

TESTIMONY ON HOTEL TAX ISSUES

PRESENTED TO THE HOUSE COMMITTEE
ON TOURISM AND RECREATIONAL DEVELOPMENT

BY

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Good morning, I am Douglas E. Hill, Executive Director of the County Commissioners Association of Pennsylvania. Ours is a non-profit, non-partisan Association providing legislative, educational, insurance, research, and similar services to all of the Commonwealth's 67 counties.

I am pleased to appear before you today to present our comments on county hotel tax issues.

At the outset, I would like to give you a historical perspective of our Association's position on hotel taxes generally, and how the statutes came to read as they now do.

For some time, Philadelphia and Allegheny Counties, along with the 2A counties of Montgomery and Delaware, had special hotel tax levies. For Philadelphia and Allegheny, these were special levies authorized under special circumstances, but for Montgomery and Delaware (and, after the 1990 census, Bucks), the tax was an optional levy for the commissioners, and existed exclusively to fund tourism promotion efforts.

Some time ago, our Association adopted a position calling for a hotel tax for all remaining counties, to be adopted by the commissioners or home rule counterparts, and to be used for general fund purposes. This proposal was, understandably, opposed by the tourism industry. In the ensuing years, we discussed the issue with industry representatives from time to time, and gradually modified our position toward dedicating the use of potential receipts to what we believed were tourism-related issues -- economic development, historic preservation, agricultural preservation and, of course, tourism promotion. While the industry appreciated the movement in our position, it still was not acceptable.

At the same time, we witnessed a concurrent trend among the counties and tourism promotion agencies to reach agreement locally on hotel taxes, and obtain special legislative authorization for county-specific taxes. The common characteristics of these taxes were that they were the product of local negotiations, and that they often included authorization for their expenditure for local "bricks and mortar" projects in addition to traditional promotional efforts.

Our state-level negotiations with the industry, combined with the experiences of counties that negotiated with their travel councils on local projects and levies, gave us a new perspective on how we should approach this issue. Recognizing the mutual interests of elected officials and tourism leaders in developing and promoting the local product, our position on the matter evolved accordingly, to one where we supported "partnering with tourism industry representatives to direct the use of hotel tax revenue or other sources of new funding for needs consistent with attracting and promoting tourism, such as infrastructure and historic preservation, which are directly related to tourism within the Commonwealth's communities." Importantly, this was placed in our *Pennsylvania County Platform* in the context of economic development, not taxation and revenue, and was coupled with resolutions relating to other cooperative efforts with the travel industry.

As a consequence, when the opportunity arose at the end of the 2000 legislative session to amend the County Code to include a hotel tax authorization for all counties that had not negotiated separate agreements, we had a conceptual framework within which to work. In the intervening years, about ten counties had worked out arrangements locally, and acquired special legislation, for

separate local taxes. All of these special taxes had promotional components, and most included authorization to use some of the funds for other purposes.

At the end of the 2000 session, at least two more counties were seeking special authorization, so CCAP and our industry counterparts set out to develop language to extend a uniform tax to all of the remaining counties.

The result was Act 142 of 2000, which included a specific hotel tax authorization of three percent for any county that did not have the tax before that date, along with separate specific authorizations for Dauphin and Adams Counties, and the ability for any pre-existing county that had less than three percent to levy a full three percent. To assure that a process of local negotiations would be an element of the tax's implementation, we required the county to levy the tax, and the TPA to administer the proceeds. And the act specified that the proceeds were to be used simply for "the purposes of tourism, convention promotion, and tourism development."

Subsequently, most of the counties have adopted the tax, and most have done so in the cooperative manner that we anticipated. We readily admit that this has not universally been the case, and in fact we worked with the industry once again on passage of Act 12 of 2005 which provided greater clarity on the administration and allowable uses of the fund. But nonetheless, we believe that the Act has been successful, and has achieved the intended results. Of the counties adopting the tax, its administration is largely consistent with the local tourism development plan, and is being spent on promotion or on projects to improve the tourism product.

