

Use of Local Hotel Occupancy Tax Revenues

There is a two-part test for every expenditure of local hotel occupancy tax.¹

Criteria #1: First, every expenditure must DIRECTLY enhance and promote tourism AND the convention and hotel industry.²

Under the Tax Code, every event, program, or facility funded with hotel occupancy tax revenues must be likely to do two things: 1) directly promote tourism; and 2) directly promote the convention and hotel industry.³ “Tourism” is defined under Texas law as guiding or managing individuals who are traveling to a different, city, county, state, or country.⁴ A “direct” promotion of the convention and hotel industry has been consistently interpreted by the Texas Attorney General as a program, event, or facility likely to cause increased hotel or convention activity.⁵ This activity may result from hotel or convention guests that are already in town and choose to attend the hotel tax funded facility or arts or historical event, or it may result from individuals who come from another city or county to stay in an area lodging property at least in part to attend the hotel tax funded event or facility.

If the funded event or facility is not reasonably likely to directly enhance tourism and the hotel and convention industry, local hotel occupancy tax revenues cannot legally fund it.⁶ However, it is important to note that events and facilities that do not qualify for hotel occupancy tax funding are often still legally eligible for city funding from most of the other funding sources available to the city (general property tax revenues, general sales tax revenues, franchise fee revenues, etc.). State law is stricter in terms of how the local hotel occupancy tax revenues can be spent.

There is no statutory formula for determining the level of impact an event must have to satisfy the requirement to directly promote tourism and hotel and convention activity.⁷ However, communities with successful tourism promotion programs generally award the amount of the hotel occupancy tax by the proportionate impact on tourism and hotel activity incident to the funding request. Entities applying for hotel occupancy tax revenue funding should indicate how they will market the event to attract tourists and hotel guests. If an entity does not adequately market its events to tourists and hotel guests, it is difficult to produce an event or facility that will effectively promote tourism and hotel activity.

A city or delegated entity should also consider whether a funded event will be held in a venue that will likely attract tourists and hotel guests. For example, if an event is held in a local school or community center, it may be less likely to attract tourists than if it is held at a local performing arts venue, museum or civic center. Each community will need to assess whether the facility hosting the function is likely to attract tourists and hotel guests. Similarly, if an event is a community picnic, local parade, educational class, or other similar type of event, it is often not likely to attract tourists and hotel guests, and would likely not be eligible for hotel occupancy tax funding.

¹ §§ 351.101(a), (b).

² §§ 351.101(b).

³ *Id.*

⁴ § 351.001(6).

⁵ See Op. Tex. Att’y Gen. Nos. GA-0124 (2003), JM-690 (1987).

⁶ *Id.*

⁷ See generally Tex. Tax Code §§ 351.101(a), (b).

Finally, it is a good practice to utilize a hotel tax application form. THLA has a sample hotel occupancy tax application form and a “post event” form that are already in use by many city governments throughout Texas. For a copy of these two forms, simply call THLA at (512) 474-2996, or email THLA at news@texaslodging.com. These forms pose questions of funding applicants such as “Do you have a hotel room block for your events?” and “What do you expect to be the number of room nights sold for this event?” Additionally, the application asks if the entity has negotiated a special hotel price for attendees of their funded event. If the entity does not find the need to reserve a hotel block or negotiate a special hotel rate, it is not likely that they anticipate their event/s will have a meaningful impact on hotel activity.

Funded entities can also visit with area hoteliers who, in many cases, can provide feedback on whether any of their hotel guests expressed an interest in attending such events or facilities in the past. Hotel front desk and management staff usually know what local events and facilities were of interest to their guests by notes in their reservation systems, requests for directions, information and transportation to such venues by hotel patrons.

After an applicant’s event or program is offered for several years, the applicant should have a reasonable idea as to whether their event or program’s attendance includes a number of tourists and hotel guests. For example, some entities track whether guests are staying at local hotels via their guest registry. Other entities measure potential out-of-town attendance from their ticket sales records or other survey information.

