A Revenue Guide

for Washington Cities and Towns

Last Updated:
April 2018

MRSC

Revision History

April 2018

- Affordable Housing Sales Tax, 2015 3rd sp.s. c 24 § 701
- Retail Sales and Use Tax section – clarified local sales tax options and timing.

August 2017

- Emergency Medical Services, 2012 c 115 § 1

January 2017

- Liquor Receipts – Profits and Taxes, RCW 70.96A.087 [2016 sp.s. c 29 § 517; 1989 c 270 § 13.] Recodified as RCW 71.24.555 pursuant to 2016 sp.s. c 29 § 701, effective April 1, 2016 [signed by the governor April 18, 2016]

September 2016

- Real Estate Excise Tax, 2016 c 138 § 3,4; 2015 2nd sp.s. c 10 § 1,3; 2015 c 53 § 98 2014 c 44 § 1; 2011 c 354 § 1
- Hotel-Motel (Lodging) Tax, 2013 c 196 § 1

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Preface

A Revenue Guide for Washington Cities and Towns contains information on the major revenue sources (and many of the minor ones) available to cities and towns for general government purposes. MRSC first published this document in 1992, and this version was published in 2009 with periodic updates afterwards.

Public Finance Consultant Judy Cox was the primary author of this report. Legal Consultant Bob Meinig reviewed and edited the entire text and Desktop Publishing Specialist Holly Stewart prepared the document for publication.

Periodic updates have been provided by Finance Consultant Toni Nelson, Senior Communications Coordinator Steve Hawley, and Graphic Designer Marissa Roesijadi. As of April 2018, we are just beginning a comprehensive review and re-write of this publication, with completion anticipated this winter.

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Property Taxes

One longtime legislative analyst from Olympia says that the Washington property tax is the most complicated in the nation. We plan to limit this discussion to what officials and staff in cities[1] really need to know. Even that is pretty complicated. Cities face two primary restrictions on their property taxes – a maximum regular property tax levy rate and a limit on the amount of additional property taxes they can levy in a year.

The Regular Property Tax Levy Rate

The maximum regular property tax levy rate for most cities is $3.375 per thousand dollars assessed valuation (AV)[2]. Some cities have a Firemen's Pension Fund. (If you do not know whether you have one, you probably do not.) Those cities can levy an additional $0.225 per thousand dollars assessed valuation, resulting in a maximum levy of $3.60 per thousand dollars AV. For cities that belong to a fire district and/or a library district, the rules are a little more 3 complicated. Nominally they have a maximum rate of $3.60 per thousand dollars AV.[3] But, they can never collect that much because the levy of the special districts must be subtracted from that amount.[4] The library district levy has a maximum rate of $.50 per thousand dollars AV[5] and the fire district levy can be as high as $1.50.[6] Therefore, if a city belongs to both a fire district and a library 6 district, and if these districts are currently levying their maximum amount, then the local levy rate can be no higher than $1.60 ($3.60 - 1.50 - 0.50 = $1.60). (Note that the Department of Revenue has determined that if a city has a Firemen's Pension Fund **and** is also in a library and/or fire district, its maximum levy rate is $3.825 minus the levy rates of the districts.[7])

If, for some reason, one (or both) of the special districts is not currently levying the maximum amount, the city's current levy could be higher. Assume that the fire district is only levying $1.00 per thousand dollars AV. The maximum city levy rate would be $3.60 - 1.00 - .50 = $2.10. But, if the fire district raises its levy rate in the future, then the city must reduce its levy rate by the same amount so that the total is never above $3.60. Such a forced reduction can cause fiscal problems if it is not anticipated. If no one in your city hall knows what rate the special districts are currently levying, your county assessor can help you.

1 Throughout this publication, the words "city" or "cities" is used rather than the phrases "city and town" or 1 "cities and towns." Unless otherwise noted, everything said about cities also applies to towns.

2 RCW 84.52.043(1)(d).

3 RCW 41.16.060.

4 RCW 27.12.390 and RCW 52.04.081.

5 RCW 27.12.050. 5

6 RCW 52.16.130, RCW 52.16.140, and RCW 52.16.160 each provide for a levy of $.50 per thousand dollars AV.

7 "First Levy Audit Completed," by Fletcher Barkdull, Property Tax Review, (Department of Revenue: Olympia) 7 October 2002. http://dor.wa.gov/Docs/Pubs/Prop_Tax/PTNews_02_Q3.pdf.

Property Tax Levy Increase – A Little History of the "Lid"

If discussion of any tax law makes most people's eyes glaze over, discussion of the 106 or 101 percent lid and other features of Washington property tax law puts people to sleep. In 1973, the legislature responded to people's concerns that property taxes were rising too fast by passing a law that established the 106 percent lid. What the 106 percent lid rule said was that your tax levy next year could be no more than 106 percent of your highest levy, beginning with the 1985 levy for 1986 taxes.[8] An alternative way of stating it is to say that your levy could not increase by more than six percent.[9]

Referendum 47

In November 1997, the voters approved Referendum 47, which put some new constraints on the allowable levy increase for some cities.[10] Cities with a population of 10,000 or more could only increase their levy by the rate of "inflation" or six percent, whichever was less.[11] "Inflation" is defined as the increase in the implicit price deflator (IPD) for personal consumption expenditures for the 12-month period ending in July as published in the September issue of the Survey of Current Business, a publication of the Bureau of Economic Analysis of the federal Department of Commerce.[12] An exception was made if the city legislative body made a finding of "substantial need" in an ordinance or resolution passed by a majority plus one of the council or two out of three commissioners.[13]

Cities with a population of less than 10,000 were not subject to this constraint. They could increase their levy by six percent (assuming this did not put them above their maximum tax rate) with a simple majority vote.[14]

Taxes on new construction, changes in value of state-assessed utility property, and newly annexed property (hereafter referred to as "add-ons"[15]) were exempted from the lid/limit factor for cities of any size and may be added to the tax levy that is requested under the lid/limit factor.

Then, Along Came Initiative 747

In November 2001, the voters passed Initiative 747. Every mention of six percent was changed to one percent. All the provisions introduced by Referendum 47 are still there. Cities with a population

8 RCW 84.55.010 and WAC 458-19-020.

9 When we talk about a percent increase in a levy, we are referring to an increase in the total dollar amount of the levy, not to an increase in the levy rate. The levy rate may increase as a result of a levy increase, but it may also decrease, despite the levy increase, because of an increase in the assessed value of property in the city. See examples on pages 3-4.

10 The legislature passed ch. 3, Laws of 1997, and sent Referendum 47 to the voters. Note that this referendum applies to all taxing jurisdictions, not only to cities.

11 RCW 84.55.005(2)(c) (1997 version).

12 RCW 84.55.005(1).

13 RCW 84.55.0101. Note that the term "substantial need" is not defined in the statutes.

14 RCW 84.55.005(2)(a) (1997 version).

15 RCW 84.55.010. The definition of "add-ons" was broadened in 2006 and now includes increases in assessed value due to construction of wind turbines in addition to increases in the value of state-assessed utility property, new construction, and improvements to property. Note also that the statute does not mention the value of property that is annexed, but it too is exempt from this provision as are refund levies. WAC 458-19-035 and WAC 458-19-085(2)(d)(i).

of less than 10,000 can now increase their levies only by one percent. Cities with a population of 10,000 or more can increase their levies by the lesser of one percent or the percentage increase in the implicit price deflator. However, since that percentage increase has been more than one percent since the initiative was passed (and will probably be so in most years), the effective limit has been one percent.[16]

If, at some time in the future, the percentage increase in the implicit price deflator is less than one percent, then cities can use the substantial need provision to levy the entire one percent. However, this provision does not give these cities the same opportunity for increased revenue that it did when the maximum rate was six percent.

How Does the Tax Lid Work?

The easiest way to see what the lid means in practice is to think of how a property tax levy is determined. The example below will use the 101 percent lid.[17] If your city plans on limiting its levy increase to the growth in the implicit price deflator or some amount other than one percent, substitute that number for one percent in the example. Just remember that the algebraic sum of the percentage changes in assessed valuation and the tax rate must add up to the percentage change you have chosen for your levy increase on the right-hand side of the equation.

Your tax levy is a function of the following formula:

Assessed valuation/1,000 *times* tax rate equals tax levy

(We have to divide the assessed valuation by 1,000 before multiplying it by the tax rate because that rate is not applied to each dollar of assessed valuation, but to each one thousand dollars.)

To see how the 101 percent lid works, let's look at five cases. (In each case, we assume that your current year's levy is the highest since your city's 1986 levy.)

1. Assume that for next year your assessed valuation increases by exactly one percent. That means that at your current rate, your tax levy next year will be one percent higher. That is the maximum increase allowed and the county assessor will keep your rate constant.

1% ↑ AV/1,000	**x**	**0% tax rate**	**=**	**1% ↑ taxt levy**

16 In June 2006, a King County Superior Court judge found Initiative 747 to be unconstitutional. That initiative, as written, told voters that the amount that taxing jurisdictions could increase their property tax levy without a vote of the people would fall from two percent to one percent, if passed. However, the two percent limit from the passage of Initiative 722 (which reduced the increase in the levy limit from six to two percent) had been declared unconstitutional before Initiative 747 went to the voters. The court ruled that that the voters in November 2001 were misled. This decision was upheld by the Washington State Supreme Court in November 2007. The legislature met in a special session and reinstated the one percent limit. Ch. 1, Laws of 2007, sp. sess.

17 These examples were more dramatic when the maximum rate increase was six percent.

2. Assume that your assessed valuation does not increase at all. To get the allowable one percent increase in your levy, the county assessor will increase your tax rate by one percent if that does not put your rate over your statutory limit. If it does, the assessor will raise your rate to your statutory limit, but the increase will be less than one percent.

0% ↑ AV/1,000	**x**	**1% tax rate**	**=**	**1% ↑ taxt levy**

3. Assume your assessed valuation goes up by 0.6 percent. Then the county assessor will increase your rate by 0.4 percent (again, as long as that does not put you over the maximum levy rate) and the combination of the 0.6 percent and 0.4 percent increases will give you a one percent increase in your levy.

0.6% ↑ AV/1,000	**x**	**0.4% tax rate**	**=**	**1% ↑ taxt levy**

4. Assume that your assessed valuation increases by more than one percent, say, eight percent. Then the county assessor will lower your rate by seven percent so that the combination of the increase and decrease yield a one percent increase in your levy.

8% ↑ AV/1,000	**x**	**7% tax rate**	**=**	**1% ↑ taxt levy**

5. For the last case, assume that your AV has fallen by two percent. In this case the assessor will increase your rate by three percent (assuming that does not put you over the statutory limit) to provide the one percent increase in your levy.

-2% ↑ AV/1,000	**x**	**3% tax rate**	**=**	**1% ↑ taxt levy**

So how does this work with cities that are already at their statutory limit? Since the tax rate cannot be increased, their tax levies will increase only by the amount of the increase in their assessed valuation.

You Don't Lose It If You Don't Use It – "Banking" Levy Capacity

Prior to 1986, cities had an incentive to raise their tax levies by the maximum amount allowed, even if they did not need the revenue that year. If they did not levy the maximum amount, they would suffer adverse consequences by not having that levy capacity in the future. Now cities can levy less than the maximum (although it is less likely that they will do so now that the maximum is one percent rather than six percent) and then make it up in a future year.[18] **Here are two examples.**

18 RCW 84.55.092.

Assume that for this year you had the assessor set a tax rate that resulted in the same levy as last year plus "add-ons." (You did not take your allowable one percent increase.) When you are doing your budget for next year, however, you realize that you need more revenue from the property tax because your sales tax receipts have fallen off. You can ask the assessor to set a tax rate for next year (assuming that it does not put you over your statutory limit) that raises your levy by one percent and then one percent again – 1.01 x 1.01 = 1.0201 – for a compounded increase of over two percent.

Now, a more complicated case where a city actually lowers its tax rate. Assume that during the current year (2009), your city has experienced a revenue windfall and has more money than it needs to fund the 2010 budget. (This situation is pretty unlikely in the 2009 economic climate, but pretend it did happen.) You could put the excess funds in a contingency fund or a "rainy day" fund, but the city council decides to give the taxpayers a break by lowering the property tax for 2010. During 2010 you receive no revenue windfall and you need more property tax revenue for the year 2011 budget. The 1986 act allows you to levy the maximum amount that you could have levied in 2010, plus an additional one percent unless that puts you over the maximum statutory rate. In 2010 you didn't use your maximum taxing capacity, but you didn't lose it because you can "bank" the extra capacity.

"But doesn't our council need to pass a special ordinance or resolution in order to bank capacity?" Read on through the next section. Banking capacity follows from other procedures you need to follow for the property tax in the budget process.

Property Taxes and Budgets

Referendum 47, passed in November 1997, introduced some new requirements for the levying of property taxes. Taxing districts must undertake a number of actions regarding property taxes at budget time.

1. **Hold a public hearing on revenue sources** for the current expense (general fund) budget and discuss any increases in the property tax revenues that are being considered.

   This requirement, part of Referendum 47, is codified in RCW 84.55.120. The statutes do not prescribe any specific notice requirements, so the city should follow its own procedures for giving notice of this hearing.

   The hearing is to be held prior to the time the city votes on its property tax levy. This hearing and the vote on the property tax ordinance may be done at the same meeting. From a public policy standpoint, however, it is preferable that the legislative body leave time to consider the testimony from the hearing before voting on the amount of the levy.

2. **Pass a *separate* ordinance or resolution stating** the property tax increases in dollar and percentage terms to fulfill the requirements of RCW 84.55.120. That statute states, in part:

   > No increase in property tax revenue, other than that resulting from the addition of new construction, increases in assessed value due to construction of electric generation wind turbine facilities classified as personal property, and improvements to property and any increase in the value of state-assessed property may be

> authorized by a taxing district, other than the state, except by adoption of a **separate** ordinance or resolution, pursuant to notice, specifically authorizing the increase in terms of both dollars and percentage.

(Emphasis added.) Of course, if you do a resolution rather an ordinance, you do not have to bear the costs of publication. We recommend that you use the form provided by the Department of Revenue.[19] You can check page 8 to see what the form looks like.[20]

If you have more than one regular property tax levy (for example, some cities have an EMS levy), you must adopt an ordinance or resolution for each levy.

Even if you are not increasing your property taxes, you should pass this ordinance or resolution, saying you are increasing your levy by "$0" which is a "0 percent" increase, because it is necessary that you do so **to bank the unused capacity**. See the discussion of banked capacity in item 5 below.

3. **Pass a property tax ordinance/levy certification.** You must adopt a levy ordinance that states how much regular property tax you are requesting for the coming year and what your levy or levies will be for any bonds. The deadline is November 30.[21]

   In addition, the Department of Revenue prefers that you fill out their levy certification form and send it to your assessor. (It is not required, however.) We have reprinted a copy of this form on page 8.[22] You can download it at https://dor.wa.gov/legacy/Docs/forms/PropTx/Forms/LevyCertf.doc.[23] DOR likes cities to use this form because it is cuts down on errors. The county assessors can easily see how much property tax each taxing district is asking for, rather than having to plow through an ordinance trying to find the relevant number(s). So, if you staple this form on the front of your property tax levy ordinance, you will make DOR and your county assessor happy. **Be sure the amounts match those in your levy ordinance.**

4. **Do we need to pass a "substantial need" resolution/ordinance?** It all depends on the July implicit price deflator for personal consumption expenditure (IPD). Read on.

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19 You may write your own resolution or ordinance to comply with this statute. However, it must be "separate" from the property tax levy ordinance. We know many city attorneys want to combine these into one document. Because this resolution/ordinance is used by assessors to "bank" unused capacity, it is a good idea to follow the direction of RCW 84.55.120 and make it "separate."

20 You can download a copy of the form at http://dor.wa.gov/docs/forms/PropTx/Forms/OrdinanceResolution.doc. Or, go to the Department of Revenue home page, www.dor.wa.gov, and type in 64 0101 in the Search window in the upper right corner. Note that there is a space between the "4" and the "0."

