New French Quarter Sales Tax for Public Safety Should Apply to Hotel Rooms

September 14, 2021

BGR We report to you.
NOW
BGR's Spotlight on Local Government Issues

In October, the New Orleans City Council will begin levying a new sales tax for enhanced public safety in the French Quarter. The tax will expand police patrols and other safety initiatives as French Quarter tourism recovers from the dual impacts of the pandemic and Hurricane Ida. But the tax will be missing a key revenue generator: hotel room rentals.

The City Council excluded hotel room rentals from the tax last month despite questions about whether the exclusion is permissible under state law. The council included the tax break in a resolution to begin levying the 0.245% tax on October 1.[1] It did so without publicly responding to legal concerns that the State Bond Commission and City administrators have raised. While BGR has not taken a position on the legal issues, it has identified several compelling policy reasons for removing the exclusion and applying the tax to hotel room rentals. An exclusion would (1) exacerbate a sharp decline in funding for public safety in the French Quarter, (2) reduce funding for recommended services other than police patrols, such as homeless assistance, (3) distribute the tax burden unfairly, and (4) deviate from well-established norms and recommended practices for taxation.[2] For these reasons, the City Council should amend its resolution to remove the exclusion.

In raising these concerns, BGR is not taking a position on a pending agreement between the City, the City Council and the French Quarter Management District (Management District), a state entity that will oversee the tax revenue as specified in the ballot proposition. The Management District approved the agreement on Monday (September 13), pending consideration of certain revisions the City requested. The agreement includes a budgeting process and other provisions necessary to direct the tax revenue to supplement patrols by the New Orleans Police Department and other public safety enhancements in the district. The agreement also establishes a framework to hold the parties accountable for the use of the tax revenue, but it does not address the exclusion for hotel room rentals.

Background

French Quarter voters approved the sales tax on April 24 after rejecting a proposition in December to renew a similar tax that expired at the end of 2020. The new tax, which applies only in the French Quarter and expires at the end of June 2026, will generate an estimated $2.5 million in the first 12 months, according to the ballot proposition.[3]

The City Council, which is imposing the tax as the governing authority of the French Quarter Economic Development District, initially sought to include the tax break for hotel rooms in the ballot proposition. But a State Bond Commission official, in consultation with the Attorney General's Office, called for the council to demonstrate its legal basis for the exclusion. Barring that, the official said the commission would not authorize placing the proposition on the ballot unless the City Council removed the exclusion. The council eliminated the exclusion and said it would revisit the issue after the election when it adopted a resolution to levy the tax.[4]

After the election, City administrators reiterated the State Bond Commission's concerns. The City Council canceled a July 1 meeting to consider a resolution levying the tax in order to review the legal questions.[5] On August 19, the council approved a resolution excluding hotel room rentals from the tax without providing a legal basis for doing so.[6] Proponents noted that hotel rooms had been excluded from the expired tax, although the legality of that exclusion, which also was implemented by a resolution, was never tested in court.

An attorney for New Orleans & Company, a private nonprofit organization that promotes tourism and conventions, subsequently told BGR that the legal basis for the exclusion comes from a state law authorizing economic development districts to levy sales taxes.[7] The attorney stated that, among other things, a clause requiring the taxing powers to be liberally construed gives the City Council the discretion to exclude hotel room rentals.

Policy Concerns with the Hotel Room Exclusion

Regardless of the status of the legal questions surrounding the exclusion, there are numerous public policy reasons for applying the tax to hotel room rentals. They include the following:

- **The exclusion would exacerbate a sharp decline in French Quarter public safety funding.** Before the pandemic, annual funding for supplemental French Quarter police patrols totaled $6.7 million. The table below shows this included $3 million from the original French Quarter sales tax and $3.7 million that local tourism officials provided from the $20 million that they collected through a 1.75% surcharge on citywide hotel room rentals.[8] When the pandemic sent hotel occupancy levels plunging in the spring of 2020, tourism officials ended their financial support for the patrols and said they had no plans to resume the funding. The loss of tourism industry funding and a pandemic-related decline in projected revenue from the new sales tax has reduced projected funding for enhanced public safety in the French Quarter from $6.7 million to $2.5 million, a 63% decrease. Applying the sales tax to hotel room rentals would generate about $500,000 annually to help mitigate this sharp decline.[9]

- **Recommended public safety services other than policing would receive less funding.** The ballot proposition voters approved requires the first $2 million in sales tax revenue each year to go to supplemental police patrols. Any amount beyond that can go to patrols and other public safety services, such as homeless assistance and code enforcement. However, an exclusion for hotel room rentals would significantly reduce the projected tax revenue available for anything but police patrols. This is problematic because the Management District's own security consultant emphasized the importance of going beyond traditional law enforcement efforts to address quality-of-life issues and other factors that contribute to crime in the French Quarter.[10] Indeed, communities across the country are taking this approach by exploring alternative public safety services and programs to supplement policing.