It is important to note that Texas law also provides that the hotel occupancy tax may not be used for general revenue purposes or general governmental operations of a municipality.⁸ It also may not be used to pay for governmental expenses that are not directly related to increasing tourism and hotel and convention activity.⁹ For example, consider a request to use the hotel occupancy tax to pay for construction of additional lighting, restrooms, roads, sidewalks, or landscaping in a downtown area. These are expenditures for which the city would traditionally use its general revenues. Therefore, such an expenditure would violate the prohibition against using the hotel tax for “general governmental operations of a municipality.”¹⁰ It is difficult to argue that such improvements to a non-tourism facility would “directly” promote tourism and hotel activity. At best, one could argue the improvements would “indirectly” enhance tourism and hotel activity—which is not sufficient under the clear language of the Tax Code to qualify for funding from the hotel occupancy tax.

⁸ Tex. Tax Code § 351.101(b); *see also* Op. Tex. Att’y Gen. Nos. JM-184 (1984), JM-965(1988).

⁹ *Id.*

¹⁰ *Id.*

Criteria #2: Every expenditure of the hotel occupancy tax must clearly fit into one of nine statutorily provided categories for expenditure of local hotel occupancy tax revenues.¹¹

The nine categories for expenditure of the hotel occupancy tax are as follows:

1) Funding the establishment, improvement, or maintenance of a convention center or visitor information center.

This category allows expenditures of the hotel tax for the creation, improvement, or upkeep of a convention center or a visitor information center.¹² The term “convention center” is defined to include civic centers, auditoriums, exhibition halls, and coliseums that are owned by the city or another governmental entity or that are managed in whole or in part by the city.¹³ It also includes parking areas in the immediate vicinity of a convention center facility, and certain hotels that are owned by the city or another governmental entity, or that are managed in whole or in part by the city.¹⁴ It does not include facilities that are not of the same general characteristics as the structures listed above.

Texas law specifies that for a facility to be funded as a convention center, it must be a facility primarily used to host conventions and meetings.¹⁵ “Primarily used” in this context would arguably mean that more than 50 percent of the bookings for the facility are to host conventions or meetings that directly promote tourism and the hotel and convention industry.¹⁶ In other words, holding local resident meetings in a facility would not count toward qualifying the facility as a convention center, but meetings of individuals from out-of-town who in part stay at hotels would qualify.

Simply naming a facility a convention center or visitor information center does not automatically qualify the facility as a “convention center.” The authority to use the hotel occupancy tax for facilities is limited and any such facility must meet the above noted “primary usage” test. For example, general civic buildings such as the city hall, local senior citizen centers or activity centers would not qualify as convention centers that could be funded by hotel tax.

2) Paying the administrative costs for facilitating convention registration.

This provision allows expenditures for administrative costs that are actually incurred for assisting in the registration of convention delegates or attendees.¹⁷ This is generally an expenditure for larger cities that hold large conventions, and includes covering the personnel costs and costs of materials for the registration of convention delegates or attendees.

¹¹ Tex. Tax Code § 351.101(a).

¹² § 351.101(a)(1).

¹³ § 351.001(2).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*; see generally Tex. Tax Code §§ 351.101(a), (b).

¹⁷ Tex. Tax Code § 351.101(a)(2).

3) Paying for advertising, solicitations, and promotions that attract tourists and convention delegates to the city or its vicinity.

This provision allows expenditures for solicitations or promotional programs/advertising directly related to attracting tourists and convention delegates to the city or its vicinity.¹⁸ Such expenditures are traditionally in the form of internet, newspaper, mail, television, or radio ads; or solicitations to promote an event or facility. The advertising or promotion must directly promote the hotel and convention industry.¹⁹ For example, the Texas Attorney General ruled that the local hotel occupancy tax may not be used for advertising or other economic development initiatives or improvements to attract new businesses or permanent residents to a city.²⁰

In certain cases, a city may be able to use the advertising and promotion category to justify covering the costs of advertising an event that will attract tourists and hotel guests, even though the administrative or facility costs for the underlying event would not qualify for hotel tax funding.²¹

4) Expenditures that promote the arts.

