

Frequently Asked Questions

Implementation of ESHB 1287: Subjecting federally recognized Indian tribes to the same conditions as state and local governments for property owned exclusively by the tribe

Leasehold Excise Tax (LET)

1. How are persons who rent or lease tribally owned exempt property impacted by the new law?

- A. When the tribally owned real or personal property (parcel) is exempt from property tax, the parcel's occupant (the tribe's tenant or lessee) may be subject to leasehold excise tax (LET). The Department of Revenue (Department) will contact the tenant/lessee to determine their responsibility to pay the LET. Persons/lessees that would qualify for an exemption from property tax if they owned the property in fee may also qualify for an exemption from LET. When determining the amount of LET due, the tax rate of 0.1284 is applied to the contract rent amount. Tenants/lessees of tribally owned exempt property will report and pay LET directly to the Department.

For leased *exempt* economic development property owned by the tribe and located inside the reservation, non-Indian tenants/lessees may be subject to LET. If that property is located outside the reservation, tribe, tribal member and non-Indian tenants/lessees may be subject to LET.

For leased economic development property subject to property tax (*not exempt*), the lease is not subject to LET.

2. Current contracts are based on the property being subject to property tax, can the contract rent amount be adjusted to specifically address the change in taxation?

- A. Under WAC 458-29A-200, the amount of taxable rent is ordinarily the amount of contract rent paid by a lessee for a taxable leasehold interest. Subsection (6)(b) of this rule discusses the criteria that the Department considers to determine if a different taxable rent calculation should be established on the basis that the contract rent is below what a fair market rental value should be. Under subsection (6)(c) of the rule, the Department will not establish a taxable rent if one of the following four situations apply:
- (i) The leasehold interest has been established or renegotiated through competitive bidding;
 - (ii) The rent was set or renegotiated according to statutory requirements;
 - (iii) Public records demonstrate that the rent was the maximum attainable; or
 - (iv) A lease properly established or renegotiated in compliance with (6)(c)(i), (ii), or (iii) has been in effect for ten years or less without renegotiation.

In sum, the LET may be a factor when a tribal lessor negotiates or renegotiates an appropriate contract rent with a new or existing lessee.

3. What are the options for remitting the LET for either the lessor or lessee?

- A. The lessee is the taxpayer; however, the lessor and lessee may make arrangements for the lessor to remit the tax on behalf of the lessee. The Department will mail tax returns to the address the tenant provides as their mailing address, which may be an address in care of the lessor. However, the tax account will be established under the taxpayer's name and the responsibility for filing and paying the tax remains with the taxpayer. If you would like to discuss another option please contact the Department directly to discuss your proposal.

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Payments in lieu of leasehold excise tax (PILT)

4. If a tribe's economic development property is exempt from property tax and there is no taxable leasehold interest, how does the tribal owner compensate local taxing districts for local services?

- A. If the exempt tribally owned economic development property is located off the reservation, a payment in lieu of leasehold excise tax (PILT) is made by the tribal owner to the county in which the property is located. The tribe pays the PILT directly to the county. The county distributes the PILT to the cities and other local taxing districts in the same proportion that each city or local taxing district would have shared if a leasehold excise tax had been levied.

5. Who calculates the PILT amount?

- A. The tribe that owns the property and the county in which the property is located must determine the PILT amount through good faith negotiations. There is no restriction on what method to use when the amount is set by the parties through good faith negotiations.

6. Who do I contact at the county to find out more information about the PILT negotiation process?

- A. Because each county is likely to implement its own PILT negotiation process, the Washington State Association of Counties (WSAC) recommends initially contacting the Chair of the County Commission/Council or the County Clerks of the Board-Council to find out more information.

A link to WSAC's searchable member directory is provided below to assist the tribes with contact information: <http://wacounties.org/wsac/memberdirectory.htm>

7. What happens if a tribe and a county cannot agree on a PILT amount?

- A. If a tribe and a county are unable to agree on a PILT amount through good faith negotiations, they may request the Department's Special Programs Division determine the PILT amount. Requests must be received by August 31st in the year the property tax exemption application is made:

State of Washington
Department of Revenue
Special Programs Division, Leasehold Excise Tax
PO Box 47477
Olympia WA 98504-7477

Call 360-534-1503, option 4 with any questions.

