WISCONSIN LEGISLATIVE COUNCIL
INFORMATION MEMORANDUM

2015-17 Revisions to Municipal Room Tax

A municipality may impose a "room tax" on entities such as hotels, motels, and other establishments that rent short-term lodging. State law controls municipal room tax collection, as well as the use of room tax revenues. 2015 Wisconsin Act 55 (Act 55), the 2015-17 Biennial Budget, and 2015 Wisconsin Act 301 (Act 301) modified state law regarding the collection and use of a municipal room tax. This Information Memorandum provides a brief overview of the municipal room tax, including a description of prior law, and summarizes the changes made by Acts 55 and 301. Gubernatorial partial vetoes that modified the budget language as originally proposed by the Legislature are noted where applicable.

BACKGROUND AND PRIOR LAW

Generally, under Wisconsin law, a municipality may impose a tax on short-term lodging (a "room tax") on entities such as hotels, motels, and other establishments that rent lodging for periods of less than one month. Additionally, two or more municipalities may impose a room tax in a "zone," defined as "an area made up of 2 or more municipalities that, those municipalities agree, is a single destination as perceived by the traveling public." [s. 66.0615 (1) (h), Stats.]

ROOM TAX PURPOSE AND USE

Wisconsin law requires that certain percentages of room tax revenues, as discussed below, must be spent on tourism promotion and tourism development. "Tourism promotion and tourism development" is defined to mean any of the following, if significantly used by transient tourists and reasonably likely to generate paid overnight stays in multiple establishments within a municipality: (1) marketing projects; (2) "transient tourist informational services;" and (3) "tangible municipal development, including a convention center." In other words, unless a municipality has only one qualifying establishment, promotional services must be of a sufficiently general nature so as to benefit multiple establishments that are subject to a room tax and owned by different people. [s. 66.0615 (1) (fm), Stats.] For example, a marketing campaign advertising a single hotel in a municipality with multiple hotels, motels, or other short-term lodging establishments would not qualify as tourism promotion or tourism development.

Prior to Acts 55 and 301, a municipality could directly spend room tax revenues on tourism promotion or tourism development or could forward the room tax revenues to a tourism entity or to a commission to be spent for those purposes.

Prior to Acts 55 and 301, a tourism entity was defined as "a nonprofit organization that came into existence before January 1, 1992, and that provides staff, development or promotional services for the tourism industry in a municipality." [s. 66.0615 (1) (f), 2013-14 Stats.] As discussed below, Acts 55 and 301 modified the definition of a tourism entity. However, tourism entities, as defined under both current and prior law, may receive room tax revenues that they must spend on tourism promotion and tourism development.

A municipality that imposes a room tax may create a commission, defined as an entity "to coordinate tourism promotion and tourism development." [s. 66.0615 (1) (a), Stats.] If two or more municipalities in a zone impose a room tax, they must create a commission. Under current and prior law, a commission must contract with an organization that performs the functions of a tourism entity if a tourism entity does not exist in a municipality or within a zone. Although not explicitly stated, this implies that a commission must work with a tourism entity as it uses room tax revenues to coordinate tourism promotion and tourism development.

Current and prior law both provide that a commission must report annually to each municipality from which it receives room tax revenues the purposes for which it spends the revenues.

ROOM TAX RATES AND EXPENDITURE LEVELS

For municipalities that adopted a room tax after May 13, 1994, the room tax rate may be no higher than 8%, and at least 70% of the room tax collections must be dedicated to expenditures related to tourism promotion and development. Therefore, up to 30% of room tax collections may be directed to general municipal expenditures.

The permitted rates and division of room taxes in municipalities that collected room taxes on or before May 13, 1994 are more complex. Subject to certain exemptions of limited applicability,[1] a municipality that collected a room tax on May 13, 1994, was required to reduce its room tax rate to 8% under 1993 Wisconsin Act 467. However, Act 467 also specified that a municipality that collected a room tax on May 13, 1994, could retain for its general revenues not more than the same percentage of the total room tax revenues collected that it retained on May 13, 1994, as an exception to the 70% threshold for expenditures related to tourism promotion and development (this exception is commonly referred to as the 1994 grandfather clause). If a municipality that collected a room tax on May 1, 1994, increased its room tax after

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[1] "A municipality that imposes a room tax under par. (a) is not subject to the limit on the maximum amount of tax that may be imposed under that paragraph if any of the following apply:

1. The municipality is located in a county with a population of at least 380,000 and a convention center is being constructed or renovated within that county.