This section authorizes the expenditure of local hotel occupancy tax for a variety of art-related programs that also promote tourism and local hotel and convention activity.²² Specifically, it allows funding the encouragement, promotion, improvement, and application of the arts including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution and exhibition of these major art forms.²³ However, it is not enough that a facility or event promotes the arts; Texas law requires that the arts related expenditure also directly promote tourism and the hotel and convention industry.²⁴

Section 351.101(a) of the Tax Code specifically states that “the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry.” The Texas Attorney General reaffirmed this standard when it held in Opinion GA-0124: “Under section 351.101 of the Tax Code, a municipality may expend its municipal hotel occupancy tax revenue only to promote tourism and the convention and hotel industry, and only for the specific uses listed in the statute.”

Additionally, THLA and Texans for the Arts (TFA) have formed a partnership to assist local governments in implementing hotel tax laws. In order to comply with the hotel occupancy tax statute, THLA and TFA agree that to be eligible for municipal arts funding with HOT revenues, recipients must satisfy the following requirements:

1. The recipient presents, performs, promotes, encourages or otherwise makes possible, artistic events, cultural performances, programs, exhibitions or lectures involving the major art forms listed in the statute, or “other arts related to the presentation, performance, execution and

¹⁸ § 351.101(a)(3).

¹⁹ § 351.101(b).

²⁰ Op. Tex. Att’y Gen. No. JM-690 (1987).

²¹ See *generally* Tex. Tax Code § 351.101(a)(3).

²² Tex. Tax Code § 351.101(a)(4).

²³ *Id.*

²⁴ § 351.101(b).

exhibition of these major art forms.”

2. The hotel occupancy tax funded programs and events are advertised and open to the general public.
3. The recipient directly enhances and promotes tourism and the convention and hotel industry.

With regard to requirement No. 3 above, THLA and TFA agree that the statute does not require a recipient to demonstrate a set level of direct impact on tourism and the convention and hotel industry to be eligible for hotel occupancy tax revenue funding. **However, the demonstration of some level of direct impact on tourism and the convention and hotel industry should be required.** Because the statute provides no specific methodology for determining a recipient’s impact on tourism or the convention/hotel industry, each funding entity has the flexibility to consider a number of factors.

The following factors may be beneficial to consider, but this list is neither exhaustive nor mandatory. Cities and counties using hotel occupancy tax may consider any or all the below listed factors or other factors that are appropriate for determining a recipient’s impact on tourism and the convention and/or hotel industry in a particular community:

- a. The recipient works with its area lodging operators and/or the convention and visitor’s bureau (CVB), either independently or in conjunction with other local arts organizations, to promote local arts events through hotel concierge services, training of hotel staff, hotel or CVB lobby area exhibitions, flyers or similar measures to better serve visitors to the area and encourage their extended stay in area hotels or a return to stay in area lodging facilities.
- b. The recipient provides entertainment to conventions, conferences and meetings offered in their cities and towns at which attendees are drawn from both in and out of the region.
- c. The recipient uses local hotel and lodging facilities for galas, meetings or other events sponsored by the recipient, including the use of hotel dining facilities by their patrons both pre and post events.
- d. The recipient books hotel rooms for visiting artists and offers hotel related information to attendees of the organization’s hotel occupancy tax funded events.
- e. The recipient promotes or markets its events outside of the local area through standard media promotion or advertising, websites, mailing lists, local, regional and national listings in publications and calendars and use of social media and where appropriate includes a link to information about area hotels.
- f. The recipient produces its events in conjunction with or within the boundaries of a Cultural and Fine Arts District established pursuant to Texas Government Code § 444.031.
- g. The recipient, either through audience or attendee questionnaires, polling, or hotel block booking codes, demonstrates that hotel guests, tourists, convention attendees or other out-of-town visitors have attended its hotel tax funded events.
- h. A performance, exhibition or other event sponsored by the hotel occupancy tax recipient has been reviewed or otherwise noted in a publication that circulates outside of the recipient’s local community, which helps promote tourism and hotel activity in the area.

There are many success stories of cities that have partnered with the arts entities to turn one day arts events into multi-day events that can substantially increase tourism and hotel activity. Such partnerships and long term planning can help both foster the arts and grow hotel tax proceeds that can be made available to the arts.

*Note: arts funding by a city may also be limited by statute. See “Special Rules” section of this guide.

5) Funding historical restoration or preservation programs.

