



STATE OF INDIANA
OFFICE OF THE ATTORNEY GENERAL
INDIANA GOVERNMENT CENTER SOUTH, FIFTH FLOOR
302 W. WASHINGTON STREET · INDIANAPOLIS, IN 46204-2770

STEVE CARTER
ATTORNEY GENERAL

TELEPHONE (317) 232-6201

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OFFICIAL OPINION 2001-10

The Honorable Timothy S. Lanane
State Senator
34 West 8th
Anderson, Indiana 46016-4415

RE: Authority of County Treasurer to Audit for Compliance with Innkeeper's Tax

Dear Senator Lanane:

This letter responds to your request for an advisory on the following question:

Does the county treasurer, specifically the Madison County Treasurer, have the authority to conduct audits for compliance with an innkeeper's tax?

It is our opinion that under Indiana Code Section 6-8.1-3-12, the county treasurer does have the authority to conduct audits and otherwise investigate for compliance with an innkeeper's tax whenever a statute or a county ordinance provides for the tax to be paid to the county treasurer instead of to the Department of State Revenue. Because the Madison County innkeeper's tax is paid to the Madison County Treasurer, that official has this authority.

ANALYSIS

There are two methods in the Indiana Code by which county innkeeper's taxes are authorized. One method is by a specific statute that provides for the establishment of an innkeeper's tax in a particular county. The other method is by a general statute that gives authority to counties to adopt an innkeeper's tax. Both methods can result in the tax being paid to the county treasurer and therefore audit and investigation functions being vested in the county treasurer.

Many chapters of Indiana Code Article 6-9 provide for the establishment of an innkeeper's tax in specified counties, one of which is Madison Country as provided for in

Indiana Code Chapter 6-9-17.¹ Although it is required in some of these counties, the innkeeper's tax is a county option through ordinance in most of them including Madison County. Indiana Code Chapter 6-9-18 is generally applicable to all counties in the state, except the seven that are required by statute to have an innkeeper's tax², allowing these counties to levy an innkeeper's tax. Counties that levy an innkeeper's tax under Indiana Code Chapter 6-9-18 are prohibited from also levying one under another chapter of Indiana Code Article 6-9. Therefore these counties, which would include Madison County, may establish an innkeeper's tax under their specific Indiana Code chapter or under Indiana Code Chapter 6-9-18, but not both.

Indiana Code Chapter 6-9-18 and all the county specific statutes, except those for St. Joseph and Madison Counties, allow for the adoption of an ordinance to require payment of the tax to the county treasurer, but absent that provide for payment to the Department of State Revenue (and then payment by the state to the county as specified). Indiana Code Section 6-9-29-3 provides that if such an ordinance is adopted "the county treasurer has the same rights and powers with respect to collecting the county innkeeper's tax as the department of state revenue." The rights and powers of the Department of State Revenue, and therefore the county treasurer, are found in the provisions of Indiana Code Article 6-8.1 applicable because the innkeeper's tax is a listed tax under that article. Ind. Code § 6-8.1-1-1.

The Madison County statute provides for payment to the county treasurer and not the Department of State Revenue. Indiana Code Section 6-9-17-3(d) states that "all provisions of IC 6-8.1 apply to the county treasurer with respect to the tax imposed by this section in the same manner that they apply to the department of state revenue with respect to the other listed taxes under IC 6-8.1-1-1." The St. Joseph County statute has an identical provision in Indiana Code Section 6-9-1-5(a).

Therefore, under Indiana Code Sections 6-9-29-3, 6-9-1-5(a) and 6-9-17-3(d) as discussed in the previous two paragraphs, the substantial authority of the Department of State Revenue to collect the listed taxes in Indiana Code Section 6-8.1-1-1 is granted to the county treasurer whenever a statute or an ordinance provides for the innkeeper's tax to be paid to the county treasurer rather than to the Department. Included are the provisions of Indiana Code Section 6-8.1-3-12 that grant audit and investigatory powers. These powers include auditing returns, subpoenaing the production of evidence, subpoenaing witnesses and questioning witnesses under oath. There is authority to enforce these powers in an appropriate court.

It is our understanding that the Madison County treasurer collects the Madison County innkeeper's tax. Therefore, regardless of whether the Madison County tax was adopted under Indiana Code Chapter 6-9-17 or under Indiana Code Chapter 6-9-18, with an ordinance requiring

¹ The other counties that are specifically addressed, by virtue of their populations in the 1990 census, are St. Joseph County, IC 6-9-1, Lake County, IC 6-9-2, Vanderburgh County, IC 6-9-2.5, Floyd and Clark Counties, IC 6-9-3, Monroe County, IC 6-9-4, Knox County, IC 6-9-5, LaPorte County, IC 6-9-6, Tippecanoe County, IC 6-9-7, Marion County, IC 6-9-8, Allen County, IC 6-9-9, Wayne County, IC 6-9-10, White County, IC 6-9-10.5, Vigo County, IC 6-9-11, Brown County, IC 6-9-14, Jefferson County, IC 6-9-15, Howard County, IC 6-9-16, Elkhart County, IC 6-9-19, and Jackson County, IC 6-9-32.

² An innkeeper's tax is required in St. Joseph, Floyd and Clark, LaPorte, Marion, Allen, and Wayne Counties.

that the tax be paid to the county treasurer rather than the Department of State Revenue, the county treasurer has the audit and investigatory powers under Indiana Code Section 6-8.1-3-12.

CONCLUSION

For the foregoing reasons, it is our opinion that under Indiana Code Section 6-8.1-3-12, a county treasurer, including the Madison County Treasurer, has the authority to conduct audits and otherwise investigate for compliance with an innkeeper's tax whenever a statute or a county ordinance provides for the tax to be paid to the county treasurer instead of to the Department of State Revenue.

Sincerely,

Stephen Carter
Attorney General

James F. Schmidt
Deputy Attorney General