



Reprinted
February 24, 2023

SENATE BILL No. 428

DIGEST OF SB 428 (Updated February 23, 2023 3:05 pm - DI 129)

Citations Affected: IC 6-9.

Synopsis: Food and beverage taxes. Authorizes the following municipalities to impose a food and beverage tax: (1) The town of Merrillville. (2) The city of Jasper.

Effective: July 1, 2023.

**Messmer, Holdman,
Randolph Lonnie M**

January 19, 2023, read first time and referred to Committee on Tax and Fiscal Policy.
February 21, 2023, amended, reported favorably — Do Pass.
February 23, 2023, read second time, amended, ordered engrossed.

SB 428—LS 6538/DI 134



Reprinted
February 24, 2023

First Regular Session of the 123rd General Assembly (2023)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2022 Regular Session of the General Assembly.

SENATE BILL No. 428

A BILL FOR AN ACT to amend the Indiana Code concerning
taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-9-54 IS ADDED TO THE INDIANA CODE AS
2 A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2023]:
4 **Chapter 54. Merrillville Food and Beverage Tax**
5 **Sec. 1. This chapter applies to the town of Merrillville.**
6 **Sec. 2. The definitions in IC 6-9-12-1 apply throughout this**
7 **chapter.**
8 **Sec. 3. (a) The fiscal body of the town may adopt an ordinance**
9 **to impose an excise tax, known as the town food and beverage tax,**
10 **on transactions described in section 4 of this chapter. The fiscal**
11 **body of the town may adopt an ordinance under this subsection**
12 **only after the fiscal body has previously held at least one (1)**
13 **separate public hearing in which a discussion of the proposed**
14 **ordinance to impose the town food and beverage tax is the only**
15 **substantive issue on the agenda for the public hearing.**
16 **(b) If the town fiscal body adopts an ordinance under subsection**
17 **(a), the town fiscal body shall immediately send a certified copy of**

SB 428—LS 6538/DI 134



1 the ordinance to the department of state revenue.

2 (c) If the town fiscal body adopts an ordinance under subsection
3 (a), the town food and beverage tax applies to transactions that
4 occur after the later of the following:

5 (1) The day specified in the ordinance.

6 (2) The last day of the month that succeeds the month in
7 which the ordinance is adopted.

8 Sec. 4. (a) Except as provided in subsection (c), a tax imposed
9 under section 3 of this chapter applies to a transaction in which
10 food or beverage is furnished, prepared, or served:

11 (1) for consumption at a location or on equipment provided by
12 a retail merchant;

13 (2) in the town; and

14 (3) by a retail merchant for consideration.

15 (b) Transactions described in subsection (a)(1) include
16 transactions in which food or beverage is:

17 (1) served by a retail merchant off the merchant's premises;

18 (2) sold in a heated state or heated by a retail merchant;

19 (3) made of two (2) or more food ingredients, mixed or
20 combined by a retail merchant for sale as a single item (other
21 than food that is only cut, repackaged, or pasteurized by the
22 seller, and eggs, fish, meat, poultry, and foods containing these
23 raw animal foods requiring cooking by the consumer as
24 recommended by the federal Food and Drug Administration
25 in chapter 3, subpart 3-401.11 of its Food Code so as to
26 prevent food borne illnesses); or

27 (4) sold with eating utensils provided by a retail merchant,
28 including plates, knives, forks, spoons, glasses, cups, napkins,
29 or straws (for purposes of this subdivision, a plate does not
30 include a container or package used to transport food).

31 (c) The town food and beverage tax does not apply to the
32 furnishing, preparing, or serving of a food or beverage in a
33 transaction that is exempt, or to the extent the transaction is
34 exempt, from the state gross retail tax imposed by IC 6-2.5.

35 Sec. 5. The town food and beverage tax rate:

36 (1) must be imposed in an increment of twenty-five
37 hundredths percent (0.25%); and

38 (2) may not exceed one percent (1%);

39 of the gross retail income received by the merchant from the food
40 or beverage transaction described in section 4 of this chapter. For
41 purposes of this chapter, the gross retail income received by the
42 retail merchant from a transaction does not include the amount of



1 tax imposed on the transaction under IC 6-2.5.