21 RCW 84.52.020 and RCW 84.52.070.

22 Note this form was written on the assumption that the taxing districts adopt their budgets before November 30. Many cities do not pass their budgets until after the date (November 30) this form is due. So, you might want to write in (or type in) a change to the last sentence. Rather than saying "which was adopted following a public hearing held on _____," you might says "which will be adopted following a public hearing scheduled to be held on _____."

23 You can also go to the Department of Revenue home page, www.dor.wa.gov, type 64 0100 in the Search window in the upper right corner. Note that there is a space between the "4" and the "0."

Under Referendum 47, approved in 1997[24], cities with a **population of 10,000 or more** could only increase their levy by the rate of "inflation" or six percent, whichever was less. "Inflation" is defined as the increase in the implicit price deflator (IPD) for personal consumption expenditures for the 12-month period ending in July as published in the September issue of the Survey of Current Business, a publication of the Bureau of Economic Analysis of the federal Department of Commerce.[25] An exception was made if the city legislative body made a finding of "substantial need" in an ordinance or resolution passed by a majority plus one of the council.[26]

Cities with a **population of less than 10,000** were not subject to this constraint. They could increase their levy by six percent (assuming this did not put them above their maximum tax rate) with a simple majority vote.

Taxes on new construction, changes in value of state-assessed utility property, and newly annexed property (hereafter referred to as "add-ons"[27]) were exempted from the lid/limit factor for cities of any size and could be added to the tax levy requested under the lid/limit factor.

In November 2001, voters passed Initiative 747, which lowered the "limit factor" in RCW 84.55.001(2) from six percent to **one percent**.

The bottom line: If the July IPD is less than one percent, cities with a population of 10,000 or over may only increase their levy by more than the IPD, up to a maximum of one percent, by passing a resolution or ordinance making a finding of "substantial need."[28] Cities with a population of less than 10,000 may increase their levy by one percent without passing such resolution or ordinance.

> **Rule 1:** If the taxing jurisdiction has a **population of less than 10,000**, filling out the Ordinance/Resolution form that we discussed in item 2 above and levying a percentage increase less than one percent will automatically "bank" capacity.

Everyone's favorite question: how do we bank capacity? Here are the "rules" and they are not as explicitly stated by the Department of Revenue as we would like.[29] We double-checked them with the Property Tax Division that produced the "Resolution/Ordinance Procedures for Increasing Property Tax Revenue" publication.

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24 The legislature passed ch. 3, Laws of 1997, and sent Referendum 47 to the voters. Note that this referendum applies to all taxing jurisdictions, not only to cities.

25 RCW 84.55.005(1).

26 RCW 84.55.0101. Note that the term "substantial need" is not defined in the statutes.

27 See footnote 15. The definition of "add-ons" has become broader.

28 On April 22, 2009, the Washington State Department of Revenue issued a Special Notice titled "Determining the Factor of Increase in Property Tax Levies." It addressed the issue of the limit factor if deflation ("negative inflation") occurs. For jurisdictions with a population of 10,000 or more, the levy for the coming year would decrease (excluding new construction, etc.) unless the legislative body made a finding of substantial need for a higher levy amount.

29 The publication to which we refer was written to help jurisdictions comply with the requirements of RCW 84.55.120. It was not written to explain procedures for banking excess capacity.

Department of Revenue

Levy Certification

Submit this document to the county legislative authority on or before November 30 of the year preceding the year in which the levy amounts are to be collected and forward a copy to the assessor.

In accordance with RCW 84.52.020, I, _____ (Name),

_____ (Title), for _____ (District Name), do hereby certify to

the _____ (Name of County) County legislative authority that the _____ (Commissioners, Council, Board, etc.)

of said district requests that the following levy amounts be collected in _____ (Year of Collection) as provided in the district's

budget, which was adopted following a public hearing held on _____ (Date of Public Hearing):

Regular Levy: _____
(State the **total** dollar amount to be levied)

Excess Levy: _____
(State the **total** dollar amount to be levied)

Signature: _____ Date: _____

For tax assistance, visit http://dor.wa.gov/content/taxes/property/default.aspx or call (360) 570-5900. To inquire about the availability of this document in an alternate format for the visually impaired, please call (360) 705-6715. Teletype (TTY) users may call 1-800-451-7985.

REV 64 0100e (w) (7/17/06)

Department of Revenue Washington State

Ordinance / Resolution No. _____

RCW 84.55.120

WHEREAS, the _____ (Governing body of the taxing district) of _____ (Name of the taxing district) has met and considered its budget for the calendar year _____; and,

WHEREAS, the districts actual levy amount from the previous year was $ _____ (Previous year's levy amount); and,

WHEREAS, the population of this district is ☐ more than or ☐ less than 10,000 (Check one); and now, therefore,

BE IT RESOLVED by the governing body of the taxing district that an increase in the regular property tax levy is hereby authorized for the levy to be collected in the _____ (Year of collection) tax year.

The dollar amount of the increase over the actual levy amount from the previous year shall be $ _____ which is a percentage increase of _____ (Percentage increase)% from the previous year. This increase is exclusive of additional revenue resulting from new construction, improvements to property, newly constructed wind turbines, any increase in the value of state assessed property, any annexations that have occurred and refunds made.

Adopted this _____ day of _____, _____.

_____ _____

_____ _____

_____ _____

If additional signatures are necessary, please attach additional page.

This form or its equivalent must be submitted to your county assessor prior to their calculation of the property tax levies. A certified budget/levy request, separate from this form is to be filed with the County Legislative Authority no later than November 30th. As required by RCW 84.52.020, that filing certifies the total amount to be levied by the regular property tax levy. The Department of Revenue provides the "Levy Certification" form (REV 64 0100) for this purpose. The form can be found at: http://dor.wa.gov/docs/forms/PropTx/Forms/LevyCertf.doc.

For tax assistance, visit http://dor.wa.gov/content/taxes/property/default.aspx or call (360) 570-5900. To inquire about the availability of this document in an alternate format for the visually impaired, please call (360) 705-6715. Teletype (TTY) users may call 1-800-451-7985.

REV 64 0101e (w) (11/15/07)

If instead of 1% the resolution states 0% (or anywhere between 0 and 1%), the district will be allowed to bank the excess levying capacity. Without the resolution, the district cannot bank excess levying capacity.

How do we know this? One has to look at the DOR publication called "Resolution/Ordinance Procedures for Increasing Property Tax Revenue" dated 9/05. It can be found at http://dor.wa.gov/docs/Pubs/Prop_Tax/PT_Ordinance.pdf [30]

What the publication does not make clear as it could is that not only are the jurisdictions "allowed" to bank excess capacity, the passage of the resolution accomplishes the banking without any further action being required of the jurisdiction.

> **Rule 2:** If the taxing district has a **population of 10,000 or more** and if the IPD is less than one percent, then in addition to filling out the form we discussed in item 2 above, the jurisdiction must pass an ordinance or resolution making a finding of "future substantial need" in order to bank capacity.

How do we know this? Look at the same publication, "Resolution/Ordinance Procedures for Increasing Property Tax Revenue" dated 9/05. Go to the discussion in the first bullet on page 1. It says, in part:

> In the case that the IPD is less than one percent, to raise the levy to one percent or to bank excess capacity, a second resolution/ordinance must be adopted.
>
> The "second" resolution is one that makes a finding of "substantial need." So, if the IPD is less than one percent, the substantial need resolution is necessary to bank capacity.
>
> And from that statement follows Rule 3.

> **Rule 3:** If the taxing district has a **population of 10,000 or more**, as long as the IPD is greater than one percent, filling out the form we discussed in item 2 above and levying a percentage increase less than one percent will automatically bank capacity, just as it does for jurisdictions with a population less than 10,000. A second resolution/ordinance" is not required to bank excess levy capacity.

How Do We Use Capacity We Have Banked in the Past? You have to find out what your maximum allowable levy is from the assessor. Let's assume that it was $110,000 for the levy you made in 2008 for 2009 and your city only levied $100,000 for 2009. When you go to make your levy for 2010, the assessor will raise your maximum allowable levy by one percent to $111,100 ($110,000

30 Note that the resolution DOR uses in this example is slightly different than the one DOR is presenting on the form that we have reproduced on page 8, but the content is the same. DOR amended the form on 11/15/07, but did not revise the publication.

x 1.01) exclusive of "add-ons," which include additional revenue from new construction, improvements to property, newly constructed wind turbines, any increase in the value of state-assessed property, annexations that have occurred, and refunds made. If you just increase your current levy by one percent, it will be $101,000 ($100,000 x 1.01) plus "addons," so you have $10,100 of banked capacity.

Let's say you want to use $7,000 of that amount. When you write you resolution/ordinance to satisfy the requirement for RCW 84.55.120, you put $7,000 in the blank that gives the dollar – amount of the increase over the actual levy from the previous year – 2009 (excluding "addons") – and that is a percentage increase of 7 percent ($7,000/100,000). When you write your levy ordinance, you put in $107,000 plus the dollar amount of "add-ons," etc. as the amount you are requesting and you put that same number in the blank for regular property tax levy in the levy certification form.

Excess Levies for General Government Purposes – If You Don't Have Banked Capacity, Maybe You Can Do a Levy Lid Lift

As discussed above, the passage of Initiative 747 in 2001 limited taxing jurisdictions with a population of less than 10,000 to an increase of one percent in their levy, plus taxes on new construction and increases in state-assessed utility valuation. Levy increases for municipalities with a population of 10,000 or more are limited to the lesser of one percent or the increase in the July implicit price deflator for personal consumption expenditures as published in the September issue of the *Survey of Current Business*.

One exception to the one percent rule is the levy lid lift. Taxing jurisdictions with a tax rate that is less than their statutory maximum rate may ask the voters to "lift" the levy lid by increasing the tax rate to some amount equal to or less than their statutory maximum rate.[31] (If you do not know your statutory maximum rate, ask your county assessor.) A simple majority vote is required.

There are two different approaches to, or options for, a levy lid lift, with each having different provisions and advantages.

Option 1: "Original flavor" lid lift (or "single-year" lift or "one-year" lift or "basic" lift) – RCW 84.55.050(1)

In 2003, when the legislation[32] establishing the multi-year lid lift was passed, MRSC nicknamed the "old" version the "original flavor" lid lift. Others used the term "basic" lift. Recently, we have seen the terms "single-year" and "one-year" lift used. We have discovered, however, that some people think this means that the lift ends or goes away after one year. As we discuss below, the lift generally lasts for a number of years, perhaps permanently. A better way to describe it may be to call it the "one-bump" lid lift compared to the multi-year lift, which "bumps up" each for a period of up to six years. In our discussion, we will continue to refer to it as the "original flavor" lift.

31 RCW 84.55.050.

32 Ch. 24, Laws of 2003, 1st spec. sess., amending RCW 84.55.050.

1. **Purpose.** It may be done for any purpose, and the purpose may be included in the ballot title, but it need not be. You could say it would be for hiring more firefighters or for additional money for general government purposes, or you could say nothing at all. In the latter case, by default, it would be for general government purposes. Stating a particular purpose may improve your chances of getting the voters to approve it.

2. **Length of time of lid lift.** It can be for any amount of time, unless the proceeds will be used for debt service on bonds, in which case the maximum time period is nine years. Setting a specific time period may make the ballot measure more attractive to the voters. But, making it permanent means you can use the funds for ongoing operating expenditures without having to be concerned that you will have to go back to the voters for another lid lift. To make the lift permanent requires language in the ballot title expressly stating that future levies will increase as allowed by chapter 84.55 RCW.

   If the lift is not made permanent, the base for future levies will, at the end of the time period specified in the ballot title, revert to what the dollar amount of the levy would have been if no lift had ever been done. Note that the assessor will assume that the governing body would have increased its levy by the maximum amount allowed each year if there had been no lid lift.

3. **Subsequent levies.** After the initial "lift" in the first year, the jurisdiction's levy in future years is subject to the 101 percent lid in chapter 84.55.RCW. This is the maximum amount it can increase without returning to the voters for another lid lift.

4. **Election date.** The election may take place on any election date listed in RCW 29A.04.321.[33]

Option 2: Multiple/multi-year lid lift – RCW 84.55.050(2)

1. **Purpose.** It may be done for any limited purpose,[34] but the purpose(s) must be stated in the title of the ballot measure, and the new funds raised may not supplant existing funds used for that purpose for any levy approved by the voters before July 27, 2009. "Existing funds" mean the actual operating expenditures for the calendar year in which the ballot measure is approved by voters. Actual operating expenditures excludes lost federal funds, lost or expired state grants or loans, extraordinary events not likely to reoccur, changes in contract provisions beyond the control of the taxing district receiving the services, and major nonrecurring capital expenditures.

   For all counties, other than King County, 2009 legislation removed the supplanting restrictions

33 There are a number of considerations in choosing the election date. Your election date will determine (assuming the ballot measure is passed) when you will get your first tax receipts. Taxes levied in November are first due on April 30 of the following year. Therefore, to receive taxes next year from a levy you are discussing during the current year, your election can be no later than November. If a council first begins thinking of a levy lid lift in September or October, during budget discussions for the coming year, it will be too late to get any measure on the November ballot. Your county auditor must receive your ordinance or resolution 52 days before a special election and 84 days before the primary or general election. (RCW 29A.04.330.) It pays to plan ahead.

Also, councils should ask around to find out what other elections will be coming up during the year. You may not want to go head-to-head with a school levy election or a voted bond issue.

34 "General government purposes" is not a "limited purpose" because the entire general fund is spent for general government purposes.

for all levies passed after July 26, 2009. Levies passed in King County are also no longer subject to the prohibition against supplanting after July 26, 2009. However, the restrictions will be reimposed on January 1, 2012.[35]

2. **Length of time of lid lift.** The lid may be "bumped up" each year for up to six years. At the end of the specified period, the levy in the final period may be designated as the base amount for the calculation of all future levy increases (made permanent) if expressly stated in the ballot title. The levy in future years will then be subject to the 101 percent lid in chapter 84.55 RCW. If the lift is not made permanent, at the end of the time period specified in the ballot title, the base for future levies will revert to what the dollar amount of the levy would have been if no lift had ever been done. Note that the assessor will assume that the governing body would have increased its levy by the maximum amount allowed each year if there had been no lid lift.

3. **Subsequent levies.** The lift for the first year must state the new tax rate for that year. For the ensuing years, the lift may be a dollar amount, a percentage increase amount tied to an index such as the CPI,[36] or a percentage amount set by some other method. The amounts do not need to be the same for each year. However the ballot title may only have 75 words, so one does not have much space to get too fancy or creative.

   (Note that one cannot specify that the lift be to a specific tax rate for each year. A tax rate **must** be specified for the first year, like "increase the rate to $3.10." For ensuing years, however, the ballot measure **cannot** say something like "and raise the rate to $3.10 in each of the next five years.")

   If the amount of the increase for a particular year would require a tax rate that is above the maximum tax rate, the assessor will levy only the maximum amount allowed by law.

4. **Election date.** The election date must be the August primary or the November general election.

So, which is the better option?

As usual, of course, it depends. The requirement that a purpose must be stated in the ballot title for a multi-year lid lift makes it appear to be less flexible than the "original flavor" or single-year version. This may be true more in theory than practice, however, because we know of only one city that has successfully passed a ballot measure where they did not specify the use of the funds.

The requirement that there be no supplanting in expenditures in the multi-year lift is more restrictive. It certainly is attractive to have the opportunity to do a levy lid lift for a popular program, such as public safety, and then use part of the money that would have been spent on that program for, say, a new computer system. One presumes, however, that citizens believe there will be no supplanting even when the statutes do not prohibit it, and that they will require some accounting from government officials.

35 RCW 84.55.050(2)(b)(ii) and (iii) as amended by ch. 551, Laws of 2009.

36 See Budget Suggestions for 2009, MRSC Information Bulletin No. 531 (August 2008), at 44, for a discussion concerning using the correct index.

