

Hotel-Motel Tax

The hotel-motel tax is a tax imposed by cities and counties upon the sale of, or charge made for the furnishing of lodging. The tax applies to sales of lodging by a hotel, rooming house, tourist court, motel, or trailer camp, and the granting of any similar license to use real property. The occupancy of real property for a continuous period of one month or more is presumed to be a rental or lease of real property rather than a sale of lodging and therefore not subject to the tax.

The tax is collected by the seller of lodging and remitted to the Washington State Department of Revenue, which distributes the tax to the appropriate local government.

What is the rate of the hotel-motel tax?

The maximum tax rate varies. As of March 12, 1998, the tax consists of two components:

- 1) A “basic” hotel-motel tax of 2% (RCW 67.28.180), and**
- 2) An additional lodging tax of up to 2% subject to certain rate limitations (RCW 67.28.181).**

The basic tax is credited against the state sales tax, which means the customer pays no additional tax on sales of lodging. If both the county and a city within the county impose the basic tax, the county must allow a credit for the city tax.

In King County, however, Bellevue may impose the tax and both the county tax and city tax are credited against the state sales tax. (The so-called “double dip”). Likewise, Yakima County and the City of Yakima may impose the basic tax and both taxes are credited against the state sales tax.

Approximately 120 cities currently impose the basic tax.

Most cities may also impose an additional lodging tax. The general rule is that the additional lodging tax may not exceed 2%, or a rate that, when added to all other taxes on the sale of lodging other than the regional transit authority (RTA) tax, does not exceed 12%.

Cities located in counties that imposed lodging taxes of 4% or more on January 1, 1997 (Pierce, Snohomish, Grays Harbor, Cowlitz) generally may not impose the additional lodging tax.

Some cities are authorized to exceed these rate limitations. In addition, some cities are authorized to impose the additional lodging tax even though they are located in counties that imposed lodging taxes of 4% or more on January 1, 1997. This is because these cities had this authority under “special” hotel-motel taxes that were repealed by 1997 legislation.

Approximately 20 cities currently impose additional lodging taxes ranging from 1% to 5%.

continued

What were the “Special” Hotel-Motel Taxes?

Prior to 1997, a few cities and counties were authorized to impose “special” hotel-motel taxes in addition to the “basic” tax. Special taxes were not credited against the state sales tax, but were in addition to the rate of tax charged to the customer. State law specified in considerable detail how revenues from the various special taxes could be used.

The special taxes were repealed as part of chapter 452, Laws of 1997 (**SSB 5867**) because the Legislature was concerned about the proliferation of a confusing array of special taxes enacted on sales of lodging over the years.

The intent of **SSB 5867** was to replace the “basic” and “special” hotel-motel taxes with a uniform lodging tax of 4% (or a rate which, when combined with other taxes on sales of lodging, does not exceed 12%). The bill included a “grandfather clause” intended to allow jurisdictions taxing at higher rates as of January 1, 1998, to continue to do so in the future. The bill also liberalized how tax revenues may be used, but required creation of lodging tax advisory committees in cities with population of 5,000 or more.

What is the “partial veto” problem we’ve heard so much about?

The original intent of **SSB 5867** was thwarted because two sections were vetoed. The effective date section (April 1, 1998) was vetoed, so that the act would take effect 90 days after session. A section making changes to the “basic” tax (RCW 67.28.180) was vetoed because of a conflict with the football stadium referendum bill, **ESHB 2192**.

The partial veto resulted in a number of unintended and unforeseen consequences:

- Several cities suffered a reduction in their rate authority, because the “grandfather clause” intended to allow cities to continue

to tax at whatever rates were in effect on January 1, 1998, was rendered invalid.

- The “double dip” was eliminated.
- There was some confusion about application of lodging tax advisory committee requirements to the “basic” tax.
- The new 4% lodging tax, in combination with the “basic” 2% tax, allowed most cities to tax at up to 6% instead of 4% as intended by the Legislature. (East Wenatchee and Wenatchee each have imposed a tax of 6%.)

What did cities do in response to the partial veto?

Yakima and Bellevue sued the state to preserve their current rate authority and the “double dip.” They argued that the law created an unconstitutional impairment of their contractual obligations. Both had issued bonds in reliance on the revenue stream from these taxes. The court issued a preliminary injunction that preserved status quo for those cities until May 15, 1998, to allow the Legislature to fix problem during the 1998 session. Five other cities (Ocean Shores, Lakewood, and Tacoma, later joined by Westport and Fife) filed a similar suit and were granted a comparable preliminary injunction.

How did the 1998 Legislature respond to the partial veto?

The 1998 Legislature enacted **HB 2698**, which resolved the problems created by the partial veto, and eliminated the need for the aforementioned litigation to proceed. The bill contained the following elements:

- The 2% “basic” hotel motel tax is left in place [RCW 67.28.180].
- The additional lodging tax is reduced from 4% to 2% [RCW 67.28.181].

