

MEMORANDUM:
PROPOSED AMENDMENTS TO INNKEEPER'S TAX ORDINANCE

December 16, 2013

SCOPE OF MEMO:

On October 21, 2013, the Starke County Convention and Visitors Commission proposed several changes to Starke County Ordinance 2007-13, "AN ORDINANCE ESTABLISHING A UNIFORM INNKEEPER'S TAX IN STARKE COUNTY, INDIANA". The document proposing the amendments is attached along with this memo. The purpose of this memo is to place the proposed changes into context of the statute and provide legal analysis.

STATUTORY CONTEXT:

Following is a quick overview of the statutory context with emphasis on the provision relevant to the proposed amendments.

- Uniform Innkeeper's Tax is governed by Ind. Code Chapter 6-9-18.
- Passage of the tax is controlled by the fiscal body; in Starke County that's the Council (IC § 6-9-18-3)
- The tax may be levied on persons "engaged in the business of renting or furnishing, for period of less than thirty (30) days, any room or rooms, lodgings, or accommodations in any (1) hotel; (2) motel; (3) boat motel; (4) inn; (5) college or university memorial union; (6) college or university residence hall or dormitory; or (7) tourist cabin; located in the county. (IC § 6-9-18-3)
- Under IC § 6-9-18-3(d) the council "may adopt an ordinance to require that the tax be reported on forms approved by the county treasurer and that the tax be paid monthly to the county treasurer. If such an ordinance is adopted, the tax shall be paid to the county treasurer not more than twenty (20) days after the end of the month the tax is collected." If such an ordinance is not adopted, the tax is paid the same as the state gross retail tax is imposed.
- Under IC § 6-9-18-3(e) "right, duties, liabilities, procedures, penalties, definitions, exemptions and administration" of the Innkeeper's tax follow the laws set forth in IC 6-2.5.
- IC 6-2.5 governs various sales and use taxes, IC § 6-2.5-9-3 and provides that vendors hold those taxes in trust for the state and are personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state. If the individual knowingly fails to collect or remit those taxes to the state, he commits a Class D felony.

LEGAL ANALYSIS:

(1) The proposal would eliminate the words "or tourism cabin" and add, "campground, or dwelling."


The current statute tracks the statutory language. Campgrounds are not listed as a place where the tax may be levied. Whether a dwelling may be taxable is a more difficult question, because a dwelling might be considered an "inn" or a "tourist cabin". While it may be permissible for the county to adopt a policy that a dwelling often rented for stays less than 30 days is a "tourist cabin", it's doubtful that the county has the authority to expand the scope of the tax to facilities not included on the list set out in IC § 6-9-18-3.

On the other hand, it may be possible to omit potential taxable facilities from the county's list – "tourism cabin" is listed in the statute, but it's not clear why the Council would want to exempt a taxable facility from the county's ordinance.

(2) The proposal would **transfer collecting authority from the state to the county treasurer**. This is specifically permitted by IC § 6-9-18-3(d).

(3) The proposal would **add a penalty clause** in effect doubling the tax for delinquencies. Whether the county possesses authority to make this amendment was unclear. Under the Uniform Innkeeper's Tax, penalties are to be assessed according to IC 6-2.5, the statutory chapters that govern sales and use taxes. My review of this rather lengthy section of the code left me unsure on exactly which provisions apply to Innkeeper's Tax (known as "CIT" in the Indiana Dept. of Revenue). However, it seems doubtful that a court would enforce a penalty provision not statutorily based. If the Council decided to implement this penalty, I'd advise specific citation to the home rule laws, and would also note that a public hearing after due notice would be required to implement the penalty clause.

Respectfully submitted,



Martin R. Lucas, attorney

To: Starke County Council

From: Starke County Convention and Visitors Commission

Date: Oct 21, 2013

Re: Ordinance 2007-13

The Convention and Visitors Commission requests the Starke County Council to make the following amendments to Starke County Ordinance 2007-13. The changes make the collection of the tax to be more specific to those that are required to collect the tax, allow the County to collect them directly instead of the State, and adds a penalty clause so there can be enforcement of the tax.

3. Take out the words, "or tourism cabin" and add, "campground, or dwelling."

4. Delete the sentence written and add the sentence, "The tax shall be reported on forms approved by the County Treasurer and shall be paid monthly to the County Treasurer, not more than twenty (20) days after the month the tax is collected.

7. Add an additional penalty clause, naming it # 7. To read, "Failure to comply will result in a penalty of 100% of the uncollected annual taxes plus the taxes due."

#8. Make the previous # 7 to be # 8 and to amend it to state, "This amended ordinance shall take effect on _____, 2013.
