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# Private Acts of 1969 Chapter 131

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Sincerely,

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# Private Acts of 1969 Chapter 131

## **SECTION 1.** Definitions. For the purposes of this Act:

(a) Person. "Persons" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

(b) Hotel. "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist camp, tourist court, tourist cabin, motel or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration. Provided, however, such definition shall not include those establishments which furnish rooms to less than six persons.

(c) Occupancy. "Occupancy" means the use or possession, or the right to the use or possession, of any room, lodgings, or accommodations in any hotel.

(d) Transient. "Transient" means any person who exercises occupancy or is entitled to occupancy for any rooms, lodgings or accommodations in a hotel for a period of less than 90 continuous days, or, for persons directly involved with a film or video production that has received formal assistance from the Memphis and Shelby County Film and Television Commission, who exercise occupancy or is entitled to occupancy for any rooms, lodgings or accommodations in a hotel for a period of less than thirty (30) continuous days. As amended by: Private Acts of 2004, Chapter 118.

(e) Consideration. "Consideration" means the consideration charged, whether or not received, for the occupancy in a hotel valued in money whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, property and services of any kind or nature without any deduction therefrom whatsoever. Nothing in this definition shall be construed to imply that consideration is charged when the space provided to the person is complimentary from the operator and no consideration is charged to or received from any person.

(f) County. "County" means any county within this state having a population of not less than 600,000 according to the Federal Census of 1960, or any subsequent Federal Census.

(g) Operator. "Operator" means the person operating the hotel whether as owner, lessee or otherwise.

As amended by: Private Acts of 1971, Chapter 173.

**SECTION 2.** Authority to levy tax. The county is authorized to levy a privilege tax upon the privilege of occupancy in any hotel of each transient in an amount of not less than three percent (3%) nor more than five per cent (5%) of the consideration charged by the operator. Said tax so levied is a privilege tax upon the transient occupying said room and is to be collected as hereinafter provided. The rate of the tax levied under this act shall be adjusted annually by the County Quarterly Court at the amount, between three per cent (3%) and five per cent (5%) inclusive, as the previous year's experience indicates is required to, as nearly as possible, pay all of the bonded indebtedness, principle and interest and the expenses of the bond sale or sales incurred by the county and/or municipality for the purposes set forth hereinafter in this act.

**SECTION 3.** Tax Added to Room Invoice. Said tax shall be added by each and every operator to each invoice prepared by the operator for the occupancy of his hotel and to be given directly or transmitted to the transient and shall be collected by such operator from the transient and remitted to the County. When a person has maintained occupancy for ninety (90) continuous days, he shall receive from the operator refund or credit for the tax previously collected from or charged to him, and the operator shall receive credit for the amount of such tax if previously paid or reported to the County. When a person directly involved with a film or video production that has received formal assistance from the Memphis and Shelby County Film and Television Commission has maintained occupancy for thirty (30) continuous days, he shall receive from the operator refund or credit for the tax previously collected from or charged to him, and the operator shall receive credit for the amount of such tax if previously paid or reported to the county.

As amended by: Private Acts of 2004, Chapter 118.

**SECTION 4.** Remittance to Clerk. The tax hereby levied shall be remitted by all operators who lease, rent or charge for any rooms within the County which has adopted the provisions of this Act to the County Court Clerk or such other officer as may by Resolution be charged with the duty of collection thereof, said tax to be remitted to such officer not later than the 20th day of each month for the preceding month. The operator is hereby required to collect the said tax from the transient at the time of the presentation of the invoice for said occupancy whether prior to occupancy or after occupancy as may be the custom of the operator, and if credit is granted by the operator to the transient; then the obligation to the County entitled to such tax shall be that of the operator.

**SECTION 5.** Rules and Regulations. The County Court which has adopted the provisions of this Act is hereby authorized and empowered by Resolution to provide reasonable rules and regulations for the implementation of the provisions of this Act. Without limitation upon the provisions of such Resolution, it may provide for the making of a monthly tax return by the operator under oath with such number of copies thereof as may be reasonably required by the collection of said tax and including such facts and information as may be reasonably required by the collection of said tax and including such facts and information as may be deemed reasonable for the verification of the tax due and may provide for and require access to the pertinent records of all operators at reasonable time.

