

Encouraging Investments in Affordable and Supportive Housing – Update on Implementation



Pursuant to RCW 82.14.540(11)

December 2019

REPORT TO THE LEGISLATURE

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Acknowledgments

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Executive Summary

Overview

The 2019 Legislature passed the Encouraging Investments in Affordable and Supportive Housing Act (RCW 82.14.540), authorizing a new state-shared local sales and use tax to invest in affordable and supportive housing. This report responds to the requirements in RCW 82.14.540(11):

"Counties and cities imposing the tax under this section must report annually to the department of commerce on the collection and use of the revenue. The department of commerce must adopt rules prescribing content of such reports. By December 1, 2019, and annually thereafter, and in compliance with RCW 43.01.036, the department of commerce must submit a report annually to the appropriate legislative committees with regard to such uses."

This report includes:

- A description of the mechanics of the sales and use tax
- Data on participating jurisdictions and spending activities
- A summary of the Department of Commerce's role and summary of rulemaking activity
- A summary of the Department of Revenue's administering the tax credit to jurisdictions
- Description of next steps

Key Takeaways

Participating Jurisdictions

Two hundred eighty-three jurisdictions (244 cities and 39 counties) are eligible to implement RCW 82.14.540. Forty-four jurisdictions have passed resolutions of intent to implement the tax credit (22 cities and 22 counties), and 21 have also adopted legislation (11 cities and eight counties). Eighteen jurisdictions have received distributions from DOR (10 cities and eight counties). At the time of publication, three of the jurisdictions that have passed legislation had not yet sent verification to DOR, or DOR data was not yet available. See Table 1 for details by jurisdiction. DOR has distributed \$15,053,796.90 in tax credits to jurisdictions as of Nov. 1.

Rulemaking Status

Commerce filed a Preproposal Statement of Inquiry CR-101 on June 27, 2019, and conducted informal consultation with stakeholders for six weeks. Commerce distributed a draft rule Oct. 21, 2019, anticipates filing the Notice of Rulemaking CR-102 in November 2019, and will hold a formal hearing in December 2019. Commerce will file the final rule with the Code Reviser in January or February 2020, and the rule will become effective in April 2020.

Introduction

Background

RCW 82.14.540 created a revenue-sharing partnership between the state and counties and cities for affordable and supportive housing investments. It authorized a local sales tax option that is a credit against the state sales tax rate of 6.5%. The maximum rate imposed may not exceed either 0.0146 percent or 0.0073 percent. Several cities and counties began the process of implementing the tax credit immediately upon the effective date by passing a resolution of intent and notifying the Department of Revenue (DOR).

Housing and services may be provided only to persons whose income is at or below 60% of the median income of the city or county imposing the tax. Counties over 400,000 population and cities over 100,000 population may use the revenue for only the following:

- *"(i) acquiring, rehabilitating, or constructing affordable housing, which may include new units within an existing structure or facilities providing supportive housing services under RCW 71.24.385 (behavioral health organizations); or*
- *"(ii) Funding the operations and maintenance costs of new units of affordable or supportive housing."*

For counties under 400,000 population and cities under 100,000 population, the revenue may be used for the purposes above and for providing rental assistance to tenants.

The amount of tax a jurisdiction can impose depends, in part, on whether there is a "qualifying" local tax, such as the Sales and Use Tax for Chemical Dependency, Mental Health Services or Therapeutic Courts (RCW 82.14.460). Jurisdictions can receive revenues for up to 20 years. Jurisdictions may finance loans or grants to nonprofit organizations or public housing authorities and may pledge the tax proceeds for repayment of bonds under debt limitations imposed by the state constitution or statute. Additionally, they may enter into an interlocal agreement with other cities, counties, and housing authorities to pool and allocate the revenue.

Pursuant to RCW 82.14.540, jurisdictions imposing the tax must report annually to the Department of Commerce (Commerce) on the "collection and use of the revenues," and Commerce must adopt rules prescribing the content of those reports. The DOR administers the tax but is not authorized or required to conduct any rulemaking.

Program Implementation and Agency Roles

Overview

This section discusses the requirements for jurisdictions to receive tax distributions under RCW 82.14.540, shows data on the jurisdictions taking action under the statute, and details the roles of the Commerce and DOR.

