

ORDINANCE NO. 1128

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, IMPOSING A LEASEHOLD TAX PURSUANT TO RCW 82.29A.040; SETTING THE RATE OF SAID TAX; PROVIDING FOR THE ADMINISTRATION AND COLLECTION THEREOF; FIXING PENALTIES FOR FAILURE TO PAY SAID TAX; AND CREATING A NEW CHAPTER 3.34 IN THE REDMOND MUNICIPAL CODE

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WHEREAS, the State of Washington by virtue of RCW 82.29A.030 imposes a twelve percent (12%) excise tax on the act or privilege of occupying or using publicly owned real or personal property through a leasehold interest; and

WHEREAS, RCW 82.29A.040 authorizes cities to enact ordinances levying and collecting such a tax, which tax shall be a credit against the taxes otherwise payable to the State of Washington; and

WHEREAS, if the City of Redmond does not impose the authorized tax revenues will be lost to the City by virtue of the tax being paid directly to the State of Washington; and

WHEREAS, the City Council of the City of Redmond deems it desirable and in the interest of the public safety, health and welfare to impose the leasehold tax authorized by the statute; now, therefore,

THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. There is hereby added to the Redmond Municipal Code a new chapter, 3.34 of said Code, which chapter shall read as follows:

Chapter 3.34

Leasehold Tax

Sections:

- 3.34.010 Imposition of tax
- 3.34.020 Rate of tax
- 3.34.030 Administration and collection of tax
- 3.34.040 Exemptions
- 3.34.050 Inspection of records
- 3.34.060 Authorization to contract with state
- 3.34.070 Penalties
- 3.34.080 Monetary penalty for late tax payments
- 3.34.300 Severability

### 3.34.010 IMPOSITION OF TAX

There is levied and shall be collected a leasehold tax on and after the effective date of this Chapter upon the act or privilege of occupying or using publicly owned real or personal property within the city of Redmond through a "leasehold interest" as defined by RCW 82.29A.020. The tax shall be paid, collected and remitted to the Department of Revenue of the State of Washington at the time and in the manner prescribed by RCW 82.29A.050.

### 3.34.020 RATE OF TAX

The rate of tax imposed by Section 3.34.010 shall be four percent of the taxable rent as defined by RCW 82.29A.020; provided, however, that the following credits shall be allowed in determining the tax payable:

- A. With respect to a product lease as defined by RCW 82.29A.020, a credit of thirty-three percent of the tax produced by the above rate.

### 3.34.030 ADMINISTRATION AND COLLECTION OF TAX

The administration and collection of the tax imposed by this chapter shall be in accordance with the provisions of RCW Chapter 82.29A.

### 3.34.040 EXEMPTIONS

Leasehold interests exempted by RCW 82.29A.130 and 82.29A.135 as they now exist or may hereafter be amended shall be exempt from the tax imposed pursuant to Section 3.34.010 of this chapter.

### 3.34.050 INSPECTION OF RECORDS

The city of Redmond hereby consents to the inspection of such records as are necessary to qualify the city of Redmond for inspection of records of the Department of Revenue pursuant to RCW 82.32.230.

### 3.34.060 AUTHORIZATION TO CONTRACT WITH STATE

The finance director is authorized to execute a contract with the Department of Revenue of the State of Washington for the administration and collection of the tax imposed by this chapter; provided, however, that the city attorney shall first approve the form and content of said contract.

### 3.34.070 PENALTIES

Failure to pay any tax due hereunder shall constitute a misdemeanor and a person or persons convicted of such a crime shall be subject to a fine of up to two hundred fifty dollars for each separate offense.

### 3.34.080 MONETARY PENALTY FOR LATE TAX PAYMENTS

All taxes not paid when due pursuant to the terms of this chapter and RCW Chapter 82.29A. shall be subject to a penalty assessment in addition to the tax itself of an amount equal to twenty percent of the total tax delinquency.

### 3.34.300 SEVERABILITY

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances shall be deemed not to be effected.

Section 2. This ordinance shall be in full force and effect five (5) days after its passage and publication by posting as provided by law.

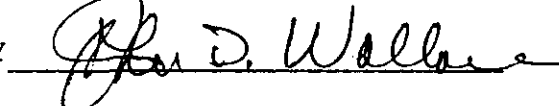
CITY OF REDMOND

  
MAYOR, CHRISTINE T. HIMES

ATTEST/AUTHENTICATED:

  
CITY CLERK, PAUL F. KUSAKABE

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

BY 

FILED WITH THE CITY CLERK: April 26, 1983  
PASSED BY THE CITY COUNCIL: May 3, 1983  
SIGNED BY THE MAYOR: May 3, 1983  
POSTED: May 5, 1983  
EFFECTIVE DATE: May 10, 1983

LEASEHOLD EXCISE TAX 82.29A.020

82.29A.010 Legislative findings and recognition

The legislature hereby recognizes that properties of the state of Washington, counties, school districts, and other municipal corporations are exempted by Article 7, section 1 of the state Constitution from property tax obligations, but that private lessees of such public properties receive substantial benefits from governmental services provided by units of government.

