

LEASEHOLD EXCISE TAX
Chapter 82.29A RCW

Tax Base Interests in publicly owned real or personal property. This typically involves a private lease of public property, often when buildings or other improvements have been added. The leasehold interest in the public land or publicly owned structures is subject to the leasehold tax, while the privately owned improvements are subject to the regular property tax.

In most instances, the tax is measured by contract rent, i.e. the amount paid for use of the public property. Contract rent includes cash payments made to or on behalf of the lessor, any rents paid by sublessees, and expenditures by the lessee for improvements to the property which inure to the owner. Excluded from contract rent are expenditures that are reimbursed by the lessor, expenditures for improvements which are to be used by the general public, expenditures relating to improvements to the property that are required by governmental action after the lease was executed, certain improvements made prior to the effective date of the tax, and improvements that are subject to personal property tax.

The law also provides that the measure of the tax be determined by the Department of Revenue in situations where the lease payment was not arrived at through competitive bidding and the compensation to the lessor does not represent the fair market value of the lease. This procedure also applies to leases which have not been renegotiated for at least ten years.

Tax Rate 12.84 percent. Cities and counties may levy a local leasehold excise tax on leasehold interests in public property within their jurisdictions at a rate up to a maximum of 6 percent, thus reducing the state rate on such property to 6.84 percent. The maximum city rate is 4 percent and it is credited against the county tax. Thus, the maximum county rate is 6 percent in unincorporated areas and 2 percent in cities which levy the maximum city rate.

Levied by State, counties, and cities.

Administration Department of Revenue. The tax is collected by public entities that lease property to private lessees and is reported by the lessor to the Department on a quarterly basis. The law also allows the tax to be levied directly against the lessee, which is sometimes done following a leasehold audit. Lessees of federal property report directly to the Department on an annual basis. The Department retains 2 percent of the local tax receipts for collection expenses, as authorized by statute.

Recent Collections/Distributions (\$000)

STATE LEASEHOLD EXCISE TAX

| <u>Fiscal Year</u> | <u>Collections</u> | <u>% Change</u> | <u>% of All State Taxes</u> |
|--------------------|--------------------|-----------------|-----------------------------|
| 2009 | \$25,613 | 18.0% | 0.2% |
| 2008 | 21,707 | (8.5) | 0.1 |
| 2007 | 23,736 | 5.5 | 0.1 |
| 2006 | 22,506 | 13.0 | 0.1 |
| 2005 | 19,918 | 2.5 | 0.1 |
| 2004 | 19,436 | 4.3 | 0.1 |
| 2003 | 18,628 | 1.7 | 0.2 |
| 2002 | 18,308 | 7.4 | 0.2 |
| 2001 | 17,048 | 2.9 | 0.1 |
| 2000 | 16,567 | 6.0 | 0.1 |

LOCAL LEASEHOLD EXCISE TAXES

| <u>Fiscal Year</u> | <u>Distributions to Cities</u> | <u>Distributions to Counties</u> |
|--------------------|--------------------------------|----------------------------------|
| 2009 | \$11,947 | \$9,548 |
| 2008 | 10,948 | 9,023 |
| 2007 | 10,902 | 8,737 |
| 2006 | 11,107 | 9,603 |
| 2005 | 9,438 | 7,364 |
| 2004 | 9,065 | 7,415 |
| 2003 | 8,551 | 7,187 |
| 2002 | 8,187 | 7,183 |
| 2001 | 7,905 | 6,580 |
| 2000 | 7,488 | 6,372 |

Distribution of Receipts

All state receipts are deposited in the state general fund, including the basic 6 percent state tax, the 7 percent surtax which adds 0.84 percent to the total rate, and the administrative fee for collection of the local taxes.

Local tax receipts are distributed by the State Treasurer on a bimonthly basis. Cities and counties may use the funds for general purposes, except that the county receipts must be further distributed to all local taxing districts, except cities, within the county. During the 2001-03 Biennium the Legislature diverted interest on the local receipts to the state general fund; thereafter the interest is distributed pro rata to the local jurisdictions.