Participating Jurisdictions

A “participating” city or county is one that chooses to impose the affordable housing sales tax credit and completes the two required steps for adoption within 12 months:

1. Pass a resolution of intent by Jan. 28, 2020
2. Adopt legislation to authorize the maximum capacity of the tax by July 28, 2020

Once a jurisdiction adopts legislation, RCW 82.14.055 requires a 30-day waiting period before the credit can take effect. As of Nov. 1, 2019, 43 jurisdictions had begun the process of implementation, and 18 had satisfied all conditions to collect the credit. There were spending activities to report.

Table 1: Jurisdictions Adopting a Resolution of Intent to Authorize the Tax

Jurisdiction	Completed Step 1: Passed Resolution of Intent	Completed Step 2: Adopted Legislation	Maximum Annual Tax Distribution
Counties			
Asotin County	Yes	Yes	Distribution data not available
Benton County	Yes	No	
Chelan County	Yes	No	
Clark County	Yes	Yes	DOR has not received resolution or ordinance yet to impose
Cowlitz County	Yes	No	
Franklin County	Yes	No	
Grant County	Yes	No	
Grays Harbor County	Yes	Yes	\$105,206.02
Island County	Yes	Yes	\$146,440.13

Jurisdiction	Completed Step 1: Passed Resolution of Intent	Completed Step 2: Adopted Legislation	Maximum Annual Tax Distribution
King County	Yes	Yes	\$5,366,226.48
Klickitat County	Yes	No	
Kitsap County	Yes	Yes	\$548,947.89
Mason County	Yes	Yes	\$121,900.28
Pacific County	Yes	Yes	\$40,900.11
Pierce County	Yes	Yes	\$1,601,254.00
San Juan County	Yes	No	
Skagit County	Yes	No	
Snohomish County	Yes	No	
Spokane County	Yes	Yes	\$937,880.63
Thurston County	Yes	No	
Whatcom County	Yes	No	
Whitman County	Yes	Yes	\$64,337.46
Yakima County	Yes	Yes	\$351,655.51
Cities			
City of Auburn	Yes	No	
City of Bothell	Yes	No	
City of Burien	Yes	Yes	\$63,337.27
City of Bremerton	Yes	No	
City of Des Moines	Yes	No	
City of Edmonds	Yes	Yes	\$71,931.05
City of Ellensburg	Yes	No	

Jurisdiction	Completed Step 1: Passed Resolution of Intent	Completed Step 2: Adopted Legislation	Maximum Annual Tax Distribution
City of Issaquah	Yes	No	
City of Kenmore	Yes	Yes	\$22,466.15
City of Kirkland	Yes	No	
City of Medina	Yes	No	
City of Newcastle	Yes	No	
City of Olympia	Yes	Yes	\$329,491.11
City of Redmond	Yes	No	
City of Sammamish	Yes	No	
City of Seattle	Yes	Yes	\$4,228,362.75
City of Snohomish	Yes	Yes	\$37,391.39
City of Spokane	Yes	Yes	DOR has not yet received resolution or ordinance to impose
City of Tacoma	Yes	Yes	\$850,070.46
City of Tukwila	Yes	Yes	\$165,998.21
City of Vancouver	Yes	No	
Totals	44	21	\$15,053,796.90

Source: Department of Revenue

Department of Revenue

Agency Role

DOR's role is to interpret and implement RCW 82.14.540 and to administer the tax credit to jurisdictions. Once a jurisdiction sends its adopted resolution and ordinance to DOR, DOR calculates the maximum tax distribution the jurisdiction is authorized to receive each fiscal year.

The tax is not officially "collected," as this is a state-shared tax credited against the state portion of the sales and use tax. Jurisdictions receive the tax distribution monthly. DOR will collect minimal information from jurisdictions to administer the tax credit and will not inquire about how jurisdictions use tax revenues. DOR provides Commerce with data on jurisdictions' "collection" of the tax for the required annual legislative report.

Determining the Authorized Tax Distribution

The maximum authorized tax distribution is based on the jurisdiction's taxable retail sales in fiscal year 2019 multiplied by the authorized tax rate (0.0073% or 0.0146%). For example, if a city's taxable retail sales were \$1 million in fiscal year 2019, the maximum amount the city may receive is either \$73 or \$146 per fiscal year, depending on its authorized rate. If that city had taxable retail sales of \$50,000 for a particular month and were eligible to receive the 0.0073% rate, it would receive \$3.65 in tax distribution for that month.

The tax rate is based on three factors: the date of adoption, the presence of a qualifying local tax (cities only), and whether the corresponding city or county is participating. In some circumstances, counties and cities share revenue. If the county elects not to participate, cities within that county that have not enacted a qualifying local tax will not receive SHB 1406 revenues after the first year.

