. There were also four counties that imposed an admissions tax and collected \$1.8 million in revenue.<sup>544</sup> There are 39 counties and about 300 cities in Washington State.

Local jurisdiction websites generally lack information on the admissions tax, but local ordinances are available from third-party municipal code compilations. The Washington Department of Revenue provides some information on locally administered admissions taxes.

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<sup>542</sup>For assessment procedures, see Wash. Rev. Code §§ 35.21.280 and 82.32.050; Seattle, Wash. Ordinances §§ 5.55.095 and 5.55.100; and Lake Forest Park, Wash. Ordinances §§ 5.02.130-150. For appeals procedures, see Wash. Admin. Code § 458-20-100(4); Seattle, Wash. Ordinances § 5.55.150(A); and Lake Forest Park, Wash. Ordinances § 5.02.180.

<sup>543</sup> Wash. Rev. Code § 82.32.330; Lake Forest Park, Wash. Ordinances § 5.02.0250; Seattle, Wash. Ordinances § 5.55.200.

<sup>544</sup> Washington State Auditor Office, Local Government Financial Reporting System (LGFRS), Admission Tax Report August 2015; *available at* <http://www.sao.wa.gov/local/Pages/LGFRS.aspx>.

## West Virginia

### Hotel Occupancy Tax

West Virginia authorizes counties and municipalities to levy and collect a privilege tax on the occupancy of hotel rooms.<sup>545</sup> The tax is imposed on the consideration paid for the room by the consumer, but does not include the consumer sales tax on the transaction, or charges for meals, valet service, room service, telephone service or other charges or consideration not paid for use or occupancy of a hotel room.<sup>546</sup> The maximum occupancy tax rate is 6 percent.<sup>547</sup> Counties may not impose a lodging tax on hotels located within the corporate limits of any municipality.<sup>548</sup>

West Virginia requires the municipality or county to “promulgate, by ordinance, order, rule or regulation, administrative procedures for assessment, collection and refund of the [occupancy] tax.”<sup>549</sup> Therefore, administrative process varies by tax administration agency. Generally, taxes and returns are due on or before the 15th day of each month following the month in which the tax is collected in the form prescribed by the municipality or county.<sup>550</sup> The statute of limitations varies among jurisdictions, from two years after the due date of the return to three years after the due date of the fourth quarter return for the year in which such tax arises.<sup>551</sup> Further, at least two taxing jurisdictions provide that a notice for reassessment must be filed within 30 days of the notice of assessment and that a hearing officer decision must be appealed within 30 days to the county circuit court.<sup>552</sup> Taxing authorities may enter into agreements with one another for the collection or administration of this tax.<sup>553</sup>

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<sup>545</sup> W. Va. Code §§ 7-18-1 through -15.

<sup>546</sup> *Id.* § 7-18-1(d).

<sup>547</sup> *Id.* § 7-18-2(b)-(c). Note, the tax shall not be imposed on any consumer occupying a hotel room for 30 or more consecutive days.

<sup>548</sup> *Id.* § 7-18-1(c).

<sup>549</sup> *Id.* § 7-18-13(a).

<sup>550</sup> *Id.* § 7-18-10.

<sup>551</sup> Barboursville, W. Va. Ordinances § 761.18; Charleston, W. Va. Ordinances §§ 110-222; 110-111.

<sup>552</sup> Charleston, W. Va. Ordinances §§ 110-222; 110-113; -114; -115; 110-277; Barboursville, W. Va. Ordinances § 761.13-15.

<sup>553</sup> W. Va. Code §§ 7-18-13(c)-(d).

There are 75 cities and 55 counties that impose the West Virginia local occupancy tax.<sup>554</sup> The City of Charleston generated \$2.8 million in revenue from the occupancy tax for the fiscal year ending June 30, 2014.<sup>555</sup> Projected tax collections for fiscal year ending June 30, 2016, for the 75 cities and 55 counties that impose the tax are \$15.5 million and \$11.1 million, respectively.<sup>556</sup>

Local jurisdiction websites generally lack information on the occupancy tax, but local ordinances are available from third-party municipal code compilations. The West Virginia State Auditor's Office provides a centralized source of information on which jurisdictions impose the local occupancy tax and the revenue generated by each jurisdiction; this source lacks information on the rates at which the taxes are imposed or any administrative information.

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In preparing this advice, we considered tax authorities that are subject to change, retroactively, prospectively, or both, and any such changes could affect the conclusions stated herein. This advice is based on the completeness and accuracy of any one or more of the facts, assumptions, and client representations on which we relied, relating to the matters to which this advice is addressed. Unless separately agreed in writing, we will not update our advice for subsequent changes or modifications to the law, regulations, or to the judicial and administrative interpretations thereof, nor to take into account your correcting, updating, or providing new or additional facts or information you supplied or any assumptions on which we relied in preparing our advice.

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<sup>554</sup> West Virginia State Auditor Office, *2015-2016 Levy Estimates Budget Documents for Local Governments*, available at [http://www.wvsao.gov/LocalGovernment/ConBud\\_15-16.aspx](http://www.wvsao.gov/LocalGovernment/ConBud_15-16.aspx).

<sup>555</sup> Charleston, W. Va., Municipal Budget for Fiscal Year Ending June 20, 2016, *Revenue Summary*, p. 1.1.

<sup>556</sup> West Virginia State Auditor Office, *2015-2016 Levy Estimates Budget Documents for Local Governments*, available at [http://www.wvsao.gov/LocalGovernment/ConBud\\_15-16.aspx](http://www.wvsao.gov/LocalGovernment/ConBud_15-16.aspx).