We believe that the majority of hotel tax programs are the result of genuine collaboration and compromise between the counties and their local industry. A hallmark of these successful programs is an understanding that promotion goes hand-in-hand with development and enhancement of a sound local product, and a concurrent understanding that each party has a valid interest in the outcome – the commissioners, as with any tax levying body, must retain some responsibility for how the funds are spent, and the industry, as the sector from which the funds are raised, should have a voice in their use and should be the primary beneficiary. Parenthetically, it is also important to note that almost no other tax is used to the exclusive or primary benefit of the economic sector from which that tax is raised.

Consequently, we believe the act should retain the flexibility we all intended when the original language was developed; that is, there should be a valid process of local negotiation and local collaboration in determining the use of the funds, directed toward the larger goal of enhancing the tourism product. The definition of the terms in the act – whether limited to promotion or expanded to include bricks-and-mortar, whether limited to promotion of attractions or expanded to include infrastructure in support of those attractions – should remain a matter of local collaboration.

Let me turn now to several specific issues and pieces of legislation. For the former, I will focus on the hotel-tax related issues contained in our cumulative policy statement, the Pennsylvania County Platform. I have included the set of hotel and tourism planks at the end of this testimony, and the full Platform can be found on the government relations page of our website, www.pacounties.org.

Collection of Hotel Taxes

Our platform supports both state collection of county taxes (with presumed remittance to the county of origin), and tools for enforcement of the tax. On the former, the tax is currently remitted to the county treasurer. We believe the tax would be more uniformly collected, and the paperwork for the facilities reduced, if it were done by the commonwealth.

On the latter, and particularly if we retain collection responsibility locally, we need proper tools to be able to do so uniformly and equitably. In the first instance, we need to assure that the determination of covered facilities is uniform; examples of questioned facilities include campgrounds and trailer parks. We note parenthetically that uniformity on this point would be achieved by state collection. Second, most counties lack statutory capacity to audit the records of facilities to determine whether they are making the proper remittances. We understand the industry's concerns with disclosure of proprietary information; this is a matter we have dealt with successfully in relation to other fee systems. That said, we believe it is a matter of equity both to taxpayers and in the local marketplace. If nothing else, the state should grant us access to the list of facilities that remit the state hotel tax, as an indicator of facilities that have a potential local liability.

Thirty-Day Rule

The premise of current law is that the hotel tax is paid by casual visitors, but not by individuals who have taken up temporary residence. This is accomplished by exempting, from both county and state taxes, hotel stays in excess of 30 days. While we agree with the premise, we observe that the system is subject to abuse and that there are alternate means to accomplish the same ends.

Specifically, while the exemption is to apply to the individual, we understand that companies often book extended blocks of rooms and negotiate application of the exemption as a condition of the booking. While this has reputedly been a practice for the railroad and airline industries, the point has been reemphasized with the influx of workers in the shale gas industry.

We suggest as an alternative that the determination be made not on the number of days, but that a residency definition be used. The laws we use to determine obligations for local earned income tax and to grant homestead exclusions for property tax purposes have language which could be adapted for this purpose, keying on domicile:

"Domicile." The place where a person lives and has a permanent home and to which the person has the intention of returning whenever absent. Actual residence is not necessarily domicile, for domicile is the fixed place of abode which, in the intention of the taxpayer, is permanent rather than transitory. Domicile is the voluntarily fixed place of habitation of a person, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some event occurs to induce the person to adopt some other permanent home. In the case of a business, domicile is that place considered as the center of business affairs and the place where its functions are discharged.

Using this standard, the facility is relieved of the administrative burden of tracking number of days, the issue of corporate versus individual exemption is clarified, and true domestic uses (e.g. boarding houses) remain exempt.

Hotel Tax Rates

The standard county rate, apart from counties with special authorizations, is three percent, and our policy statement calls for an authorization of up to six percent. The statement also calls for uniformity among county authorizations (which, given recent legislation, may alter our position to seven percent), and for the ability to designation of administration of the funds by up to three qualified tourism or travel destination development entities.