Counties do not need a "qualifying local tax" and automatically receive the full share .00146% rate within unincorporated areas in several scenarios. The tax rate cities receive depends on whether there is a qualifying local tax before the July 20, 2020 deadline, and whether the corresponding county participates. The potential scenarios and corresponding tax distributions are shown in Table 2.

Table 2: Tax Distributions in Cities and Counties by Scenario

Scenario	County Participates	City Imposes "Qualifying Local Tax"	County Collects in County	County Collects in City	City Collects in City
If the city chooses not to participate, but the county does participate, the county will receive the full 0.0146% within the city boundaries.	Yes	No	0.0146%	0.0146%	None

Scenario	County Participates	City Imposes "Qualifying Local Tax"	County Collects in County	County Collects in City	City Collects in City
If the city elects to participate and imposes a "qualifying local tax" by the deadline, the city will receive the full 0.0146% share, and the county will not receive any revenues within the city boundaries.	Yes	Yes	0.0146%	None	0.0146%
If the county does not participate, but the city imposes a qualifying local tax by July 20, 2020, the city will receive 0.0146%.	No	Yes	None	None	0.0146%
Cities without a qualifying local tax will receive .0073% ONLY IF THE CORRESPONDING COUNTY CHOOSES TO PARTICIPATE.	Yes	No	0.0146%	0.0073%	0.0073%

Department of Commerce

Agency Role

Participating jurisdictions must report to Commerce on the "collection and use of the revenues" annually, and Commerce is adopting rules prescribing the content of those reports.

Rulemaking

Commerce filed a Preproposal Statement of Inquiry CR-101 on June 27, 2019, and conducted informal consultation with stakeholders for six weeks. Commerce distributed a draft rule on Oct. 21, 2019, and anticipates filing the Notice of Rulemaking CR-102 with the proposed rule in December 2019 and holding a formal hearing in February 2020. Commerce anticipates filing the final rule with the code reviser in April 2020, with the rule becoming effective 30 days after filing in May 2020.

See Appendix A for the proposed rule.

Next Steps

Commerce will align the collection of jurisdictions' "collection and use" reports with the fiscal year so that local data collection cycles coincide with the maximum tax distribution. Therefore, jurisdictions' 2020 reports will be due to Commerce on Oct. 1, 2020. Commerce will compile results of those reports and submit its first annual report to the appropriate legislative committees by Dec. 1, 2020.

Appendix A: Proposed Rule

Chapter 365-240 WAC

AFFORDABLE AND SUPPORTIVE HOUSING--LOCAL SALES AND USE TAX

NEW SECTION

WAC 365-240-010 Authority. This chapter is promulgated pursuant to the authority granted in RCW 82.14.540 requiring counties and cities that impose the local sales and use tax for affordable and supportive housing to report annually to the Department of Commerce on the collection and use of the revenue and for the Department of Commerce to adopt rules prescribing the content of those reports.

NEW SECTION

WAC 365-240-020 Authorized uses of tax revenue. Counties with populations over 400,000 and cities with populations over 100,000 may use tax revenue for (a) acquiring, rehabilitating, or constructing affordable housing, which may include new units within an existing structure or facilities providing supportive housing services under RCW 71.24.385 (behavioral health organizations); OR (b) operations and maintenance costs of new units of affordable or supportive housing.

Counties with populations under 400,000 and cities with populations under 100,000 population may use tax revenue for the activities outlined above, as well as to provide rental assistance to tenants that are at or below 60% of the median income of the county or city that is imposing the tax.

NEW SECTION

WAC 365-240-030 Annual report to the department of commerce. Jurisdictions must submit a report to the department by October 1 annually with the following information pertaining to the most recent fiscal year. Reports submitted by a lead jurisdiction or managing entity pursuant to an interlocal agreement must be accompanied by contract language designating the responsible entity for submitting annual reports and ensuring their accuracy.

A. Revenue collection:

- i. Total tax distribution from the department of revenue;
- ii. Applicable tax rate.

B. Program activities

- iii. Total funds committed;
- iv. Number, types and status of supported projects;
- v. Degree of leverage with other public and private funds;
- vi. Total funds utilized for rent assistance;
- vii. Duration of affordability for supported projects;

C. Program outputs:

- viii. Total funds committed for loans and grants;
- ix. Total funds obligated to support bonding activities;
- x. Total funds committed for operations and maintenance of new units of affordable or supportive housing;
- xi. Total number of households served with rent assistance;
- xii. Target populations served.

[Statutory Authority: RCW 84.14.540]