

# Local Government Lodging Tax Update

**WENDY JOHNSON**

**INTERGOVERNMENTAL RELATIONS ASSOCIATE  
(TAX, FINANCE & ECONOMIC DEVELOPMENT)**

**[WJOHNSON@ORCITIES.ORG](mailto:WJOHNSON@ORCITIES.ORG) 503-540-6585**



# Local Lodging Tax...Basic Facts

---

- Cities and counties have imposed lodging taxes since at least 1930s.
- Lodging taxes are a local option & rate is set by city/county. Referral is not required unless local charter or ordinance requires voter approval.
- Approximately 115 cities and 16 counties have a tax. More have added in recent years.
- Tax rate ranges are 2% to 13.5%. (Most are 6-9%.)
- Tax details are set by city/county. Most track closely with state tax provisions, exemptions, procedures, etc. Most collect and enforce tax on their own.
- Lodging tax state statutes are in ORS Chapter 320– generally latter sections apply to local government

# State transient lodging covers:

- Hotels and motels;
- Bed and breakfast facilities;
- RV sites in RV parks or campgrounds;
- Resorts and inns;
- Lodges and guest ranches;
- Cabins;
- Condominiums;
- Short-term rental apartments and duplexes;
- Vacation rental houses;
- Tent sites and yurts in private and public campgrounds; and
- Any other dwelling unit, or portion of a dwelling unit, used for temporary overnight stays. (< 30 days)



Local tax coverage is often the same but when it varies it is generally in these last 4 categories

# State lodging tax exemptions:

---

## Facilities:

Health care facilities, including hospitals and long care facilities

Drug/alcohol abuse treatment facilities

Mental health treatment facilities

Facilities that have < 30 days of rentals in a year

Emergency temporary shelters funded by the government

Nonprofit youth & church camps, conference centers and other qualifying nonprofit facilities

## Persons:

Lodgers who spend > 30 days at the same facilities

Federal employees on federal business

# Lodging Tax-- Key Legislative History

---

- 2003:** State lodging tax begins (1%) and various state preemptions on local taxes begins
- 2013:** Online travel companies required to pay state and local transient lodging tax on the sale price of the rooms they sell, rather than the discounted price at which they contract for rooms. “Intermediaries” defined and required to pay tax directly rather than forwarding tax to the lodging provider. (HB 2656)
- 2017:** ●**DOR/local government lodging tax info sharing authorized (HB 3180)**  
Confidential info continues to be protected; provides that DOR can request info from local governments to improve state’s tax collection and vice versa. ORS 320.332; OAR 150-320-0060 (rule effective January 1, 2019)  
DOR plans to start sharing in Summer 2019.
- DOR collection of local government taxes authorized (HB 2400)** ORS 305.620(1)  
Not operable because need \$ to start program and program state’s software.
- 2018:** “Intermediaries” definition tweaked again to cover all platforms; clarified intermediary responsibility to collect taxes, file tax returns and pay local government lodging taxes ORS 320.300 (effective July 1, 2019)

# “Transient Lodging Intermediary” (HB 4120) (2018)

---

(12) “Transient lodging intermediary” means a person other than a transient lodging provider that facilitates the retail sale of transient lodging and:

(a) Charges for occupancy of the transient lodging[.];

(b) Collects the consideration charged for occupancy of the transient lodging; or

(c) Receives a fee or commission and requires the transient lodging provider to use a specified third-party entity to collect the consideration charged for occupancy of the transient lodging.

(13) “Transient lodging provider” means a person that furnishes transient lodging.

(14) “Transient lodging tax collector” means a transient lodging provider or a transient lodging intermediary.

# “Transient Lodging Intermediary” (HB 4120) (2018)

---

**SECTION 6. (1) The transient lodging provider or transient lodging intermediary that collects the consideration charged for occupancy of transient lodging, or a transient lodging intermediary described in ORS 320.300 (12)(c), as applicable, is responsible for collecting any local transient lodging tax and shall file a return of the tax with the unit of local government that imposes the tax, or with any tax administrator identified by the unit of local government, reporting the amount of tax due during the reporting period to which the return relates.**

**(2) Returns shall be filed on or before the deadline fixed by the unit of local government for filing of returns and shall be made under penalties for false swearing.**