The legislature further recognizes that a uniform method of taxation should apply to such leasehold interests in publicly owned property.

The legislature finds that lessees of publicly owned property are entitled to those same governmental services and does hereby provide for a leasehold excise tax to fairly compensate governmental units for services rendered to such lessees of publicly owned property.

Added by Laws 1975-76, 2nd Ex.Sess., ch. 61, § 1, eff. March 1, 1976.

Library References

Licenses 11(1).

C.J.S. Licenses § 26 et seq.

Notes of Decisions

In general 1  
State funds 2

2. State funds

1. In general  
Legislature has broad plenary powers in its capacity to levy taxes; it can fix the subject of taxation and exempt property, and it can limit or extend the time of payment. Japan Line, Ltd. v. McCaffree (1977) 88 Wash.2d 93, 558 P.2d 211.

Cancellation of ad valorem tax with the concurrent enactment of a higher leasehold tax did not constitute a "gift" of state funds, even though the state allegedly had the power to demand both taxes. Japan Line, Ltd. v. McCaffree (1977) 88 Wash.2d 93, 558 P.2d 211.

82.29A.020 Definitions

As used in this chapter the following terms shall be defined as follows, unless the context otherwise requires:

(1) "Leasehold interest" shall mean an interest in publicly owned real or personal property which exists by virtue of any lease, permit, license, or any other agreement, written or verbal, between the public owner of the property and a person who would not be exempt from property taxes if that person owned

**82.29A.020****EXCISE TAXES**

the property in fee, granting possession and use, to a degree less than fee simple ownership: *Provided*, That no interest in personal property (excluding land or buildings) which is owned by the United States, whether or not as trustee, or by any foreign government shall constitute a leasehold interest hereunder when the right to use such property is granted pursuant to a contract solely for the manufacture or production of articles for sale to the United States or any foreign government. The term "leasehold interest" shall include the rights of use or occupancy by others of property which is owned in fee or held in trust by a public corporation, commission, or authority created under RCW 35.21.730 or 35.21.660 if the property is listed on or is within a district listed on any federal or state register of historical sites. The term "leasehold interest" shall not include road or utility easements or rights of access, occupancy or use granted solely for the purpose of removing materials or products purchased from a public owner or the lessee of a public owner.

(2) "Taxable rent" shall mean contract rent as defined in subsection (a) of this subsection in all cases where the lease or agreement has been established or renegotiated through competitive bidding, or negotiated or renegotiated in accordance with statutory requirements regarding the rent payable, or negotiated or renegotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor: *Provided*, That after January 1, 1986, with respect to any lease which has been in effect for ten years or more without renegotiation, taxable rent may be established by procedures set forth in subsection (b) of this subsection. All other leasehold interests shall be subject to the determination of taxable rent under the terms of subsection (b) of this subsection.

(a) "Contract rent" shall mean the amount of consideration due as payment for a leasehold interest, including: The total of cash payments made to the lessor or to another party for the benefit of the lessor according to the requirements of the lease or agreement; expenditures for the protection of the lessor's interest when required by the terms of the lease or agreement; and expenditures for improvements to the property to the extent that such improvements become the property of the lessor. Where the consideration conveyed for the leasehold interest is made in combination with payment for concession or other

LEASEHOLD EXCISE TAX 82.29A.020

rights granted by the lessor, only that portion of such payment which represents consideration for the leasehold interest shall be part of contract rent.

"Contract rent" shall not include: (i) Expenditures made by the lessee, which under the terms of the lease or agreement, are to be reimbursed by the lessor to the lessee; (ii) expenditures made by the lessee for the replacement or repair of facilities due to fire or other casualty or for alterations or additions made necessary by an action of government taken after the date of the execution of the lease or agreement; (iii) improvements added to publicly owned property by a sublessee under an agreement executed prior to January 1, 1976, which have been taxed as personal property of the sublessee prior to January 1, 1976, or improvements made by a sublessee of the same lessee under a similar agreement executed prior to January 1, 1976, and such improvements shall be taxable to the sublessee as personal property; (iv) improvements added to publicly owned property if such improvements are being taxed as personal property to any person.