2. The municipality intends to use at least 60% of the revenue collected from its room tax, of any room tax that is greater than 7%, to fund all or part of the construction or renovation of a convention center that is located in a county with a population of at least 380,000.

3. The municipality is located in a county with a population of less than 380,000 and that county is not adjacent to a county with a population of at least 380,000, and the municipality is constructing a convention center or making improvements to an existing convention center.

4. The municipality has any long–term debt outstanding with which it financed any part of the construction or renovation of a convention center." [s. 66.0615 (1m) (am), Stats.]

May 1, 1994, the municipality may retain not more than the same percentage of the room tax that it retained on May 1, 1994, except that the municipality must spend at least 70% of the increased amount of room tax that it began collecting after May 1, 1994, on tourism promotion and development. [2]

[s. 66.0615, Stats.]

2015 WISCONSIN ACTS 55 AND 301

2015 Senate Bill 21 (SB 21) was passed by the Legislature, modified by the Governor's partial veto, and enacted as Act 55. Act 55 made several changes to the collection and use of a municipal room tax, each of which is discussed below. Gubernatorial partial vetoes that modified the language passed by the Legislature are noted where applicable.

Subsequent to Act 55, Act 301 made additional changes to the municipal room tax by expanding the definition of tourism entity, permitting municipalities to contract with a wider range of organizations if a tourism entity does not exist, and revising the required membership of a tourism entity's governing body.

EXPENDITURE OF ROOM TAX REVENUE

Act 55 specified that the required percentage of room tax revenues must be spent on tourism promotion or **tourism** development, not municipal development generally. Under prior law, the revenues were required to be spent on "tourism promotion and development."[3]

Act 55 eliminated a municipality's authority to directly spend the room tax revenues that must be spent on tourism promotion and tourism development. Instead, a municipality must forward those room tax revenues to a commission, if one exists for the municipality, or to a tourism entity.

RETENTION OF ROOM TAX REVENUE

Act 55 modified the 1994 grandfather clause, which generally permitted municipalities that had imposed a room tax prior to May 13, 1994, to retain more than 30% of room tax revenues if they had been doing so as of that date. Beginning with the room taxes collected on January 1, 2017, the amount of room tax revenues that a municipality subject to the 1994 grandfather clause may retain for purposes other than tourism promotion and tourism development is capped. The cap will be gradually reduced over a period of five years, such that, by fiscal year 2021, an affected municipality will be able to retain only the same dollar amount of the room

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[2] Although the grandfather clause is commonly understood to permit a municipality to retain more than 30% of collected room tax revenues for purposes other than tourism promotion and tourism development if it was doing so as of May 13, 1994, the clause also requires a municipality to continue to retain less than 30% of collected room tax revenues if it was doing so as of May 13, 1994.

[3] Act 55 did not, however, modify the required aspects of tourism promotion and tourism development. See, for example, the continued allowance for "tangible municipal development, including a convention center" in both current and prior law. [s. 66.0615 (1) (fm), Stats.; s. 66.0615 (1) (fm), 2013-14 Stats.] It appears that under both current and prior law, tangible municipal development may qualify as tourism promotion or tourism development if it meets the definition's requirement that it is significantly used by transient tourists and is reasonably likely to generate overnight stays in multiple establishments within a municipality that are subject to a room tax and are owned by different people. However, municipal development that does not satisfy these qualifications would not be considered tourism promotion or tourism development with regard to expenditure of room tax revenues.

tax that it retained in fiscal year 2010 or 30% of its current year room tax revenues, whichever is greater.[4]

TOURISM ENTITIES

Definition of Tourism Entity

Acts 55 and 301 modified the definition of "tourism entity." Under prior law, a tourism entity was a nonprofit organization that existed before January 1, 1992, and provided staff, development, or promotional services for the tourism industry in a municipality.