**SECTION 6.** Offer to Absorb Tax Prohibited. No operator of a hotel should advertise or state in any manner whether directly or indirectly that the tax or any part thereof will be assumed or absorbed by the operator or that it will not be added to the rent, or that if added, any part will be refunded.

**SECTION 7.** Penalties and Interest for Delinquency. Taxes collected by an operator which are not remitted to the County Court Clerk on or before the due dates are delinquent. An operator shall be liable for interest on such delinquent taxes from the due date at the rate of six percent (6%) per annum, and in addition for penalty of one-half of one percent ( $\frac{1}{2}$  of 1%) for each month or fraction thereof such taxes are delinquent. Such interest and penalty shall become a part of the tax herein required to be remitted. Willful refusal of an operator to collect or remit the tax or willful refusal of a transient to pay the tax imposed is hereby declared to be unlawful and shall constitute a misdemeanor punishable upon conviction by a fine not in excess of \$50.00.

**SECTION 8.** Records. It shall be the duty of every operator liable for the collection and payment to the County of any tax imposed by this Act to keep and preserve for a period of three (3) years all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the County, which records the County Court Clerk shall have the right to inspect at all reasonable times.

**SECTION 9.** Administration. The County Court Clerk in administering and enforcing the provisions of this Act shall have as additional powers, those powers and duties with respect to collecting taxes as provided in Title 67 of Tennessee Code Annotated or otherwise provided by law.

For his services in administering and enforcing the provisions of this Act, the County Court Clerk shall be entitled to retain as a commission two and one-half percent (2- $\frac{1}{2}$ %) of the taxes so collected. Upon any claim of illegal assessment and collection, the taxpayer shall have the remedy provided in T.C.A. 67-3033 it being the intent of this Act that the provisions of law which apply to the recovery of State taxes illegally assessed and collected be confronted to apply to the recovery of taxes illegally assessed and collected under the authority of this Act; Provided further, the County Court Clerk shall possess those powers and duties as provided in Section 67-2301, Tennessee Code Annotated, with respect to the adjustment and settlement with taxpayers, all errors of County taxes collected by him under authority of this Act and to direct the refunding of same. Notice of any tax paid under protest shall be given to the County Court Clerk and the Resolution authorizing levy of the tax shall designate a County officer against whom suit may be brought for recovery.

**SECTION 10.** Initial Resolution, Application and Allocation of Revenue. The initial Resolution adopted by the County levying said tax shall be adopted not more than thirty (30) days after approval by the Quarterly County Court as provided in Section 12 of this Act; and said initial Resolution shall set the effective date of the tax which shall not be more than thirty (30) days after adoption of the initial Resolution, and shall further state the purpose of said tax to be the construction of an addition to the public Auditorium, or of additional facilities adjacent to the public Auditorium, in the nature of a convention center, for conventions, exhibitions, meetings or similar large gatherings. Revenue from this tax shall be credited to a County Fund entitled, "The Auditorium Fund", under jurisdiction of the Chairman of the Quarterly County Court, and all such expenditures therefrom shall be for the stated purpose as provided in the County Resolution levying said tax. In the event that capital expenditures for construction of such facilities are made by the County alone, the revenue from this tax shall first be applied to payment of all bonded indebtedness, principal and interest and the expenses of the bond sale or sales incurred by

the County for construction of such facilities; thereafter, the revenue from this tax shall be applied to reimburse the County in full for any and all capital expenditures by the County for construction of such facilities, made or financed by means other than bonded indebtedness, including but not limited to capital expenditures from general revenue, sinking fund for capital improvements and contributions in-kind of real or personal property. In the event that a municipality within the County shall participate jointly with the County in the contribution of capital expenditures for construction of such facilities, the revenue from this tax shall be applied and allocated as follows:

