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HOUSE BILL 1651 HOTEL OCCUPANCY TAX

HOUSE TOURISM AND RECREATIONAL DEVELOPMENT COMMITTEE

Harrisburg, Pennsylvania

Written Remarks Presented By
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Executive Director

April 26, 2010

These written remarks are presented to the House Tourism and Recreational Development Committee by Douglas E. Hill, Executive Director of the County Commissioners Association of Pennsylvania (CCAP). The CCAP is a non-profit, non-partisan association providing legislative and regulatory representation, education, research, insurance, technology, and other services on behalf of all of the Commonwealth's 67 counties. The Association is pleased to offer these written remarks on the HB 1651, relating to the hotel occupancy tax.

Counties have the ability to levy hotel taxes by authority granted in the County Code or the Second Class County Code. The tax was initially granted over time to about a dozen counties either as a class of counties or as a special legislative authorization, typically coupled with specified purposes for its use. As additional counties sought legislative authority, often in cooperation with, and with the assent of, their local tourism promotion agency, the general assembly finally approved what became Act 142 of 2000. That act granted an authorization of a three percent hotel tax to all of the remaining counties. Counties that had previously been authorized levies of less than three percent were granted additional authority up to that rate, and counties that had been granted higher rates were permitted to maintain those higher rates.

Other than the special purposes granted to a handful of counties, for most of the counties the funds generated are to be used primarily for tourism promotion. Based on questions of allowable uses as counties began to implement the tax under Act 142, the general assembly provided greater clarity on the matter through Act 12 of 2005. Under that act, the primary uses of the funds generated remain a variety of tourism promotion and marketing purposes, although the funds may also be used for "projects or programs that are directly and substantially related to tourism within the county, augment and do not unduly compete with private sector tourism efforts and improve and expand the county as a destination market."

The law also stipulates, with exceptions for a handful of counties, that the fund is to be collected by the county treasurer and deposited into a restricted account under the control of the recognized tourism promotion agency in the county. The TPA is charged with administering the fund consistent with the act, although in practice the allocation of the funds is often a matter of periodic negotiation between the board of commissioners and the board of the TPA.

The law has been successful in greatly increasing the amount of local funds available for tourism promotion and marketing, particularly when compared with the often-meager general fund appropriations counties had been making previously. The funds also helped county TPAs compete more evenly for available state funding through the matching grant program and later through the regional marketing initiative.

We are now facing several problems in tourism promotion, however. The first is the open question whether remittances collected through third party booking – Travelocity, Orbitz, and the like – fall within the definition of the act. The subject of today's hearing, HB 1651, clarifies the matter for the commonwealth's occupancy tax, but we ask the Committee to conduct a legal review to determine whether its provisions will have equal weight regarding the tax collected by the counties.

The county tax relies on definitions not in the Tax Reform Code, which HB 1651 amends, but in the authorizing language in the County Code and Second Class County Code. While not absolutely uniform, the Code language typically provides that "the tax shall be collected by the operator from the patron of the room or rooms and paid over to the county as herein provided," with operator defined as "an

individual, partnership, nonprofit or profit-making association or corporation or other person or group of persons who maintain, operate, manage, own, have custody of or otherwise possess the right to rent or lease overnight accommodations in a hotel to the public for consideration."

We believe HB 1651 takes the right approach, and seek clarity so that it, or if necessary companion legislation, yields the same outcome for counties. To us it is a matter of equity; the payment and remittance of the levy should not rely on how the room is booked but rather should be uniformly applied on the full consideration paid for its occupancy.

Our second issue is likewise a matter of equity. Although not addressed in HB 1651, it is also a problem shared equally by the commonwealth and by counties. House Bill 1651 amends section 209 of the Tax Reform Code, relating to definitions. Earlier in that same section, subpart (a)(5) provides that anyone who stays 30 days or more is a "permanent resident" and thereby is exempted from the tax. Comparable language is found in the definition sections of the authorizing language for the county hotel taxes.

This has become an issue particularly in the Marcellus region, where the companies rely heavily on out-of-state workforces and have booked the majority of the hotel rooms, often for the full year, for a rotating set of these workers. As a consequence of these long term bookings, those staying in the rooms become "permanent residents" – albeit for this limited purpose – and both the state and the county lose hotel occupancy tax for all of these rooms. We support some change that would resolve this matter for both the commonwealth and for counties, without inadvertently pulling in those who reside in, for example, low-income boarding houses. As noted previously regarding the primary subject matter of HB 1651, in addition to amending the bill, companion bills may need to be drafted to place comparable language in the County Code and the Second Class County Code.

The last issue, also an equity issue, relates to enforcement of the tax. The authorizing language for the county hotel taxes typically provides that "the county commissioners may by ordinance impose requirements for keeping of records, the filing of tax returns and the time and manner of collection and payment of tax . . . (and) may also impose by ordinance penalties and interest for failure to comply with recordkeeping, filing, collection and payment requirements." The problem is lack of clarity on penalties, and no clear ability by the counties to examine the hotel's records on an administrative level to determine compliance; instead enforcement often relies on inefficient and costly litigation. We are seeking some clear audit capacity, coupled with clearly set out penalties so that we can be certain the tax is uniformly applied and uniformly collected. Again, this may not be able to be accomplished through HB 1651 but instead may require amendments to the County Code and the Second Class County Code.

We appreciate your consideration of these comments, and would be pleased to work with you to provide clarity on the applicability of HB 1651 to the county hotel tax, as well as working separately on the other issues we brought up in these remarks.

We would be pleased to answer questions or furnish additional information. You are invited to contact me by email (dhill@pacounties.org) or call 717-979-2566 to discuss any of these issues further.