- **New circumstances have undermined a key rationale for the original tax exclusion.** When the original tax took effect in 2016, one rationale for the exclusion was that the citywide surcharge on hotel room rentals was already providing

FUNDING FOR ENHANCED PUBLIC SAFETY IN THE FRENCH QUARTER

Source	Pre-pandemic	Post-pandemic
Sales tax	$3 million	$2.5 million
Hotel room surcharge	$3.7 million*	$0
TOTAL	**$6.7 million**	**$2.5 million**

* Local tourism officials provided this revenue from a 1.75% citywide hotel surcharge that they control. They withdrew the funding in 2020 due to the pandemic.

> Excluding room charges from the tax would significantly reduce the amount visitors pay for the enhanced public safety services they receive. This would shift more of the costs to local residents who patronize French Quarter businesses.

substantial funding for enhanced public safety in the French Quarter. However, the withdrawal of that funding means revenue for public safety services derived from hotel room rentals would drop from $3.7 million before the pandemic to nothing if hotel rooms are excluded from the new tax. This undermines the argument by proponents that the exclusion would simply maintain the status quo established when the original tax was in effect.

- **French Quarter hotels have not demonstrated a competitive disadvantage from the tax.** Officials with the City Council and the Management District said the exclusion is a key component of an agreement with French Quarter hoteliers to support the tax. The officials assert that maintaining a uniform citywide hotel tax rate is necessary for French Quarter hotels to remain competitive with other hotels in New Orleans and across the country. However, they have not demonstrated that the tax – which amounts to 44 cents for a typical pre-pandemic room charge of $180 – would create a competitive disadvantage. In addition, BGR's comprehensive 2019 report on Orleans Parish hotel taxes found several instances of special districts in a dozen peer cities that have higher hotel tax rates than the rest of the city. These districts tend to be in areas with high tourism levels and greater public service needs, like the French Quarter. Meanwhile, an exclusion for hotel room rentals would unfairly concentrate the tax burden on other French Quarter businesses that, like hotels, have nearby competitors that are not subject to the tax. Public safety funding from hotel rooms would drop from a pre-pandemic level of $3.7 million to nothing, while other goods and services continue to be taxed at pre-pandemic rates.

- **An exclusion for hotel rooms does not align with recommended practices for taxation.** A key principle of good taxation is that those who benefit from public goods and services should pay the taxes that fund them.[11] In this case, French Quarter hotel guests clearly benefit from the enhanced public safety services that the special sales tax funds. They will pay the tax on purchases at hotels other than the room rental, such as food and beverages. However, hotel room charges are one of the largest expenditures most visitors make. Thus, excluding room charges from the tax would significantly reduce the amount visitors pay for the enhanced public safety services they receive. This would shift more of the costs to local residents who patronize French Quarter businesses. This exclusion also runs counter to the basic fiscal advantage created by shifting or exporting the tax burden to nonresidents to the extent possible.[12]

- **An exclusion deviates from state and national norms for taxation.** BGR's research for its 2019 report shows that an exclusion would deviate from well-established state and national norms. The report found that most jurisdictions apply all general sales taxes to hotel room rentals.[13] This includes New Orleans, where the 5% local sales tax applies to hotel rooms. This ensures that hotel rooms contribute to basic public services at the same rate as all other taxable goods and services. Under the exclusion, hotel rooms would contribute less. The total tax rate on hotel rooms is substantially higher than the general sales tax rate in most jurisdictions, including New Orleans. Proponents of the exclusion argue that this means hotel rooms are already contributing more than their share and should not be subject to the public safety tax. However, the additional revenue from the higher tax rate goes to promoting tourism, conventions and professional sports, which benefits hotel owners. Indeed, BGR's report showed that New Orleans had the highest portion of hotel taxes going to tourism-related purposes among a dozen peer cities. The exclusion would reinforce this tourism focus.

