

REVENUE ESTIMATING CONFERENCE

Tax: Local Taxes and Fees

Issue: Local Option Food and Beverage Tax – Levy of 1% Tax in Select Municipalities Subject to Referendum Approval

Bill Number(s): CS/HB 7073 (codified as Chapter 2024-158, L.O.F.)

Entire Bill

Partial Bill: Section 21 only

Sponsor(s): House Appropriations Committee, House Ways and Means Committee, and Representative McClain

Month/Year Impact Begins: July 1, 2024

Date(s) Conference Reviewed: June 17, 2024

Section 1: Narrative

a. Current Law:

Municipal Resort Tax

Chapter 67-930, L.O.F., as amended by Chapters 82-142, 83-363, 93-286, and 94-344, L.O.F., authorizes the Municipal Resort Tax, which also consists of two separate levies. Municipalities in counties having a population of not less than 330,000 and not more than 340,000 (i.e., Broward County) and in counties having a population of more than 900,000 (i.e., Miami-Dade County), according to the 1960 decennial census, whose charter specifically provided or was amended prior to January 1, 1968, to provide for this tax levy, are eligible to impose it by ordinance adopted by the governing body. A tax of up to 4% may be levied upon the rent of every occupancy of a room or rooms in any hotel, motel, apartment house, rooming house, tourist or trailer camp, as defined in part I of ch. 212, F.S. A tax of up to 2% may be levied upon the retail sale price of all items of food or beverages sold at retail, and of alcoholic beverages sold at retail for consumption on the premises at any place of business required by law to be licensed by the state hotel and restaurant commission or by the state beverage department. However, the tax does not apply to those sales the amount of which is less than 50 cents or sales of food or beverages delivered to a person's home under a contract providing for deliveries on a regular schedule when the price of each meal is less than \$10.

The Miami-Dade County municipalities of Bal Harbour, Miami Beach, and Surfside are eligible to impose the Municipal Resort Tax. According to their official government websites, Bal Harbour¹, Miami Beach², and Surfside³ are imposing the tax at 4 percent on transient rental transactions and 2 percent on the sale of food and beverages.

It is the duty of every person renting a room or rooms and selling at retail food or beverages or alcoholic beverages for consumption on the premises to act as the tax collection agent. These persons must collect, report, and pay over to the municipality all taxes levied in accordance with the enacted ordinance. Any municipality collecting the tax has the same duties and privileges as the Department of Revenue (DOR) under part I of ch. 212, F.S., and may use any power granted to the DOR under this part including enforcement and collection procedures and penalties.

The governing body may authorize by ordinance the creation of an authority or commission empowered to contract and be contracted with its own name as an agency of the municipality to expend the tax proceeds as the body may determine appropriate. The tax proceeds are used for the creation and maintenance of convention and publicity bureaus; development and maintenance of art and cultural centers; enhancement of tourism; publicity and advertising; construction, operation, and maintenance of auditoriums, community centers, and convention structures; or relief from ad valorem taxes being used for any of these other purposes.

Local Option Food and Beverage Tax

Section 212.0306, F.S., authorizes the Local Option Food and Beverage Tax, which actually consists of two separate levies. Any county, as defined in s. 125.011(1), F.S., [i.e., Miami-Dade County] may impose two separate taxes by ordinance adopted by a majority vote of the county's governing body. The first tax authorized in s. 212.0306(1)(a), F.S., may be imposed at the rate of 2 percent on the sale of food, beverages, or alcoholic beverages in hotels and motels. A second tax authorized in s. 212.0306(1)(b), F.S., may be imposed at the rate of 1 percent on the sale of food, beverages, or alcoholic beverages in establishments that are licensed by the state to sell alcoholic beverages for consumption on the premises, except for hotels and motels. However, this 1 percent tax does not apply to any alcoholic beverage sold by the package for off-premises consumption. The county levying either tax locally administers the tax using the powers and duties enumerated for local administration of the tourist development tax by s. 125.0104, F.S. Miami-Dade County began levying these taxes on October 1, 1993.

¹ <http://www.balharbourfl.gov/doing-business/resort-tax-registration>

² <https://www.miamibeachfl.gov/city-hall/finance/filepay-resort-tax/>

³ See document entitled "Resort Tax Form" available at <http://www.townofsurfsidefl.gov/departments-services/finance/certificate-of-use-local-business-tax-receipt-and-resort-tax-information>

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The county distributes the 2 percent tax proceeds to a countywide convention and visitors’ bureau, which by interlocal agreement and contract with the county has been given the primary responsibility for tourist and convention promotion, to be used for those purposes authorized in s. 125.0104(5)(a)2. or 3., F.S. (1992 Supp.). If the county is not or is no longer a party to such an interlocal agreement and contract with a countywide convention and visitors’ bureau, the county allocates the proceeds for those purposes authorized in s. 125.0104(5)(a)2. or 3., F.S. (1992 Supp.).