(a) The revenue from such tax shall first be applied to payment of bonded indebtedness, principal and interest including expenses of the bond sale or sales, incurred by both the County and the municipality, or by either of them, for construction of such facilities and such revenue shall be allocated between the County and the municipality in such amounts necessary to meet the fiscal debt service requirements each year of both if there be sufficient funds. Such allocation shall be based upon actual bonded indebtedness incurred for such purpose, without deduction or offset due to any grant, credit or benefit which either government entity may be entitled by law to receive in connection with or as a result of such capital expenditures, such as but not limited to any grant, credit or benefit accruing under provisions of federal housing and urban renewal statutes. The Chairman of the Quarterly County Court under whose jurisdiction shall be the Auditorium Fund as provided herein shall, excluding the first year in which this tax shall be levied and beginning June 30 of each year subsequent thereto or as soon as practicable thereafter but in no event more than ninety (90) days, calculate and pay over to the municipality that amount due such municipality from the proceeds of this tax levy during that fiscal year currently ending. Revenue derived from the levy of this tax during the first year in which said tax is levied shall be carried over for use in the next ensuing fiscal year in the payment of the allocable amounts to the County and the municipality in accordance with the provisions of Section 10 hereof where applicable.

(1) If at the close of any fiscal year, the revenue from such tax shall not be sufficient to meet the total debt service of both the County and the municipality for bonded indebtedness incurred for construction of such facilities, the available revenue from this tax shall be allocated between the County and the municipality in the same direct proportion as such bonded indebtedness of each bears to the total of such bonded indebtedness of both, calculated upon the basis of the total principal amount of all such bonds which have been issued by the County and the municipality at any time prior to the close of that fiscal year provided further, that the balance, if any, of such debt service of either the County or the municipality not paid by revenue of this tax at the end of each fiscal year shall be accumulated by each in a separate account (hereinafter referred to as "deficit account") which shall bear simple interest at the same rate as the bonds issued by each such governmental entity for construction of such facilities.

(2) If the revenue from such tax in any fiscal year exceeds the total of such debt service requirements for that year, such surplus revenue thus accruing may be retained by the Chairman of the Quarterly County Court as a sinking fund for such future debt service requirements or such surplus may be applied to the reduction of the deficit accounts of the County and the municipality in the same proportion as provided in sub-section (a) (1) hereof.

(3) In the event the total bonded indebtedness incurred for construction of such facilities by either the County or the municipality shall become paid in full as to bond principal and interest, including expenses of the bond sale or sales, and some portion of such bonded indebtedness of one governmental entity remains unpaid, then that governmental entity whose bonded indebtedness has been satisfied in full shall cease, for the time being, to share in the revenue of this tax, and the total revenue from this tax shall be applied toward payment of such outstanding bonded indebtedness of the other governmental entity. For purposes of this subsection (a) (3) only, the bonded indebtedness of either the County or the municipality shall be considered paid in full whenever the bonded indebtedness obligation to the holders of such obligation shall have been satisfied in full, even though such obligations may have been paid in part from sources other than the revenue from this tax.

(b) Upon the total of such bonded indebtedness of both the County and the municipality being paid in full, principal and interest, including expenses of the bond sale or sales, then the revenue from this tax, together with any surplus revenue accumulated in accordance with subsection (a) (2) hereof, shall next be applied to the County and the municipal accumulated deficit accounts as provided in sub-section (a) (1). For purposes of this sub-section (b) only, the revenue and surplus,

if any, shall be allocated between the County and the municipality in the same direct proportion that such deficit account of each bears to the total of such deficit accounts of both governmental entities. Upon one of such governmental entities being reimbursed in full, both principal and interest on such deficit account, with a balance of the deficit account of the other governmental entity remaining unreimbursed, then the total revenue from this tax shall, for the time being, be applied to reimbursement of the deficit account of that governmental entity whose account remains unpaid.