- Cities imposing a total tax of 6% prior to January 1, 1998 (i.e. East Wenatchee and Wenatchee) are allowed to continue to impose a tax at that rate.
- A new “grandfather clause” allows municipalities that had authority to impose “special” and “basic” hotel-motel taxes prior to July 27, 1997, at rates higher than generally allowed to continue to have that authority through January 1, 1999. Thereafter, the municipality may not exceed the tax rate actually imposed on January 1, 1999. **Note the “use it or lose it” feature. A city that had authority to tax at a higher rate prior to July 27, 1997, must act by January 1, 1999, in order to preserve that authority.**
- The “double dip” for the cities of Bellevue and Yakima is restored.
- It is clarified that the lodging tax advisory committee requirements apply to the “basic” tax, but only if the tax or use of tax revenues is changed.

What action is required now?

If you’re a city that imposed one of the special hotel-motel taxes prior to July 27, 1997, you need to reenact your taxing ordinances under the new statutory authority by January 1, 1999, if you have not already done so. This is particularly important if the tax ordinance refers specifically to one of the special hotel-motel tax statutes that was repealed in 1997. It would be prudent to reenact the tax ordinance even if it does not refer to a specific statute. If your city only imposes the basic tax, you do not need to reenact your ordinance.

Secondly, if your city had authority to impose special hotel-motel taxes at rates higher than current law, but you have not actually imposed the taxes, you have until January 1, 1999, to use your full taxing authority. If you do not act before this date, you will be subject to the rate limitations under current law.

Now that the dust has settled, are cities any better off than before?

Yes. Many cities that had no special hotel-motel tax authority may now impose a 2% lodging tax in addition to the basic tax. Also, cities in King County, other than Bellevue, could not previously impose the basic tax. Now, for the first time, many cities in King County can impose a tax on lodging.

Also, where the prior law narrowly prescribed how hotel-motel tax revenues could be spent, the law now provides greater flexibility by allowing lodging tax revenues to be used for “tourism promotion” and “tourism-related facilities,” as broadly defined in the law.

Finally, believe it or not, the law is actually less complicated than it was prior to 1997.

What about the Lodging Tax Advisory Committee requirement?

In exchange for the additional flexibility in the use of hotel-motel tax receipts, the Legislature decided to impose additional procedural requirements on cities with a population of 5,000 or more. These cities must establish a lodging tax advisory committee prior to imposing a lodging tax and submit any proposal to impose a lodging tax, increase the tax rate, remove a tax exemption, or “change in the use” of tax revenues, to the advisory committee for review and comment at least 45 days prior to taking action on the proposal.

What is a “change in the use” of tax revenues?

The term is not defined in the law, which leaves several unresolved questions. If, for example, current funding goes to tourism promotion and proposed funding would go to a convention center board, this would clearly be a “change in the use.”

continued

However, even more subtle changes might be regarded as a “change in the use.” The best approach is to take a conservative view and submit to the advisory committee any change in the current spending pattern that could conceivably be challenged as a “change in the use.” For example:

- Proposed funding for a new recipient for services currently performed by a different recipient.
- Proposed funding for a current recipient for new services.
- Change in the proportional distribution among current recipients.

What if the Lodging Tax Advisory Committee disagrees with the proposal?

Although the advisory committee’s recommendations are not binding, the Legislature clearly intended to ensure that interested parties have a forum for debating the merits of any proposal. It is in the best interest of everyone if differences are resolved before moving forward with a proposal.

Who must serve on the advisory committee?

The advisory committee must consist of at least five members. One member must be an elected official of the city or town. This member serves as the chair of the committee.

In addition, membership **must** include:

- a) At least two representatives of businesses that collect the lodging tax, and
- b) An equal number of persons involved in activities authorized to be funded by lodging tax revenues.

An advisory committee for a town or city **may** also include one non-voting member who is an elected official of the county in which the city or town is located.

Although the law does not expressly forbid the inclusion of other members, the provision for the inclusion of “one non-voting” county elected official clearly implies that the committee should not include members in addition to those mentioned above. That is, a city should not appoint other unrelated individuals, such as retail merchants, travel agents, restaurateurs, “at large” members, and so forth, even though they might have an interest in tourism.

Does my city need to form an advisory committee if we impose only the “basic” hotel-motel tax?

A city that already imposes the “basic” hotel-motel tax is not required to form an advisory committee unless or until it changes the rate of tax, removes a tax exemption, or makes a change in the use of tax revenues.

Questions?

If you have additional questions about the hotel-motel tax, contact **Jim Justin** or **Sheila Gall** of AWC at (360) 753-4137 or e-mail: jimj@awcnet.org or sheilag@awcnet.org