Exemptions, Deductions and Credits

- personal property leased by the federal government or foreign countries for purposes of manufacturing articles for the U.S. or foreign government.
- road and utility easements.
- rights of access for purposes of removing products from public lands.
- operating utility property which is assessed by the state for property tax purposes.
- student housing at public schools and colleges.
- low-income housing that is subsidized by government.
- leases of property for agricultural fairs.
- public employee housing.
- leases by Indians or Indian tribes.
- Indian lands, if the contract rent is at least 90 percent of the fair market rental value.
- leases with annual rents of less than \$250.
- leases of less than 30 days' duration.
- leases of residential units on a month-to-month basis pending destruction or removal for purposes of public construction of highways or buildings.
- leases relating to public works contracts.
- leases for purposes of manufacturing alcohol fuel exempt up to six years (new applications for exemption not accepted after end of 1992).
- a credit of 33 percent of the tax otherwise due for product leases.
- a credit of the amount by which the leasehold excise tax exceeds the amount of property tax which would be due on the leased property if it were in private ownership (thus effectively limiting the leasehold tax to what the property tax would have been).
- property located in a special review district established as of 1976, which is listed on a federal or state register of historical property and which was in existence as of January 1, 1987 (RCW 35.21.755).
- leasehold interest in state-owned adult correctional institutions used in conjunction with the operation of correctional industries.
- leases to nonprofit organizations for the operation of camps and other recreational activities conducted for disabled persons.
- interests in the public or entertainment areas of Safeco Field. The exemption does not extend to locker rooms or private offices of the lessee.
- interests in the public or entertainment areas of Qwest field and exhibition center.
- interests acquired in conjunction with improvements to State Route #16 (Tacoma Narrows Bridge).
- interest in structures and machinery used to produce alcohol fuel, wood biomass fuel, or biodiesel fuel (exemption for up to six years).
- port district property leased to an aircraft manufacturer for production of a super-efficient aircraft.
- the public and entertainment areas of an amphitheater in Clark County.
- property within a designated national historical reserve owned by a municipality.
- credit equal to the senior citizens/disabled persons property tax exemption.
- property used for the placement of military housing.
- infrastructure used as battery recharging or exchanging stations for electric vehicles.

History

In 1970, the State Supreme Court ruled in the Edgewater Inn case that leasehold interest in publicly owned property could be subject to taxation. The following year the Legislature adopted a moratorium on assessment of public leases for property tax purposes until 1974. However, the moratorium only applied to leases contracted since July 1, 1970. With the possibility of leases of public property adopted or renegotiated since July 1, 1970, becoming subject to tax, the 1973 Legislature imposed an excise tax on leases that were effective prior to July 1, 1970, in order to provide some equity for all leases of public property. The rate of the in-lieu excise tax was 14 percent of annual lease payments.

The 1976 Legislature repealed the previous system and in its place established the current statute with a rate of 12 percent, of which cities and counties could levy up to 6 percent. During 1982 surtaxes totaling 7 percent were added, resulting in the current combined tax rate of 12.84 percent. The provision limiting the leasehold excise tax to the amount that would be due under the property tax was approved in 1986.

In 1999, the leasehold tax base was clarified by an amendment to the statute. The definition of leasehold interest was modified to exclude rights of access to public property for purposes of exploring for energy resources or the removal of natural resource products. This has the effect of removing from tax leases for the purpose of grazing livestock. Also, the definition of contract rent for product leases was changed with respect to the value of products that are removed.

In 2001, the leasehold interest in approximately 3,000 residential and recreational parcels located at Lake Cushman in Mason County were shifted from leasehold excise tax to regular property tax, even though the properties remain in public ownership.

Discussion/Major Issues

There are approximately 430 governmental jurisdictions that collect the tax from lessees and report to the Department. The number of federal lessees which report directly to the Department is about 1,300; most of these represent leases of recreational property on national forest lands.

The leasehold tax provides equity in taxation of all property; otherwise private users of public property would realize an economic benefit over privately owned property. The primary examples of leasehold tax involve port property upon which lessees construct warehouses and manufacturing plants, airline facilities at public airports, hotels and major businesses on the University of Washington's "metropolitan tract" in downtown Seattle, state grazing lands, DNR tidelands, national forest land leased for recreational cabins, and publicly developed industrial property.