As described in s. 125.0104(5)(a)2. or 3., F.S. (1992 Supp.), the 2 percent tax proceeds are used for the following purposes.

1. Promoting and advertising tourism in the State of Florida and nationally and internationally.
2. Funding convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies or by contract with the chambers of commerce or similar associations in the county.

The 1 percent tax proceeds are distributed by the county pursuant to the guidelines provided in the approved plans for addressing homeless needs as well as the construction and operation of domestic violence centers. The county and its respective municipalities continue to contribute each year at least 85 percent of aggregate expenditures from the respective county or municipal general fund budget for county-operated or municipally-operated homeless shelter services at or above the average level of such expenditures in the two fiscal years preceding the levy date of this tax.

For the first 12 months of the 1 percent tax levy, the proceeds are used by the county to assist persons who have become or are about to become homeless. These funds are made available for emergency homeless shelters, food, clothing, medical care, counseling, alcohol and drug abuse treatment, mental health treatment, employment and training, education, and housing. Thereafter, not less than 15 percent of the proceeds are made available for construction and operation of domestic violence centers. The remainder is used for programs to assist the homeless or those about to become homeless. In addition, the proceeds and accrued interest may be used as collateral, pledged, or hypothecated for authorized projects, including bonds issued in connection with such authorized projects.

Prior to 2023, sales in cities or towns imposing a Municipal Resort Tax, as authorized by Chapter 67-930, L.O.F., were exempt from both the 1% and 2% Local Option Food and Beverages Tax levies. However, legislation enacted in 2023 (i.e., HB 7063, which was codified as Chapter 2023-157) authorized the 1% Local Option Food and Beverage Tax authorized in s. 212.0306(1)(b), F.S., to be imposed by each of the three municipalities of Bal Harbour, Miami Beach, and Surfside, if the levy is approved by a majority of registered electors of that municipality voting in a referendum held at a general election as defined in s. 97.021, F.S.

Relevant Taxes on the Sale of Food, Beverages, or Alcoholic Beverages			
Local Option Food and Beverage Tax		Municipal Resort Tax	
2% Tax	On the sale of food, beverages, or alcoholic beverages in hotels and motels only.		Upon the retail sale price of all items of food or beverages sold at retail, and of alcoholic beverages sold at retail for consumption on the premises at any place of business required by law to be licensed by the state hotel and restaurant commission or by the state beverage department. However, this tax shall not apply to those sales the amount of which is less than fifty cents nor to sales of food or beverages delivered to a person’s home under a contract providing for deliveries on-a regular schedule when the price of each meal is less than ten dollars.
1% Tax	On the sale of food, beverages, or alcoholic beverages in establishments that are licensed by the state to sell alcoholic beverages for consumption on the premises, except for hotels and motels; however, the tax shall not apply to any alcoholic beverage sold by the package for off-premises consumption.	Up to 2% Tax	

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- b. Proposed Change:** The legislation amends s. 212.0306(2)(d), F.S., to clarify that in a referendum to adopt the 1% Local Option Food and Beverage Tax in any of the three municipalities (i.e., Bal Harbour, Miami Beach, and Surfside) currently levying the Municipal Resort Tax, the 1% tax levy must be approved by a majority of electors voting in the election, rather than having to be approved by a majority of registered electors.

Section 2: Description of Data and Sources

None

Section 3: Methodology (Include Assumptions and Attach Details)

On June 23, 2023, the REC reviewed nearly identical legislation, which required a higher voting threshold for the levy’s approval, and the Conference adopted a zero/positive indeterminate fiscal impact.

Beginning July 1, 2024, any future imposition of the 1% Local Option Food and Beverage Tax on eligible sales within one or more of these three municipalities (and the resulting tax proceeds going to Miami-Dade County) would be subject to two conditions. First, the municipality’s governing body would need to adopt an ordinance calling for a local referendum, which must be held at a general election, to approve the tax levy within the jurisdiction. Second, a majority of electors of that municipality voting in the referendum would need to approve it.

For these reasons, the EDR staff again recommends a zero/positive indeterminate fiscal impact.

Section 4: Proposed Fiscal Impact

	High		Middle		Low	
	Cash	Recurring	Cash	Recurring	Cash	Recurring
2024-25			0/**	0/**		
2025-26			0/**	0/**		
2026-27			0/**	0/**		
2027-28			0/**	0/**		
2028-29			0/**	0/**		

Revenue Distribution: Local funds only.

Section 5: Consensus Estimate (Adopted: 06/17/2024): The Conference adopted a zero impact.

	GR		Trust		Local/Other		Total	
	Cash	Recurring	Cash	Recurring	Cash	Recurring	Cash	Recurring
2024-25	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2025-26	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2026-27	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2027-28	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2028-29	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0