

Section 1 - What's in this Chapter

Updated 2011

This chapter begins with a description of legislative history written by Lynn Birleffi, co-founder of WTIC and a legislator when the lodging tax bill was introduced. Key points from the authorizing statute are discussed in non-legal language, including what the tax is, how to get it on the ballot, and lodging tax exemptions. This chapter is intended as a guide only. Specific questions should be directed to the appropriate legal authority in your community.

Section 2 - Legislative History

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In 1985 efforts to pass a broad-based visitors tax (lodging, restaurants, liquor, and other related industries) to promote tourism failed. After much discussion, the lodging industry agreed to support a local option sales tax on lodging only, provided the tax was used to fund local tourism promotion and not to fund buildings or other tourism facilities. The industry felt these types of facilities should be funded from general sales tax revenues or a general capital facility tax. They also stipulated that the governing board would be composed primarily of members of the tourism industry.

In 1986, House Bill 122 authorizing a lodging tax of one or two percent was introduced with the general limitation that expenditures were to promote travel and tourism. House and Senate amendments added the provisions regarding promotional material and other limitations. Because the amendments were from the floor, no materials exist to indicate legislative intent regarding these limitations. The bill narrowly passed the House, was approved by the Senate, and signed into law by the Governor. The law was amended in 1989 to allow up to four percent tax.

The lodging tax was passed so communities could market their unique assets, augmenting promotions by the state and private sector. In many cases, communities had a specific market need that the state could not financially support. Often these needs were broader than could be supported by just one private sector business, so the local option lodging tax filled an important gap.

The lodging tax was to be used for travel and tourism promotion by the county or city approving the tax. Expenditures for travel and tourism promotion were limited to promotional materials, television and radio advertising, printed advertising, promotion of tours and other specific tourism related objectives. None of the lodging tax revenues could be used for capital construction or improvements. (That has since changed in some cases, as will be discussed in further chapters).

Section 3 - What the Lodging Tax Is

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In communities that have approved the lodging tax, all establishments providing sleeping accommodations to transient guests (who stay less than 30 days) must collect this special sales tax. This applies to hotels, motels, tourist courts, RV and trailer parks, dude ranches, bed & breakfasts, condominiums, and campgrounds. Today 23 of the 23 counties in Wyoming have either a city or county-wide tax. A list of cities and counties with the lodging tax and percentages is found on the Department of Revenue website at <http://revenue.state.wy.us>. Check their sections on Forms and Publications.

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- The tax can be from one to four percent and it must be in one percent increments (e.g. can't be 1.5%). The amount is determined by the city or county that votes for the tax. W.S. 39-15-204(a)(ii)
- The tax can be either county-wide or in individual cities. If a county-wide tax is in place, a city CANNOT have an additional lodging tax even if the combined county and city taxes wouldn't exceed the 4% limit. W.S. 39-15-203(a)(ii)(A)
- The tax begins on the first day of a calendar quarter after 60 days notice has been given to the lodging properties. (If the election is in November, the tax begins April 1.) W.S. 39-15-203(a)(ii)(B)
- Resorts and dude ranches must collect lodging tax. If the resort or dude ranch doesn't separate lodging charges from charges for meals and other services, the total amount billed is taxable. WY Dept. of Revenue Rules, Chapter 2, Section 15(ee)
- Charges for services and supplies furnished in connection with lodging, such as in-room video viewing and room service meals, are subject to the lodging tax. WY Dept. of Revenue Rules, Chapter 2, Section 15®(i)
- When a guest (individual or corporate) leases a room for thirty or more continuous days, no tax is due. For example, if a corporation rents a room for thirty continuous days and rotates employees through the room, no tax is due because the corporation is considered the guest. The contract, lease, or correspondence should clearly indicate this arrangement. If the lodging service ends before the thirtieth day, then tax is due. WY Dept. of Revenue Rules, Chapter 2, Section 15®(v)