Affordable Housing Levy for Very Low-Income Housing

Counties and cities may impose additional regular property tax levies up to $0.50 per thousand dollars assessed valuation each year for up to ten years to finance affordable housing for very low-income households when specifically authorized to do so by a majority of voters of the taxing district (RCW 84.52.105). If both the city and county impose a levy, the levy of the last jurisdiction to receive voter approval is reduced so that the combined rate does not exceed $0.50 per thousand dollars AV in any taxing district.

This tax may not be imposed until the legislative authority declares the existence of an emergency with respect to the availability of housing that is affordable to very low-income households, and the legislative authority adopts an affordable housing finance plan in conformity with state and federal laws regarding affordable housing. Very low-income is defined as being at or below 50 percent of the median income for the taxing district.

Excess Levies for General Government Purposes – One Year Levy

Even cities that are currently levying their statutory maximum rate can ask the voters, at any special election date, to raise their rate for one year.[37] Many cities refer to this levy as an O and M (operations and maintenance) levy. There are two different scenarios for voter approval. If at least 60 percent of the voters vote "yes" with a voter turnout of more than 40 percent of the number of people voting in the last general election, the measure is passed. However, if the voter turnout is 40 percent or less of the number voting in the last general election, all is not lost. In that case, as long as the number of "yes" votes is equal to at least 60 percent times 40 percent of the number of people voting in the last general election, the measure will pass. If, for example, 1,000 people voted in the last general election, as long as at least 240 (1,000 x .4 = 400; 400 x .6 = 240) people vote "yes" on the O and M levy, it will pass even if the number voting is less than 400 (40 percent of those voting in the last general election).[38]

As with the levy lid lift, the purpose for which the money will be used does not need to be specified. However, it is not fiscally prudent to build an annual budget that assumes that the voters will renew the levy authority each year. A good use of these funds would be for a one-time expenditure.

Receipt of Funds

Property taxes are due on April 30 and October 31.[39] This means that cities receive the bulk of their property tax revenue in May and June and in November and December. In some counties, the assessor transfers the city share of the revenue received on a daily basis. In other counties, the assessor makes the transfer on the 10th day of the month, paying interest on the balances it has held until that time.[40]

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37 RCW 84.52.052.

38 RCW 84.52.052 and art. 7, §2(a) of the state constitution. Note that an easy way to express this alternative for voter approval is to say that when voter turnout is less than 40 percent of the voter turnout at the last general election, the "yes" votes must be at least 24 percent (240/1000) of the voter turnout at the last general election in order for the measure to pass.

39 RCW 84.56.020

40 See RCW 84.56.230; RCW 36.29.110; Seattle v. King County, 52 Wn. App. 628 (1988), rev. denied, 112 Wn.2d 1002 (1989) (Cities entitled to interest accumulated on tax collection prior to distribution).

Retail Sales and Use Tax

Cities and towns have a number of sales tax options available to generate revenue. For the purposes of this section, "sales tax" means a "sales and use tax" unless otherwise noted.

Sales tax rates vary from city to city depending on exactly which taxes have been imposed – and at what rates – by the city, county, and other taxing districts with sales tax authority such as transit districts. Most, but not all, of these sales taxes require approval by a simple majority of voters, and some must be renewed periodically.

The Department of Revenue collects and distributes the revenues, retaining 1% as an administrative fee for most sales taxes.[41]

"Basic" 0.5% Sales Tax – First Half-Cent

Any city or town may impose, by resolution or ordinance, a non-voted sales and use tax at the rate of 0.5% on any taxable event, as authorized by RCW 82.14.030(1). These revenues are not restricted and may be used for any purpose. The Department of Revenue calls this tax the "basic" 0.5% in its reports, but it is also commonly referred to as the "first half-cent" to differentiate it from the "second half-cent" described in the next section.

Counties have the same authority, and as of 2018 every city, town, and county in Washington has imposed the first half-cent. However, the combined city/county rate may not exceed 0.5 percent. If both the city and county are levying the first half – which all cities and counties are – 15% of the first half-cent collected within the city must be distributed to the county. In effect, this drops the city's first half authority to 0.425% (85% of 0.5%), with the remaining 0.075% (15% of 0.5%) going to the county.

"Optional" 0.5% Sales Tax – Second Half-Cent

Any city or town may also impose an additional sales tax up to 0.5 percent, in increments of 0.1 percent, as authorized by RCW 82.14.030(2). These revenues are also unrestricted and may be used for any purpose. This "optional" sales tax – often referred to as the "second half-cent" – has been imposed by almost every city and town. Implementation required a majority vote of the legislative body, but it is worth noting that changes to the tax rate are subject to referendum even if your city has not otherwise adopted powers of initiative and referendum.[42]

Counties have the same authority. As of 2018, almost every county has imposed the full 0.5% optional sales tax, with just a few exceptions.[43] As with the first half-cent, the total combined city/county rate may not exceed 0.5%.
If the county imposes its second half-cent at a rate greater than the city, the excess will still be levied

41 RCW 82.14.050

42 RCW 82.14.036 (as of 2018, every city or town has imposed the full 0.5% second half-cent except for Asotin and Clarkston, which have both imposed 0.3%).

43 As of 2018, every county has imposed the full 0.5% second half-cent except for Asotin County, which has imposed 0.3%, and Klickitat County, which is not using any of its second half-cent authority.

against the taxpayer and the county will receive the difference over and above the city rate. If the county imposes its second-half at a rate equal to the city – which almost all counties have – then 15% of the city's second half-cent must be distributed to the county. If the county imposes a rate less than the city, the county must receive an amount of the city's tax equal to 15% of the county's rate.[44]

For almost all cities, this means the city's rate effectively drops to 0.425% (85% of 0.5%), with the remaining 0.075% (15% of 0.5%) going to the county.

The exceptions, as of 2018, are:

- **Asotin and Clarkston:** Since both the city and county impose a rate of 0.3%, the city's rate effective drops to 0.255% (85% of 0.3%), with the remaining 0.045% (15% of 0.3%) going to the county. (Note that if either of these cities opts to increase the optional sales tax above 0.3% in the future, such increase will be subject to possible referendum under RCW 82.14.036.)
- **Bingen, Goldendale, and White Salmon:** Since Klickitat County has not imposed any of its second half-cent authority, the cities retain all of the revenues collected under the second half-cent, with none of the revenue going to the county. If the county ever imposes an optional sales tax, some of the city revenues will then be shared with the county.

Additional Local Sales and Use Tax Options

In addition to the "basic" and "optional" sales taxes, cities and towns also have a number of other sales tax options that are available. However, these tax options are less flexible and must generally be used for certain designated purposes. Generally speaking, most of these additional sales taxes require voter approval, although unlike most property tax ballot measures, sales taxes only require a simple majority and do not have validation (voter turnout) requirements.

This section discusses only those options available to cities and towns. It does not discuss other sales taxes that are only available to counties or other non-city taxing districts.

0.9% Transit Sales Tax

A city or town, with voter approval, may levy a sales tax between 0.1 and 0.9% for public transportation purposes as authorized by RCW 82.14.045. The tax requires a simple majority vote. However, it is worth noting that few cities provide transit service directly, so more commonly this sales tax authority is used by public transportation benefit areas (PTBAs) or other transit providers.

0.2% Transportation Benefit District Sales Tax

Any city or town may form a transportation benefit district (TBD) under chapter 36.73 RCW to raise revenue for specific transportation projects. A TBD can be a separate, quasi-municipal corporation, or the city that formed the district may assume all the rights, powers, functions, and obligations of the TBD including the authority to place this sales tax option before the voters.[45]
TBDs may generate revenue through a variety of means, but one that has gained in popularity is

44 RCW 82.14.040(2). Also see AGO 2006 No. 18 for a comprehensive explanation of how the county and city rates interrelate under different scenarios.

45 For more on TBD assumption, see the MRSC website or chapter 36.74 RCW.

a voted sales tax up to 0.2% under RCW 82.14.0455 and RCW 36.73.040(3)(a). The tax requires a simple majority vote to pass.

Unlike many of the sales tax options, the TBD sales tax is limited in duration. A successful ballot measure is only imposed for 10 years, with the ability to place this same sales tax option back before the voters for one additional 10-year period. The only exception to this time limitation is for the repayment of debt; if the TBD sales tax is to be used to repay debt, the ballot measure must state so and provide the length of the tax obligation.

0.1% Public Safety Sales Tax

Any city or town, with voter approval and subject to the restrictions below, may impose a sales tax of up to 0.1% for public safety as authorized by RCW 82.14.450. The ballot measure must clearly state the purposes for which the tax is to be used and requires approval by a simple majority of voters. The statute requires that at least one-third of the revenue be used solely for criminal justice purposes, fire protection purposes, or both as defined in RCW 82.14.340(4)-(5).

Similar to the shared revenue requirements under RCW 82.14.340 (criminal justice), the city must share the tax with the county. 85% of this sales tax revenue is distributed to the city and 15% to the county. This local sales tax option also features a differential in the tax base from the state sales tax base, with sales of motor vehicles and the lease of motor vehicles for up to the first 36 months of the lease exempted.

Counties may also place a ballot measure before the voters for a public safety sales tax under the same statute. The county's sales tax option may range from 0.1% to 0.3%. If the tax is approved, the county must share the revenue with the cities, with 60% distributed to the county and the remaining 40% distributed on a per capita basis to the cities within the county.

The combined city/county rate may not exceed 0.3 percent:

- If the county is already levying the full 0.3%, no city within the county may impose a new public safety sales tax.
- If the city enacted a 0.1% public safety sales tax before the county, and the county imposes a 0.3% sales tax countywide, the county must credit back 0.1% to the city.
- If the county has imposed a public safety sales tax less than 0.3%, the city may still impose its own public safety sales tax up to 0.1%, as long as the combined city/county rate does not exceed 0.3%.

0.1% Affordable Housing Sales Tax

Any city or town, with voter approval and subject to the restrictions below, may levy a sales tax up to 0.1% for affordable housing as authorized by RCW 82.14.530, as long as the county has not done so first. This is a relatively new option, enacted by the state legislature in 2015, which requires a ballot measure presented to the voters and approved by a simple majority.

At least 60% of the revenue must be used for constructing affordable housing, constructing mental and behavioral health-related facilities, or funding the operations and maintenance costs of new units of affordable housing and facilities where housing-related programs are provided. The

affordable housing and facilities may only be provided to people within specified population groups whose income is 60% or less of the county median income.[46]

The remaining funds must be used for the operation, delivery, or evaluation of mental and behavioral health treatment programs and services or housing-related services. No more than 10% of the revenue may be used to supplant existing local funds.

For cities and towns in any county except King County: If the county has not imposed the sales tax by October 9, 2017, any city or town within the county may submit such a sales tax to the voters. No county imposed this sales tax before the deadline, so now any city or town outside of King County may submit such a proposition to voters.

For cities and towns in King County: If King County has not imposed an affordable housing sales tax by October 9, 2018, any city or town within the county may submit such a proposition to voters.

0.1% Arts, Science & Culture Sales Tax

Any city, town, or county may, with voter approval, impose a sales tax up to 0.1% for up to seven years to benefit or expand access to nonprofit cultural organizations as authorized by RCW 82.14.525. The tax must be approved by a simple majority of voters, and it may be re-imposed for one or more additional 7-year periods with voter approval.

A "cultural organization," as defined in RCW 36.160.020, must be a 501(c)(3) nonprofit corporation with its principal location(s) in Washington State and conducting a majority of its activities within the state. The primary purpose of the organization must be the advancement and preservation of science or technology, the visual or performing arts, zoology (national accreditation required), botany, anthropology, heritage, or natural history.

State-related cultural organizations are eligible, but the funding may not be used for local or state government agencies, fundraising organizations that redistribute money to multiple cultural organizations, radio/TV broadcasters, cable communications systems, internet-based communications services, newspapers, or magazines.

The revenues must be used in accordance with RCW 36.160.110, which is very detailed and has separate criteria for cities in King County (sub-section 2) and all other counties (sub-section 1). The funds may be used for a number of purposes related to cultural access programs, including start-up funding, administrative and program costs, capital expenditures or acquisitions, technology, and public school programs to increase cultural program access for students who live in the city.

Unlike most local sales tax options that have an administrative fee withheld by the Department of Revenue, this local option sales tax must be collected and distributed to the city or town on a monthly basis at no cost.

46 For specific eligibility language, see RCW 82.14.530(2)(b).

0.1% Mental Health and Drug Dependency Sales Tax

Mental health and drug dependency sales taxes under RCW 82.14.460 are almost entirely imposed by and distributed to counties. However, the statute authorizes any city with a population over 30,000, located within Pierce County, to impose a sales tax up to 0.1% for mental health purposes if the county has not already done so.[47] This tax may be imposed by local legislative action (ordinance) and does not require a vote. As of 2018, Pierce County has not imposed a mental health sales tax, and Tacoma is the only city currently imposing this tax.

1.0% High-Capacity Transit Sales Tax

Cities that operate transit systems – as well as public transportation benefit areas and other transit authorities – may, with voter approval, impose a sales tax up to 1.0% under RCW 81.104.170 for the purpose of providing high-capacity transit service. This authority is reduced to 0.9% if the jurisdiction is located in a county that has imposed a 0.1% criminal justice sales tax under RCW 82.14.340, which almost all counties have. As of 2018, no city has imposed this tax; however, Sound Transit has imposed a 1.4% sales tax within the Puget Sound region under this statute.

What Items Are Taxed?

Sales taxes apply to most retail sales of personal property to state residents, as defined in RCW 82.04.050. However, there are a large number of specific exemptions listed in chapter 82.08 RCW. These exemptions change with some frequency as new exemptions are written and older ones expire or are repealed. Additionally, there is the specific exemption for retail sales tax on motor vehicle sales and leases that we outlined under the Public Safety Tax (RCW 82.14.450).

Perhaps the most visible exemptions for consumers are prescription drugs (RCW 82.08.0281) and groceries (RCW 82.08.0293), although alcohol, restaurant meals, and prepared foods sold in grocery stores are taxable.

Sales tax exemptions that may be of particular interest to cities are those for copies made in response to public records requests (RCW 82.08.02525) and labor and services on transportation projects (RCW 82.04.050(8) and WAC 458-20-171).

Services to individuals and businesses – things like haircuts, medical bills, consultants' fees, etc. – are not "personal property," and most services are not subject to sales tax. However, some services are subject to sales tax, as listed in RCW 82.04.050.

Who Has to Pay a Use Tax?

If purchases are made out-of-state by a Washington resident and the sales tax paid is less than the rate being levied in the resident's city, state law requires that a use tax be calculated and paid

47 Technically, this statute applies to any city with a population over 30,000 in a county with a population over 800,000 that has not imposed a county-level mental health tax. As of June 30, 2017, King County and Pierce County are the only counties over 800,000, and Snohomish County is very close to that threshold. However, King County and Snohomish County have both imposed a mental health sales tax, so in effect this statute only applies to cities in Pierce County.

to make up the difference.[48] For example, if you buy some clothes in Idaho, where the sales tax rate is six percent, and the tax rate in your city is 7.8 percent, you owe a use tax of 1.8 percent on the purchase price. If you buy furniture in Oregon, where there is no sales tax, and the rate in your city is 8.2 percent, you owe a use tax at the rate of 8.2 percent on the purchase price. If you make a retail purchase from a mail order catalog and are not charged sales tax, you owe a use tax at the rate of the sales tax in your city. Any retail purchase on the Internet that does not include a charge for sales tax requires the payment of a use tax.[49]

So, how many people are paying the use tax? Practically no one does, unless the purchase is of a car or truck where a use tax must be paid before they can be licensed. Otherwise, there is no enforcement mechanism. (City finance people should be aware, however, that there is an enforcement mechanism for purchases by their jurisdictions. The Department of Revenue does audits to ensure compliance with the use tax statutes.)