2 Sec. 6. A tax imposed under this chapter is imposed, paid, and
3 collected in the same manner that the state gross retail tax is
4 imposed, paid, and collected under IC 6-2.5. However, the return
5 to be filed with the payment of the tax imposed under this chapter
6 may be made on a separate return or may be combined with the
7 return filed for the payment of the state gross retail tax, as
8 prescribed by the department of state revenue.

9 Sec. 7. The amounts received from the tax imposed under this
10 chapter shall be paid monthly by the treasurer of state to the town
11 fiscal officer upon warrants issued by the auditor of state.

12 Sec. 8. (a) If a tax is imposed under section 3 of this chapter by
13 the town, the town fiscal officer shall establish a food and beverage
14 tax receipts fund.

15 (b) The town fiscal officer shall deposit in the fund all amounts
16 received under this chapter.

17 (c) Money earned from the investment of money in the fund
18 becomes a part of the fund.

19 Sec. 9. Money in the food and beverage tax receipts fund must
20 be used by the town only for the following purposes:

21 (1) Park and recreation purposes, including the purchase of
22 land for park and recreation purposes.

23 (2) Tourism related purposes or facilities, including the
24 purchase of land for tourism related purposes.

25 (3) The pledge of money under IC 5-1-14-4 for bonds, leases,
26 or other obligations incurred for a purpose described in
27 subdivisions (1) and (2).

28 Revenue derived from the imposition of a tax under this chapter
29 may be treated by the town as additional revenue for the purpose
30 of fixing its budget for the budget year during which the revenues
31 are to be distributed to the town.

32 Sec. 10. With respect to obligations for which a pledge has been
33 made under section 9 of this chapter, the general assembly
34 covenants with the holders of the obligations that this chapter will
35 not be repealed or amended in a manner that will adversely affect
36 the imposition or collection of the tax imposed under this chapter
37 if the payment of any of the obligations is outstanding.

38 Sec. 11. (a) If the town imposes the tax authorized by this
39 chapter, the tax terminates on July 1, 2045.

40 (b) This chapter expires July 1, 2045.

41 SECTION 2. IC 6-9-55 IS ADDED TO THE INDIANA CODE AS
42 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

1, 2023]:

Chapter 55. Jasper Food and Beverage Tax

Sec. 1. This chapter applies to the city of Jasper.

Sec. 2. The definitions in IC 6-9-12-1 apply throughout this chapter.

Sec. 3. (a) The fiscal body of the city may adopt an ordinance to impose an excise tax, known as the city food and beverage tax, on transactions described in section 4 of this chapter. The fiscal body of the city may adopt an ordinance under this subsection only after the fiscal body has previously held at least one (1) separate public hearing in which a discussion of the proposed ordinance to impose the city food and beverage tax is the only substantive issue on the agenda for that public hearing.

(b) If the city fiscal body adopts an ordinance under subsection (a), the city fiscal body shall immediately send a certified copy of the ordinance to the department of state revenue.

(c) If the city fiscal body adopts an ordinance under subsection (a), the city food and beverage tax applies to transactions that occur after the later of the following:

- (1) The day specified in the ordinance.**
- (2) The last day of the month following sixty (60) days after the date on which the ordinance is adopted.**

Sec. 4. (a) Except as provided in subsection (c), a tax imposed under section 3 of this chapter applies to a transaction in which a food or beverage is furnished, prepared, or served:

- (1) for consumption at a location or on equipment provided by a retail merchant;**
- (2) in the city; and**
- (3) by a retail merchant for consideration.**

(b) Transactions described in subsection (a)(1) include transactions in which food or beverage is:

- (1) served by a retail merchant off the merchant's premises;**
- (2) food sold in a heated state or heated by a retail merchant;**
- (3) made of two (2) or more food ingredients, mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or**
- (4) food sold with eating utensils provided by a retail**



