PENNSYLVANIA ASSOCIATION OF TRAVEL & TOURISM
One Industry, One Voice

PATT Room Tax History, Strategy and Recommendations

The Pennsylvania Tourism industry needs to develop a coordinated, statewide policy on not only defeating inappropriate uses of the Room Tax dollars, but also looking at changes in the law that would benefit Travel & Tourism and increase marketing dollars. This is good for Pennsylvania and its counties.

When a guest checks out of a lodging facility in Pennsylvania, he or she pays a six percent state occupancy tax in every county - in addition to a local room tax that ranges from two and a half to just over nine percent in most counties. The revenue generated from the state occupancy tax goes to the State's General Fund Budget, and the local room tax is collected and spent at the local level.

We have supported local room tax legislation, when the law provided for consistency in rates and use. When room taxes are dedicated to tourism marketing purposes, everyone benefits, especially local communities, which are the primary beneficiaries of the economic development resulting from the tourism dollars spent. Increased visitation supports an increase in jobs, real estate taxes, income taxes, corporate taxes, state sales taxes and state occupancy taxes, thus benefiting all Pennsylvanians.

The debate over room taxes is becoming more common, especially during tough economic times. Faced with budget deficits and reduced funding, local communities in need of money for brick and mortar economic development projects, road repairs, community programs and basic services, view tourists as easy targets for increasing taxes that can be used for non-tourism marketing purposes. The tourism industry continues to oppose efforts to use all or part of room taxes for non-tourism marketing activities. Using these dollars to promote increased tourism, meetings and conventions etc… is instrumental to the financial success of the state's tourism industry, especially small businesses.

Additionally, if this tax is used for non-marketing purposes, our state and local destinations will lose market share to those with strongly funded marketing budgets. This will result in a decrease in jobs, real estate taxes, income taxes, corporate taxes, state sales taxes and state occupancy taxes.

History

A review of Pennsylvania's county hotel room tax legislation can be confusing and requires a detailed analysis because of the proliferation of different enabling Statutes for different counties.

- The adoption of Hotel Room Taxes in Pennsylvania has been on a "piecemeal basis" starting as early as 1977 in Allegheny County, and 1986 in Philadelphia County. The initial Statutes provided for Room Taxes to be used primarily to support the construction of convention centers (with some taxes going to the local Tourism Promotion Agency(s), (TPA's) for other tourism marketing and development purposes.)
- In 1982 there was legislation adopted to support convention centers serving Second Class A Counties (Montgomery, Delaware and Bucks County).
- It was not until the mid 1990's that legislation was first adopted to authorize the County collection of Hotel Room Taxes exclusively for general tourism and marketing purposes.
- Some of the Enabling Statutes define the enabled County in such a fashion that only one (1) County qualifies, including Home Rule Counties (e.g. Statutes focusing on Dauphin, Adams, Erie and Lackawanna County).
- Act 142 was the last Enabling Statute to be adopted and authorized all the Counties that had no other Room Tax legislation to collect Room Taxes. (Forty-five (45) counties.)
- Like most legislation, the Enabling Statutes are imprecise particularly with respect to the definition of some terms. They were written in a manner which results in some flexibility on a county by county basis. The philosophical thinking on this was to allow some room for hoteliers and TPA's to work with their own County Commissioners in developing an Ordinance under the Enabling Statue.
- Multi-county TPA's have had a particularly difficult time with respect to the administration of Room Taxes, especially where the TPA's counties each have different Enabling Statutes, with different authorized purposes for the Tax.
- An inherent tension is incorporated into the structure under the Enabling Statutes. The Statutes are explicitly clear that all of the tax monies collected (less the 2% administrative fee) are to go to the TPA for the specific purposes defined in the Enabling Statue.
- The "specific purposes" in the Enabling Statutes frequently involve ambiguous language. Some counties have interpreted the use of proceeds language to push for questionable uses or projects which the local TPA resists. Counties have significant leverage. If the TPA is non-cooperative, the county can designate another non-profit entity as its "Recognized Tourism Promotion Agency."