Sales Tax Streamlining

In 1992, the U.S. Supreme Court ruled in Quill Corp. v. North Dakota that Congress could pass legislation allowing states and local governments to tax mail order sales.[50] However, Congress chose not to do so. Although this same decision allows Congress to pass legislation to permit state and local governments to tax remote sales, whether made by mail order or on the Internet, Congress does not appear ready to do so anytime in the near future. One issue raised by businesses is that such taxation would be too complicated and expensive for smaller retailers. States exempt different items from the sales tax and there are many different tax rates. In addition, there is the issue of where the tax will be collected and by whom. Who gets the tax if someone in Seattle buys a gift on the Internet from a remote seller in Minnesota who then sends the gift to a friend in Arizona?

To meet this criticism, over 41 states and the District of Columbia have joined together in the Streamlined Sales and Use Tax Agreement (SSUTA) to make their sales tax systems more uniform. States that are fully in compliance with the agreement (as of June 1, 2009, there were 19) receive sales tax revenues from the approximately 1000 retailers that are voluntarily collecting the tax. In exchange, the retailers will be protected from potential past tax liability and receive monetary allowances for the costs of collecting the sales taxes using certified software or vendors.

Legislation passed in 2003 put our state in compliance with most aspects of the SSUTA. However, during the next few years, legislation that required that the sales be credited to the point of delivery (a requirement of SSUTA) ran into obstacles. In our state, they were credited at the point of the origin of the sale. Making this change would result in some taxing districts being net gainers and some being net losers, and it was a source of great contention among cities. Representatives of the losing and gaining cities finally worked out a mitigation agreement that fully compensates

48 See WAC 458-20-178(12).

49 Mail order catalog and Internet sellers that have physical locations in the state do charge sales tax on their remote sales. If you make a purchase on the Internet from Eddie Bauer or REI, for example, you will be levied a sales tax. A purchase from LL Bean or buy.com will not be taxed. Some remote sellers that were not collecting sales tax started to do so voluntarily when Washington became fully compliant with the Streamlined Sales and Use Tax Agreement on July 1, 2008.

50 Quill Corp. v. North Dakota, 504 U.S. 298 (1992).

losing taxing districts with transfers from the state. These transfers will be offset by any new revenues that the losing cities receive from the remote sellers that have volunteered to collect and remit sales taxes to those states in full compliance with the SSUTA.[51] Washington State finally passed legislation in 2007[52] that meets the point-of-delivery requirement. It went into effect on July 1, 2008.

More recent legislation, passed in 2009, imposed the sales tax on "digital products" such as digital goods, digital automated services, and remote access software so that the tax treatment is the same no matter how the customer receives them. This legislation was necessary to be in full conformity with SSUTA and to prevent revenue losses from erosion of the sales tax base.[53]

Timing of Receipts and Sales Tax Rate Changes

Most retailers remit their sales taxes to the Department of Revenue (DOR) by the 25th of each month for sales made during the prior month.[54] The DRS distributes those collections to cities and towns on the last day of the following month after subtracting a small service charge.[55] There is anywhere between a one-day to 60-day time lag between collection and remittance by the state to local government. Interest earned on the funds collected are paid to local government under the provisions of RCW 82.14.050.

Increases in sales tax rates requires some timing considerations. RCW 82.14.055 states:

- A local sales tax change may take effect no sooner than 75 days after DOR receives notice of the change and then it will only take effect on January 1, April 1, or July 1; or
- If the local sales tax change is a credit against the state sales tax, it may take effect no sooner than 30 days after DOR receives notice of the change and then only on the first day of the month following.

Note that sales tax changes are no longer allowed to occur in the last quarter of the year (October 1). Therefore any voted local sales tax option taxes authorized by the voters at an election after April 1 would most likely not be imposed until January 1 of the following year.

51 See "Mitigation Plan," Washington State Department of Revenue, December 2006. http://www.awcnet.org/documents/mitigationconcept.pdf

52 RCW 82.32.730.

53 "SHB 2075 – Digital Goods Legislation Description," Washington State Department of Revenue, March 2009.

54 RCW 82.32.045 and WAC 458-20-22801. The Department of Revenue can waive tax remittance for persons with gross sales less than $28,000 per year or make the administrative decision to put smaller taxpayers on an annual or quarterly payment schedule.

55 RCW 82.14.050 - .060

General Business and Occupation Taxes and Business Licenses[56]

Business taxes and licenses come in three forms:

1. Excise (percentage) taxes levied on different classes of business to raise revenue. These are commonly called general business and occupation taxes.
2. Licenses for the purposes of regulation only.
3. Licenses to regulate and raise revenue.

General Business and Occupation Taxes

These taxes are levied at a percentage rate on the gross receipts of the business, less some deductions. Businesses are put in different classes such as manufacturing, wholesaling, retailing, and services. Within each class, the rate must be the same, but it may differ among classes.

Effective April 20, 1982, the legislature set the maximum tax rate that can be imposed by a city's legislative body at 0.2 percent (0.002), but grandfathered in any higher rates that existed on January 1, 1982.[57] All ordinances that impose this tax for the first time or raise rates must provide for a referendum procedure.[58] Any city may levy a rate higher than 0.2 percent, if it is approved by a majority of the voters.[59] Thirty-eight of Washington's 281 cities levy this tax.

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56 RCW 35.22.280(32) authorizes any city of the first class: "To grant licenses for any lawful purpose, to fix by ordinance the amount to be paid therefor, and to provide for revoking the same . . . ." This language has been construed by the Washington Supreme Court as authorizing licenses for revenue purposes as well as regulation. The court has in at least three decisions upheld a business and occupation tax under the above language: Fleetwood v. Read, 21 Wash. 547, 552-553 (1899); Seattle v. King, 74 Wash. 277, 279 (1913); and Pacific Telephone and Telegraph v. Seattle, 172 Wash. 649, 653 (1933).

For second class cities, the authority is found in RCW 35.23.440(8): "License generally: To fix and collect a license tax for the purposes of revenue and regulation, upon all occupations and trades, and all and every kind of business authorized by law . . . ." RCW 35.27.370(9) provides the authority for towns: "To license, for the purposes of regulation and revenue, all and every kind of business, authorized by law and transacted and carried on in such town . . ." Under RCW 35A.82.020, a code city may "exercise the authority authorized by general law for any class of city to license and revoke the same for cause, to regulate, make inspections and to impose excises for regulation or revenue in regard to all places and kinds of business, production, commerce, entertainment, exhibition, and upon all occupations, trades and professions and any other lawful activity . . ."

57 RCW 35.21.710. This statute also has a provision that allows cities that had rate higher than 0.2 percent on January 1, 1982 to increase the rate without a vote of the people. The increase is limited to a total of 10 percent of the January 1, 1982 rate, with the annual incremental increase limited to two percent of the current rate.

58 RCW 35.21.706. This referendum procedure must specify that a petition may be filed within seven days of the passage of the ordinance with the filing officer (e.g., city clerk). Within 10 days, the filing officer must confer with the petitioner as to form and style of the petition and write a ballot title. Then the petitioner has 30 days to gather the signatures of at least 15 percent of the registered voters. If sufficient valid signatures are submitted, the referendum is voted on at the next special election (see RCW 29A 04.330 for special election dates) as long as that election is at least 45 days after the certificate of sufficiency is received by the city. If a general election is to be held within 90 days, then the referendum must be voted on at the general election. However, the election statutes now require that a resolution calling for a special election must be given to the county auditor at least 52 days prior to the election, and a resolution calling a special election that would occur on the primary or general election date must be given to the auditor at least 84 days before the election. RCW 29A.04.330.

59 RCW 35.21.711.

Model Ordinance

In 2003, the legislature passed a bill that required the Association of Washington Cities (AWC) to convene a committee to develop a model ordinance that must be adopted by all cities imposing a B&O tax no later than December 31, 2004.[60] The legislature was concerned about the lack of uniformity of the cities' B&O tax ordinances and about allegations that some business income was subject to multiple taxation. As noted in the Final Bill Report, the legislation required that the model ordinance have certain mandatory provisions:

> a system of credits that prevent multiple taxation of the same income, a gross receipts threshold for small businesses;[61] tax reporting frequency requirements; provisions for penalties and interest, claim and refund provisions, and certain terms with definitions from the state B&O statutes or based on comparable definitions within the state B&O statutes.[62]

Beginning January 1, 2008, cities that levy the B&O tax must allow for allocation and apportionment,[63] as set out in RCW 35.102.130. A study done by the Department of Revenue estimated that this will reduce the taxable base and B&O taxes collected in all but four cities.[64] The total estimated losses for 2004 were $23.2 million, with Seattle being by far the biggest loser. AWC has posted on its web site a revised model ordinance that incorporates the allocation and apportionment provisions and the various legislative changes made since 2003.[65]

Business and occupation taxes are unpopular with business people and are termed inequitable by some tax experts because they tax gross receipts rather than profits. Other people argue that the entire state and local tax structure is inequitable because Washington has no income tax. The business and occupation tax is, along with the property tax, the sales tax, and utility taxes, one of the four major revenue options given to the cities by the legislature. The basic argument in favor of the tax is that businesses benefit from general government expenditures, especially police and fire services, that are supported by the tax.

Cities thinking of levying a gross receipts tax should consider whether they have the staff time and expertise necessary to administer this tax. In particular, the staff must routinely audit the tax accounts to ensure compliance. Any cities that have revenue-generating fees (described below) should also determine that firms are paying the correct amount, but this is probably easier to do for these fees.

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60 Ch. 79, Laws of 2003 and ch. 35.102 RCW. RCW 35.102.020 states that the new chapter is of limited scope and does not apply to taxes on any service that traditionally or historically has been taxed as a utility business for municipal services, such as light and power, natural gas distribution, telephone, cable television, sewer, water, drainage, solid waste, and steam.

61 Only gross receipts over $20,000 a year may be taxed.

62 Washington State Legislature, 2003 Final Legislative Report (Olympia, 2003), 156.

63 Apportionment refers to an approach under tax law under which a multi-jurisdiction business is allowed to apportion, or divide, its taxable income among the jurisdictions in which it does business.

64 Washington State Department of Revenue, Municipal Business and Occupation Tax - Study of Potential Impacts (Allocation and Apportionment Study) (Olympia, November 2005), 36.

65 See also MRSC's web page on "Business and Occupation Taxes" at http://www.mrsc.org/Subjects/Finance/B- 89 Otax.aspx

Regulatory License Fees[66]

Regulatory license fees fall into two categories. First, there are business license fees. One purpose of such fees is to register all businesses to provide the city with a record of the owners, in the event a citizen or a city department has a problem with a business. Another basic purpose would be to help ensure compliance with city ordinances (for example, zoning). Cities that levy a gross receipts business and occupation tax also need to register businesses to be able to check for their compliance in the payment of taxes. These fees are set at a flat rate per license in an amount designed to recover the administrative costs of registering the businesses and issuing the licenses, maintaining the files, etc. The fees charged should be fair and bear a reasonable relation to costs.[67] A reasonable charge might provide for recovery of the full costs of issuing the average license, including the direct salary and benefits of the staff, the indirect costs of management, and possibly even a share of computer acquisition costs.

Second, there are professional and occupational licenses. These are levied on such businesses as pawnbrokers, used goods stores, taxis and taxi drivers, and massage parlors. The license fee may include, in addition to the costs listed above, the costs of investigating the background of the person requesting the license. The license fees for professional and occupational licenses will vary by the kind of activity involved.

Many smaller cities levy the second kind of fee, but not the basic business license fee. Implementing a business license program is considered to be a sound management practice to protect the corporate city and its citizens.

Revenue-Generating Regulatory Licenses

Rather than charge a single flat fee to license all businesses, cities that license to generate revenue use one or more criteria to set the fees. Criteria that we have seen used include: establishing ranges of employees or square footage of the business and then charging different fees depending upon the range in which the firm falls; charging different fees depending on the type of business; and using a flat rate per employee or square foot.

Twenty-seven of the 246 cities responding to this question in the 2008 Association of Washington Cities Tax and User Fee Survey have a range of fees, based on the number of people they employ. Eleven cities charge a fee per employee, per hour, or full-time equivalent employee. Three cities use the square footage of the establishment as the basis for their license fees. Some cities use a combination of two or three measures. Mountlake Terrace, for example, has a license that is based on number of employees and square footage. Bothell has a three-part fee that combines the number of employees, type of business, and square footage.[68] Kirkland has a base fee and a surcharge that uses ranges of number of employees and ranges of gross receipts.[69]

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66 Many people refer to these fees as "taxes." Care needs to be taken to determine whether the person using the term "business tax" is referring to a gross receipts tax or a revenue-generating fee of the type discussed here.

67 See McQuillin, Municipal Corporations §26.46 (December 2008); see, generally, Patton v. Bellingham, 179 Wash. 566 (1934), and Homes Unlimited v. Seattle, 90 Wn.2d 154 (1978).

68 Bothell Resolution No. 1227 (2008).

69 Kirkland Municipal Code §7.02.160(b).

The law allows for a good deal of creativity in designing these license fees. However, classes of businesses must be clearly defined, with each business within each class being charged the same fee.[70]

70 See McQuillin, Municipal Corporations §26.76 (December 2008).

Utility Business and Occupation Taxes[71]

Utility taxes may be levied on the gross operating revenues earned by private utilities from operations within the boundaries of a city and by a city's own municipal utilities.[72] Utilities on which taxes may be levied include electric, water, sewer, stormwater, gas, telephone, cable TV, and steam. Note that utilities will often break out the amount of the tax on the bill, the tax is legally levied on the utility, not the customer and must be paid from utility revenues.

What Are the Limits on the Tax Rate?

Legislation passed in 1982 limits the tax rate that a legislative body may impose on electric, gas, steam, and telephone utility services to six percent.[73] Cellular telephone and pager services may be taxed at the same rate as other telephone services.[74] A city may ask the voters to approve a rate of higher than six percent on these utilities. We know of at least six cities where such an increase has been approved. In four of those cities, the funds are used for public safety purposes.[75]

There are no restrictions on the tax rates for water, sewer, and stormwater utilities. The rate on cable TV is governed by the Cable Communications Policy Act of 1984.[76] It requires that the rate not be "unduly discriminatory against cable operators and subscribers." If a city has set all its tax rates at six percent, the rate on cable TV should probably be no higher than that. However, if rates on utilities other than electric, gas, or telephone are higher than six percent, an argument can be made that the tax on cable TV can be higher than six percent also without being "unduly discriminatory," because all the rates over which the jurisdiction's legislative body has control are higher than six percent. Direct broadcast satellite television services are preempted from all local government taxation except for the sales of equipment, such as satellite reception dishes.[77]

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71 The statutory authority for utility taxes is found in the same places as that for business licenses and the general business and occupation taxes. See footnote 56.

72 Note that a city may levy taxes on any revenues earned from its operations outside the city limits. Burba v. Vancouver, 113 Wn.2d 800 (1989). However, a city may not tax any income earned by another city's utility or a by a special district that operates within its boundaries, unless there is express statutory authority or the other taxing district gives its permission. King County v. Algona, 101 Wn.2d 789 (1984).

73 RCW 35.21.870(1). Note that a utility tax may not be levied on interstate long distance service (RCW 35.21.714 and RCW 35A.82.060), but a service business and occupation tax may be levied (RCW 35.21.715 and RCW 35A.82.065).

74 In Western Telepage, Inc. v. City of Tacoma, 140 Wn.2d 599 (2000), the Washington State Supreme Court found that one-way paging services fall within the statutory definition of "telephone business."

To tax cellular telephones and/or pager services, a city must take care with the definitions in its utility tax ordinance. For examples, see Bellevue Municipal Code §4.10.020; Seattle Municipal Code Ch. 5.30.