**(3) When a return is required under this section, the transient lodging tax collector required to file the return shall remit the taxes due to the unit of local government at the time fixed for filing of returns.**

**(4) This section applies to a transient lodging tax collector unless a charter provision or ordinance or resolution of the unit of local government, or an agreement entered into between the transient lodging tax collector and the unit of local government, provides otherwise.**

# Online Travel Companies/Intermediaries History (aka OTCs)

**2012** Online companies sue Portland (to stop collection of city tax)

## **2013 Legislation (HB 2656--effective October 7, 2013)**

Bill requires online travel companies to pay the state and local transient lodging tax on the **sale price** of the rooms they sell, rather than the **discounted price** at which they contract for rooms. In addition, bill requires intermediaries to **pay tax directly** rather than forwarding tax to the lodging provider. That is, “tax shall be collected by the transient lodging tax collector that receives the consideration rendered for occupancy of the transient lodging.”

**November 2013** Online companies sue State of Oregon (DOR) in Oregon Tax Court over HB 2656 (legality of tax on intermediaries)

## **2014**

Portland agreement with Airbnb (Voluntary Collection Agreement - VCA), July 2014 and payments begin

Airbnb payments to DOR begin, September 2014

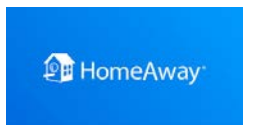
Washington County VCA with Airbnb, effective July 1, 2016; more locals sign VCAs thereafter

Settlement in online companies’ case against State of Oregon (DOR). Some OTCs first start paying tax directly to DOR and some local governments after years of dispute. Some litigation/ difference in practice continues. Letter sent to many cities and counties in October. Back taxes paid from October 7, 2013 to October 2015 in many locales.

## **2018 Legislation (HB 4120—effective July 1, 2018)**

Definition of intermediary revised. Clarified intermediary responsibility to collect, file tax return and pay local government lodging taxes.

Some OTCs begin paying tax in 2018 but others still have not. Nonpayers cite federal/state privacy law concerns, unclear local laws and forms, and not enough time to get their technology right to do the itemizations for the local jurisdiction. (LITIGATION ONGOING, particularly regarding disclosures including addresses)





## Local Government Tax Receipts

2002: ≈ \$60 million

2017: ≈ \$205 million



shutterstock.com • 225727816

See Dean Runyan Report data (meeting materials)

### Examples:

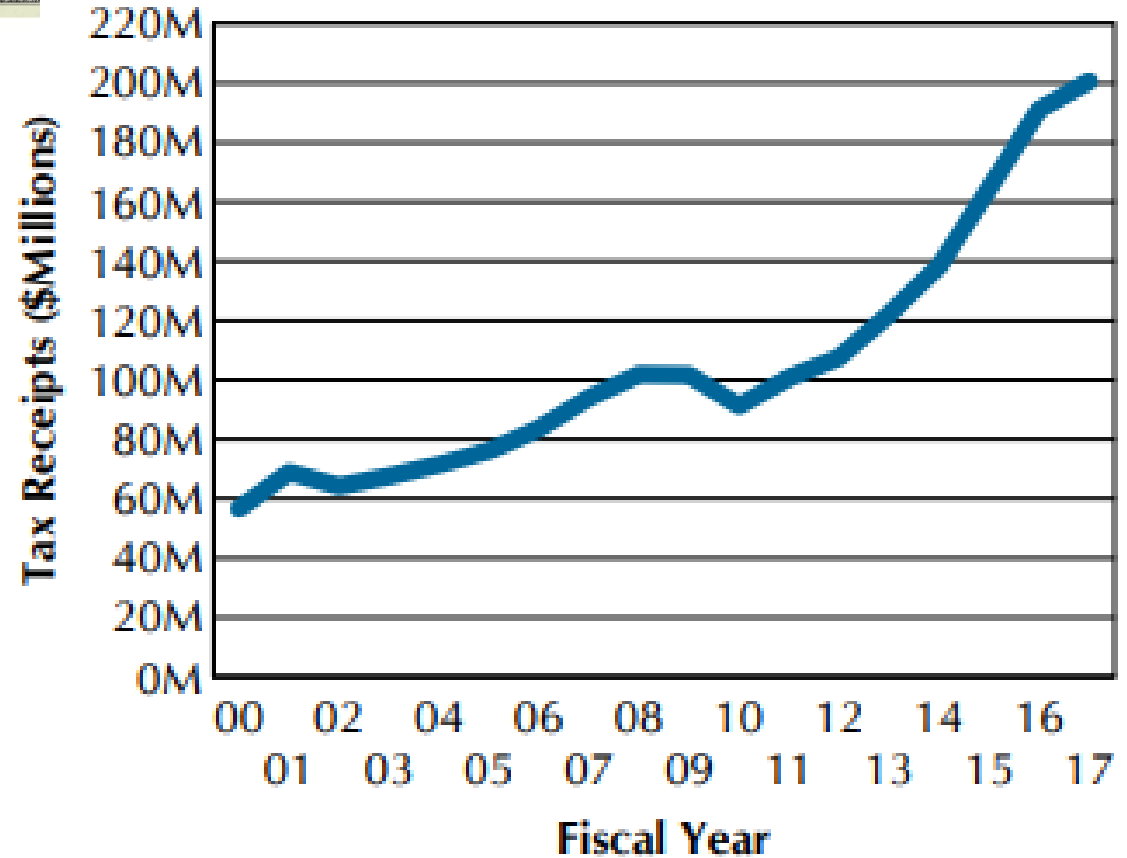
Ashland: 2006: \$1.9 million; 2017: \$2.8 million