Exemptions

- Any entity exempt from paying sales tax is exempt from paying lodging tax AS LONG AS the entity pays the bill directly. An employee of an exempt entity who pays with personal funds must pay the lodging tax (and sales tax as well) even if the employee will be reimbursed by the exempt entity. WY Dept. of Revenue Rules, Chapter 2, Section 9(d)
- Entities that are exempt from paying lodging tax include:
 - United States government employees paying with a centrally billed SmartPay card WY Dept of Revenue, Excise Tax Division, Tax Publication #3, page 11
 - The state of Wyoming or its political subdivisions (this includes schools) W.S. 39-15-105(a)(iv)(A)
 - Religious or charitable organizations in the conduct of their regular functions W.S. 39-15-105(a)(iv)(B)
 - A joint powers board organized under the Wyoming Joint Powers Act W.S. 39-15-105(a)(iv)(D)
 - An irrigation district created under W.S. 41-7-201 through 41-7-210 W.S. 39-15-105(a)(iv)(G)
 - A weed and pest control district created under W.S. 11-5-101 W.S. 39-15-105(a)(iv)(H)
- Guides and outfitters providing lodging are specifically exempt from collecting lodging tax. W.S. 39-15-105(a)(viii)(G)
- Lodging purchased by a licensed guide or outfitter may be purchased exempt from sales tax as a purchase for resale. Any applicable lodging tax pertaining to lodging other than temporary shelters mentioned in W.S. 39-15-105(a)(viii)(G) must be paid to the lodging

vendor by the guide or outfitter. WY Dept of Revenue, Excise Tax Division, Tax Publication, page 10. Check <http://revenue.state.wy.us>. Go to Publications.

Section 4 - What the Money Can be Used For

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According to statute “Expenditures for travel and tourism promotion shall be limited to promotional materials, television and radio advertising, printed advertising, promotion of tours and other specific tourism related objectives, provided that none of these funds shall be spent for capital construction or improvements...” W.S. 39-15-211(a)(ii)(B)(I) [What can be spent on capital construction has since been clarified and is attached as an appendix.

In the statute it is clear that the tax must be used for travel and tourism promotion by the county or town approving the tax. It is also clear that lodging tax revenues can not be used for constructing tourism facilities such as parks, museums, visitor centers, or transportation systems. The Attorney General in a July 1993 opinion (see Appendix 106) affirmed that the statute “... definitely prohibits building facilities such as restrooms, bike trails and the like ...”, “... would appear to prohibit expenditures for such things as operation of parks or transportation systems ...”, and “... may permit payment of salaries for persons to answer tourist, convention and tour type inquiries and the like.”

While it is clear that facility construction costs should not be paid for, opinions differ over what can be included in expenditures for “other specific tourism related objectives”. In the same July 1993 opinion, the Attorney General declined to go into detail on this issue, stating that “... the question may be who should decide what the expenditures should be in order to promote tourism in the locality imposing the tax. I do not believe this office can or should be the final arbitrator of the question since the present statute could be subject to several interpretations.”

It is generally accepted that travel and tourism promotion should bring people in from outside the area for an overnight stay in the community. Using this criteria, lodging tax money has been used for specialty gifts, events, office supplies, equipment, vans, and staff. It has also been used to operate visitor centers and convention and visitor bureaus (however, it can't be used for the construction of these facilities). If deciding whether expenditures are appropriate is a recurring problem for your board, it may help to insert a listing of appropriate expenditures into your bylaws.

- Expenditures are restricted to travel and tourism promotion. W.S. 39-15-211(a)(ii)(B)(I)
- Capital expenditures are specifically prohibited unless lodging tax deposits are more than \$500,000 (adjusted for inflation) per 1% of tax during the preceding three year period (e.g. if the tax is 3%, deposits must be \$1,500,000 or more in each of the three preceding years.) Qualifying boards must use 30% of total lodging tax revenue for providing visitor impact services and must deposit 10% into the general fund of the county. W.S. 39-15-211(a)(ii)(D,E,F,G)

What is considered “capital construction?”

W.S. 39-15-211(a)(ii)(B)(I) regarding distribution of the revenues collected under 39-15-204(a)(ii), the excise tax imposed on lodging services, “the primary purpose of which is for local travel and tourism promotion” states that “expenditures for travel and tourism promotion shall be limited to promotional materials, television and radio advertising, printed advertising, promotion

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of tours and other specific tourism related objectives, or improvements. When the revenues collected exceed the amounts in W.S. 39-15-211(a)(ii)(D) through (G), then some of the funds (30%) must be used for “visitor impact” services within the governmental entity imposing the tax.