75 RCW 35.21.870(1). In Pasco, voters approved an increase of 2.5 percent for anti-crime purposes. Pasco Municipal Code §5.32.040(8). The revenue from the voted 2.5 percent tax increase in Richland is used for fire department operations. Richland Municipal Code §§5.20.040,.050, .100. Kennewick has had a voted tax increase of 2.5 percent on electricity, natural gas, and telephone services since 1991. Kennewick Municipal Code §3.70.020(2),(3). The revenue is used for police and fire department capital and operating needs. Toppenish increased rates by 2.5 percent for police department purposes. Toppenish Municipal Code §3.37.030(E), (F). Pullman raised its rates to eight percent, with the additional two percent allocated to the street fund. Pullman Municipal Code §6.15.055(4). Grandview voters approved an additional 1.5 percent to be used for animal control, graffiti removal, youth crime prevention programs, parks and recreation, and museum and library services. Grandview Municipal Code §3.60.050(G). In November 2006, voters in Federal Way approved an increase to 7.75 percent for 18 additional police officers and other police and community safety staff.

76 Cable Communications Policy Act of 1984, §622(g)(2)(A) (47 U.S.C. §542(g)(2)(A)).

77 Telecommunications Act of 1996, §602(a) ((47 U.S.C. §522(a)).

Effective July 1, 2008, cities may no longer tax Internet access due to the passage of the federal Internet Tax Freedom Act Amendments Act of 2007, Public Law 110-108, the federal moratorium against the imposition of state and local taxes on Internet access. Prior to this time, a grandfathering provision allowed cities to levy their service B&O tax on Internet access charges and their telephone utility tax on telecommunications service purchased, used, or sold by a provider of Internet access.

What Do We Need to Do to Change a Rate?

A city that imposes a utility tax for the first time or that increases a tax rate may be required to include a referendum clause in the ordinance. From its placement in the text, it is unclear whether RCW 35.21.706, which very definitely requires a referendum clause for a gross receipts business and occupation tax, applies to utility taxes.[78] In response to inquiries, MRSC has suggested adoption of a cautious approach, recommending that referendum language be included in any increase to a utility tax. Nevertheless, we note that a number of cities have not included a referendum clause. A court decision or legislative amendment would clarify this matter.

Any tax changes for electric, telephone, and gas utilities cannot take effect until the end of 60 days after enactment of the ordinance.[79] If the utilities are private utilities, they need this time to apply to the Washington Utilities and Transportation Commission for a rate adjustment to reflect the tax change.

Real Estate Excise Tax

The real estate excise tax is levied on all sales of real estate, measured by the full selling price, including the amount of any liens, mortgages, and other debts given to secure the purchase (RCW 82.46.010(5) and RCW 82.45.030). The state levies this tax at the rate of 1.28 percent (RCW 82.45.060). A locally-imposed tax is also authorized. However, the rate at which it can be levied and the uses to which it may be put differs by city population and whether the city is planning under the Growth Management Act (GMA). All cities may levy a quarter percent tax (referred to as "the first quarter percent of the real estate excise tax" or "REET 1").

Cities that are fully planning under GMA are given the authority to levy a second quarter percent tax ("REET 2") by RCW 82.46.035(2). Note that this statute specifies that if the city is located in a county that is required to fully plan under GMA, REET 2 may be levied by a vote of the legislative body. If, however, the county opts to fully plan under GMA, REET 2 must be approved by a majority of the voters.

78 RCW 35.21.706, requiring the referendum procedure, immediately precedes RCW 35.21.710, providing for a limit on the general business and occupation gross receipts tax. The limitation placed on utility taxes in RCW 35.21.870 appears considerably later in the chapter. You can find the requirements for a referendum clause in RCW 82.14.036.

79 RCW 35.21.865.

How Can the First Quarter Percent – REET 1 – Be Spent?

Cities Not Planning Under GMA or Are Planning and Have a Population of 5,000 or Less

According to RCW 82.46.010(2), these jurisdictions must use REET 1 funds "for any capital purpose identified in a capital improvements plan and local capital improvements, including those listed in RCW 35.43.040." RCW 35.43.040 additionally lists local improvements that can be funded through a local improvement district (LID), which includes projects such as streets, parks, sewers, water mains, swimming pools, and gymnasiums. Local capital improvements include the acquisition of real and personal property associated with such improvements, thus, land acquisition for parks is a permitted expenditure.

Capital projects not listed in the local improvement statute (for example, a fire station, city hall, courthouse, or library) are also permitted uses as long as they are included in the city's capital improvement plan. Expenditures that are not allowed are such things as the purchase of police cars. Accountants may consider these to be "capital" for accounting purposes, but they are not "capital purposes" or "local capital improvements." See correspondence between Allen R. Hancock, Deputy Prosecuting Attorney of Island County and Philip H. Austin, Senior Deputy Attorney General.

Cities Planning Under GMA With a Population of More than 5,000

These jurisdictions must spend the first quarter percent of their real estate excise tax receipts solely on capital projects that are listed in the capital facilities plan element of their comprehensive plan. RCW 82.46.010(6) defines "capital projects" as:

> 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; parks; recreational facilities; law enforcement facilities; fire protection facilities; trails; libraries; administrative facilities, judicial facilities, river flood control projects...

REET 2: Spending the Second Quarter Percent

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

For this 0.25% of the real estate excise tax, "capital project" is defined in RCW 82.46.035(5) as:

> 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.

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

As of September 2015, under limited circumstances, REET 2 funds may be used for those capital projects that qualify as REET 1 projects, including acquisition of land for parks, recreational facilities; law enforcement facilities; fire protection facilities; trails; libraries; administrative facilities, judicial facilities, and river flood control projects. The dollar limit on the use of REET 2 funds for such purposes is the greater of $100,000 or 25% of available funds, not to exceed $1 million per year. The use of REET 2 funds for these purposes also requires additional reporting requirements.

Limited Use of REET 1 and 2 Funds for Maintenance

Note: During the 2015 legislative session, the state legislature placed significant additional restrictions on the use of REET funds for maintenance. However, local governments can continue to use REET funds for maintenance under the preexisting rules that will sunset on December 31, 2016. MRSC recommends that local governments continue to use REET funds for maintenance under the preexisting rules and prepare to transition to the new rules by December 31, 2016.

Prior to December 31, 2016

RCW 82.46.010(7) and 82.46.035(7) allow cities and towns to use REET 1 revenues for operations and maintenance (O&M) of existing REET 1 eligible capital projects and REET 2 revenues for O&M of existing REET 2 eligible capital projects. There is a limit, however, on how much can be spent on O&M. The maximum amount of each REET fund that may be spent on O&M is the greater of $100,000 or 35 % of the available funds, not to exceed $1 million per year. This legislation sunsets on December 31, 2016.

After December 31, 2016

After the sunset date of December 31, 2016, there are additional limitations on the use of REET funding for maintenance. These new limitations include:

Definition of Maintenance – The definition of maintenance is limited. RCW 82.46.015 (5) defines maintenance as:

> the use of funds for labor and materials that will preserve, prevent the decline of, or extend the useful life of a capital project. Maintenance does not include labor or material costs for routine operations of a capital project (emphasis added).

Dollar Limit – The maximum amount of either REET 1 or REET 2 that may be spent on maintenance is the greater of $100,000 or 25% of the available funds, not to exceed $1 million per year.

Reporting Requirements – The local government must prepare a written report demonstrating that it has, or will have, adequate funding from all sources of public funding to pay for all capital projects identified in its capital facilities plan for a two-year period. This report must be adopted as part of the city's regular budget process and must include:

- Information necessary to demonstrate that the local government has, or will have, adequate funding from all sources to pay for all capital projects identified in its capital facilities plan. How revenues collected under REET 1 and REET 2 have been used during the prior two-year period.
- How revenues collected under REET 1 and REET 2 will be used for the succeeding two-year period.
- What percentage of funds for capital projects is attributed to REET 1 and REET 2 revenues compared to all other source of capital project funding.

Posting of Disclosure Requirements – If the local government has imposed any requirements on landlords or sellers of real property to provide information to a buyer or tenant "pertaining to the subject property or to the surrounding area," the requirements must be posted on the MRSC website in accordance with RCW 43.110.030(2)(e).

What's This Other One-Half Cent Tax Shown in RCW 82.46.010(3) (REET 3)?

Cities that are not levying the optional half-cent sales tax under RCW 82.14.030(2) have the option of levying an additional 0.5% real estate excise tax. These receipts are not designated for capital projects. They are a general fund revenue for city operating expenditures. Only two cities, Asotin and Clarkston, have chosen to do this. From a financial standpoint, the optional half-cent sales tax will probably bring in more revenue than this additional 0.5% real estate excise tax. For border cities and counties, however, who do not feel they are able to levy the optional sales tax, this tax is a revenue option.

The imposition of this tax, a change in rate, or a repeal of the tax is subject to the referendum procedures given in RCW 82.46.021.

Accounting for REET Funds

Because this revenue source is restricted to a specific 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 (RCW 82.46.030(2) and 82.46.035(4)).

Hotel-Motel (Lodging) Tax[80]

Most cities have had the authority to levy a "hotel-motel" or lodging tax of two percent since 1973.[81] 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.

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

80 Tourist promotion area fees are discussed on pages 52-53.

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

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.[82] 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 rate 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 taxes), 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 rate for the Regional Transit Authority (Sound Transit) in portions of King, Pierce, and Snohomish counties is not included in making these calculations.) The limit for the total rate in Seattle is 15.2 percent, because the convention center tax is higher than in the rest of the county.[83] This means that most cities in King County may only levy a one percent tax and Seattle cannot levy any tax.[84]
- Cities that had authority to levy a "special" tax before July 27, 1997 that allowed a total rate higher than four percent, had that rate grandfathered in by the 1997 legislation.[85] 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 total four percent tax county-wide before January 1, 1997, are limited to the "basic" two percent rate.[86] This affects cities in Snohomish and Cowlitz counties.
- Due to some unique circumstances,[87] 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.[88]

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82 RCW 67.28.1801. Ch. 35, Laws of 1998, §2.

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

84 At the time this statute was written, the sales tax in King County, excluding Seattle, was 8.2 percent. The convention center tax was 2.8 percent and the hotel-motel tax for the Kingdome/new football stadium was two percent, making the total rate 13 percent. Subtracting the two percent credit against the state sales tax brought the total rate down to 11 percent. That meant that cities in King County, other than Seattle, could levy a one percent hotel-motel tax.

However, in 2000, King County voters approved an increase in the transit tax by 0.2 percent. This would have raised the total rate that provides the limit for the hotel-motel tax to 12.2 percent, and would thus lower the rate the cities could levy by 0.2 percent to 0.8 percent. Legislation was then passed that required an entity that passed a sales tax increase, which pushed the total over the 12 percent limit, to exempt sales of lodging from the increase. Ch. 79, Laws of 2001, and RCW 82.14.410.

85 RCW 67.28.181(2)(a).

86 RCW 67.28.181(2)(b).

87 See 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.

88 RCW 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.[89] 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.[90] In practical terms this means that 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 on January 1, 2021.[91]

However, the law also has a provision for any cities that, before June 26, 1975, had pledged hotelmotel 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.[92] 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" credit against the state sales tax.[93]

How Can the Revenues Be Used?

The guiding principle for the use of lodging taxes is that they must be used for activities, operations and expenditures designed to increase tourism. Specifically, lodging taxes can be used for:

- Tourism marketing as defined by RCW 67.28.080 . It includes activities such as:
  - Advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists;
  - Developing strategies to expand tourism;
  - Operating tourism promotion agencies; and
- Marketing and operations of special events and festivals designed to attract tourists;
- Operations and capital expenditures of tourism-related facilities owned or operated by a municipality or a public facilities district; or
- Operations of tourism-related facilities owned or operated by nonprofit organizations (RCW 67.28.1816).

You may additionally use lodging tax revenues to pay for staff support of the Lodging Tax Advisory Committee. (See MRSC's blog post on Using Lodging Taxes for Staff Support of LTAC.)

89 RCW 67.28.180(2)(a) and RCW 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.

90 RCW 67.28.180(2)(b).

91 RCW 67.28.180(2)(c)(ii).

92 RCW 67.28.180(2)(c)(iii).

93 Ch. 189, Laws of 2007, and RCW 67.28.180(2)(b) allows the "double-dipping" to continue until 2021 to pay debt service on bonds for county facilities for agricultural promotion.

What's a Tourism-related facility?

> A tourism-related facility is a real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor that is (a) owned by a public entity, nonprofit organization (including a non-profit business organization, destination marketing organization, main street organization, lodging association, or chamber of commerce) and (b) used to support tourism, performing arts, or to accommodate tourist activities (RCW 67.28.080).

Note: As of July 1, 2013, capital expenditures for tourism-related facilities owned by nonprofit organizations are no longer permitted expenditures of lodging tax funds.

Applications for Lodging Tax Funds

In cities with at least 5,000 population, applications must be submitted directly to the lodging tax advisory committee (LTAC). In cities or towns of less than 5,000, applications are submitted to the city or the municipality may opt to form an LTAC for the application process.

The law is silent on the frequency of distribution or the timeline associated with the award process. Some jurisdictions choose to make awards as part of their annual budget cycle. Others also make mid-year awards to account for unexpected increases or decreases in projected revenue.

Who Must Apply?

All applicants for awards of lodging tax must apply to either the LTAC or the municipality. The applicants may consist of convention and visitors bureaus, destination marketing organizations, nonprofits, including main street organizations, lodging associations, or chambers of commerce, and additionally the cities or towns themselves.

The State Auditor's Office (SAO) is interpreting the law to mean that all users of funds, including municipalities, are considered applicants and must follow relevant application procedures. So, cities and towns with LTAC's must submit applications for their own projects.

What is Included in the Application?

All applications must include estimates of how funding the activity will result in:

- Increases to people staying overnight,
- Travelling 50 miles or more, or
- Coming from another state or country.

To ensure this data is collected, jurisdictions should require this information on their lodging tax application forms.

There is no requirement that priority for funding be given to applicants expected to generate the most travelers, and lodging tax revenue may still be awarded to recipients who generate few of these types of travelers.

Examples of Funding Applications and Guidelines can be found on the MRSC website for Lodging Tax.

Review and Selection of Applications

In a municipality of at least 5,000 population, the LTAC receives all applications for lodging tax revenue and recommends a list of candidates and funding levels to the municipality's legislative body for final determination. If a municipality under 5,000 chooses to establish a LTAC, they may, but do not have to follow these requirements.

What Does the Municipality Do with the LTAC's Recommendations?

The legislative body "may choose only recipients from the list of candidates and recommended amounts provided by the local lodging tax advisory committee" (RCW 67.28.1816(2)(b)(ii), emphasis added). An August 2016 informal opinion from the Attorney General's Office interpreted this language to mean that the legislative body may award amounts different from the LTAC's recommended amounts, but only after satisfying the procedural requirement in RCW 67.28.1817(2). (For more details, see our blog post on Informal AG Opinion Clarifies Lodging Tax Awards.) That requirement is that the municipality must submit its proposed change(s) to the LTAC for review and comment at least 45 days before final action is taken.

Note: A city need not fund the full list of recipients as recommended by the LTAC and may choose to make awards to only some or to none of the recommended recipients on this list.

Contracts with Recipients of Lodging Tax Funds

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

The Lodging Tax Advisory Committee (LTAC)

This committee must have at least five members, appointed by the governing body and the committee membership be composed of the following:

- At least two representatives of businesses that are required to collect the lodging tax, and
- At least two people who are involved in activities that are authorized to be funded by this tax, and
- One elected city official who serves as chairperson of the committee.

The statute also provides that a person who is eligible under the first category is not eligible for appointment under the second category, and vice versa. Organizations representing hotels and motels and organizations 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 elected county official and vice-versa. The governing body must review the membership of the committee annually.

In addition to reviewing applications for the use of the lodging tax the committee must also review any proposal by the municipality to impose a new lodging tax, raise the rate of an existing tax, repeal

an exemption from the lodging tax, or change the use of the tax proceeds. The submission must occur at least 45 days before final action will be taken on the governing body's proposal. Even if the committee finishes its work before the 45 days are up, the governing body still must wait 45 days.