- Under Enabling Legislation the tax proceeds must be used in the following six (6) categories:
    1. Convention promotion.
    2. Marketing the area served by the agency as a leisure travel destination.
    3. Marketing the area served by the agency as a business travel destination.
    4. Using all appropriate marketing tools to accomplish these purposes, including, but not limited to, advertising, publicity, publications, direct marketing, direct sales and participation in industry trade shows.
    5. 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.
    6. Any other tourism marketing or promotion program deemed necessary by the recognized tourist promotion agency.

Who Designates a Tourism Promotion Agency (TPA?)

The designation of a Tourism Promotion Agency (TPA) is made by each county. In a county of the first class (Philadelphia only), designation is made by ordinance. In all other counties, designation of a **single county TPA** is made by resolution adopted by the Board of County Commissioners – with the requirement that said resolution have concurrence by various subdivisions (boroughs, cities and townships) representing over 50% of the total county population.

A **regional TPA** is designated by ordinance in cities of the first class or by proper resolution of the governing body of a county or counties. Using the above procedures, two or more counties may designate a single TPA.

** Losing a TPA designation happens by another entity being designated.

Current Room Tax Climate in Pennsylvania

Our association and membership are very concerned about the erosion and continued attempts on the county, township and municipal level to divert the Room Tax dollars away from the appropriate uses.

We are also very concerned about the piece meal approach on a county by county basis. It puts the industry in a difficult position and continues to create a fragmented approach. We know that the General Assembly and Administration do not want to see a continued "piece meal" approach to Room Taxes and that there is a core group of the General Assembly that does not want to put up what they perceive as a "Tax Vote."

In the last legislative session Erie, Lackawanna and Adams all increased the Room Tax Rate for their respective counties.

There are currently two bills in the Legislature this session:

- **HB 1486** - This legislation would increase the maximum county hotel room tax for nine specific counties from 3 percent to 5 percent. The bill amends Section 1770.2 of the County Code, which applies to the following counties: ***Blair, Cambria, Centre, Chester, Indiana, Lancaster, Lycoming, Mercer and York***.
  PATT is Neutral on HB 1486

- **SB 838 – This legislation** would amend the County Code to provide counties of the fourth class (populations 145,000 – 209,999) the option to raise the ceiling on hotel room tax from 3% to 5% in order to generate more revenue for tourism promotion.

  75% of all revenue collected for the hotel room tax will be used by the county's Tourism Promotion Agency (TPA) for the promotion, advertising, and marketing of tourism and special events and for administrative costs.

  25% of all revenues received shall be distributed as follows:

  - 50% shall be used by the county commissioners for the purpose of economic development and historic preservation, and the arts.
  - 50% shall be used by the county commissioners for grants to municipalities that have a municipal police department employing at least two full-time police officers assigned to law enforcement duties and who work a minimum of two hundred days per year or are a member of a regional police department that provides full-time police services to the municipality pursuant to an agreement or contract.

  PATT is opposed to SB 838

PATT Recommendations

There is significant interest and support from the industry in creating a strategic approach to not only addressing the concerns with the "piecemeal" approach to Room Tax laws, but also taking the opportunity to address several other concerns with the enabling legislation.

We are recommending addressing the following areas:

1. PATT would support giving the counties within Act 142 (45 Counties), as well as the counties outlined in HB 1486, the option of raising the cap from 3% to no more than 7% - dependent on ensuring that 100% of this revenue goes towards marketing and promotion for tourism.

2. We would like to address our concerns with enforcement and collection of the Room Tax at the local and county level.
3. We would like to create stronger definitions that could be added to the law in regards to what the appropriate uses are for the Room Tax.
4. Create a more comprehensive/protective process at the county level around potential un-designation of a TPA, or the establishment of more than one designated tourism promotion, tourism development or travel destination development entities.
5. Consider expanding Room Tax definitions to include any facilities that take a fee for an overnight stay, i.e. Cabins, Campgrounds, Vacation Rentals, Colleges and Universities (excluding students enrolled in a degree program).
6. Future Room Tax Statutes should not be intended to fund "brick and mortar" or other non-tourism related projects or initiatives.
7. Establish a workgroup of stakeholders by September 1st to discuss these and other proposed recommendations. The goal would be to create a strategy and agreement on how to accomplish the recommendations and garner support from the stakeholders.