A city may spend a portion of its hotel occupancy tax revenues to enhance historical restoration and preservation projects or activities, or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums that are likely to attract tourists and hotel guests.²⁵ Texas law does not limit such funding to structures that are owned by a public or nonprofit entity, or to whether the project is listed on a historic registry, but the city may choose to impose such limitations.

It is not enough that a project or activity event merely be historical in nature; Texas law requires that the historical related expenditure also directly promote tourism and the hotel and convention industry.²⁶ Section 351.101(a) of the Tax Code specifically states that “the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry.” The Attorney General in Opinion GA-0124 (2003) reaffirmed this standard when it held: “Under section 351.101 of the Tax Code, a municipality may expend its municipal hotel occupancy tax revenue “only to promote tourism and the convention and hotel industry” and only for the specific uses listed in the statute.”

Additionally, the amount of funding a city allocates to the historical programs category may be limited by statute. See the “Special Rules” section of this guide, starting on page 24.

6) Funding certain expenses, including promotional expenses, directly related to a sporting event within counties with a population of under 1 million.

This section authorizes a municipality located in a county with a population of under 1 million to use local hotel occupancy tax revenue to fund certain expenses, including promotional expenses, directly related to a sporting event.²⁷ To qualify under this authorization, the sporting event must be one that would “substantially increase economic activity at hotels and motels within the city or its vicinity.”²⁸ The statutory authorization also requires that a majority of the participants in the sporting event also be tourists to the area.²⁹

This category is intended to allow communities to fund the event costs for sporting tournaments that result in substantial hotel activity. For example, if a city had to pay an application fee to seek a particular sporting event or tournament, it could use hotel tax for such an expenditure if the sporting event would substantially increase economic activity at hotels and the city was within a county of under one million population. The requirement that a majority of the participants must be “tourists” is included in the statutory authority to prohibit the use of local hotel tax for sporting related facilities or events that are purely local (e.g.; local recreation centers, local little league and parks events, intramural sports, etc.).

7) Funding the enhancement or upgrading of existing sports facilities or sports fields for

²⁵ § 351.101(a)(5).

²⁶ § 351.101(b).

²⁷ § 351.101(a)(6).

²⁸ *Id.*

²⁹ *Id.*

certain municipalities.

Certain statutorily bracketed cities may use local hotel occupancy tax to enhance and upgrade existing sports facilities owned by the municipality.³⁰ Acceptable sports facilities include those for baseball, softball, soccer, rodeos, and flag football.³¹ The municipality must own the sporting facility, and the municipality must meet one of the following population requirements:

- i. The municipality has a population of 80,000 or more, and is located in a county that has a population of 350,000 or less: **Abilene, Amarillo, Beaumont, College Station, Corpus Christi, Killeen, Laredo, League City, Longview, Lubbock, Midland, Odessa, Pearland, San Angelo, Tyler, Waco, and Wichita Falls.**³²
- ii. The municipality has a population of at least 75,000, but not more than 95,000, and is located in a county that has a population of less than 200,000 but more than 160,000: **Bryan and College Station.**³³
- iii. The municipality has population of at least 36,000, but not more than 39,000, and is located in a county that has a population of 100,000 or less that is not adjacent to a county with a population of more than two million: **Huntsville and Texarkana.**³⁴
- iv. The municipality has a population of at least 13,000 but not more than 39,000, and is located in a county that has a population of at least 200,000: **Addison, Alamo, Alvin, Angleton, Balch Springs, Bellaire, Benbrook, Burleson, Colleyville, Converse, Coppell, Copperas Cove, Corinth, Deer Park, Dickinson, Donna, Duncanville, Farmers Branch, Friendswood, Groves, Hewitt, Highland Village, Horizon City, Harker Heights, Humble, Hurst, Hutto, Katy, La Marque, La Porte, Lake Jackson, Lancaster, Leander, Little Elm, Live Oak, Mercedes, Murphy, Nederland, Port Neches, Portland, Rio Grande City, Rosenberg, Sachse, Saginaw, San Benito, San Juan, Schertz, Seagoville, Socorro, South Houston, Southlake, Stafford, Taylor, The Colony, Universal City, University Park, Watauga, Weslaco, West University Place, and White Settlement.**³⁵
- v. The municipality has a population of at least 70,000, but not more than 90,000, and no part of the city is located in a county with a population greater than 150,000: **Longview.**³⁶
- vi. The municipality is located in a county that is adjacent to the Texas-Mexico border, the county has a population of at least 500,000, and the county does not have a municipality with a population greater than 500,000: Cities in Hidalgo County including, but not limited to **McAllen, Edinburg, Mission, and Pharr.**³⁷
- vii. The municipality has a population of at least 25,000 but not more than 26,000, and is located in a county that has a population of 90,000 or less: **Greenville and Paris.**³⁸
- viii. The municipality is located in a county that has a population of not more than 300,000 and in which a component university of the University of Houston System is located: **Victoria.**³⁹
- ix. The municipality has a population of at least 40,000 and the San Marcos River flows through the municipality: **San Marcos.**⁴⁰