The committee's comments must 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 governing body may go ahead and take final action.

Lodging Tax Reporting Requirements

All entities receiving lodging tax distributions must provide information to their respective local government on their use of these funds as required by RCW 67.28.1816. This includes local governments that directly use lodging tax funds for municipal purposes, such as municipal facilities or community events. Local governments will then, in turn, report this information annually to JLARC using their on-line reporting system.

Local governments should, as part of their contract with recipients, require that the report be provided immediately after the event or activity. The deadline for local governments to submit the annual data to JLARC is March 15 for the year ending the previous December 31.

JLARC does not provide advice on how to estimate tourism impacts. Good faith estimates of actuals can be reported provided applicants and users of funds indicate how those estimates will be developed. All information (including descriptions of how actual impacts were estimated) will be available for public review. (JLARC can be contacted for technical issues associated with the reporting portal by emailing jlarc@leg.wa.gov.)

Emergency Medical Services

All cities are allowed to ask the voters for authority to levy an additional property tax of up to 50 cents per thousand dollars of assessed valuation to support emergency medical services. The levy presented to the voters can be imposed for six years, ten years, or permanently.[94]

A permanent levy or the initial imposition of a six or ten year levy requires a voter approval of at least 60 percent and a voter turnout of at least 40 percent of the number of people that voted in the last general election. However, if the voter turnout falls below 40 percent of the number of voters from the last general election, all is not lost. In that case, as long as the number of "yes" votes is equal to at least 60 percent of the 40 percent of the last general election, then the measure will pass. Here is an example of how that would work:

1,000 people voted in the last general election
40 % equals 400 voters
60 % of 400 = 240 yes votes needed to pass ballot measure

94 RCW 84.52.069(2).

For the uninterrupted continuation of six or ten year EMS levy a simple majority vote is all that is required.[95]

If a city imposes a permanent levy, it must account separately for the expenditure of the revenues.[96] In addition, a permanent levy is subject to a referendum **at any time**.[97] This provision means the "permanent" levy may not necessarily be permanent.

An EMS levy is a "regular property tax levy."[98] As such, it is governed by RCW 84.55.010. After the initial levy is approved by the voters, cities with a population under 10,000 may increase the amount of the levy by a maximum of one percent a year plus an additional amount ("add-ons") for new construction, improvements to property, newly constructed wind turbines, increases in the value of state-assessed property, annexations, and refunds. Cities with a population of 10,000 and over are limited each year to a levy increase that is no greater than one percent or the implicit price deflator (IPD) whichever is less (see page 2 - Referendum 47) plus add-ons, unless the council makes a finding of "substantial need" with a majority plus one vote of the city council.[99]

This levy is not subject to the limitation in RCW 84.52.043(2), which provides that the aggregate levies of special districts and the city and county may not exceed $5.90 per thousand dollars assessed valuation.[100] It is, however, subject to the constitutional provision that the aggregate of all regular property tax levies (except levies by ports) may not exceed one percent of assessed value ($10 per thousand dollars assessed valuation).[101]

Gambling Tax[102]

Cities that choose to allow gambling activities within their borders may tax the gambling revenues. Currently, the maximum tax rates are as follows:

- Amusement games: 2 percent of gross receipts less prizes (net receipts);
- Amusement games by charitable or nonprofit organizations that have no paid operating or

95 *Id.* Note that an easy way to express this alternative for voter approval is to say that when voter turnout is less than 40 percent of the voter turnout at the last general election, the "yes" votes must be at least 24 percent (240/1000) of the voter turnout at the last general election in for the measure to pass.

96 RCW 84.52.069(3).

97 RCW 84.52.069(4). The standard referendum procedure requires that a petition must be filed within seven days of the passage of the ordinance. Within ten days, the officer with whom the petition is filed must confer with the petitioner concerning the form and style of the petition and provide a ballot title. The petitioner has 30 days to gather valid signatures from at least 15 percent of the registered voters as of the last general election. If enough valid signatures are gathered, the referendum must be placed on the ballot at the next general election, if one is to be held within 180 days of the filing of the petition, or at a special election called for that purpose.

98 AGO 1993 No. 7.

99 Pages 2-5 contain an expanded discussion of levy limits under RCW 84.55.010 and Referendum 47.

100 RCW 84.52.069(5) and RCW 84.52.043(2)(d). RCW 84.52.010 sets out the order in which the special district levies get cut in the event that the aggregate rate exceeds $5.90.

101 RCW 84.52.050 and art. 7, §2, of the Washington State Constitution. Note that excess levies for operations and maintenance (discussed on pages 13) are not subject to this one percent limit, nor are port district levies. RCW 84.52.052 and RCW 84.52.050.

102 RCW 9.46.110.

management personnel: no tax on first $5,000 of net receipts (including that from any bingo games), then 2 percent of net receipts;

- Bingo and raffles: 5 percent of net receipts;
- Raffles by charitable or nonprofit organizations: no tax on first $10,000 of net receipts, then 5 percent of net receipts;
  Bingo by charitable or nonprofit organizations that have no paid operating or management personnel: no tax on first $5,000 of net receipts (including that from any amusement games), then 5 percent of net receipts;
- Punch boards and pull-tabs by charitable or nonprofit organizations, 10 percent of net receipts;
- Punch boards and pull-tabs by commercial stimulant operators, 5 percent of gross receipts or 10 percent of net receipts; and
- Social card games: 20 percent of gross receipts.

How Can We Spend the Proceeds?

RCW 9.46.113 states that cities that levy gambling taxes "shall use the revenue from such tax **primarily** for the purpose of enforcement of the provisions of this chapter." (Emphasis added.) In 1991, the Washington State Supreme Court handed down a decision *(American Legion Post No. 32 v. City of Walla Walla)*[103] that clarified the definition of "primarily." In that decision, the court said that gambling tax revenues must "first be used" for gambling law enforcement purposes to the extent necessary for that city. The remaining funds may be used for any general government purpose.

The court also recognized that enforcement does not necessarily encompass only police activity directly related to gambling activities. A general police presence can help prevent illegal gambling activities. From a practical standpoint, and as an easy way to keep a trail for the auditor, funds should be spent first on direct gambling enforcement, then on other police functions and, if that does not exhaust the tax monies, then on non-police expenditures.

Leasehold Excise Tax

Most leases of publicly-owned real and personal property in the state are subject to a leasehold excise tax in lieu of a property tax.[104] The 1976 legislature established a 12 percent tax[105] to be levied either on the contract rent (when the lease is established by competitive bidding) or, in other instances, by the imputed economic rent as determined by the Department of Revenue.[106] The 1982 legislature added a seven percent surcharge making the total rate 12.84 percent.[107]

103 116 Wn.2d 1 (1991).

104 See RCW 82.29A.130 for a list of leasehold interests exempt from the tax.

105 RCW 82.29A.030(1)

106 RCW 82.29A.020(2)(b).

107 RCW 82.29A.030(2).

Cities and counties may collectively levy up to six percent of this 12.84 percent.[108] The maximum county rate is six percent and the maximum city rate is four percent. The county must give a credit for any city tax. Therefore, if a city is levying its maximum four percent, the county may collect only two percent in the city. These taxes are collected by the city and remitted to the Department of Revenue. After deducting an administrative fee,[109] the department distributes the taxes to local governments on a bimonthly basis.[110]

Use Tax on Brokered Natural Gas

In 1986, the federal government deregulated the natural gas industry. Deregulation allowed large customers to bypass the gas utilities and bargain directly with independent marketers. Some of these sales were, therefore, no longer a taxable event for utility business and occupation tax purposes. Some cities lost considerable revenue and, as a result, the legislature passed a law, effective July 1, 1990, allowing cities to levy a use tax on the purchases of brokered natural gas by consumers.[111] The tax rate is equal to the city's utility tax on natural gas, which must be six percent or less, unless the voters approve a higher rate. (There is a similar provision for the state, which also lost utility tax revenues.)[112] Cities contract with the state to collect these taxes and they are distributed to local governments on a monthly basis.

However, in 2008, the state court of appeals held that, under the statutory definition, a person "uses" natural gas at such place where the person first takes "dominion and control" over the gas in the state, i.e., where it is purchased or at the state border, not the place of consumption.[113] So, when a person purchases natural gas from an independent marketer in one city in Washington and then consumes the gas in another city, the person "uses" the gas in the first city and may not be taxed for the use by the second city. Legislation had been proposed in the 2009 session that would have clarified that the "use" of natural gas for purposes of this statute is the place where it is consumed, but it did not pass before the legislature adjourned. Also, the court of appeals decision was appealed to the state supreme court, which accepted review. So, unless a city repeals this tax, the Department of Revenue will continue to collect it, but cities affected by this court decision and receiving revenues under this tax should consider these factors before spending or budgeting for this revenue until a legislative fix has been enacted or the state supreme court acts to reverse the court of appeals decision.

Due to the greater awareness of this use tax as a result of the court decision, some cities have received refund requests from entities paying the utility tax on natural gas. Cities should review their natural gas utility tax ordinances carefully to determine what entities and activities are subject to the tax.

108 See RCW 82.29A.040.

109 RCW 82.29A.080.

110 RCW 82.29A.090.

111 RCW 82.14.230.

112 RCW 82.12.022.

113 *G-P Gypsum Corp. v. Dep't of Revenue*, 144 Wn. App. 664 (2008), review granted, 165 Wn.2d 1023 (2009).

Admission Tax

All cities may levy an admission tax in an amount no greater than five percent of the admission charge, as is authorized by RCW 35.21.280. This tax can be levied on admission charges (including season tickets) to places such as theaters, dance halls, circuses, clubs that have cover charges, observation towers, stadiums, and any other activity where an admission charge is made to enter the facility.[114]

The statute provides exceptions for admission to elementary or secondary school activities and any public facility of a city or county public facility district for which the district has levied an admission tax under RCW 35.57.100 or 36.100.210. A city may, however, impose its own tax on admission to activities at a public facility district, in addition to the tax the district levies, if the revenue is used for the construction, operation, maintenance, repair, replacement, or enhancement of that public facility or to develop, support, operate, or enhance programs in that public facility.[115]

The admission tax must be collected, administered, and audited by the city. Some cities exempt certain events sponsored by nonprofits from the tax. This is not a requirement, however.

114 In Ski Acres v. Kittitas County, 118 Wn.2d 852 (1992), the Washington State Supreme Court ruled that the county could not levy its admission tax on ski lift tickets and/or rental equipment under RCW 36.38.010(2), which states, in part, that the term "admission charge" includes:

> a charge made for rental or use of equipment or facilities for purpose of recreation or amusement, and where the rental of the equipment or facilities is necessary to the enjoyment of the privilege for which a general admission is charged, the combined charges shall be considered as the admission charge.

The court agreed with the plaintiff that, because one could enter the ski area without a charge, the county could not charge an admission tax on the ski lift price (or equipment rental). This same argument could apply to facilities such as bowling alleys and skating rinks.

Because the language in the city statute is similar, a court might find that cities also cannot levy an admission tax in cases where people can enter a place without paying even though they have to pay to participate in the activity in that place. The statute authorizing the admission tax for cities and towns, however, is different from the statute authorizing the county tax, and the area of difference is found in the language used by the supreme court to invalidate Kittitas County's application of the tax to ski lifts. Without additional guidance by the courts, it is difficult to conclude whether cities possess greater taxing authority. An argument to that effect certainly could be made.

115 RCW 35.21.280(1).

State-Shared Revenues

State-collected revenues that are shared with all cities are derived from liquor receipts (profits and excise taxes) and motor vehicle fuel excise taxes. Cities as a group receive a fixed percentage of each of these sources, and the funds are then allocated to individual jurisdictions on a per capita basis. The fire insurance premium tax provides a modest contribution to the firemen's pension fund in some cities, and four cities receive Capron refund payments.[116]

Population figures, determined annually as of April 1 by the state demographer in the Office of Financial Management, are used as the basis for the per capita distribution of these funds. The population in an area annexed by a city is added to the city's population on the effective date of the annexation. In newly incorporated areas, the population figure shown in the records of incorporation filed with the Secretary of State is used until the next annual determination is made.[117]

Long gone are the receipts from the motor vehicle excise tax (MVET), part of which were distributed on the basis of population and part as sales tax equalization to sales tax poor cities. Although Initiative 695, which repealed this tax in 1999, was found unconstitutional, the 2000 legislature decided that the people had spoken and repealed this tax, replacing it with a $30 license fee.[118]

To provide "backfill" for this lost revenue, the legislature appropriated funds that were distributed from 2000 to 2005 to the cities with the greatest losses from the repeal of the MVET. During the 2005 legislative session, a permanent funding source was designated.[119]

Liquor Receipts – Profits and Taxes

Since cities are responsible for the policing of liquor establishments located within their limits, but are precluded from taxing them because of the state liquor monopoly,[120] state law provides that a share of the state-collected profits and taxes be returned to cities to help defray policing costs.

Liquor board profits consist of the difference between revenue generated by the Washington State Liquor Control Board and the board's expenditures, specific revenues collected for a dedicated purpose, and administrative fees attributable to specific licensees that serve hard alcohol. Revenues are generated from sales at state liquor stores, taxes collected on wine and beer manufacture and distribution, licensee fees, alcohol related permit fees, penalties, and forfeitures. Liquor profits are divided among the state, counties, and cities. Cities get a 40 percent share,[121] with an additional

116 See page 41 for discussion of Capron refunds.

117 RCW 43.62.030.

118 Ch. 2, Laws of 2000, 1st spec. sess.

119 Ch. 450, Laws of 2005, RCW 43.08.290 and RCW 82.45.060.

120 Locally Shared Liquor Profits and Taxes," (source unknown) July 27, 1962, mimeographed copy in MRSC files.

121 RCW 66.08.190(1)(b).

amount distributed to border area cities.[122] These funds are distributed on the last days of March, June, September, and December.

Cities also receive 28 percent of the liquor excise tax receipts.[123] These funds are distributed on the last days of January, April, July, and October.

To be eligible to receive liquor taxes and profits, a city must devote at least two percent of its distribution to support an approved alcoholism or drug addiction program.[124]

Motor Vehicle Fuel Excise Tax – "Gas Tax"

As of 2009, the state levied a tax of 37.5 cents per gallon on motor vehicle fuel under RCW 82.36.025(1) through (6) and on special fuel (diesel) under RCW 82.38.030(1) through (6).[125] Cities receive 10.6961 percent[126] of the 23 cents per gallon tax levied under RCW 82.36.025(1) and RCW 82.38.030(1), from which some small deductions are made.[127]

Cities also are given a 8.3333 percent share of the three cent taxes levied under RCW 82.36.025(3) and (4) and RCW 82.38.030(3) and (4).[128]

These funds are distributed monthly on a per capita basis and are to be placed in a city street fund[129] to be spent for:

> salaries and wages, material, supplies, equipment, purchase or condemnation of right-of-way, engineering or any other proper highway or street purpose in connection with the construction, alteration, repair, improvement or maintenance of any city street or bridge, or viaduct or underpassage along, upon or across such streets.

Note there is no longer a requirement that cities with a population of 15,000 or more put 31.86 percent of their tax receipts in an arterial street fund for capital purposes, although a

122 RCW 66.08.190(1)(a) and RCW 66.08.195.

123 RCW 82.08.160 specifies that 35 percent of the total tax collected under RCW 82.08.150 must be deposited in the "liquor excise tax fund." Per RCW 82.08.160, 80 percent of the monies in the liquor excise tax fund is distributed to cities. .35x.8=.28.

124 RCW 71.24.555.

125 We will use the term "gas tax" to refer to both the tax on gasoline under RCW 82.36.025 and the tax on special fuel (primarily diesel) under RCW 82.38.030.