Conclusion and Recommendations

Whether the tax break is legal or not, this report identifies several compelling reasons for applying the tax to hotel room rentals. Local residents, who typically do not stay in French Quarter hotels, should be concerned about the exclusion because it reduces public safety revenues and shifts more of the tax burden to other French Quarter businesses that they may patronize. As such, citizens should urge policymakers to apply the tax to hotel room rentals to ensure that visitors pay their share for the enhanced public safety services.

The City Council should amend its resolution levying the tax to remove the exclusion for hotel rooms. This would distribute the tax burden more fairly among the customers of all businesses in the French Quarter. It would also help ensure the recommended mix of policing and non-patrol services to enhance overall public safety in New Orleans' most iconic neighborhood and the heart of its tourism economy.

If the City Council fails to act, tourism leaders should use a portion of hotel surcharge revenues to resume funding for public safety. This could offset the foregone tax revenue from the exclusion and reintroduce fairness by having hotel room rentals contribute to public safety in the French Quarter, as do all other taxable goods and services.

Endnotes

1 French Quarter Economic Development District Resolution R-2021-4, adopted August 19, 2021. Meeting information is available on the City Council's website.

2 See Bureau of Governmental Research, *On the Ballot: French Quarter Sales Tax, April 24, 2021*.

3 Proponents of the French Quarter sales tax have viewed $2.5 million as the projected tax revenue excluding hotel room rentals. It is difficult to make projections given the uncertain pace of New Orleans' recovery from the pandemic. Before the pandemic, the previous French Quarter sales tax, which also exempted hotel room rentals, generated about $3 million a year.

4 Stein, Michael Isaac, "City Council members maintain legally dubious hotel exemption while reinstating French Quarter sales tax," *The Lens*, August 19, 2021.

5 Stein, Michael Isaac, "French Quarter security tax delayed over demand for hotel exemption," *The Lens*, July 12, 2021.

6 French Quarter Economic Development District Resolution R-2021-4 levying the tax includes the phrase "as approved by the voters" and quotes verbatim the ballot language specifying the transactions that are subject to the tax. However, the resolution adds the words "excluding the furnishing of hotel and motel guest rooms," which voters did not approve.

7 La. R.S. 33:9038.39.

8 Total surcharge revenue from New Orleans & Company's 2019 audited financial statements.

9 BGR gathered the $500,000 estimate of foregone tax revenue from tax proponents prior to the April election. It is a rough estimate based on lower hotel room charges and occupancy rates due to the pandemic. A BGR analysis suggests this figure would be substantially higher for pre-pandemic levels. Hotel data on New Orleans & Company's website indicates that there are about 7,500 hotel rooms in the French Quarter Economic Development District, which includes several large hotels on the downriver side of Canal Street that are not typically considered to be in the French Quarter. Based on 2019 citywide daily averages of a $180 room charge and a 74% occupancy rate, a 0.245% tax on those 7,500 rooms would have generated about $890,000.

10 Interfor International, Physical Security Assessment, prepared for the French Quarter Management District, June 23, 2020.

11 BGR, *The Lost Penny: An Analysis of the Orleans Parish Hotel Tax Structure*, January 2019, p. 12.

12 Ibid.

13 Ibid., p. 7.

2021

BGR Review Committee

Norma Grace, *Chair*
Anne P. Baños
Ludovico Feoli
Alex Gershanik
Merritt Lane
Steven W. Usdin
Maureen Clary
Louis M. Freeman, Jr.
Hunter G. Hill
Blake J. Stanfill

BGR Project Staff

Amy L. Glovinsky, President & CEO
Stephen Stuart, Vice President & Research Director
Paul Rioux, Research Analyst

This report is available on BGR's web site, **www.bgr.org**.

Become a Member

To preserve its independence, BGR relies on financial support from a diverse membership of individuals, corporations and foundations. To find out how you can become a part of BGR, go to www.bgr.org/membership or call us at 504-525-4152 x108.

We report to you.

The Bureau of Governmental Research is a private, nonprofit, independent research organization dedicated to informed public policy making and the effective use of public resources for the improvement of government in the New Orleans metropolitan area.

BUREAU OF GOVERNMENTAL RESEARCH
1055 St. Charles Ave., Suite 200
New Orleans, LA 70130
Phone 504-525-4152
www.bgr.org
@bgrnola

Photography by Kevin Rabalais