³⁰ § 351.101(a)(7).

³¹ *Id.*

³² § 351.101(a)(7)(B)(i).

³³ § 351.101(a)(7)(B)(ii).

³⁴ § 351.101(a)(7)(B)(iii).

³⁵ § 351.101(a)(7)(B)(iv).

³⁶ § 351.101(a)(7)(B)(v).

³⁷ § 351.101(a)(7)(B)(vi).

³⁸ § 351.101(a)(7)(B)(vii).

³⁹ § 351.101(a)(7)(B)(viii).

⁴⁰ § 351.101(a)(7)(B)(x).

- x. The municipality is intersected by both State Highways 71 and 95: **Bastrop**.⁴¹

[Note that statutory population brackets are based on the decennial U.S. Census, most recently conducted in 2010.⁴²]

Texas law further requires that before local hotel tax to be used for this purpose, the sports facilities and fields must have been used a combined total of more than 10 times for district, state, regional, or national sports tournaments in the preceding calendar year.⁴³

If hotel tax revenues are spent on enhancing or upgrading a sports facility, the municipality must also determine the amount of “area hotel revenue” generated by hotel activity from sports events held at the hotel tax funded facility for five years after the upgrades to the sport facility are completed.⁴⁴ The area hotel revenues that were generated from sports events at the hotel tax funded facility over that five year period must at least equal the amount of hotel tax that was spent to upgrade the sports facility.⁴⁵ If the amount of hotel tax that was spent on the facility upgrades exceeds hotel revenue attributable to events held at that facility over that five year period, the municipality must reimburse the hotel occupancy tax revenue fund any such difference from the municipality’s general fund.⁴⁶

For example, if a city spent \$400,000 on improvements to its soccer fields, it would have to show at least \$400,000 in area hotel revenue directly attributable to events held at that soccer field over the five year period after the soccer field improvements were completed. If the city could only show \$300,000 in hotel industry revenue due to events held at that soccer field, the city would have to reimburse the city hotel tax with the \$100,000 difference from the city’s general fund.

8) Funding transportation systems for tourists

Often with conventions and large meetings, there is a need to transport the attendees to different tourism venues. In 2007, the Texas Legislature authorized the use of city hotel tax for any sized city to cover the costs for transporting tourists from hotels to and near the city to any of the following destinations:

- the commercial center of the city;
- a convention center in the city;
- other hotels in or near the city; and
- tourist attractions in or near the city.⁴⁷

The reimbursed transportation system must be owned and operated by the city, or privately owned and operated but financed in part by the city.⁴⁸ For example, this authority could be used to cover the costs of a city to finance certain private shuttles to operate between the convention center and area hotels and attractions for a large city-wide convention. The law specifically prohibits the use of the local hotel tax to cover the costs for a transportation system that serves the general public.⁴⁹

⁴¹ § 351.101(k).

⁴² Tex. Gov’t Code Ann. § 311.005(3) (Vernon 2015).

⁴³ Tex. Tax Code §§ 351.101(a)(7), 351.1076.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ § 351.110(a).

⁴⁸ § 351.110(b).

⁴⁹ § 351.110(c).

9) Signage directing tourists to sights and attractions that are visited frequently by hotel guests in the municipality.