In three cities, the gas tax is 38.5 cents per gallon. Cities that are located no more than ten miles from an international border may levy an additional one cent per gallon gas tax with voter approval to mitigate the effects of tourism on their streets. RCW 82.47.020. According to the Washington State Legislative Transportation Committee's Washington State Transportation Resource Manual (January 2007), Blaine, Nooksack, and Sumas are currently levying this tax.

126 RCW 46.68.090(2)(g)

127 RCW 46.68.110(1)-(3).

128 RCW 46.68.090(4)(a), (5)(a). In 2005, the legislature passed ESSB 6103 in 2005, which added three cents to the gas tax in both 2005 and 2006, two cents in 2007, and 1.5 cents in 2008. The legislation withstood an initiative challenge in November 2005.

129 RCW 47.24.040 and ch. 35.76 RCW. See also RCW 35A.37.010(9) for code cities.

city may continue to do so.[130] Cities are still required to spend 0.42 percent of their gas tax receipts on 154 paths and trails, unless that amount is $500 or less.[131]

Capron Refunds

Cities located in counties composed entirely of islands receive a share of monies called Capron refunds.[132] The gas tax collected under RCW 82.36.025(1) and RCW 82.38.030(1) and motor vehicle license fees collected under RCW 46.16.0621 and .070 in a county with neither a state highway nor a fixed connection with the mainland are returned to the county and shared with cities in that county (in practice, one county – San Juan – and its only city – Friday Harbor) on the basis of their relative assessed valuations.[133] In an island county with a state highway or a fixed connection with land, one-half of the gas tax and motor vehicle license fees designated above are returned and shared in same manner. Oak Harbor, Coupeville, and Langley receive a portion of Island County's funds.

These refunds are to compensate these cities and counties for their lack of state highways (and state highway investment).

Fire Insurance Premium Tax

The state collects a two percent tax on the premiums of all insurance policies written.[134] Twenty-five percent of the tax collected on fire policies and the fire component of homeowner's and commercial multi-peril policies are distributed to cities and fire districts that have firemen's pension funds.[135] Premiums that are attributed to losses from such things as burglaries, tornadoes, floods, etc. are not shared with cities. For the homeowner's and commercial multi- peril policies, actual data is collected on the loss experience due to fire as a percent of total losses. These percentages are then applied to the total premium taxes collected from these policies to calculate the taxes attributable to the fire component.

For example, if the amount paid out on homeowner's policies for fire losses was 20 percent of total value of claims paid, and if the premium tax collected on homeowner's policies was $20,000,000, the calculation would be as follows:

A similar calculation is made for premiums from commercial multi-peril policies. A particular city's share of these taxes is a function of the number of paid firefighters in the city as a percent of total paid firefighters in all the cities and fire districts that qualify to receive this tax.

$20,000,000 x .2 = $5,000,000 of the homeowner's premiums are attributable to fire
$5,000,000 x .25 = $1,250,000 is available to be distributed

130 This requirement was repealed by SSB 5969, ch. 89, Laws of 2005.

131 RCW 47.30.030 and .050.

132 RCW 46.68.080. The 1930s legislation establishing these refunds was sponsored by Victor J. Capron of San Juan County. The two relevant counties are Island and San Juan.

133 Ch. 337, Laws of 2006, amended RCW 46.68.080 to exclude certain gas tax revenues from the monies that are shared.

134 RCW 48.14.020(1).

135 RCW 41.16.050(2).

City-County Assistance

After it repealed the motor vehicle excise tax (MVET) in 2000 in response to Initiative 695,[136] the legislature provided "backfill" funds for six years to a number of cities, most of which had lost sales tax equalization funding. In 2005, a permanent funding source was found, Ch. 450, Laws of 2005 provided that 1.6 percent of the state real estate excise tax levied under ch. 82.45 RCW be deposited in the newly-created city-county assistance account.[137] These funds are diverted from the Public Works Trust Fund, whose share of the state real estate excise tax fell from 7.7 percent to 6.1 percent.

The formula used to allocate city funding is based on a sales tax and property tax equalization formula, and the 2005 MVET backfill levels. The sales tax and property tax equalization components of the formula are similar to the former sales tax equalization program that was funded with MVET.

Cities with a population of 5,000 or less qualify to receive distributions equal to the greater of: 1) 55 percent sales tax equalization on the sum of the first 0.5 percent local sales tax and sales tax mitigation funds for the previous fiscal year; 2) 55 percent property tax equalization based on per capita assessed values per $1,000 assessed value; or 3) their 2005 MVET backfill allocation.[138] However, cities with twice the statewide per capita assessed value are not eligible for funding.

Cities with populations over 5,000 qualify to receive distributions equal to the greater of: 1) 50 percent sales tax equalization on the sum of the first 0.5 percent local sales tax and sales tax mitigation funds for the previous fiscal year or 2) 55 percent property tax equalization based on per capita assessed values per $1,000 assessed value.[139] These cities do not qualify for funding if their assessed value per capita is above the statewide average (compared to twice the statewide average for smaller cities).

Distributions for all cities are capped at $100,000, to be increased each year by the increase in the July implicit price deflator for personal consumption expenditures.[140] And, new cities that incorporate after August 1, 2005 are not eligible for funding.

If there are not enough revenues to fund the distributions above, then they will each be reduced proportionately. If there are more revenues than necessary to fund the above distributions, they are to be distributed proportionately on the basis of population among those cities that have received funds under this statute and impose the second half cent of the sales and use tax under RCW 82.14.030(2) in the full amount.[141]

136 Ch. 2, Laws of 2000, 1st Spec. Sess. Initiative 695 was approved by the voters but was declared unconstitutional by the state supreme court. Amalgamated Transit Union Local 587 v. State, 142 Wn.2d 183 (2000).

137 RCW 43.08.290(1).

138 RCW 43.08.290(4)(a) as amended by ch. 127, Laws of 2009.

139 RCW 43.08.290(4)(b) as amended by ch. 127, Laws of 2009.

140 RCW 43.08.290(5).

141 RCW 43.08.290(d) and (e).

When the bill was passed in 2005, the amount of funding that would be available to cities and counties for the first calendar year was estimated to be $5 million each. (Think of this $5 million as the "supply" of funds from the real estate excise tax (REET).) And, the legislature estimated that $5 million would be enough to fund the certification levels of the cities and counties. (Think of the certifications as the "demand" for funds.) In fact, in 2006 the supply of funds and distributions made totaled $7.95 million because real estate excise tax receipts were so much higher than anticipated. And, it was fortunate they were as high as they were because the total amount for which cities were certified (the "demand") in 2006 was $6.65 million and $5 million would not have been enough to give every city its certification amount.

In 2007, the supply of funds totaled $7.61 million and cities were certified for $7.75 million, so cities got just a bit less than their certification amounts. In 2008, when the housing market collapsed, real estate excise tax receipts and distributions fell to $5.06 million. Cities received approximately two-thirds the amount for which they had been certified because the demand was so much greater than the supply.

Recognizing that real estate excise tax receipts will be relatively low for the forseeable future, the 2009 legislature appropriated an additional $2.5 million to be distributed to both cities and counties on July 1, 2009 and on July 1, 2010.[142]

Certification and distribution dates:

Beginning with October 2009, the Department of Revenue (DOR) must certify the final amounts, based on the factors described above, to be distributed in the coming year, by October 1. And, beginning in 2010, DOR must provide a preliminary certification by September 1.

Funds are distributed quarterly on January 1, April 1, July 1, and October 1. In order for the funds to be distributed on those dates, the transfers must be made in the previous month. The payments, therefore, come in December of the year in which the certification is made, then March, June, and September of the coming year. This means that for budgeting purposes, cities are dealing with two different certification years.

When they pass their budgets in November or December for the coming year, they know the amounts for which they are certified for the coming year, but the first payment will arrive in December of the current year. The amounts they budget will be their estimates of how much they will receive during the first three quarters of the coming year based on their October 1 certifications plus their guessimate of what they will receive in December of next year, which will depend on their certification on October 1 next year.[143]

142 Chapter 567, Laws of 2009, §805.

143 RCW 43.08.290(6)(c) and (d) as amended by ch. 127, Laws of 2009. Before the statutes were amended, the certification was done no later than March 1 for distribution in the same year.

Criminal Justice Revenues

In 1990, the legislature passed a bill providing funds for criminal justice purposes for local government.[144] This legislation, scheduled to sunset on January 1, 1994, was reenacted, with some amendments, by the 1994 legislature.[145] Referendum 49, passed by the voters in November 1998, included provisions that increased funding for local government criminal justice expenditures by 22 percent.[146] However, funding was decreased by 55 percent when the motor vehicle excise tax, the main funding source, was repealed in 2000.[147]

Currently cities get two allocations of criminal justice revenue that are distributed under the terms of RCW 82.14.320 and RCW 82.14.330. The money comes from the state general fund. Beginning with fiscal year 2000, each cash transfer was $4.6 million, and it grows each year by the same fiscal growth factor that governs the increase in the expenditure limit under Initiative 601.[148] In 2008, each transfer was $5.9 million. These funds are distributed on the last days of January, April, July, and October.

Counties have the authority to levy sales taxes for criminal justice purposes and the receipts of two of these options are shared with cities.

Funds Distributed under RCW 82.14.320 – "High Crime"

To qualify to receive these funds a city must:

1. Have a crime rate in excess of 125 percent of the state-wide average as calculated in the most recent annual report on crime in Washington State as published by the Washington Association of Sheriffs and Police Chiefs.

2. Be levying, at the maximum rate, the second half cent of the sales tax or the half cent real estate excise tax.[149]

3. Have a per capita yield from the first half cent of the sales tax of less than 150 percent of the state-wide average per capita yield for all cities.

144 Local Criminal Justice Fiscal Assistance," Ch. 1, Laws of 1990, 2nd sp. sess.

145 Ch. 21, Laws of 1993, 1st sp. sess.

146 Ch. 321, Laws of 1998. The deposits into the municipal criminal justice assistance account under subsections 5(j) and (k), and sections 12 and 13, taken all together, resulted in increased funding.

147 Ch. 2, 1st sp. sess, Laws of 2000.

148 The "fiscal growth factor" is the average growth in state personal income for the prior ten fiscal years. RCW 43.135.025(7).

149 RCW 82 14.030(2) and RCW 82.46.010(3).

Thirty percent of the funds are distributed on the basis of population to cities that have a crime rate more than 175 percent of the state-wide average. The remainder is distributed to all qualifying cities solely on the basis of population. Cities have to requalify for the distribution each year based on the above criteria.

The determination of who qualifies and for what amount is made in July of each year for distribution in the four quarters of the state fiscal year. Therefore, when a city develops its budget for the coming calendar year, it knows how much funding, if any, it will receive at the end of January and April of the coming year, but it will not have information about distributions in the last two quarters of the calendar year (July and October) until the following July. In some years, there are cities that "fall off" the list completely although they may be back on it the following year. Obviously, forecasting this revenue source is difficult.

The language of the statute states that the funds distributed have to be used "exclusively for criminal justice purposes" and cannot be used "to replace or supplant existing funding."[150] Since the year that establishes the base for any measure of supplanting is calendar year 1989, it is unlikely that any city needs to be concerned about supplanting now.

The legislature has defined "criminal justice purposes" to be:

> activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates as defined in RCW 70.123.020, and publications and public educational efforts dealing with runaway or at-risk youth.[151]

Funds Distributed under RCW 82.14.330 – Population, Violent Crime, and Special Programs

Sixteen percent of these funds is distributed on the basis of population, with each city getting a minimum of $1,000 a year.[152] Twenty percent is distributed, again on the basis of population, to those cities that have had an average violent crime rate in the last three years that is 150 percent of the statewide average for those three years.[153] These funds are subject to the same spending restrictions as those under RCW 82.14.320, with the exception that they may not be spent on publications and public educational efforts dealing with runaway or at-risk youth.[154] (See the discussion in the previous section.)

150 *RCW 82.14.320(6).*

151 *Id.*

152 RCW 82.14.330(1)(b).

153 RCW 82.14.330(1)(a).

154 RCW 82.14.330(1).

Fifty-four percent goes to cities on a per capita basis to be spent on innovative law enforcement strategies, such as: alternative sentencing and crime prevention programs like community policing; domestic violence reduction programs; and/or programs for at-risk children or child abuse victim response programs.[155]

The final 10 percent of the funds is distributed on a per capita basis to cities that contract with another governmental agency for the majority of their law enforcement services. A city must notify the Department of Community, Trade and Economic Development of its contract by November 30 for the upcoming calendar year.[156]

Optional Sales Taxes[157]

0.1 Percent Sales Tax Under RCW 82.14.340

County commissioners or councils may vote to levy a county-wide 0.1 percent sales tax for criminal justice purposes.[158] The tax is subject to the same referendum provisions as the second half percent sales tax. Ten percent of the funds collected are distributed to the county, with the remainder allocated to the cities and the county on the basis of population.[159]

For example, assume that the collections from this tax are $1 million. The county gets ten percent ($100,000) off the top, leaving $900,000 to be shared among the county and cities. If your city has a population of 10,000 and the total population (incorporated and unincorporated) in the county is 80,000, your city's share will be 10,000/80,000 = 12.5 percent of $900,000, or $112,500.The statute states that the funds distributed have to be used "exclusively for criminal justice purposes" and cannot be "used to replace or supplant existing funding." Since the year that establishes the base for any measure of supplanting is calendar year 1989, it is unlikely that any city needs to be concerned about supplanting now.

The legislature has defined "criminal justice purposes" in this statute to be:

> activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates.

155 RCW 82.14.330(2)(b).

156 RCW 82.14.330(2)(a).

157 Sales tax rate changes must be made at least 75 days before beginning of a quarter. See discussion on page 20.

158 As of 2018, 35 counties are levying this tax.

159 Note that there is an additional 0.1 percent sales tax that all counties, other than King County, may levy for juvenile detention facilities and jails. RCW 82.14.350. This tax must be voted on and passed by a simple majority. Permitted expenditures include design, construction, and maintenance of these facilities. This tax is not shared with cities.

0.3 Percent Sales Tax Under RCW 82.14.450

A county legislative body may submit a ballot proposal to a county-wide vote for a sales tax increase of up to 0.3 percent. Sales of motor vehicles or the lease of motor vehicles for up to the first 36 months are exempt from the tax. The proposal must be approved by a majority of the voters at a primary or general election.

The text of the ballot measure must state the purposes for which the funds will be used. At least one-third of the money must be spent for "criminal justice purposes, fire protection purposes, or both" with no restrictions on type of use for the remaining two-thirds.[160] "Criminal justice purposes" is defined as:

> activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates.

Funds from this tax may not supplant existing funds used for these purposes except as follows: 1) up to 100 percent may be used to supplant existing funding in calendar year 2010; 2) up to 80 percent may be used to supplant existing funding in 2011; 3) up to 60 percent in 2012; 4) up to 40 percent in 2013; and 5) up to 20 percent may be used to supplant existing funding in 2014.[161]

Sixty percent of the funds are distributed to the county, with the cities in the county getting the remaining 40 percent on a per capita basis. The cities must spend the portions they receive in accordance with the uses stated in the ballot measure.

160 RCW 82.14.450(4) as amended by ch. 551, Laws of 2009.

161 Ch. 551, Laws of 2009. An informal opinion from Deputy Solicitor General James K. Pharris to Ron Zirkle, Yakima County Prosecutor, dated December 2, 2005, states that the base for determining whether existing funds have been supplanted is the 2004 level of spending for a tax first imposed January 1, 2005. One can use this "rule" for taxes imposed on other dates.

Transportation Revenues

Recognizing that the state-shared revenue from the gas tax was insufficient for the transportation needs of local jurisdictions, the 1990 legislature provided them with a number of local option revenue sources. Two of these options are no longer available. The street utility was found to be unconstitutional in 1995.[162] The local option vehicle license fee was repealed by the passage of Initiative 776 in 2002. This fee was levied by King, Pierce, Snohomish, and Douglas counties and shared with the cities. The legislature also established high occupancy vehicle funding and high capacity transportation system funding options for certain jurisdictions, such as the sales tax mentioned on page 18.