Under Act 55, a tourism entity was an organization that: (1) was a nonprofit organization; (2) existed before January 1, 1992; (3) spent at least 51% of its revenues on tourism promotion and tourism development; and (4) provided destination marketing staff and services for the tourism industry in a municipality.[5]

Under current law, as modified by Act 301, a tourism entity is an organization that: (1) is a nonprofit organization; (2) existed before January 1, **2015**, instead of January 1, **1992**; (3) spends at least 51% of its revenues on tourism promotion and tourism development; and (4) provides destination marketing staff and services for the tourism industry in a municipality.

Municipal Contracts With Other Organizations

Prior law did not allow for the creation of a tourism entity after January 1, 1992, although, if no tourism entity existed in a municipality, a tourism commission was required to contract with another organization to perform the functions of a tourism entity.

Under Act 55, a municipality was permitted to contract with an organization that did not exist prior to January 1, 1992, under certain circumstances. If on January 1, 2016, no organization within a municipality qualified as a tourism entity, as described above, the municipality was permitted to contract with an organization that: (1) was a nonprofit organization; (2) was created within the municipality; (3) spent at least 51% of its revenues on tourism promotion and tourism development; and (4) provided destination marketing staff and services for the tourism industry in the municipality.

Under current law, as modified by Act 301, if an organization satisfying the modified definition of tourism entity does not exist, then a municipality may contract with a nonprofit organization that either: (1) spends at least **51% of its revenue** on tourism promotion and tourism development; or (2) was incorporated before January 1, 2015, and spends **100% of the room tax revenue it** receives from a municipality on tourism promotion and tourism development.

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[4] Under SB 21, as enrolled, a municipality that would otherwise be subject to the room tax retention reduction schedule could have delayed implementation of the reduction schedule if the municipality had entered into a contract before January 1, 2016, that depended upon room tax revenues to satisfy its terms. The Governor vetoed this provision. Therefore, under Act 55, all municipalities that had imposed a room tax as of May 13, 1994, and had retained more than 30% of room tax revenues pursuant to the 1994 grandfather clause will be subject to the room tax revenue retention reduction schedule beginning with the room tax collected on January 1, 2017.

[5] Among other changes to the definition of "tourism entity," SB 21 changed the date by which a nonprofit organization must have existed in order to be recognized as a tourism entity from January 1, 1992, to January 1, 2016. The Governor vetoed the date modification, restoring the provision under prior law that a nonprofit organization must have existed prior to January 1, 1992, to be recognized as a tourism entity.

Tourism Entity Governing Bodies

Prior law did not address the composition of a tourism entity's governing body.

Under Act 55, a tourism entity's governing body was required to include at least one owner or operator of a lodging facility that collected the room tax and was located within the municipality for which the room tax is collected.

Act 301 revised the required membership of a tourism entity's governing body to include either: (1) at least one owner or operator of a lodging facility that collects room tax for the municipality within which it is located; or (2) at least four owners or operators of lodging facilities that collect room taxes and that are located in the zone for which the room tax is collected.

REPORTING REQUIREMENTS

Act 55 specified that a tourism entity must annually report to each municipality from which it receives room tax revenues the purposes for which the revenues were spent. Under prior law, this reporting requirement applied only to tourism commissions.[6]

Act 55 created a new reporting requirement applicable to municipalities. Beginning in 2017, all municipalities that impose a room tax must submit an annual report to the Department of Revenue, on or before May 1 of each year. Among other information, the reports must include the amount of room tax revenue collected and the rate imposed the previous year; an accounting of the amounts forwarded to tourism entities or commissions in the previous year; and a list of the members of the commission or governing body of the tourism entity to which revenue was forwarded in the previous year.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by Scott Grosz, Principal Attorney, and Rachel E. Snyder, Staff Attorney, on July 28, 2016.

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[6] As discussed above, if no tourism entity exists within a municipality, a municipality may contract with certain organizations. Although not explicitly stated, it appears logical that such an organization would also be considered a tourism entity and would, therefore, be subject to the reporting requirements.

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