We believe an increase in the rate is justified, in part because of our growing appreciation for tourism as a driver of local economies, and in part due to the emasculation in recent years of the Commonwealth's appropriations to local agencies under the Tourism Promotion Act.

In addition to advocating an increase, we also emphasize that we believe determination of uses should remain a local decision, determined through collaboration between the county and its tourism promotion agency. We continue to support the dual system of county levy and TPA administration, and we particularly oppose any legislative allocation of the proceeds outside of what is agreed to locally.

In that context, we did not become involved with legislation last session which increased, and changed the allocations of, the hotel taxes in Adams and Lackawanna counties, inasmuch as the legislation was specific to those counties and was to our understanding agreed to by all parties locally. In a similar vein, while we have not yet weighed in on SB 838, which would authorize an increase of the hotel tax to five percent in fourth class counties (the bill has been reported from the Senate Community, Economic, and Recreational Development Committee), we anticipate our membership will object to that bill's concurrent imposition of allocation requirements.

Allowable Uses

As noted we believe, as a general rule, uses of the hotel tax should be determined locally. We remain committed to the standard statutory framework applying to all counties not subject to a specific local law:

- (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.

This list of uses was negotiated among county and tourism interests and was enacted generally by Act 12 of 2005, with the intent of being more specific than the original language of Act 142 of 2000, but still allowing determinations of use to be made by local collaboration.

Conclusion

County commissioners recognize the important role that travel and tourism plays in the local economy, and share a commitment toward improving and developing that product. We remain committed to working with you and the industry toward that goal.

Thank you for your consideration of these comments.

CCAP TOURISM & HOTEL TAX RESOLUTIONS 2012-2013 Pennsylvania County Platform

Assessment and Taxation – Tax Collection and Administration

3. The Association supports legislative or regulatory changes to require the commonwealth to collect and remit to counties any applicable county hotel tax for state-owned lodging facilities. (Added 2009, readopted 2012)
4. The Association supports legislation to eliminate the current rule that deems a hotel stay in excess of 30 days a residential accommodation and removes it from liability for state and county hotel taxes, while being careful not to affect the status of true transient rentals such as boarding houses. (Added 2009, readopted 2012)
5. The Association supports enactment of provisions to aid in enforcement of the county hotel tax, including clear authority to levy penalties for failure to comply, authority to perform an independent audit of pertinent records of hotel operators, and ability to cross-reference state hotel tax collection data. (Added 2010, readopted 2012)
7. The Association supports legislation that creates equity among the counties with regard to the maximum rate of the hotel tax regardless of county class. (Added 2012)

Community and Economic Development - Tourism

1. The Association seeks an amendment to the County Code to allow counties to fund tourist promotion agencies at a greater level than that specified by the Code. (Added 1999, readopted 2012)
2. The Association supports administration of tourism grant programs by the Department of Community and Economic Development consistent with the objectives of maintaining individual county tourism promotion programs, balanced with incentives for regional approaches and providing consistency with Commonwealth tourism promotion efforts. (Added 2000; amended 2002, amended 2007, amended 2009, readopted 2012)
3. The Association directs its community and economic development committee to review statutes providing for tourism promotion agencies, including issues such as composition of boards, regional cooperation, funding, planning, administration, certification, and decertification. (Added 2003, readopted 2012)
4. The Association supports development and expansion of funding sources to assist counties in preserving their architectural heritage. (Added 2000, amended and readopted 2012)
5. The Association supports continuation of funding support for regional recreation and heritage-based tourism initiatives established in partnership by the Commonwealth's Department of Conservation and Natural Resources and Department of Community and Economic Develop-

ment, such as “Pennsylvania Wilds” and similar initiatives in the “Pittsburgh and Its Countryside”, “Northeast PA Mountains” and “Philadelphia and Its Countryside” tourism regions, and acknowledges the dual objectives of developing the tourism trade while conserving our natural attractions and assets. (Added 2008, readopted 2012)

6. The Association supports an amendment to the County Code to permit counties to increase the hotel occupancy tax up to 6% along with authorization to designate the funds for administration by up to three tourism, tourism promotion, tourism development, or travel destination development entities. (Added 2009, readopted 2012)