In 2009, the Texas Legislature added a statutory category that allows cities to use municipal hotel occupancy tax revenue to pay for signage directing tourists to sights and attractions frequently visited by hotel guests in the municipality.⁵⁰ Arguably, this type of expenditure was permissible as “advertising and promotion” prior to this 2009 legislation. However, the Legislature codified this understanding to officially include signage directing tourists to sights and attractions that are frequently visited by hotel guests.⁵¹

Summary of the Nine Uses for the Local Hotel Occupancy Tax

In summary, local hotel occupancy tax revenues only may be spent to establish or enhance a convention center or visitor information center, cover the administrative expenses for registering convention delegates, pay for tourism-related advertising and promotions, fund arts programs or facilities that will directly promote tourism and hotel and convention activity, fund historic restoration or preservation projects that will enhance tourism and hotel and convention activity, in certain counties and cities noted above fund certain costs for holding sporting events and making upgrades to sporting facilities that substantially increase local hotel activity, certain transportation costs for taking tourists from hotels to various locations, and pay for signage directing tourists to sights and attractions frequently visited by hotel guests. If the city cannot fit an expenditure within one of these nine categories, hotel occupancy tax revenues cannot be used for that purpose, unless a special state statute was passed to allow such additional uses. This article includes a summary of special provisions and limitations placed on cities that fall into certain population brackets or special geographic areas of the state.

With regard to the use of local hotel occupancy taxes, there is no time limit for a city to expend all of its hotel occupancy tax funds. At a minimum, however, state law does require that for cities with a seven percent local hotel tax rate, at least one-seventh of the hotel tax proceeds must be spent advertising and promoting the city to directly impact tourism and the hotel and convention industry.⁵² It should also be noted that state law requires that interest earned on hotel tax must be spent in the same way as other hotel tax revenues.⁵³ State law does not address revenues that are earned from events funded by the local hotel occupancy tax.

⁵⁰ § 351.101(a)(9).

⁵¹ *Id.*

⁵² §§ 351.103, 351.1035, 351.104(d), 351.105(b), and 351.106(a).

⁵³ §§ 351.001(9), (10).

Administering Hotel Occupancy Tax Revenue Expenditures

Duty of funded entities to provide a list of activities.

All entities (including the city itself) that are directly or indirectly funded by the local hotel occupancy tax are annually required to provide a list of the scheduled activities, programs, or events that will directly enhance and promote tourism and the convention and hotel industry.⁵⁴ This list is to be provided annually to the city secretary or his/her designee prior to the expenditure of the hotel occupancy tax funding by the funded entity.⁵⁵ An entity may add items to this list at any time, and each city decides the format for providing this information. This documentation requirement does not apply if the entity already provides written information to the city indicating which scheduled activities or events that it offers that directly enhance and promote tourism and the convention and hotel industry. For example, cities that require quarterly or annual reports on the use of hotel tax by hotel tax funded entities would satisfy this requirement if their report addresses the extent to which their events directly promote tourism and hotel activity.⁵⁶

It is important to remember that if an entity does not have any such events or programs reasonably expected to directly promote tourism and the hotel and convention industry, it is not eligible for local hotel occupancy tax funding.⁵⁷ If only a portion of an entity's programs fit these criteria, then only a proportionate amount of that entity's costs should be covered by the local hotel occupancy tax.⁵⁸

Delegating management of funded activities.

The governing body of a city may delegate the management or supervision of programs funded by the hotel occupancy tax by written contract.⁵⁹ This delegation may be made to a person, another governmental entity, or to a private organization.⁶⁰ This delegation is often made to a local arts council, a chamber of commerce, or to the convention and visitors bureau. The municipality shall approve the entity's annual budget prior to delegating the management or supervision of hotel tax funded programs.⁶¹ Furthermore, the municipality shall require the delegated entity to make periodic reports, at least quarterly, listing the hotel occupancy tax expenditures made by the delegated entity.⁶² Additionally, the Code requires that the contracted entity maintain complete and accurate financial records for every expenditure of hotel occupancy tax revenue, and upon the request of the municipality or another person, make the records available for inspection and review.⁶³

An entity with delegated authority to manage hotel tax funded programs undertakes a fiduciary duty with respect to the use of the tax revenue.⁶⁴ Such entities are also required to maintain the city hotel occupancy tax revenue in a separate bank account that may not be commingled with any other account or funds.⁶⁵ The Tax Code does not contain similar prohibitions against commingling the funds for

⁵⁴ § 351.108(b).