- 1 merchant, including plates, knives, forks, spoons, glasses,
 2 cups, napkins, or straws (for purposes of this subdivision, a
 3 plate does not include a container or package used to
 4 transport the food).
- 5 (c) The city food and beverage tax does not apply to the
 6 furnishing, preparing, or serving of a food or beverage in a
 7 transaction that is exempt, or to the extent the transaction is
 8 exempt, from the state gross retail tax imposed by IC 6-2.5.
- 9 **Sec. 5. The city food and beverage tax rate:**
- 10 (1) must be imposed in an increment of twenty-five
 11 hundredths percent (0.25%); and
 12 (2) may not exceed one percent (1%);
 13 of the gross retail income received by the merchant from the food
 14 or beverage transaction described in section 4 of this chapter. For
 15 purposes of this chapter, the gross retail income received by the
 16 retail merchant from a transaction does not include the amount of
 17 tax imposed on the transaction under IC 6-2.5.
- 18 **Sec. 6. A tax imposed under this chapter shall be imposed, paid,
 19 and collected in the same manner that the state gross retail tax is
 20 imposed, paid, and collected under IC 6-2.5. However, the return
 21 to be filed with the payment of the tax imposed under this chapter
 22 may be made on a separate return or may be combined with the
 23 return filed for the payment of the state gross retail tax, as
 24 prescribed by the department of state revenue.**
- 25 **Sec. 7. The amounts received from the tax imposed under this
 26 chapter shall be paid monthly by the treasurer of state to the city
 27 fiscal officer upon warrants issued by the auditor of state.**
- 28 **Sec. 8. (a) If a tax is imposed under section 3 of this chapter by
 29 the city, the city fiscal officer shall establish a food and beverage
 30 tax receipts fund.**
- 31 **(b) The city fiscal officer shall deposit in the fund all amounts
 32 received under this chapter.**
- 33 **(c) Money earned from the investment of money in the fund
 34 becomes a part of the fund.**
- 35 **Sec. 9. Money in the food and beverage tax receipts fund must
 36 be used by the city for one (1) or more of the following purposes:**
- 37 (1) Construction, renovation, improvement, equipping, or
 38 maintenance of city capital improvements.
- 39 (2) Financing, construction, improvement, equipping,
 40 operation, maintenance and promotion of the Jasper
 41 Community Wellness, Sports and Aquatic Center.
- 42 (3) The pledge of money under IC 5-1-14-4 for bonds, leases,



1 or other obligations incurred for a purpose described in
2 subdivisions (1) and (2).
3 **Revenue derived from the imposition of a tax under this chapter**
4 **may be treated by the city as additional revenue for the purpose of**
5 **fixing its budget for the budget year during which the revenues are**
6 **to be distributed to the city.**

7 **Sec. 10. With respect to obligations for which a pledge has been**
8 **made under section 9 of this chapter, the general assembly**
9 **covenants with the holders of the obligations that this chapter will**
10 **not be repealed or amended in a manner that will adversely affect**
11 **the imposition or collection of the tax imposed under this chapter**
12 **if the payment of any of the obligations is outstanding.**

13 **Sec. 11. (a) If the city imposes the tax authorized by this chapter,**
14 **the tax terminates on July 1, 2045.**

15 **(b) This chapter expires July 1, 2045.**



COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 428, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, delete lines 21 through 40, begin a new line block indented and insert:

- "(1) Park and recreation purposes, including the purchase of land for park and recreation purposes.**
(2) Tourism related purposes or facilities, including the purchase of land for tourism related purposes.
(3) The pledge of money under IC 5-1-14-4 for bonds, leases, or other obligations incurred for a purpose described in subdivisions (1) and (2)."

Page 4, after line 8, begin a new paragraph and insert:

"Sec. 11. (a) If the town imposes the tax authorized by this chapter, the tax terminates on July 1, 2045.

(b) This chapter expires July 1, 2045.

SECTION 2. IC 6-9-55 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

Chapter 55. Jasper Food and Beverage Tax

Sec. 1. This chapter applies to the city of Jasper.

Sec. 2. The definitions in IC 6-9-12-1 apply throughout this chapter.