(c) When both the County and the municipality shall have been reimbursed in full, principal and interest for such deficit accounts, in accordance with sub-section (b) hereof, then the revenue from this tax shall next be applied to reimburse both the County and the municipality for capital expenditures for construction of such facilities made from sources other than the proceeds of bonded indebtedness, including but not limited to, capital expenditures made from general revenues, sinking funds for capital improvements, and contributions in-kind of real or personal property. For purposes of this sub-section (c) only, the revenue from this tax, together with and including any surplus in the Auditorium Commission Fund, if any there be, shall be allocated fifty percent (50%) to the County and fifty percent (50%) to the municipality. When either of such governmental entities shall be reimbursed in full for all of such capital expenditures for construction of such facilities, then the total revenue from this tax shall be applied to reimbursement of the other governmental entity for such capital expenditures. At the later of: (i) such time as the original issue of bonds issued to finance the construction of the Cook Convention Center and any bonds issued in accordance with subsections (e) and (f) of Section 10 hereof shall become paid in full as to both principal and interest and (ii) June 30, 2015, the taxing resolution shall be repealed and the tax shall no longer be levied; provided further that any funds remaining in "The Auditorium Fund", after all obligations imposed under the provisions of this act shall have been fulfilled, shall be paid into a trust fund restricted to those uses in subsections (d), (e) and (f) of Section 10 hereof.

(d)

(1) Through Fiscal Year 2025 ending June 30, 2025, subject to the availability of funds, the Convention and Visitors Bureau or its successor agency (the "CVB") shall receive an amount of three million three hundred thousand dollars (\$3,300,000) for Fiscal Year 1995-1996; provided further, that subject to the availability of funds, the amount of such funding shall increase by five percent (5%) per annum for each fiscal year thereafter until the tax provided for herein shall no longer be levied. Subject to the restrictions and conditions set forth herein, the Memphis City Council and the Board of County Commissioners may appropriate all excess revenues derived from the levy of the tax provided for herein for the funding of the Convention and Visitors Bureau or its successor agency.

(2) Notwithstanding subdivision (d)(1), if the revenues of such tax are not sufficient to generate eleven million four hundred thousand dollars (\$11,400,000) for Fiscal Year 2025 ending June 30, 2025, to cover the County's commitment to fund the required annual debt service for either a new or substantially renovated indoor sports facility owned by a sports authority pursuant to Tennessee Code Annotated, Title 7, Chapter 67, in which a National Basketball Association franchise is a tenant (including any refinancing or additional bonds issued, the "New Arena Bonds") plus the County's requirement to cover capital expenses and a ticket shortfall for the existing FedEx Forum, then the difference between eleven million four hundred thousand dollars (\$11,400,000) and the actual amount the County receives shall be refunded to the County by the CVB.

(e)

(1) For Fiscal Year 2026 commencing July 1, 2025, the revenues produced by this tax after subtracting any administrative fee charged by the Shelby County Clerk shall be allocated as provided in subdivision (e)(2). In return for this funding, the CVB will provide two (2) seats on its Board of Directors for individuals nominated by the Shelby County Mayor and approved by the Shelby County Board of Commissioners.

(2) Commencing July 1, 2025, the revenues of the tax shall be allocated annually as follows:

(A) The first thirty-five and three-quarters percent (35.75%) shall be allocated to the CVB.

(B) After the CVB has received its share pursuant to subdivision (e)(2)(A), up to a

maximum amount of eleven million four hundred thousand dollars (\$11,400,000), plus an increase based upon the growth of the revenues of the tax, if any, shall be allocated to cover the County's commitment to fund the required annual debt service for the New Arena Bonds plus the County's payment requirements, including, without limitation, capital expenses and ticket shortfall, under that certain Arena Use and Operating Agreement by and among the County, the City of Memphis, the Memphis and Shelby County Sports Authority, Inc., and Hoops, LP., and that certain Arena Operations Shortfall Agreement by and between the Memphis and Shelby County Sports Authority, Inc., and Memphis Basketball, LLC, including any amendments, supplements, and successor agreement to the foregoing agreements. As an example, if hotel occupancy tax revenues increase in Fiscal Year 2026 by two percent (2%) over the Fiscal Year 2025 revenues, then the County's initial share of the revenues of the tax would be eleven million six hundred twenty-eight thousand dollars (\$11,628,000).

