STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

December 19, 2025

Opinion No. 25-021

Grandfathering Protection Related to a Municipality's Levying of a Hotel Occupancy Privilege Tax

Question 1

Is a municipality's levying of an occupancy tax subject to the caps set out in Tenn. Code Ann. § 67-4-1402(a)(2) if the municipality collects the occupancy tax pursuant to a private act that existed on or before July 1, 2021, and authorizes the municipality to "levy and collect" an occupancy tax "in an amount not to exceed 5%," but the municipality's governing body did not vote to levy the full 5% until after July 1, 2021?

Opinion 1

No.

Question 2

If the answer to Question 1 is yes, does Tenn. Code Ann. § 67-4-1402(a)(3) exempt the municipality from the caps in subdivision (a)(2) if the municipality's private act, effective before May 1, 2025, authorizes the municipality to "levy and collect" an occupancy tax "in an amount not to exceed 5%," but the municipality's governing body did not vote to levy the full 5% until after May 1, 2025?

Opinion 2

Because of the answer to Question 1, the question as posed is moot.

ANALYSIS

In recent years, the General Assembly has enacted several measures related to the ability of municipalities to levy hotel occupancy privilege taxes. As currently codified, Tenn. Code Ann. § 67-4-1402 generally provides that "the tax levied by a municipality[1] upon the privilege of occupancy in a hotel must not exceed four percent (4%) of the consideration charged to a transient by the hotel operator." Tenn. Code Ann. § 67-4-1402(a)(2). This rule, however, is not without qualification. In the same provision, for instance, the statute now provides that "on or after May

[1] Within this statutory scheme, "municipality" means "an incorporated city or town or a county, but does not include a county with a metropolitan form of government." Tenn. Code Ann. § 67-4-1401(3).

5, 2025, a municipality shall not increase the tax in an amount such that the cumulative tax in an incorporated area of a county exceeds eight percent (8%)." *Id.* And through other provisions, the General Assembly has included additional statutory qualifications with respect to preexisting taxes or authority to levy. *See, e.g.*, Tenn. Code Ann. § 67-4-1402(b) (addressing in part the continuing validity of private acts "levying or authorizing the levy of a tax upon the privilege of occupancy in a hotel" that existed on or before July 1, 2021).

Here, the request seeks guidance regarding the interplay between preexisting authority to levy an occupancy tax and the statutory limits referenced above from § 1402(a)(2). The request's core concern appears to be whether the caps in § 1402(a)(2) circumscribe a municipality's levying of an occupancy tax pursuant to a private act that existed on or before July 1, 2021. For the reasons stated below, we are of the opinion that a municipality is not subject to the statutory caps under the circumstances described in the first question. And given our conclusion on that issue, the second question as posed is moot.

1. The first question is concerned with whether a municipality may levy an occupancy tax irrespective of the caps in § 1402(a)(2) when the municipality collects the tax pursuant to a private act that authorizes the municipality to "levy and collect" an occupancy tax "in an amount not to exceed 5%." More pointedly, the question is posed presupposing two temporal conditions: (1) the private act providing such authorization existed on or before July 1, 2021, and (2) the municipality's governing body did not vote to levy the full 5% until after July 1, 2021.

Based on grandfathering protection provided within the Tennessee Code, a municipality's levying of an occupancy tax would not be subject to the caps in § 1402(a)(2) in the scenario described. Section 1402(b) directly specifies that § 1402 "does not void or modify a private act, ordinance, or resolution levying or authorizing the levy of a tax upon the privilege of occupancy in a hotel that existed on or before July 1, 2021, except as provided in § 67-4-1414." Tenn. Code Ann. § 67-4-1402(b). And setting aside momentarily the referenced exception involving § 1414, this language clearly states that a private act authorizing a levy remains valid if it existed on or before July 1, 2021. Moreover, if such a private act is not modified by § 1402—as the above language from subsection (b) instructs—a tax collected pursuant to the grandfathered private act would not be subject to § 1402(a)(2)'s caps.

Additionally, it is of no consequence that, in the scenario described, the municipality's governing body did not vote to levy the full 5% authorized under the private act until after July 1, 2021. The fact that *authorizations* to levy remain valid indicates that a post-July 1, 2021, imposition of the levy would be entirely permissible. Indeed, "[i]n our examination of statutory language, we must presume that the legislature intended that each word be given full effect." *Hayes v. Gibson Cnty.*, 288 S.W.3d 334, 337 (Tenn. 2009). And here, the General Assembly unmistakably conferred grandfathering protection not only on private acts that levied occupancy taxes, but also with respect to private acts that *authorized* a levy on hotel occupancy. *See* Tenn. Code Ann. § 67-4-1402(b) (pertaining to private acts "levying *or authorizing* the levy" that existed on or before July 1, 2021 (emphasis added)).

As for § 1402(b)'s indication that its effect may be limited by what is provided in § 1414, the pertinent limitation from § 1414 concerns how revenue derived from a preexisting privilege

tax or authority is used. And to this end, § 1414 provides generally that "a municipality with a preexisting privilege tax or authority shall not change the use of the revenue except in accordance with this part and subject to the restrictions of this part." Tenn. Code Ann. § 67-4-1414(a)(1).[2] The substantive import from § 1402(b), however, remains the same: among other preexisting local law, "any authorization to levy . . . granted[] under a private act . . . remains in full force and effect on and after July 1, 2021." *Id.*

Indeed, if such preexisting authorization to levy *remains* in *full force and effect*, this generally confirms two things. First, if the authorization to levy "remains," this confirms that the power to levy is still valid even if a municipality's governing body did not vote to levy the full tax already authorized until after July 1, 2021. And second, if the authorization remains "in full force and effect," in our view this confirms that the amount of the authorized levy is not encumbered. In the scenario described in the question, then, the municipality's levying of a 5% occupancy tax would not be subject to the caps in § 1402(a)(2).

2. As referenced earlier, the request asks that we entertain a second question if we answer the first question in the affirmative. Because we have answered the first question in the negative, however, the question as posed is moot.

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[2]We observe that Tenn. Code Ann. § 67-4-1414(a)(2) qualifies this general rule and outlines parameters under which certain municipalities with a preexisting privilege tax or authority "shall not change the designated use, but may otherwise change the allocations of the revenue." Tenn. Code Ann. § 67-4-1414(a)(2).