

● Spending the Second Quarter Percent – REET 2

This part of the real estate excise tax may only be levied by cities that are required to or choose to plan under the Growth Management Act. All cities that levy this tax face the same provisions, whether their population is greater or less than 5,000.

For this quarter percent of the real estate excise tax, "capital project" means those:

public works projects of a local government for planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, bridges, domestic water systems, storm and sanitary sewer systems, and planning, construction, reconstruction, repair, rehabilitation, or improvement of parks.¹⁰⁵

Note that acquisition of land for parks is not a permitted use of REET 2 receipts, although it is a permitted use for street, water, and sewer projects.

● What's This Other One-Half Percent Real Estate Excise Tax?

Cities that are not levying the optional half-cent sales tax under RCW 82.14.030(2) have the option of levying an additional one-half percent real estate excise tax.¹⁰⁶ These receipts are not designated for capital projects. They are a general fund revenue for city operating expenditures. Only one city, the City of Clarkston, has chosen to do this.¹⁰⁷ From a financial standpoint, the optional half-cent sales tax will probably always bring in more revenue than this additional one-half percent real estate excise tax. For border cities, however, who do not feel they are able to levy the optional sales tax, this tax is a revenue option.

● Accounting for These Funds

Because this revenue source has a dedicated purpose, it must be accounted for separately in a capital projects fund. Those cities that are planning under GMA and levying both REET 1 and REET 2 need to keep track of each of these revenues separately because the uses to which they may be put are different.¹⁰⁸

Hotel-Motel Tax

Most cities have had the authority to levy a "hotel-motel" or lodging tax of two percent since 1973.¹⁰⁹ Over the years, some cities got special interest legislation passed that increased the rate of their permitted levy and/or provided for certain uses of the tax revenue that were unique to them. In 1997, the legislature repealed much of chapter 67.28 RCW and gave most cities the same levy rate and permitted uses.

¹⁰⁵RCW 82.46.035(5).

¹⁰⁶RCW 82.46.010(3).

¹⁰⁷See Clarkston Municipal Code, §3.88.010.

¹⁰⁸RCW 82.46.035(4).

¹⁰⁹Ch. 34, Laws of 1973, 2nd ex. sess.

•What Are the Tax Rates?

Most cities may impose a "basic" two percent tax under RCW 67.28.180 on all charges for furnishing lodging at hotels, motels, and similar establishments (including bed and breakfasts and RV parks) for a continuous period of less than one month. This tax is taken as a credit against the 6.5 percent state sales tax, so that the total tax that a patron pays in retail sales tax and the hotel-motel tax combined is equal to the retail sales tax in the jurisdiction.¹¹⁰ In addition, most cities may levy an additional tax of up to two percent, for a total rate of four percent, under RCW 67.28.181(1). This "special" tax is **not** credited against the state sales tax. Therefore, if a city levies this additional tax, the total tax on the lodging bill will increase by two percent.

There are some exceptions:

- RCW 67.28.181(1) stipulates that this additional two percent tax may be levied as long as the total tax under chapter 36.100 RCW (the public facilities district tax), chapter 82.08 RCW (the state sales tax), chapter 82.14 RCW (the city, county, and transit district sales tax), chapter 67.28 RCW (the hotel-motel tax chapter), and chapter 67.40 RCW (the convention and trade center tax) does not exceed 12 percent. (Note that the sales tax for the Regional Transit Authority in portions of King, Pierce, and Snohomish counties is not included in making these calculations.) This means that most cities in King County may only levy a one percent tax.¹¹¹ Seattle cannot levy any tax. The total hotel-motel tax in Seattle is 15.2 percent, higher than in the rest of the county, because the convention center tax is higher.¹¹²
- Cities that had authority to levy a "special" tax before July 27, 1997 that allowed a rate higher than four percent, had that rate grandfathered in by the 1997 legislation.¹¹³ All the cities in Grays Harbor and Pierce counties are in this category plus Chelan, Leavenworth, Long Beach, Bellevue, Yakima, and Winthrop.
- Cities located in counties that had the authority to levy a four percent tax county-wide before January 1, 1997, are limited to the "basic" two percent rate.¹¹⁴ This affects cities in Snohomish and Cowlitz counties.
- Due to some unique circumstances,¹¹⁵ there was a period of time at the end of 1997 and beginning of 1998 when the outstanding taxing authority was six percent, rather than the four percent the legislature intended. During this time, Wenatchee and East Wenatchee raised their total tax to six percent. These rates were grandfathered in by the 1998 legislature.¹¹⁶

¹¹⁰RCW 67.28.180(1). Ch. 35, Laws of 1998, §2.