Bend: 2006: \$2.96 million; 2017: \$8.9 million

Portland: 2006: \$16.5 million; 2017: \$50.7 million

Rockaway Beach: 2006: \$224K; 2017: \$684K

## **Transient Occupancy Tax Receipts**



# State preemption of local government: 2003

---

○ Moratorium on use of local transient lodging tax revenues:

may not decrease percentage of total TLT revenues that were actually expended or agreed to be expended to fund “tourism promotion” or “tourism-related facilities” as of July 2, 2003. (ORS 320.350)

Frozen at 2003 percentage dedicated to tourism!

Percentages vary amongst counties and cities from

0-100% restricted



# State preemption of local government: 2003

## 70/30 split

---

If local government increases lodging tax or imposes a new tax (after 2003):

- 70% of net revenue from the new or increased tax shall be used for: “**tourism promotion**” or “**tourism-related facilities**” or finance/refinance debt of “tourism-related facilities”
- No more than 30% may be used to fund **city or county services (general fund)**

Thus, total percentage of local tax revenues that are restricted to tourism is highly variable around the state. (Need pre and post- 2003 percentages to figure out number.)

# 4 Key Definitions (ORS 320.300):

---

## #1

(7) “**Tourism promotion** ” means any of the following activities:

- (a) Advertising, publicizing or distributing information for the purpose of attracting and welcoming **tourists**;
- (b) Conducting strategic planning and research necessary to stimulate future **tourism** development;
- (c) Operating **tourism** promotion agencies; and
- (d) Marketing special events and festivals designed to attract **tourists**.

# 4 Key Definitions: (ORS 320.300)

---

## #2

### (9) “**Tourism-related facility**” means:

(a) A **conference center, convention center or visitor information center**; and

(b) Other improved real property that has a useful life of 10 or more years and has a substantial purpose of supporting **tourism** or accommodating **tourist** activities.

- Many cities and counties don't have a facility as defined by (a).
- Subsection (b) is the catch-all for permitted use of revenues in the 70% category. It was intended to provide flexibility but it has been narrowly construed over time.

(See **2008 AG opinion #OP-2008-3**) (Complex!)

# 4 Key Definitions: (ORS 320.300)

---

## #3 & #4

(6) **“Tourism”** means economic activity resulting from tourists.

(10) **“Tourist”** means a person who, for business, pleasure, recreation or participation in events related to the arts, heritage or culture, travels from the community in which that person is a resident to a different community that is separate, distinct from and unrelated to the person’s community of residence, and that trip:

(a) Requires the person to travel more than 50 miles from the community of residence; **or**

(b) Includes an overnight stay.