8. What information must be included in the request to the Department to determine the PILT amount?

- A. The following information must be included in the request to the Department:
- Contact information for the tribe and county—names, titles, addresses, phone numbers, fax numbers, and email addresses.
 - These contacts must be the individuals who have been authorized to negotiate the PILT and have signing authority for the agreement.
 - A copy of each parcel's most recent property tax statement.
 - A spreadsheet that includes the following for each parcel:

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- The parcel number, location code, and tax code area (assigned by the county assessor);
 - The final PILT amounts proposed by the tribe and county, respectively;
 - The contract rent amount for the property if the tribe were to lease it to an “arms length” tenant;
 - The county’s estimated fair market lease value (by month or year) for the property as if it were leased;
 - A statement from the county and tribe on the basis for the proposed PILT amounts and other values;
 - A full description of the property, including an estimate of revenues, expenses, or other factual information that the parties believe are relevant to establishing a “taxable rent” calculation; and
 - If a business that is registered with the Department is located on the property, provide the business name and tax reporting number.
- A list of all agreed upon terms of a PILT agreement such as:
 - Frequency of payments
 - To whom payments be made payable;
 - Where to send the payments;
 - Length of time the PILT agreement will be in effect;
 - Any other details as necessary.

9. What will the Department consider when asked to determine the PILT amount?

- A. The new law (EHB 1287, Section 8) provides only one limitation on the amount of PILT that can be established; that is, the PILT amount may not exceed the leasehold excise tax amount that would otherwise be owed by a taxable leasehold interest in the property.

When calculating the maximum PILT threshold, the following information may be useful:

The last property tax assessment amounts for the included parcels.

Leasehold excise tax (LET): The amount of LET due is calculated by multiplying the tax rate by the annual amount of contract rent. If the contract rent is not a market value, a taxable rent calculation is established and used in the calculation of the tax due.

Leasehold excise tax rates: The tax rate imposed statewide for leasehold excise tax is 12.84% of the taxable rent. The local portion of the leasehold excise tax is 6.0%. Because the PILT is paid directly to the county for distributions to the county, cities, and other local taxing districts in the same proportion that each local taxing district would have shared if a leasehold excise tax had been levied, the Department has determined that only the local portion of the tax rate (6.0%) applies to calculate the maximum threshold of a PILT amount.

Determining a taxable rent: When the Department establishes a taxable rent for the LET, it uses the guidelines adopted in WAC 458-29A-200(6)(a):

- (i) Consideration shall be given to rent being paid to other lessors by lessees of similar property for similar purposes over similar periods of time; or
- (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.

10. When distributing PILT to the cities and other local taxing districts, how will the county determine amounts to be distributed when it is based on leasehold excise tax distribution?

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- A. The county treasurer must distribute all such money collected solely to the local taxing districts (Tax Code Areas or TCA's), including cities, in the same proportion that each local taxing district would have shared if a leasehold excise tax had been levied.

To find cities that impose a LET, see the back of the leasehold excise tax return located at DOR's website: http://dor.wa.gov/content/FindTaxesAndRates/OtherTaxes/tax_leasehold.aspx. Tax code areas are assigned by to each parcel by the county assessor's office.

11. Is there a simple way to determine how tribally owned fee land is taxed or not taxed?

- A. Yes, the following matrix outlines the treatment of tribal property owned in fee on or off a reservation.

Tribal Property Owned in Fee	Inside Reservation	Outside Reservation
Non-Economic Development Property ★ <i>Property owned by the Tribe and used to provide an essential government service <u>other than economic development</u>.</i>	Eligible for Exemption	Eligible for Exemption
Economic Development Property ★ <i>Property owned by the tribe on or before March 1, 2014 and <u>occupied by the Tribe</u> for economic development purposes.</i>	Eligible for Exemption * <i>Annual Renewal Required</i>	Eligible for Exemption * <i>PILT agreement is a requirement for exemption</i> * <i>Annual Renewal Required</i>
Economic Development Property ★ <i>Property owned by the Tribe on or before March 1, 2014 and <u>occupied by a tenant</u> for economic development purposes.</i>	Eligible for Exemption * <i>Upon exemption, non-tribal tenant is subject to LET</i> * <i>Annual Renewal Required</i>	Eligible for Exemption * <i>Upon exemption, both tribal and non-tribal tenants are subject to LET</i> * <i>Annual Renewal Required</i>
Economic Development Property ★ <i>Property acquired by the Tribe after March 1, 2014 and occupied for economic development purposes</i>	Not Eligible for Exemption	Not Eligible for Exemption

**Department of Revenue Special Programs for more information:
360-534-1503**

For information on Property tax exemptions for tribal property used for essential government services, contact the Property Tax Division at (360) 534-1400.

For more information about leasehold excise tax applicability to leasehold interests of tribally owned property, contact the Special Programs Division at (360) 534-1503, Option 4.