Recommendation #1 – Raise the Room Tax Rate from 3% to no more than 7% for those counties under Act 142 and those counties within HB 1486 (9 counties).

- PATT would support giving the counties within Act 142 (45 Counties), as well as the counties outlined in HB 1486, the option of raising the cap from 3% to no more than 7% - dependent on ensuring that 100% of this revenue goes towards marketing and promotion for tourism.

Benefits:

- We could address the interests of York County through their support of HB 1486 (which also includes the other 8 counties) by creating more of an omnibus bill that included the current 45 counties in Act 142 and the 9 counties that are impacted by HB 1486 – thus creating one less piece of Room Tax legislation.
- Franklin County's desire to also go to 5% would be addressed by opening up Act 142 and changing the cap, because they are already include in Act 142 and they would not need SB 838 to do that.

Recommended Steps that would demonstrate ROI and Partnership:

- All the Room Tax dollars raised would have to go back to the designated TPA in or for that County.
- ANY increase in room tax – if allowable – should follow an outlined procedure that involves the hotels, TPA and TPA members.

- Submit an annual audit to the County Commissioners and DCED/Private- Public Partnership to demonstrate commitment and ROI/Economic Impact on the dollars being raised and spent. (***Under Act 142 – Section 2 TPA's must submit an annual audited report to the County***.)
- Work with DCED/Public Private Partnership to continue to conduct an annual state-wide Economic Development Study/ROI, with the numbers broken down by County. The findings will be distributed to the County Commissioners, the TPA Board/Membership and the DCED/Private- Public Partnership.

Recommendation #2 - Address our concerns with collection and enforcement of the Room Tax at the local and county level.

- Create stronger language that provides more teeth to enforce the room tax legislation at the county level.
- Ask for County Commissioners to issue a statement to all properties explaining the law and encouraging remittance and compliance.
- Create or tighten up the protocol and procedures for room tax collection.
- This could establish and or strengthen a partnership between the TPA and the Commissioners.
- The TPA would help identify collection problems and new properties eligible to implement and collect the tax to the County Treasurer.
- At the beginning of each year, the TPA could submit a formal letter to the County Treasurer listing all properties within the County that should be collecting room tax and a list of future properties of which to be aware in the upcoming fiscal year.
- Subsequently, tax collection problems would be handled by the County Treasurer through an official notification process.
- Notices sent by certified mail from the County Tax Collector to the property. Failure to comply results in a letter from the Attorney General's office detailing deadlines for compliance, consequences and fines.

Recommendation #3 - Stronger definitions should be added to the law in regards to what the appropriate uses for the Room Tax are.

- Better define the original intent of the Legislation that establishes a sound perspective beyond a TPA or County Commissioner's interpretation.
- Update and re-issue the letter from the House Tourism Committee in 2001 that was sent to all County Commissioners clarifying how the Room Tax dollars are to be used.

Recommendation # 4 – Create a more comprehensive/protective process at the county level around potential un-designation of a TPA, or the establishment of more than one designated tourism promotion, tourism development or travel destination development entities.

- One way to address the concerns of a TPA about being under the threat of un-designation would be to work with DCED/Public Private Partnership to re-establish and adopt criteria for a TPA Designation/Certification/Accreditation recognition. (Similar to what existed under the TPA Grant Program Guidelines and Requirements).
    - Similar to the following:
        - TPA must be a non-profit organization
        - The existence of sufficient tourism assets, such as lodging, service businesses and tourism attractions.
        - Ability to carry out essential marketing functions such as:
            - An interactive website
            - A strategic tourism marketing plan
            - Comprehensive fulfillment services
            - Audited financials on how Room Tax monies are spent.
    - Without these criteria designated TPA would be open to the potential process of de-certification (undesignated.)
- The goal would be that this would provide more protection at the county level. More steps in the process before a TPA could be undesignated.

Recommendation #5 - Consider expanding Room Tax definitions to any facility that takes a fee for an overnight stay, i.e. Cabins, Campgrounds, Vacation Rentals, state owned lodging facilities, Colleges and Universities (excluding students enrolled in degree programs).