Any prepaid contract rent shall be considered to have been paid in the year due and not in the year actually paid with respect to prepayment for a period of more than one year. Expenditures for improvements with a useful life of more than one year which are included as part of contract rent shall be treated as prepaid contract rent and prorated over the useful life of the improvement or the remaining term of the lease or agreement if the useful life is in excess of the remaining term of the lease or agreement. Rent prepaid prior to January 1, 1976, shall be prorated from the date of prepayment.

With respect to a "product lease", the value of agricultural products received as rent shall be the value at the place of delivery as of the fifteenth day of the month of delivery; with respect to all other products received as contract rent, the value shall be that value determined at the time of sale under terms of the lease.

(b) If it shall be determined by the department of revenue, upon examination of a lessee's accounts or those of a lessor of publicly owned property, that a lessee is occupying or using publicly owned property in such a manner as to create a leasehold interest and that such leasehold interest has not been established through competitive bidding, or negotiated in accordance with

## 82.29A.020

### EXCISE TAXES

statutory requirements regarding the rent payable, or negotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor, the department may establish a taxable rent computation for use in determining the tax payable under authority granted in this chapter based upon the following criteria: (i) Consideration shall be given to rental being paid to other lessors by lessees of similar property for similar purposes over similar periods of time; (ii) consideration shall be given to what would be considered a fair rate of return on the market value of the property leased less reasonable deductions for any restrictions on use, special operating requirements or provisions for concurrent use by the lessor, another person or the general public.

(3) "Product lease" as used in this chapter shall mean a lease of property for use in the production of agricultural or marine products to the extent that such lease provides for the contract rent to be paid by the delivery of a stated percentage of the production of such agricultural or marine products to the credit of the lessor or the payment to the lessor of a stated percentage of the proceeds from the sale of such products.

(4) "Renegotiated" means a change in the lease agreement which changes the agreed time of possession, restrictions on use, the rate of the cash rental or of any other consideration payable by the lessee to or for the benefit of the lessor, other than any such change required by the terms of the lease or agreement. In addition "renegotiated" shall mean a continuation of possession by the lessee beyond the date when, under the terms of the lease agreement, the lessee had the right to vacate the premises without any further liability to the lessor.

(5) "City" means any city or town.

Added by Laws 1975-76, 2nd Ex.Sess., ch. 61, § 2; eff. March 1, 1976.  
Amended by Laws 1979, Ex.Sess., ch. 196, § 11, eff. July 1, 1979.

#### Historical Note

The 1979 amendment, in subsec. (1), added the second sentence of the proviso.      Effective date—Laws 1979, Ex. Sess., ch. 196: See Historical Note following § 82.04.240.

#### Library References

Licenses ⇐11(1).

C.J.S. Licenses § 26 et seq.

LEASEHOLD EXCISE TAX 82.29A.040

Notes of Decisions

1. In general

Taxation of improvements added to publicly owned property leased to person not exempt from ad valorem taxes. Op.Atty.Gen.1977, No. 8.

82.29A.030 Tax imposed—Rate—Credit

There is hereby levied and shall be collected a leasehold excise tax on the act or privilege of occupying or using publicly owned real or personal property through a leasehold interest on and after January 1, 1976, at a rate of twelve percent of taxable rent: *Provided*, That after the computation of the tax there shall be allowed credit for any tax collected pursuant to RCW 82.29A.040.

Added by Laws 1975-76, 2nd Ex.Sess., ch. 61, § 3, eff. March 1, 1976.

Cross References

- Allowable credits, see § 82.29A.120.
- Disposition of revenue, see § 82.29A.070.
- Exemptions, see § 82.29A.130.
- Payment of taxes, see § 82.29A.050.

Library References

- Licenses ⇨ 11(1), 29.
- C.J.S. Licenses §§ 26 et seq., 48.

Notes of Decisions

- In general 1
- Exemptions 2

"novel," the form of the tax being new but the subject matter previously taxed. *Japan Line, Ltd. v. McCaffree* (1977) 88 Wash.2d 93, 558 P.2d 211.

1. In general

Retroactive imposition of leasehold excise tax was not violative of due process, where the tax was clearly designed to impose a true tax for the direct support of government, and where the tax was not

2. Exemptions

Taxation of improvements added to publicly owned property leased to person not exempt from ad valorem taxes. Op.Atty.Gen.1977, No. 8.

82.29A.040 Counties and cities authorized to impose tax —Maximum rate—Credit—Collection

The legislative body of any county or city is hereby authorized to levy and collect a leasehold excise tax on the act or privilege of occupying or using publicly owned real or personal property through a leasehold interest in publicly owned property