In 2007, the legislature passed amendments to chapter 36.73 RCW that greatly increased the financing options for transportation benefit districts.

Local Option Motor Vehicle Fuel Excise Tax

Upon a vote of the people, a local option gas tax can be levied countywide at a rate equal to 10 percent of the state rate.[163] As of 2009, the state rate was 37.5 cents per gallon, so 10 percent currently would be 3.75 cents per gallon.[164] The tax may be implemented only on the first day of January, April, July, or October.[165]

The tax is to be collected by the state treasurer and distributed on a monthly basis to the county and its cities. The county must sign a contract with the Department of Revenue for the administration and collection of the tax. A fee of up to one percent of the proceeds is charged.[166]

For purposes of this distribution, the population in the unincorporated areas is multiplied by 1.5 and added to the population of the cities. This new total is used as the denominator in the revenue sharing formula.[167] For example, if the population in the unincorporated areas of a county is 40,000 and that in the incorporated areas is 90,000, the following calculations would be made.

40,000 x 1.5 = 60,000
60,000 + 90,000 = 150,000
60,000/150,000 = 0.40

162 Covell v. Seattle, 127 Wn.2d 874 (1995).

163 RCW 82.80.010(2).

164 See page 40.

165 RCW 82.80.010(2).

166 RCW 82.80.010(6).

167 RCW 82.80.080.

This county would get 40 percent of the revenue being distributed. Similar calculations are made for each city, using its population in the numerator. The only counties that have attempted to levy this tax are Spokane County and Snohomish County. The ballot measures failed and, at this time, no county is levying this tax.

Local Option Commercial Parking Tax

This tax may be levied by a city within its boundaries and by a county in the unincorporated areas.[168] There is no limit on the tax rate and many ways of assessing the tax are allowed. If the city chooses to levy it on parking businesses, it can tax gross proceeds or charge a fixed fee per stall.[169] If the tax is assessed on the driver of a car, the tax rate can be a flat fee or a percentage amount.[170] Rates can vary by any reasonable factor, including location of the facility, time of entry and exit, duration of parking, and type or use of vehicle.[171] The parking business operator is responsible for collecting the tax and remitting it to the city, which must administer it. This tax is subject to a voter referendum.[172] At the present time, Bainbridge Island, Bremerton, Mukilteo, SeaTac, and Tukwila are the only cities that we know are levying this tax.

Expenditure of Local Option Transportation Taxes

Under RCW 82.80.070(1), local option transportation taxes must be used for "transportation purposes," which are defined as:

> including but not limited to the following: The operation and preservation of roads, streets, and other transportation improvements; new construction, reconstruction, and expansion of city streets, county roads, and state highways and other transportation improvements; development and implementation of public transportation and high capacity transit improvements and programs; and planning, design, and acquisition of right-of-way and sites for such transportation purposes.

However, this section of the statute goes on to say:

The proceeds collected from excise taxes on the sale, distribution, or use of **motor vehicle fuel and special fuel** under RCW 82.80.010 shall be used exclusively for "highway purposes" as that term is construed in Article II, section 40 of the state Constitution. (Emphasis added.)

"Highway purposes" is defined in Article II, section 40 in the state constitution, in part, as:

(a) The necessary operating, engineering and legal expenses connected with the administration of public highways, county roads and city streets;

168 RCW 82.80.030(1).

169 RCW 82.80.030(4).

170 RCW 82.80.030(2)(a) and (d).

171 RCW 82.80.030(2)(e).

172 RCW 82.80.090.

(b) The construction, reconstruction, maintenance, repair, and betterment of public highways, county roads, bridges and city streets; including the cost and expense of (1) acquisition of rights-of-way, (2) installing, maintaining and operating traffic signs and signal lights, (3) policing by the state of public highways, (4) operation of movable span bridges, (5) operation of ferries which are a part of any public highway, county road, or city street...

And these "highway purposes" are narrower than the "transportation purposes" identified in the beginning of the statute. Until this inconsistency is eliminated by the legislature or is clarified by an attorney general opinion or court decision, a conservative use of these fuel tax funds would be the narrower use.

All local option transportation funds are to be spent in a manner consistent with the city's transportation and land use plans. The legislation also includes some provisions for transportation planning that apply to jurisdictions with a population over 8,000 and that establish criteria that are to be used in expending the money.[173] The revenues may also be used to pay debt service on general obligation or revenue bonds if the city issued them to raise funds for street projects.

Transportation Benefit Districts

Cities, along with counties, may form transportation benefit districts to acquire, construct, improve, provide, and fund transportation improvements in the district that is consistent with any existing state, regional, and local transportation plans and necessitated by existing or reasonably foreseeable congestion levels.[174] The area may include other cities and counties, as well as port and transit districts through interlocal agreements.[175]

Any city passing on ordinance to form a transportation benefit district must also identify revenue options for financing improvements in the district. A district that has coterminous boundaries with a city may levy a $20 per vehicle license fee[176] or impose transportation impact fees on commercial or industrial buildings, both without voter approval.[177] A credit must be provided for any transportation impact fee on commercial or industrial buildings that the city has already imposed. Similarly, any district that imposes a fee that, in combination with another district's fee, totals more than $20, must provide a credit for the previously levied fee.[178]

> **Note:** New legislation in recent years allows cities to gradually increase their nonvoted vehicle license fees to a maximum of $50, subject to conditions, as well as to voluntarily "assume" the powers of the district so that the transportation benefit district is no longer a separate legal agency. For the latest information on transportation benefit districts, see the MRSC website.

173 RCW 82.80.070(3).

174 RCW 36.73.020(1).

175 RCW 36.73.020(2).

176 RCW 82.80.140(2)(a) and RCW 36.73.065(4)(a)(i).

177 RCW 36.73.065(4)(a)(ii) and RCW 36.73.120.

178 RCW 82.80.140(2).

Voter-approved revenue options include a license fee of up to $100 per vehicle[179] and a 0.2 percent sales tax.[180] Like many other special districts, transportation benefit districts may levy a one-year O&M levy under RCW 84.52.052[181] and do an excess levy for capital purposes under RCW 85.52.056.[182]

The funds must be spent on transportation improvements as set forth in the district's plan. "Transportation improvement" is defined as:

> a project contained in the transportation plan of the state or a regional transportation planning organization. A project may include investment in new or existing highways of statewide significance, principal arterials of regional significance, high capacity transportation, public transportation, and other transportation projects and programs of regional or statewide significance including transportation demand management. Projects may also include the operation, preservation, and maintenance of these facilities or programs.[183]

179 RCW 36.73.065(4)(a)(i) and RCW 82.80.140(1).

180 RCW 36.73.040(3)(a) and RCW 82.14.0455.

181 RCW 36.73.060(1).

182 RCW 36.73.060(2).

183 RCW 36.73.015(3).

Other Revenue Sources

Franchise Fees

Franchise fees are charges levied on private utilities to recoup city costs of administering the franchise and for the right to use city streets, alleys, and other public properties. The franchise fees on light, natural gas, and telephone utilities are limited by statute to the actual administrative expenses incurred by the city directly related to: receiving and approving a permit, license, or franchise; reviewing plans and monitoring construction; and preparing a detailed SEPA document.[184] They are not revenue generators as they are in some states.

Cable TV franchise fees are governed by federal rather than state law and are negotiated with the cable company. They may be levied at a rate of up to five percent of gross revenues, regardless of the costs of managing the franchise process.[185]

Tourism Promotion Area Fees[186]

The legislative body of a county with a population of more than 40,000, and any city within a county of that size, may form a "tourism promotion area" under chapter 35.101 RCW. However, in a county with a population of one million or more, the legislative body shall be comprised of two or more jurisdictions acting under an interlocal agreement.

A county can form a tourism promotion area only in an unincorporated area, and a city can do so only within its boundaries, unless a county and city sign an interlocal agreement to do otherwise. Within a tourism promotion area, the city or county legislative body may impose a charge of up to $2 per night, which applies at lodging businesses with 40 or more units. Up to six different classifications are allowed, with different charges for each one.

Formation of a tourism promotion area is initiated by a petition to the legislative body of the city or county, as the case may be, which petition must contain the signatures of people who operate lodging businesses in the area that would be paying at least 60 percent of the charges in the area. The legislative body must hold a public hearing on establishment of the proposed tourism promotion area.

The revenue must be used for "tourism promotion," which is defined as "activities and expenditures designed to increase tourism and convention business, including but not limited to advertising,

184 RCW 35.21.860.

185 Cable Communications Policy Act of 1984, §622(a), (b) (47 U.S.C. §542(a), (b)).

186 Ch. 35.101 RCW as amended by ch. 442, Laws of 2009.

publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists and operating tourism destination marketing organizations." However, the legislative body, which may appoint an advisory board, has the sole discretion as to how the funds are used to promote tourism.

Transfer of Funds from Municipally-Owned Utilities

Municipal utilities should really not have funds in excess of the amount they need to provide their services. Rates are supposed to be set only at the level necessary to cover costs.[187] However, sometimes a utility does find itself with surplus funds.[188] When that happens, a city may be able to transfer this surplus from the utility fund to the general fund.

RCW 35.37.020 provides that every city and town having a population of less than 20,000 **shall** transfer any utility fund surplus to the general fund, except for any funds the council finds necessary for: (1) extending or repairing the infrastructure; (2) paying debt service; and (3) establishing a sinking fund. Note that this same statute contains symmetric language: any deficit in a utility fund **shall** be covered by a transfer from the general fund. Under RCW 35A.37.010(7), these requirements apply also to code cities.

Towns also have their own statute, RCW 35.27.510, that authorizes transfer of a utility surplus under certain conditions. If the utility is free of debt, if a depreciation fund satisfactory to the state auditor has been created, if rates are the lowest possible level, and if the fixing of rates is governed by contract with the utility service supplier, then the mayor and council may transfer surplus funds with a unanimous vote. Since most towns do not contract for their utility services, this statute is not very useful.

Transfer of Funds from the LID Guaranty Fund

A city may be able to transfer assets from a local improvement district (LID) guaranty fund to the general fund.[189] The treasurer must certify that, after the transfer, the fund will have sufficient assets to cover all outstanding obligations and any other obligations that might reasonably be expected to occur. After such a transfer is made, the cash remaining in the guaranty fund can be no less 10 percent of the outstanding obligations.

187 *Uhler v. Olympia*, 87 Wash. 1 (1915); Carstens v. Public Utility District No. 1, 8 Wn.2d 136 (1941).

188 Here is how the State Auditor's Office is defining "surplus":
The amount by which operating revenues exceeds operating expenses. When determining the available surplus in a proprietary fund, the following must first be deducted from the proprietary fund balance: capital asset replacement cost, future capital expansions and improvements and any legally restricted resources. The cash basis entities should also deduct any outstanding bonds and other indebtedness. - See BARS Manual, Vol. 1, Pt. 3, Ch. 6, P. 8.

189 RCW 35.54.095(1).

Interest on Investments

RCW 35.39.034 and RCW 35A.40.050 allow cities to commingle funds for investment purposes and to apportion investment earnings to the participating funds or to the general fund if the council passes on ordinance or resolution to that effect. There are, however, some restrictions.

RCW 35.39.034 has a proviso regarding interest on bonds:

> PROVIDED, That funds derived from the sale of general obligation bonds or revenue bonds or similar instruments of indebtedness shall be invested, or used in such manner as the initiating ordinances, resolutions, or bond covenants may lawfully prescribe.

Although there is no such language in RCW 35A.40.050, bond covenants and provisions still determine the allocation of interest from bonds. If you have questions, check with your bond counsel.

In other cases, the State Auditor's Office has determined that interest from some city revenue sources must be allocated to the funds that hold the restricted revenues. The BARS Manual (Vol. 1, Pt. 3, Ch. 12, P. 43-44) provides a matrix of revenue sources and states whether interest on those sources may be allocated to the general fund.

Traffic and Parking Fines

Although the state supreme court establishes the schedule of fines for traffic infractions,[190] cities share in the revenue from infractions committed within their boundaries. After the fines are collected by the municipal or district court, 32 percent of the noninterest money is sent to the state. The remainder may be deposited in any city fund. Most jurisdictions put this money in the general or current expense fund. The interest is split evenly between the state public safety and education account, the state judicial information system, the city general fund, and the city general fund to be dedicated to fund local courts.[191]

A city has complete control over setting the fines for violation of its parking ordinances.[192] It may also charge a penalty of up to $25 for failure to pay the parking ticket fine in the time prescribed by law.[193] These revenues are deposited in the general fund.

190 RCW 46.63.110(3).

191 RCW 3.50.100(5), RCW 35.20.220(5), and RCW 3.62.040(6).

192 Infraction Rules for Courts of Limited Jurisdiction (IRLJ) Rule 6.2(c) states:
This schedule does not apply to penalties for parking, standing, stopping, or pedestrian infractions established by municipal or county statute. Penalties for those infractions are established by statute or local court rule . . .

193 See RCW 46.63.110(4).

Parking Meters

In 1941, the state supreme court upheld as a valid exercise of the city's police power a Spokane ordinance providing for the installation and maintenance of parking meters for regulating traffic on the city's streets.[194] Parking meters promote parking turnover, ration space where demand exceeds supply, provide short-term parking spaces for shopping or personal errands, improve traffic circulation, and provide revenue for the city. The revenue generated is to be used to cover the costs of installing and maintaining the meters, collection of the fees, and enforcement by city officials. Revenue in excess of this amount may be used for parking studies and acquisition and operation of off-street parking facilities.[195]

Other Fees and Charges

Sprinkled throughout the RCWs is authority for cities to levy fees and charges to cover the cost of providing services or programs and regulatory activities. For example, fees may be charged for animal licensing,[196] inspection of restaurants,[197] parks and recreation programs,[198] and the processing of development and building permit applications.[199] Fees may be levied for street use permits,[200] copy charges,[201] and fireworks stands permits.[202] The general guiding principle for these fees and charges is that they may be set at a level that recovers all the direct and indirect costs associated with the activity, including administrative overhead.[203] However, if fees more than recover costs, they then become more like taxes, and cities need specific statutory authority to levy taxes.

Cities that are planning under the Growth Management Act can assess impact fees for: fire protection facilities; schools; parks, open space, and recreation facilities; and for street purposes.[204]

194 *Kimmel v. City of Spokane*, 7 Wn.2d 372 (1941).

195 See WAC 308-330-650. In Kimmel v. City of Spokane, supra, the court did not concern itself directly with the revenue producing character of parking meters. The court said that it would not look behind the regulatory purpose declared in the ordinance, in the absence of evidence tending to show that the declaration is false and that the ordinance is actually a revenue measure.

196 RCW 35.23.440(11) and RCW 35.27.370(7).

197 RCW 70.05.060(7) and RCW 70.90.150(2).

198 RCW 35.21.020 and RCW 35A.67.010.

199 RCW 19.27.100; RCW 82.02.020.

200 RCW 35.22.280(7), RCW 35.23.440(33), RCW 35.27.370(4), and RCW 35A.11.020.

201 RCW 82.08.02525.

202 RCW 70.77.260.

203 However, in Home Builders v. City of Bainbridge Island, 137 Wn. App. 338, 349 (2007), the state court of appeals rejected the inclusion of costs the city attributed to its building and planning department in determining the fees to be charged developers. The court stated: "We reject the City's and the trial court's expansion of RCW 82.02.020's exception beyond the costs of processing applications, inspecting and reviewing plans, or preparing SEPA statements to include a portion of all costs allowed by accounting and cost allocation guidelines for government agencies."

204 RCW 82.02.050-.090. For more information on impact fees, see MRSC's web page on impact fees at http://www.mrsc.org/Subjects/Planning/impactpg.aspx.

These fees are to be used to pay for system improvements (public facilities in the above categories that are included in the capital facilities plan) that are reasonably related to the new development and that will reasonably benefit the new development.[205]

205 RCW 82.02.050(3).