(C) The remainder of the revenues of the tax up to sixty-one and one-quarter percent (61.25%) of the revenues of the tax shall be allocated to the CVB.

(D) Any remaining hotel occupancy taxes shall be allocated to the County for any purpose permitted under this Private Act.

(E) Upon the retirement of the New Arena Bonds, sixty-one and one-quarter percent (61.25%) of the revenues of the tax will be allocated to the CVB and thirty-five and three-quarters percent (35.75%) will be allocated to the County for any purpose permitted under this Private Act.

(F) The County and the CVB shall have the authority to enter into any agreements necessary to effectuate the purpose of this section; provided, that such agreements do not conflict with the express provisions provided herein.

(f) If there be excess revenues remaining after each year's debt service on the existing and outstanding bonded indebtedness incurred by the city and the county for the construction of the existing Cook Convention Center, after funds have been provided to the Convention and Visitors Bureau or its successor agency as prescribed in Section 10, subsection (d) hereof, and after each year's debt service on the existing and outstanding bonded indebtedness (issued after January 1, 1995), in aggregate principal amount of not exceeding eleven million five hundred thousand dollars (\$11,500,000), incurred by the county for construction of improvements to the Pyramid Arena as prescribed in Section 10, subsection (e), such funds must be used for one of the following purposes or any combination thereof: (1) to fund the payment of any capital improvement project expenditures relative to the existing Cook Convention Center and Auditorium that have been made by the city and the county in the past, present, or the future, including, but not limited to, debt service, interest, and pro rata issuance costs which are additional to the construction costs or (2) to provide additional funding to the Convention and Visitors Bureau or its successor agency, or (3) to fund the operating deficit, if any, of the existing Cook Convention Center and Auditorium or (4) to the payment of capital, operating and maintenance expenditures incurred in connection with a sports facility, whether paid directly by the county or paid by the county to a third party under a use and operations agreement relating to a sports facility, or to the payment of bonded indebtedness, principal and interest including expenses of the bond sale or sales, incurred by the city and county, or by either of them, for construction or modification of a sports facility, as designated by the Mayor of Memphis and the Memphis City Council and the Mayor of Shelby County and the Shelby County Board of County Commissioners or (5) to the payment of capital expenditures for public infrastructure that promotes tourism in the county.

As amended by: Private Acts of 1987, Chapter 85,  
Private Acts of 1995, Chapter 74,  
Private Acts of 2001, Chapter 57,  
Private Acts of 2019, Chapter 30,  
Private Acts of 2024, Chapter 67.

The County is authorized to pledge the revenue from this tax or any part thereof in payment of any bonds issued under any bond Act, including but not limited to the "County Recovery and Postwar Aid Act of 1945", as amended, Tennessee Code Annotated, for construction of such facilities; and any municipality participating in the capital expenditure for construction of such facilities is authorized to pledge its right to receive any funds from the County as provided in this Act, or any part thereof, in payment of any bonds issued by such municipality under any Municipal Bond Act for construction of such facilities.

**SECTION 11.** Severability Clause. The provisions of this Act are hereby declared to be severable. If any

of its sections, provisions, exceptions, or parts be held unconstitutional or void, the remainder of this act shall continue to be in full force and effect, it being the legislative intent now hereby declared, that this Act would have been adopted even if such unconstitutional or void matter had not been included herein.

**SECTION 12.** That this Act shall have no effect unless approved by a two-thirds ( $\frac{2}{3}$ ) vote of the Quarterly County Court of any County to which this Act may apply not more than sixty (60) days subsequent to its approval by the Chief Executive of this State or after its otherwise effective date. Its approval or non-approval shall be proclaimed by the presiding officer of the Quarterly County Court and shall be certified by him to the Secretary of State.

**SECTION 13.** That this Act shall be effective from and after its passage, the public welfare requiring it, but the provisions thereof shall not become operative until validated as provided in Section 12 herein and as otherwise provided in this Act.

Passed: May 2, 1969.

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