Recommendation # 6- Future Room Tax Statutes should not be intended to fund "brick and mortar" or other non-tourism related projects or initiatives.

- In the future we should keep separate (a) enabling legislation for the development of brick and mortar facilities such as arenas, stadiums, convention centers and the like.
- We need to have clear definitions of what constitutes "brick and mortar."
- Any Hotel Tax rate authorized for capital facilities would be separate and apart from those authorized under the marketing enabling statue.
- Future legislation needs to speak to addressing what happens to the Room Tax dollars once the bonds are paid off.
    - It needs to state that once the expiration date is reached on the bonds that the monies need to revert back to the designated Tourism Promotion Agency for their marketing efforts.

- Address the re-financing options that these entities have that could keep those room taxes dollars tied up for the foreseeable future, rather than just paying off the bonds.

<u>To the question of "Tourism Development?"</u>

Act 142 establishes that funds generated by such a tax must be expended exclusively for "tourism, convention promotion, and tourism development" while, at the same time, allowing flexible interpretation of those terms. Second, a dynamic balance, not so readily understood by all parties concerned, is established, requiring that county commissioners levy the taxes and tourism promotion agencies administer the funds they generate, all within the framework of local collaborative agreement as to the objectives to be met by their expenditure.

- Recurring questions in the present debate address the degree of latitude permitted in expenditure of the taxes collected, and the flexibility available in their administration.
- Clearly, as long as there is local consensus that a proposed expenditure qualifies as "tourism, convention promotion, and tourism development", that expenditure may be considered. Examples discussed in some counties include, beyond traditional marketing/promotion efforts, such projects as construction and operation of visitor centers, historic preservation (restoration of covered bridges and historic buildings), infrastructure (e.g. facilitation of pedestrian or vehicular access to facilities and attractions), and open space and agricultural preservation (when a tourist promotion agency marketing plan positions such among the strong visitor appeals of that county).

Recommendation #7 - Workgroup of stakeholders to be established by September 1st to discuss proposed recommendations and create a strategy and agreement on how to accomplish them.

<u>Other Room Tax Related Issues</u>

30 Day Rule

There has been no legislation introduced this legislative session yet but there are plans to do so. This legislation would increase or remove the 30 day cap which would mean Room tax could be collected beyond 30 days on anyone that is staying a property long term. Currently this is capped at 30 days.

PATT does not have an official position on this currently but will be surveying our membership to determine an interest in addressing this issue. This is an initiative that could be addressed or attached to a future Room Tax bill.

This is an issue that the County Commissioners Association supports and currently the Pennsylvania Restaurant and Lodging Association (PRLA) opposes.

Online Travel Company (OTC) Issues

Representative Day has introduced several bills that would close a hotel tax loop hole. HB 871 – HB 875 are currently in the House Tourism Committee.

Representative Day's package of bills would close the current loophole that permits online travel companies to remit less tax than in-state lodging establishments.

PATT supports the closing of this loophole. Currently, the Commonwealth is losing money because online travel companies are remitting taxes on a lesser amount than the actual cost at which they sell a hotel room. It puts in-state hotels that collect and remit the tax properly at a competitive disadvantage.

When a customer books an overnight stay directly with a lodging establishment, the lodging establishment charges the appropriate tax on the billed cost of the room and remits the taxes to the state.

When a customer books an overnight stay with an online travel company (such as Expedia, Travelocity, Orbitz), these companies are only remitting taxes on the wholesale cost the company paid for the room, not the actual (higher) cost the customer pays.

The Commonwealth is losing valuable sales tax revenue because the full tax is not being remitted back to the state. Counties are losing valuable hotel occupancy tax revenue that is intended for tourism promotion because the full tax is not being remitted to the county.

Conclusion

The industry needs to develop a coordinated, statewide policy on not only defeating inappropriate uses of the hotel tax dollars but looking at changes in the law that would benefit Travel & Tourism and increase marketing dollars.

The more room tax dollars available to the TPA, the more marketing it can to do attract tourists and visitors to come and stay overnight. This visitor spending money will help support a wide array of local, county and regional businesses and business owners. These Room Tax revenues generate much needed visitor spending in these local communities.

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