# Local Lodging Tax Problems

---

1. Not all intermediaries are paying local governments despite HB 4120 (2018).
2. Some intermediaries are paying but require a voluntary collection agreement (VCA); this is inequitable to other lodging tax collectors.
3. The shared economy continues to grow and tracking short term rentals is complex and time consuming. They are not easily identifiable in a community like a hotel/motel.
4. Many intermediaries refuse to disclose addresses of short term rentals, making tax verification and enforcement difficult. Litigation is still pending and there have been mixed results.
5. Tracking traditional hotel/motel taxes is also more complex and time consuming as they also use intermediaries to book rooms and there are many subsidiary intermediaries.
6. Auditing and enforcement (collections, liens, etc.) requires staffing and resources that communities are struggling to fund.
7. The 2003 restrictions on how local governments may use lodging tax revenues is inequitable and is become unduly restrictive. It has been 16 years since the state has been doing tourism promotion and there has been no easing of the restrictions. The tourism industry has grown but so have tourist costs.

# KEY 2019 Pending Legislation to Address Problems

Bill #	Bill summary
HB 2166	codifies <u>subpoena power</u> of local governments to enforce lodging taxes (& get addresses)
HB 3134	expands <u>definition of tourism promotion</u> to allow more flexibility in how lodging tax revenues are used—adds tourist events and sporting event costs (like state provision)
HB 3135 \$	provides <u>appropriation for scraping software</u> to improve state collection of short-term rentals that can be accessed by local governments as well to improve enforcement
HB 3136 \$	provides <u>appropriation for implementing program for state to collect local tax</u> for local governments who opt-in; \$900K loan; paid for by 5% intermediary reimbursements that is foregone until loan is paid
HB 3137	clarifies due date of taxes—would provide that <u>tax is due after stay</u> and not when stay is booked; this is the accrual accounting method that is the norm
HB 3138 *	revises <u>30 day exception</u> : provides that exception to doesn't apply when intermediary is used



# Subpoena bill language– the address problem

---

9       **(5)(a) A unit of local government that imposes a local transient**  
10 **lodging tax may, in conformity with the charter, ordinances, resol-**  
11 **utions and administrative rules of the unit of local government and**  
12 **all applicable federal and state law, subpoena and examine witnesses,**  
13 **administer oaths and order the production of any returns, books, pa-**  
14 **pers, documents, correspondence and other evidence pertaining to the**  
15 **matter under inquiry, tangible or electronic, in any form or format**  
16 **whatever, in the possession, custody or control of any person, when-**  
17 **ever the unit of local government deems such action necessary and**  
18 **proper in the prosecution of inquiries related to the local transient**  
19 **lodging tax. Information requested of a transient lodging tax collector**  
20 **that is subject to Title II of the Electronic Communications Privacy**  
21 **Act of 1986, 18 U.S.C. 2701 et seq., is limited by the provisions of that**  
22 **title.**

23       **(b) A unit of local government may enforce a subpoena or order for**  
24 **production issued pursuant to paragraph (a) of this subsection under**  
25 **the laws of the unit of local government.**

# Current Enforcement by Cities

---

## Auditing:

- Some cities do not audit at all.
- Some do spot audits in house.
- Some cities contract with CPA firms.
- Some use their county partner to audit.

Those that do audit generally select a number to spot audit each year, audit all establishments on rotation or audit based on red flags.

## Finding Nonpayers:

A few cities have purchased data scraping software subscriptions (Host Compliance or STR Helper).

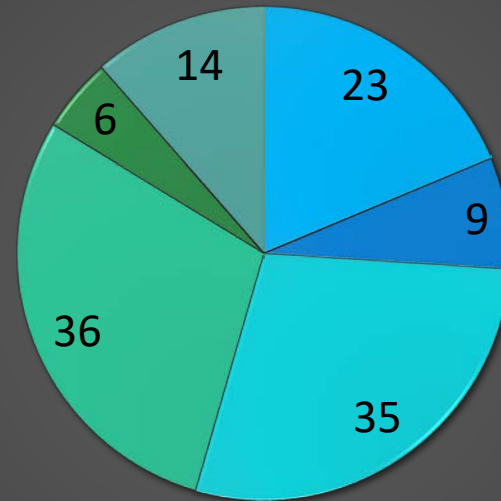
Some cities check and track websites regularly on their own.

Others cities rely on a complaint driven system to enforce against nonpayers.

Coming soon-- sharing info with state.

# City Survey Results

## City Interest in DOR Collection of Local Lodging Taxes



Very Interested

Very Interested but in July

Interested but unsure

Not Interested

Not Interested as Another Entity Collects

No Response

---

# QUESTIONS?