¹¹¹Cities in King County, other than Seattle, have an 8.2 percent sales tax, a two percent hotel-motel tax for the Kingdome/new football stadium, and a 2.8 percent hotel-motel tax for the convention center. These add up to 13 percent. Subtracting the two percent credit against the state sales tax brings the figure down to 11 percent, leaving room for a one percent tax.

¹¹²RCW 67.40.090(2)(d). The statutes provide that the maximum rate in Seattle is 15.2 percent. RCW 67.28.181(2)(c).

¹¹³RCW 67.28.181(2)(a).

¹¹⁴RCW 67.28.181(2)(b).

¹¹⁵See *Budget Suggestions for 1998*, Municipal Research and Services Center: Seattle, August 1997, pp. 26-32, for a discussion of the unintended consequences of the partial veto of ch. 452, Laws of 1997.

¹¹⁶RCW 67.28.181(2)(d).

•City or County Tax?

Counties also have the right to levy this tax but, in most cases, the county must allow a credit for any tax levied by a city.¹¹⁷ One exception is King County. The law provides that if any county pledged these tax revenues before June 26, 1975, to pay debt service on the construction of a "public stadium, convention center, performing arts center, or visual arts facilities," then it could collect the tax on a county-wide basis from all lodging facilities.¹¹⁸ In practical terms this means cities in King County are not able to levy the hotel-motel tax at rate higher than one percent, and Seattle can levy no tax at all, until the bonds issued for the new football stadium are retired in January 1, 2021.¹¹⁹

However, the law also has a provision for any cities that, before June 26, 1975, had pledged hotel-motel tax revenue to pay debt service for the construction of one of the facilities listed above. Those cities are able to continue to collect their hotel-motel tax until the debt is retired.¹²⁰ One such city is Bellevue, where the 6.5 percent state retail sales tax on the sale of lodging is reduced by both the two percent county hotel-motel tax and the two percent city tax. The city of Yakima and Yakima County also pledged hotel-motel tax revenues for a convention center before June 26, 1975, and the state sales tax there is subject to the same "double-dipping."

•How Can the Revenues Be Used?

These funds may be used solely for paying for tourism promotion and for the acquisition and/or operation of tourism-related facilities.¹²¹ "Tourism promotion" is defined as:

activities and expenditures designed to increase tourism, including **but not limited to** advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding marketing of special events and festivals designed to attract tourists. [Emphasis added].¹²²

Those who recall the previous language will note that this new language is broader. Cities may still advertise and publicize using written materials, advertisement on radio or television or in other media, banners, floats, etc. However, "activities and expenditures to increase tourism" could also include the salary and benefits of a city employee for the time spent promoting tourism, or the travel expenses of an employee who staffs a city booth at a convention. Note that hotel-motel tax funds may be spent only on **marketing** special events and festivals. These monies may **not** be spent on the costs of actually putting on the special events or festivals. There is nothing in the definition that limits the marketing to city events, as long as the events are designed to attract tourists.

¹¹⁷RCW 67.28.181(3). If a city is levying the entire four percent tax (or more, if a higher rate has been grandfathered in), the county may not levy its tax in that city.

¹¹⁸RCW 67.28.180(2)(b).

¹¹⁹RCW 67.28.180(2)(c)(ii).

¹²⁰RCW 67.28.180(2)(c)(iii).

¹²¹RCW 67.28.1815. "Tourism" is defined as "economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts, or souvenirs." RCW 67.28.080(5). There is no stipulation that the tourism promotion be of a type that attracts overnight visitors. Of course, to the extent it does not, hotel-motel tax receipts will be lower.

¹²²RCW 67.28.080(6).