⁵⁵ *Id.*; § 351.108(d).

⁵⁶ § 351.108(g).

⁵⁷ § 351.101(b).

⁵⁸ § 351.101(e).

⁵⁹ § 351.101(c).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ § 351.101(d).

⁶⁴ § 351.101(c).

⁶⁵ *Id.*

individual organizations, such as an arts or historical group that receives hotel tax funding for their individual program, but do not themselves oversee hotel tax funding to other entities.

Use of hotel occupancy tax revenues to cover administrative expenses.

Texas law allows proceeds of the municipal hotel occupancy tax to be used to cover the portion of administrative costs that are directly attributable to work on activities that may be funded by the tax.⁶⁶ For example, entities that manage activities funded by the hotel occupancy tax may spend some of the tax for certain day-to-day operational expenses.⁶⁷ These expenses may include supplies, salaries, office rental, travel expenses, and other administrative costs.⁶⁸ However, these costs may be reimbursed only if the expenses are incurred in the promotion and servicing of expenditures authorized under the hotel occupancy tax laws.⁶⁹ The portion of the administrative costs that are covered should not exceed the percentage of the cost that is attributable to the activity funded by the hotel occupancy tax.⁷⁰ For example, administrators who spend 33 percent of their time overseeing hotel occupancy tax funded programs should seek funding for no more than 33 percent of their salary or 33 percent of other related overhead costs. Additionally, hotel occupancy tax revenues may be spent on travel that is directly related to the performance of the person's job in an efficient and professional manner.⁷¹ This travel should facilitate the acquisition of skills and knowledge that will promote tourism and the convention and hotel industry.⁷²

Additional Limits Applicable to the City of Austin

The Texas Tax Code provides additional rules for certain Texas cities based on the city's population bracket. Where noted, these special rules supplement or further restrict the general two-part test for hotel occupancy tax revenue expenditures. For statutory construction purposes, population brackets are based on the decennial federal census, most recently conducted in 2010.⁷³

Cities with a population of 200,000 or greater (except Houston): Arlington, Austin, Corpus Christi, Dallas, El Paso, Fort Worth, Garland, Irving, Laredo, Lubbock, Plano, and San Antonio.

In addition to the general two part test for all expenditures of the hotel occupancy tax revenue, the above cities have certain specific expenditure limitations that apply to their handling of the local hotel occupancy tax.

15 Percent maximum expenditure for the arts and 15 percent maximum expenditure for historical restoration and preservation:

Under § 351.103(c), a city with a population of at least 200,000 may not expend more than the greater of either 15 percent of the hotel occupancy tax revenue collected or the amount of tax received by the city

⁶⁶ § 351.101(e).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ § 351.101(f).

⁷² *Id.*

⁷³ Tex. Gov't Code § 311.005(3).

at the rate of 1 percent of the cost of a room on promotion of the arts.⁷⁴ Also, a city with a population of more than 125,000 may not spend more than 15 percent of its hotel occupancy tax revenue on historical restoration and preservation programs.⁷⁵

Minimum threshold for advertising and promotion funding: Amarillo, Austin, Arlington, Corpus Christi, Dallas, El Paso, Fort Worth, Frisco, Garland, Grand Prairie, Irving, Odessa, Plano, Round Rock, San Antonio, and Tyler:

Except for Nacogdoches, cities that undertake funding a convention center hotel with hotel occupancy tax revenues must allocate a minimum threshold of funding for advertising and promotion of tourism and hotel activity under § 351.101(a)(3).⁷⁶ Specifically, these cities may not allocate hotel tax funding under § 351.101(a)(3) to a percentage that is less than the average percentage of that revenue allocated by the municipality for that purpose during the 36-month period preceding the date the municipality begins using hotel tax revenues for the hotel project.⁷⁷

⁷⁴ § 351.103(c).

⁷⁵ § 351.103(c).

⁷⁶ § 351.102(d).

⁷⁷ *Id.*