“Visitor impact services” are defined in this 39-15-211(a)(ii)(III)(3) as including but not limited to the provision of vehicle parking, public transportation, public restrooms, pedestrian and bicycle pathways, museums and other displays.” Other than the inclusion of these several types of facilities and improvements, no other definition is provided to determine the extent of what could be included in visitor impact services.

- If the tax is county-wide, all expenditures must be made in accordance with the Uniform Municipal Fiscal Procedures Act which deals primarily with budgeting and other record keeping. W.S. 39-15-211(a)(ii)(B)(I)

Section 5 - Election Procedures

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Getting the Tax on the Ballot

- There are two routes you can take to get the lodging tax proposition placed on a ballot. Consult with your county or city attorney to make sure the appropriate steps are followed and for correct wording on the resolutions and ballot language.
 - Submit a petition signed by 5% of your county or city’s registered voters. W.S. 39-15-203(a)(ii)(C)
 - Obtain a resolution. For a county-wide tax you need a resolution from the county commissioners and 2/3 of the incorporated municipalities in the county. For a city tax you need a resolution from the governing body of the city. W.S. 39-15-203(a)(ii)(C,D)
See Appendix 110 and 111 for sample resolutions.
- Counties and cities can hold a special election for the lodging tax or can put the tax proposition on the ballot during a regular election. W.S. 39-15-203(a)(ii)(D)
 - General elections are held on the first Tuesday following the first Monday in November of each even-numbered year. W.S. 22-2-104(a)
 - Primary elections are held on the first Tuesday after the third Monday in August in general election years. W.S. 22-2-104(b)
 - Town elections are held on the first Tuesday after the first Monday in May every two years. W.S. 22-2-104©
- Notice of a general or primary election (including the lodging tax proposition) must be given well before the election date. The county or city must have all approvals and the actual ballot language available for the county clerk by the following deadlines:
 - The county clerk must publish the notice between 45 and 35 days before a general election. W.S. 22-2-109(b)
 - The county clerk must publish the notice between 101 and 91 days before a primary election. W.S. 22-2-109(a)
- In addition, under the terms of the lodging tax statute, notice of the election must be posted by the county or city once each week for 30 days before the election in at least one

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newspaper published in the county or city where the election will be held. W.S. 39-15-203(a)(ii)(D)

Subsequent Elections

Once you have initial approval from the public for the lodging tax, it must be re-approved periodically.

- The same lodging tax proposition is submitted to the voters at the second general election after approval. W.S. 39-15-203(a)(ii)(D)
- From then on, the same lodging tax proposition is submitted to the voters every four years at a general election until defeated. W.S. 39-15-203(a)(ii)(D)
- A proposal to increase an existing lodging tax can be placed on the ballot by the same routes (petition or resolution) used to place the initial tax on the ballot. W.S. 39-15-203(a)(ii)(D)

Section 6 - Election Results

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Approval of the Lodging Tax

- The lodging tax proposal is passed if a majority of those casting their ballots vote in favor of imposing the tax. W.S. 39-15-203(a)(ii)(B)
- The county commissioners (if a county-wide tax) or city council (if a city-wide tax) then passes a resolution or ordinance imposing an excise tax on the sales price for lodging services. W.S. 39-15-203(a)(ii)(F)
- Within 30 days following certification of the election results, the county commissioners or the city council (as appropriate) must notify the Department of Revenue of the ordinance or resolution and must submit a list of persons selling lodging services within their jurisdiction. W.S. 39-15-203(a)(ii)(F)
- Each year the tax is in effect, the commissioners or council must notify the Department of Revenue of the resolution or ordinance and must provide an updated list of persons selling lodging services. W.S. 39-15-203(a)(ii)(F)

Defeat of the Lodging Tax

If more than 50% of those casting their ballots vote against the lodging tax proposition, the tax is defeated.

- After being defeated, the lodging tax proposition can't be resubmitted to the voters for at least eleven months. W.S. 39-15-203(a)(ii)(E)
- The tax is collected until June 30 of the year immediately following the general election when the tax was defeated. W.S. 39-15-203(a)(ii)(E)
- The state treasurer retains revenues collected during the last three months the tax is in effect to provide for refund of any overpayment of tax. On June 30 one year after the tax expires, the state treasurer will distribute any remaining balance to the treasurer of the appropriate county or city.