However, because of the state constitutional gift of public funds prohibition,¹²³ a city should enter into a contract with any private organization providing marketing services or any other tourist promotion activity. The contract should spell out the tourism-related services to be provided in exchange for city funding and what reports will be required. Also, any organization doing promotion on behalf of the city may only spend hotel-motel tax funds on items that the city itself could fund. This prohibits, for example, any expenditures on promotional hosting.

The limitation on using hotel-motel tax revenues for acquiring and/or operating tourism-related facilities is guided by the following definition:

"Tourism-related facility" means: real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor, and used to support tourism, performing arts, or to accommodate tourist activities.¹²⁴

The prior legislation specifically mentioned certain facilities on which most cities could expend hotel-motel tax funds. These included stadiums, convention centers, performing and visual arts facilities, and public restrooms. Cities may still spend their hotel-motel funds on these facilities, but the new language allows a city to build and/or operate any facility that supports tourism or accommodates tourist activity. What kinds of facilities does this include? It depends. The guiding principle here is that the facilities should be used by tourists. So, for example, a municipal golf course, would likely be a permitted expenditure in Chelan, where it probably would not be if it were in a residential neighborhood in Spokane. Each situation is unique. We realize that is not as much guidance as many cities will want, but that is all we can give you in this publication. You are welcome, of course, to call our office or the state auditor's office to discuss a specific project.

One other guiding principle is that these tourism-related facilities must be owned and operated by the city, either individually or jointly with another municipality or private party.¹²⁵ A city cannot, for example, give money to a nonprofit museum, even though museums are a permitted use if owned by the city.¹²⁶

•Lodging Tax Advisory Committee¹²⁷

If a city with a population over 5,000 wishes to impose a new hotel-motel tax, raise the rate of an existing tax, repeal an exemption from the hotel-motel tax (we do not know if any cities are providing exemptions), or change the use of the tax proceeds, it must form a lodging tax advisory committee.

- This committee must have at least five members, appointed by the city council.
- The committee membership must include at least two representatives of businesses that are required to collect the hotel-motel tax, two people who are involved in activities that are

¹²³ Art. 8, §2.

¹²⁴ RCW 67.28.080(7).

¹²⁵ RCW 67.28.120.

¹²⁶ See letter dated October 28, 1987 from Leland T. Johnson, Assistant Attorney General, to Frederick C. Canavor, Jr., Prosecuting Attorney, San Juan County. This point is reiterated in a letter dated June 14, 1993, from Stacia Reynolds (now Hollar), General Counsel, Washington State Auditor's Office, to Paul Sullivan, Jr., City Attorney of Ellensburg.

¹²⁷ RCW 67.28.1817.

authorized to be funded by this tax, and one elected city official who serves as chairperson of the committee.

- Organizations representing hotels and motels and organization involved in activities that can be funded by this tax may recommend people for membership.
- The number of committee members from organizations representing the hotels and motels and the number from organizations involved in activities that can be funded must be equal.
- A city's committee may include a non-voting county official.
- The council shall review the membership of the committee annually.

So, What Does the Committee Do? Any proposal to impose a new hotel-motel tax, raise the rate of an existing tax, repeal an exemption from the hotel-motel tax, or change the use of the tax proceeds, must be submitted to the lodging tax advisory committee for review and comment.

- This submission must occur at least 45 days before final action will be taken on the city's proposal. Even if the committee finishes its work before the 45 days are up, the city still must wait 45 days.
- The committee's comments shall include an analysis of the extent to which the proposal will accommodate activities for tourists or increase tourism, and of the extent to which it will affect the long-run stability of the fund to which the hotel-motel taxes are credited.
- If the advisory committee does not submit comments before the time that final action is to be taken on the proposal, the city may go ahead and take final action.

Each city that levies a hotel-motel tax must submit two reports to the Department of Community, Trade and Economic Development (CTED). The first report should have been submitted on October 1, 1998; the next is due on October 1, 2000. The report must contain the following information:

- The total hotel-motel tax rate in the city.
- The total hotel-motel tax revenue received in each of the preceding six years.
- A list of projects and activities funded by this tax.
- The amount of revenue expended for each project and activity.

This information will be used by CTED to make a report to the legislature.