Sec. 3. (a) The fiscal body of the city may adopt an ordinance to impose an excise tax, known as the city food and beverage tax, on transactions described in section 4 of this chapter. The fiscal body of the city may adopt an ordinance under this subsection only after the fiscal body has previously held at least one (1) separate public hearing in which a discussion of the proposed ordinance to impose the city food and beverage tax is the only substantive issue on the agenda for that public hearing.

(b) If the city fiscal body adopts an ordinance under subsection (a), the city fiscal body shall immediately send a certified copy of the ordinance to the department of state revenue.

(c) If the city fiscal body adopts an ordinance under subsection (a), the city food and beverage tax applies to transactions that occur after the later of the following:

- (1) The day specified in the ordinance.**
(2) The last day of the month following sixty (60) days after the date on which the ordinance is adopted.

SB 428—LS 6538/DI 134



Sec. 4. (a) Except as provided in subsection (c), a tax imposed under section 3 of this chapter applies to a transaction in which a food or beverage is furnished, prepared, or served:

- (1) for consumption at a location or on equipment provided by a retail merchant;**
- (2) in the city; and**
- (3) by a retail merchant for consideration.**

(b) Transactions described in subsection (a)(1) include transactions in which food or beverage is:

- (1) served by a retail merchant off the merchant's premises;**
- (2) food sold in a heated state or heated by a retail merchant;**
- (3) made of two (2) or more food ingredients, mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or**
- (4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or package used to transport the food).**

(c) The city food and beverage tax does not apply to the furnishing, preparing, or serving of a food or beverage in a transaction that is exempt, or to the extent the transaction is exempt, from the state gross retail tax imposed by IC 6-2.5.

Sec. 5. The city food and beverage tax rate:

- (1) must be imposed in an increment of twenty-five hundredths percent (0.25%); and**
- (2) may not exceed one percent (1%);**

of the gross retail income received by the merchant from the food or beverage transaction described in section 4 of this chapter. For purposes of this chapter, the gross retail income received by the retail merchant from a transaction does not include the amount of tax imposed on the transaction under IC 6-2.5.

Sec. 6. A tax imposed under this chapter shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5. However, the return to be filed with the payment of the tax imposed under this chapter may be made on a separate return or may be combined with the



return filed for the payment of the state gross retail tax, as prescribed by the department of state revenue.

Sec. 7. The amounts received from the tax imposed under this chapter shall be paid monthly by the treasurer of state to the city fiscal officer upon warrants issued by the auditor of state.

Sec. 8. (a) If a tax is imposed under section 3 of this chapter by the city, the city fiscal officer shall establish a food and beverage tax receipts fund.

(b) The city fiscal officer shall deposit in the fund all amounts received under this chapter.

(c) Money earned from the investment of money in the fund becomes a part of the fund.

Sec. 9. Money in the food and beverage tax receipts fund must be used by the city for one (1) or more of the following purposes:

(1) Construction, renovation, improvement, equipping, or maintenance of city capital improvements.

(2) Parks and recreation.

(3) The pledge of money under IC 5-1-14-4 for bonds, leases, or other obligations incurred for a purpose described in subdivisions (1) and (2).

Revenue derived from the imposition of a tax under this chapter may be treated by the city as additional revenue for the purpose of fixing its budget for the budget year during which the revenues are to be distributed to the city.

Sec. 10. With respect to obligations for which a pledge has been made under section 9 of this chapter, the general assembly covenants with the holders of the obligations that this chapter will not be repealed or amended in a manner that will adversely affect the imposition or collection of the tax imposed under this chapter if the payment of any of the obligations is outstanding.

Sec. 11. (a) If the city imposes the tax authorized by this chapter, the tax terminates on July 1, 2045.

(b) This chapter expires July 1, 2045."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 428 as introduced.)

HOLDMAN, Chairperson

Committee Vote: Yeas 12, Nays 0.

SB 428—LS 6538/DI 134



SENATE MOTION

Madam President: I move that Senate Bill 428 be amended to read as follows:

Page 5, line 39, delete "Parks and recreation." and insert **"Financing, construction, improvement, equipping, operation, maintenance and promotion of the Jasper Community Wellness, Sports and Aquatic Center."**

(Reference is to SB 428 as printed February 22, 2023.)

MESSMER