W.S. 39-15-211(a)(ii)(C)

Section 7 - Tax Collection and Distribution

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Lodging tax is collected from the transient guest by the lodging property and remitted to the Wyoming Department of Revenue.

- The first year a county or city institutes the lodging tax, the State keeps a 2% administrative fee. W.S. 39-15-211(a)(ii)(A)
- Each year after that the State keeps a 1% administrative fee. W.S. 39-15-211(a)(ii)(A)
- The remaining lodging tax revenues are distributed monthly to the county or city treasurer. W.S. 39-15-211(a)(ii)(B)
- The county or city must spend at least 90% of the money for travel and tourism promotion. If there is money remaining, up to 10% can be put into the general fund of the city or county. W.S. 39-15-211(a)(ii)(B)(I,II) BUT, that can be changed if your city and county governing bodies agree to put 100% of the tax into your Joint Powers Board.
 - How much money can be saved or held in reserve by the Lodging Tax Board?

Reports on lodging tax issued by the Department of Revenue reflect the date the tax is remitted to the Department. If a lodging property remits late or remits quarterly, the money may not be reported until several months after it was actually collected from the guest. In other words, it takes at least two months and sometimes more for lodging tax dollars to travel from collection by the lodging property to remittance to the Department of Revenue to disbursement to the counties and cities. As a result, lodging tax deposits normally lag guest visits by several months. Over the course of the year, the lodging tax board will get their money. It just may not come when they expect it.

Section 8 - Reporting and Enforcement

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Local governments and their entities (including both county and city lodging tax boards) must report financial information yearly following Department of Audit rules (see Chapter 6 for more information.) The Department of Revenue is in charge of collecting and distributing lodging tax revenues. Both Departments are willing to answer any questions you might have and are responsible for enforcement of their own rules. The Attorney General can provide opinions relating to the statutes and rules but the question must come from a Department or legislator. Normal criminal and civil law applies to other actions of county and city lodging tax boards.

- Lodging tax boards must have a yearly review or audit. WY Dept. of Audit Rules, Chapter 6, Section 3
- Lodging tax boards must also complete an annual census report (F-32). WY Dept. of Audit Rules, Chapter 5, Section 3

What is the annual census report?

Special districts, like the lodging tax board of a joint powers board, are required by the State of Wyoming, Department of Audit, Chapter 5, Special District Informational Reporting, Department of Audit, Public Funds, effective September 4, 2007, to submit an annual census report form. The census report is utilized by the Department of Audit to obtain information on revenue, expenditure and financial activity of the special district. Chapter 5, Section 2.

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For Special Districts, the census report from that must be used is the Survey of Local Government Finances. Single purpose districts, like the lodging tax boards, must use Department of Audit form, F-32. Reports must be filed with the Department of Audit within 90 days of the entity's fiscal year end. Chapter 5, Section 5, citing W.S. 9-1-510(b)

Section 9 - Resource Material

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This manual should be used as a guide only as it is based on changing legal requirements. We suggest you consult appropriate professional counsel if you have specific questions. The following material is included in the appendix section of this manual for general reference. You can also check the State's websites at <http://legisweb.state.wy.us> for current statutes, <http://revenue.state.wy.us>. Check their sections on Forms and Publications and <http://soswy.state.wy.us> for current election rules.

- Appendix 101 - Wyoming Statute 22-2-1: Elections
- Appendix 102 - Wyoming Statute 39-15: Sales and Lodging Tax
- Appendix 103 - Link to Department of Revenue Rules: Sales and Use Tax
- Appendix 104 - Link to Lodging Tax: Department of Revenue Tax Publication #3
- Appendix 105 - Lodging and Sales Tax Rates for town and counties in Wyoming
- Appendix 106 - A July 1993 Attorney General opinion on permissible uses of lodging tax revenue
- Appendix 107 - An August 1993 opinion from the Attorney General on requiring 10% of lodging tax revenue to be used as general revenue
- Appendix 108 - An October 1987 letter from the Department of Revenue on the taxability of outfitter and guide services
- Appendix 109 - An August 1989 letter from the Department of Revenue on the taxability of outfitter and guide services
- Appendix 110 - Lodging Tax Resolution: Town Council
- Appendix 111 - Lodging Tax Resolution: County Commissioners
- Appendix 112 – Resort Areas